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New York City Hiring Practices

New York State Commission on Government Integrity

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"NEW YORK CITY HIRING PRACTICES"
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STATE OF NEW YORK
COMMISSION ON GOVERNMENT INTEGRITY

PUBLIC HEARING

April 4, 1989
9:15 o'clock a.m.

"NEW YORK CITY HIRING PRACTICES"

Held At

The Association of the Bar
of the City of New York
42 West 44th Street
New York, New York

BEFORE: JOHN D. FEERICK, Chairman
RICHARD D. EMERY
PATRICIA M. HYNES
JAMES L. MAGAVERN
BERNARD S. MEYER
BISHOP EMERSON J. MOORE,

Commissioners

APPEARANCES:

PETER BIENSTOCK, ESQ.,
Executive Director

JAMES M. MC GUIRE, ESQ.
Deputy Chief Counsel

TIMOTHY BROSNAN, ESQ.,
Staff Counsel

ALEXANDRA LOWE, ESQ.,
Staff Counsel

Stewart Nissenbaum
-and-
Harold Rabinowitz
-and-
Leonard Sweet

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Hearing Reporters
THE CHAIRMAN: This hearing is now in
session. I have a brief statement I'd like to
make.

Today and tomorrow, this Commission is
continuing its public hearings into the integrity
of certain New York City hiring practices. In
keeping with the Commission's legal mandate, we
are examining the extent to which these practices
are unethical and whether they foster corruption,
favoritism, abuse of official position or create
an appearance of impropriety that damages the
public's faith in the integrity of City Govern-
ment.

At the conclusion of our investigation,
we will make recommendations to improve flawed
procedures, regulations or laws that permit such
practices and the abuses they may foster.

The Commission's public hearings on
patronage began in January. We heard then, and
have gathered during months of investigation,
evidence of a patronage program operated out
of the Mayor's Talent Bank and City Hall from
at least 1983 to 1986. The Commission does not
intend, by its investigation or these public
hearings, to condemn political patronage, per se. Patronage, we all know, is as old as politics and is still very much alive all over America.

Our Commission is troubled by the patronage system disclosed at our hearings. We heard considerable evidence that this system operated in a way that undermine the affirmative action activities of the Mayor's Talent Bank.

In addition, according to the testimony, candidates referred by political leaders were given more than equal opportunity, they were given special opportunities. For example, testimony was received that politically-sponsored candidates enjoyed the advantage of not having to compete with others for job openings, because the openings were not posted as required. Witnesses testified that at least one agency, the Department of Environmental Protection, was pressured at times to hire a candidate pushed by people in City Hall, even if it preferred a more qualified candidate of its own choosing.

Former City employees also testified that they feared subtle -- and sometimes not so subtle -- retaliation if the agency didn't "play ball."
And, according to documentary evidence and testimony, laborer jobs were controlled by City Hall and were dominated by political referrals.

The basis for our Commission's concern is apparent in light of the testimony given by expert witnesses at our January hearing. According to these experts, politics may be an appropriate consideration in filling policy-making jobs or positions requiring close loyalty to an elected official, but for laborer jobs, patronage serves no legitimate purpose. The experts testified that, by definition, a defensible patronage system requires proper policy reasons for the giving or withholding of jobs, and someone at or near the top who is aware of the practices.

A fundamental question remaining in this Commission's investigation is, who was responsible for setting up and operating this patronage system, and what were its goals, if any.

Another evil of patronage systems, according to the experts, is the ever-present danger of cynicism and loss of morale with agencies, and the lost of public confidence in government, if hiring decisions are perceived to the politically based.
Also troubling is that the subjective, ad hoc decisions necessary to carry out patronage and the great power that goes to those who control it, can corrupt government and lead to other sorts of abuses, a danger made even more real when the power over hiring decisions is combined in one person, with other powers that affect the operations of government agencies.

In fact, one of those other abuses, an apparent cover-up, involving the destruction of Talent Bank documents on the part of government workers, and questionable sworn testimony for this Commission, was brought into sharp focus at the January hearings, and is an important part of the Commission's ongoing investigation.

Today and tomorrow, we will attempt to find answers to many of the questions raised during and after the January hearings.

For example, we intend to call witnesses today who can shed more light on the role of Joseph DeVincenzo and others in patronage hiring. We also will explore the circumstances under which James Hein was demoted following his public testimony in January, and the circumstances
surrounding Mr. DeVincenzo's retirement from City service with a full pension. Our interest in this particular pension stems from the Commission's previously announced recommendation that there be immediate reform of the laws governing pensions for public employees. The lack of any provision in the law for forfeiture of the publicly financed pensions of wrongdoing government employees lessens the opportunity for proper investigation of wrongdoing and the incentive for an employee to cooperate in an investigation.

Today's hearing also will examine how certain jobs at the Department of Transportation, between 1983 and 1986, were controlled by City Hall and were dominated by political referrals.

We will also be questioning, at tomorrow's hearing, Special Advisor to the Mayor, John LoCicero, and First Deputy Mayor Stanley Brezenoff. And tomorrow afternoon will be primarily devoted to taking testimony from Mayor Koch.

The Commission will not be calling certain other witnesses or exploring certain issues, to abide by a request from the Manhattan District
Attorney's Office that we not do so. For obvious reasons, I cannot be more specific in listing those witnesses or subject matters. Two witnesses that the Commission has sought to question, Anthony Ameruso and Joseph DeVincenzo, who has previously testified before us, both privately and publicly, and have recently asserted the Constitutional privilege against self-incrimination.

I'm going to file with the record of these hearings a letter that our Commission received from Andrew M. Lawler, dated March 23, 1989, concerning the circumstances under which Mr. DeVincenzo asserted his privilege, and I would also note for the record that this letter is being filed with the consent of Mr. Lawler.

With the exception of Mayor Koch, all witnesses who will testify today and tomorrow have been served with subpoenas by the Commission. All of the witnesses who testify and all persons who are mentioned during the testimony of any witnesses have certain rights under the New York Civil Rights Law, Section 73.

For example, a witness has the right, at the conclusion of his or her testimony, to file
a brief sworn statement for incorporation into
the record of the hearing. Any person whose
name is mentioned during the testimony of another,
and who believes that he or she has been adversely
affected by the testimony, has the right to, likewise, submit a sworn, written statement for incorporation into the record.

Witnesses may be accompanied by counsel, and counsel may advise the witness of his or her right, as long as there is no obstruction or interference with the orderly conduct of this hearing. Counsel may submit proposed questions to be asked of a witness, and the Commissioners shall as any such question they deem appropriate.

A final, but important comment: After our January hearings, the Commission became aware of concerns expressed by individuals who had been identified, either by witnesses or in documents, as Talent Bank referrals. The Commission has not drawn, nor will it draw, any adverse conclusions merely from the fact that someone may have been referred for employment by the way of the Talent Bank or City Hall. It would be unfair even to suggest, which we do not, that merely because
Jean

a person was referred by the Talent Bank, that he
or she is not a competent or dedicated municipal
employee.

Before calling the first witness, I would
note for the record that Commission Vance is not
present today because of the flu.

I now call as our first witness, Robert
Jean.

ROBERT JEAN, called as a witness, having
been first duly sworn by the Chairman, was ex-
amed and testified as follows:

THE CHAIRMAN: Please be seated.

(Witness complies.)

THE CHAIRMAN: I recognize Commission
Staff Counsel Timonty Brosnan.

MR. BROSnan: Thank you, Mr. Chairman.

EXAMINATION BY

MR. BROSnan:

Q Mr. Jean, before we get started, we often
have a problem with the microphone, and that is that
either the witness or counsel doesn't keep it close
enough to their mouth, so that everybody can't hear.
So, I just ask you up front, speak into the microphone,
so I don't have to interrupt your testimony later.
Jean

It's seems that I have that problem, also.

Mr. Jean, could you tell us where you are presently employed?

A I am employed with the New York City Department of Transportation.

Q In what capacity?

A I'm the Deputy Director in the Parking Division.

THE CHAIRMAN: Can I just interrupt?

It's not clear to me that your microphone is on. Some of the Commissioners are having difficulty hearing the questions.

MR. BROSAN: Is this better?

THE CHAIRMAN: Yes.

Q I'm sorry, Mr. Jean, could you repeat for us where you're presently employed?

A I'm the Deputy Director in the Parking Division in the Bureau of Traffic.

Q Prior to that position, what position did you hold?

A If you want to go back a while, I was Director of Personnel for the City Department of Transportation. I had a number of positions in between.
Q Well, from 1976 until 1986, what was your position?
A I was Director of Personnel for the Department of Transportation.
Q During that time period, did you become familiar with the hiring practices for most of the positions at the Department of Transportation?
A Yes.
Q And, over time, in that capacity, as Personnel Director, did you meet regularly with Commissioner Ameruso on personnel matters?
A We had monthly meetings with a number on staff, the First Deputy Commissioner, the Commissioner, to go over personnel matters on a regular basis and determine which actions would be approved that had been requested by the Bureaus and which would not be approved.
Q Now, Mr. Jean, focusing on the time period 1983, late 1983, until you left Personnel, I'd like to discuss the hiring practices for certain manual laborer titles at the Department of Transportation.
Specifically, those titles include Deckhand, Ferry Agent, Assistant Highway Repairer, Debris Remover,
Starting with Deckhand, Mr. Jean, could you tell us how Deckhands got hired during that period?

A If you're talking about the period after about 1984, they came out of the Mayor's Office. Prior to that, they would have come from the Ferries Bureau.

Q Just for a second, let's focus on prior to that. When you say they came out of the Ferries Bureau, do you know where Ferries got its candidates from?

A As far as I know, they got them from a number of sources, including the Staten Island Political Establishment, the unions, referrals. I really wasn't aware of where each particular person came from. I knew there were a number of sources.

Q Isn't it true that you had conversations with one of your subordinates who told you that, in fact, Ferries was receiving their candidates from the Staten Island Democratic organization and other political clubs?

A I know they were receiving some. I don't know if they were receiving all.

I was told by one of my subordinates at one point that Nick LaPorte, Sr. was calling and asking for the progress of someone we were in the
Jean

process of hiring.

Q Did you ever bring this fact to anyone's attention, specifically to the Commissioner's or Deputy Commissioner's --

A The Commissioner and the Deputy Commissioners in my Department knew a lot more about where these people were coming from than I did.

Q Now, switching to the period when you believe this process changed, did it, in fact, change and, if you know, what precipitated that change?

A At some point, and I think it was 1984, but I don't remember the dates exactly, I was told by the Commissioner to let the Ferries -- I guess he was a Deputy Commissioner -- to let him know that he shouldn't be in business for himself, and he should be referring -- instead of referring directly from some of the political people out there, the names should go through the Mayor's Office and be cleared through the Mayor's Office.

Q Did you have an understanding as to who or what office within the Mayor's Office these candidates had to go through?

A That would be Joe DeVincenzo's office.

Q Did you have conversations with anyone in
Mr. DeVincenzo's office concerning this change in
procedure?

A I know I discussed it with whoever was
there. I don't remember whether it was Peter Gilvarry
or Jim Hein, but they were aware of it, and we were
aware of it. The names went -- any names they wanted
to put on went through the Mayor's Office after that
point.

Q And both Mr. Hein and Mr. Gilvarry were
working for Mr. DeVincenzo at the time?

A Yes, they were.

Q Now, Mr. Jean, Deckhand is a competitive
Civil Service position where, if there's no Civil
Service list, you hired provisionally; correct?

A Yes, that's true.

Q Do you recall the list, the Civil Service
list, for Deckhand running out at a point in time
prior to 1983, '84?

A There was no list for quite a while before
1983 or '84. I don't remember exactly how long, but
the list had run out for at least a year or more.

Q Mr. Jean, you have an exhibit book in
front of you. If you could just take a look at
Commission Exhibit No. 27?
A If I can find my glasses.

Yes. I read it.

Q Could you tell me what that is?

A It's a directive from the Mayor basically saying that to eliminate all barriers to equal opportunity, there should be -- it basically says -- wait, let's see: That that position should be prominently posted by all City agencies and placed on file with the Department of Personnel.

Q Are these commonly known as the posting procedures that came out of the Mayor's Office?

A Yes. This is what establishes it. There were a set of procedures out of the Mayor's Office after this that set out the guidelines.

Q And during the time that you began to hire Deckhands provisionally and more focusing on 1983 and thereafter, was posting for provisional job vacancies a required personnel policy?

A Yes, it was.

Q And that policy was coming from --

A The Mayor's Office.

Q And when you hired Deckhands during this specific period we're talking about, did you post personnel notices?
Jean

A No, we did not.

Q Why not?

A Because the Mayor's Office let us know that since they were referring the candidates that we didn't have to post the position.

Q When you say the Mayor's Office, you mean, Mr. DeVincenzo's office?

A Yes, I do.

Q I want to turn to another title and that is Assistant Highway Repairers. Assistant Highway Repairers is a City-wide job; is that correct?

A I don't know what you mean by City-wide. It's unique -- it would have been in all boroughs. It's unique to the Department of Transportation.

Q Did Assistant Highway Repairers work in all five boroughs?

A Yes, they did.

Q Assuming that a determination has been made internally that there is a need for Assistant Highway Repairers, where would the candidates be recruited from?

A Well, in the past, because of the fact that a Class 3 driver's license was required for the title, which was the kind of a license most people
don't have, the candidates were recruited from Motor vehicle operators already working for the Department who had Class 3 licenses initially.

Q Focusing now on late 1983 through early 1986, is that also the case?

A At some point and again I can't remember exact dates, I was told that an agreement had been made with the Mayor's Office where we would get half the names from the Department among the motor vehicle operators and the other half of the names would come from the Mayor's Office.

Q So those were the two sole sources for Assistant Highway Repairers, the motor vehicle operators and City Hall?

A I don't know if they were the sole sources, but they were 99 percent of the sources. There might have been one or two people who came from some other source.

Q Mr. Jean, could you turn to Exhibit 62?

A I have it.

Q Could you also take a look at Exhibit 63?

A Yes. I have looked at both of them.

Q Could you tell me, generally, what they are?
These are PAR's. I think they are called Position Allocation Requests to recruit Highway Repairers. One has a name on it and the other has a list of eight names.

Q I think PAR's have come to be known as Planned Action Reports. I don't mean to correct you, but --

A I think you are correct.

Q Is it true that both these PAR's are seeking hires in 1984?

A According to the dates that are on the PAR's, that would be true.

Q Now, Mr. Jean, if you could look at the notation on Exhibit 62 in the Justification Section on the bottom half --

A Where it says, "Posting Waived"?

Q Yes, and then the list of attached candidates on the second page of Exhibit 63?

A Yes. I have looked at it.

Q What do they indicate to you?

A That the position wasn't posted and that names were submitted for approval -- or people had been appointed -- this was a post audit. The people had been appointed; eight, nine people.
Q Is that to say, then, that in 1984 candidates for this position were coming only from City Hall and the union?

A I don't know if this says that. That was my recollection that they came from City Hall and/or the union.

Q Now, Mr. Jean, you spoke of an agreement being made between City Hall and the Department whereby a certain number of candidates would come from the union and a certain number of candidates would come from City Hall. Could you tell us about that agreement?

A I was told by the Commissioner that he had an agreement with Joe DeVincento that City Hall would supply, I think, 50 percent of the names and the other 50 percent would come from the Deputy Commissioner of Highways who I understood to be getting at least some of those from the union, but they were all -- the group from Highways were all current employees.

Q Do you recall that the union representative was also consenting to this arrangement?

A I would assume he would be, but I don't know that for a fact. I never talked to him about it.

Q Did Commissioner Ameruso ever tell you who from City Hall would have to approve this arrangement?
Jean

A He mentioned Joe DeVincenzo's name on a couple of occasions. That's who he dealt with over there.

Q Did Commissioner Ameruso ever tell you why he made such arrangements with City Hall and the union?

A I don't know if he mentioned it in this context. He mentioned it to me on other occasions something to the effect that he would be getting credit with City Hall for himself and for the agency.

Q Did he say it would be a good thing to make points with the Mayor's Office?

A Something to that effect. I don't remember the exact words, but that was my understanding.

Q And did he also instruct you that if other positions with no education or qualification requirements were to come about in this fashion that you should inform him so that he might be able to make similar arrangements?

A He told me that if we were hiring any positions with a fairly large number of candidates where there was no education or experience requirements that City Hall might be interested in filling, to let him know, and he would be able to work out something with Joe DeVincenzo so that we would get
credit with the Mayor's Office.

Q And finally, Mr. Jean, these arrangements, were they official and by that I mean, did the City Department of Personnel know about these arrangements?

A There was no formal procedure to notify them. I don't know that they knew about them. They weren't part of the agreement as far as I know. They wouldn't have had any basic interest in it as far as I know.

Q Mr. Jean, Exhibits 62 and 63 indicate -- I think you indicated -- showed you that you were not posting for the Assistant Highway Repair position in 1984.

A No. 62 says, "Posting Waived." The other one does not. So from the first one, it would mean that these were not posting for those positions. I would assume we weren't.

Q Well, the second page of Exhibit 63, though, all the candidates come from one specific borough; is that correct?

A Yes, they do.

Q Would that indicate a coincidence to you or would that indicate that you weren't posting?

A It would indicate, I think, that we weren't
posting.

Q And these exhibits are for 1984. My question is: Do you recall posting for this position in 1985?

A I don't believe we posted once that agreement was made.

Q Now, Mr. Jean, could you look at Exhibit 64 and Exhibit 65?

A I have looked at them.

Q You have had an opportunity to look at both exhibits?

A Yes, I have.

Q Are these types of notes that are contained in those exhibits familiar to you?

A I have seen them from time to time. I don't know how often, but yes.

Q Are these the types of notes that would come from City Hall referring candidates for different positions?

A Yes. Peter Gilvarry or Jim Hein would attach a note to a list of names, I believe. I really didn't handle that on a day to day basis, but I believe that's how it happened.

Q Do you know if Peter Gilvarry or Jim Hein
Jean wrote to your people, your staff regularly with names?

A They sent us names, yes. I don't know if it was always sent in this form, but they sent us names.

Q And in all of these arrangements that you spoke about that would have been made with City Hall, did City Hall have exclusive control over who was to be referred?

A Well, there were exceptions made. Basically, they referred the candidates, but if there was some reason that someone in the agency had a candidate, we could usually work out something with them. We had a good relationship. We weren't fighting with them.

Q If someone in the agency had a candidate, you still had to clear it with City Hall?

A Yes. If we had agreed that there was a deal with them on a particular title, of course we would have to clear anyone else with them.

Q Now, Mr. Jean, focusing on Exhibit No. 65, if you could, the first page on the note in Exhibit 65 says, "The candidates are listed in priority order." And then the attached page is a numbered list which is headed, "Assistant Highway Repairers."

My question is: Was it common for City Hall
to send candidates in certain priority?

A I don't recall that as being common. I had seen it on a few occasions, but I don't know if that was common.

Q Well, could you tell me why they would send candidates in priority order?

A Because there would be a certain amount of jobs and people would be going through the interviewing process and some of the people wouldn't take the jobs. Some of the people wouldn't qualify. Some of the people would be turned down and at a certain point the job would be filled. There wasn't a site control in terms of one person-one job. So they put them in priority order to make sure that if we ran out of priority jobs, that at least their priorities got the first crack.

Q When these candidates were sent over by City Hall, was there, in fact, a review or interview process by which they were selected?

A As far as I knew there was.

Q By whom?

A By someone in the hiring area, the area where the people were going to work. They would be interviewed by a supervisor or someone in the Deputy Commissioner's office depending upon the situation.
Q And if someone from one of those groups wanted to reject a City Hall candidate, did they have absolute authority to do so?

A In most cases, as long as they were more or less cooperating, there wasn't a problem if they rejected somebody. If they were rejecting somebody in favor of another -- out of a group of City Hall candidates because they liked others better, I don't recall City Hall ever giving us a tough time about it as long as they felt we were cooperating with them.

Q Isn't it true that in those interviews, but for City Hall candidates making a big mistake, they were hired?

A In those kind of jobs, if they looked decent, I mean, they were not the kind of jobs where you were going to ask someone their hobbies or anything. These were the lowest level laborer type jobs. If someone came in, they looked neat and weren't reeking of alcohol and they could do the job, basically they would be hired.

Q Mr. Jean, let's move onto another title and that is Debris Remover and I want to take the same scenario.

The determination had been made that a
certain number of Debris Removers are to be hired. Where would you get the candidates from in that instance?

A At that point in time they came from two sources, the way I remember it. Our own people in the Public Works Program who we want to put on regular employment and the Mayor's Office. The Mayor's Office basically had the jobs, but if we came up with candidates that we wanted to put in from the Public Works Program, then we would call them and say we have six or seven of our own and they had no problem with it.

Q But you still had to get those candidates cleared through the Mayor's Office?

A Yes, we did.

Q Was there any type of agreement worked out for this position between the Commissioner and the Mayor's Office?

A I'm not positive. I think there was. It was a type of title where there would have an agreement, but I don't really remember specifically. I do know we got most of our referrals from the Mayor's Office.

Q And do you recall posting for that title, at all, during the period we are speaking about?

A I don't recall. From some of the documents
I've seen, it indicates that we didn't post, and I would believe that.

Q Now, with Debris Removers, Mr. Jean, --
MR. BROSnan: Strike that.

Q In your experience, Mr. Jean, do you remember where the greatest concentration of minority hires was in these labor type jobs at the Department of Transportation?

A As far as I can recall, most of the minorities were the bulk of the lower level jobs, and that's where the concentration was.

Q When you say, "lower level jobs," do you mean titles such as Debris Remover, Assistant Bridge Operator and Parking Meter Collector?

A Yes.

Q As opposed to the higher level jobs of Assistant Highway Repairer?

A I don't remember them coming in the same numbers in the higher level jobs as they came in in the lower, but I don't have EEO statistics, so -- but that's my recollection.

Q Did your experience lead you to a conclusion on the effectiveness of the posting procedures?

A I didn't think it was, to any great degree,
Jean

changing the ethnic make up at the higher level jobs,
but I'm talking higher level than you're talking about,
I'm talking about managerials and sub-managerials, not
so much the bottom line laborer types.

Q    Didn't you find that posting procedures
were hypocritical?

A    I, frankly, thought they -- yes, I did.
I thought they were a waste of time. I thought they
were a farce, because I didn't care -- once there was
no Civil Service list -- and I wanted a Civil Service
list for titles, but Department of Personnel was not
giving exams for these titles. Once they were pro-
visional, I really didn't care where the people came
from as long as we filled the jobs.

The posting procedures slowed down the
process to fill the jobs. The agency was expanding,
and we were under a hell of a lot of pressure from
the various Deputy Commissioners to fill their posi-
tions. Working out a deal with City Hall where we
would refer people and going around the posting pro-
cedure, frankly, to me, was a quicker way to fill the
jobs, plus, I didn't see anyone being brought in from
off the street on the jobs that were posted.

The positions that were posted, the
people came from within the Department, somebody they knew, somebody who referred them. There were very few people who walked in cold on posting jobs.

So, yes, I considered it hypocritical.

Q Mr. Jean, without going into the details for Ferry Agent, the position of Ferry Agent, can we also classify that as one of the jobs where there was no posting and the candidates had to come from the Mayor's Office?

A That's what I recall.

Q Mr. Jean, could you turn to Exhibit No. 66?

A Yes. I've looked at it.

Q You've had an opportunity to review that?

A Yes, I have.

Q Could you tell us what this memo means?

A It's a memo from me to Joe DeMarco telling him that Peter Gilvarry had given us a list of names for various positions in Ferries and that Lenny Pierkarsky, who was a Deputy Commissioner of Ferries at that time, should insure that all these people were interviewed, and if he wanted to reject any of these people, he should call me up and let me know exactly why, so that I can inform City Hall.
Q Can you tell me what precipitated this memorandum?

A Because, at that point, the referrals were still coming from Ferries, and the perception, at least by the Commissioner, the way he communicated it to me, was that Lenny was getting referrals from the political establishment on Staten Island and he was getting credit and the Mayor's Office wanted credit for the Mayor for these referrals.

Q Continue, please.

A Therefore, it was time to tighten up a little bit with Lenny, which is the reason for this memo, to insure that the City Hall people got inter-viewed.

After that point, it wasn't necessary, because at a certain point, then all the names had to go through City Hall, but this was a point before that.

Q Just to clarify two aspects of your answer, Lenny is who?

A Lenny Pierkarsky.

Q He was the Director of the Bureau of Ferries?

A Yes, he was.

Q And he was getting his candidates from the
Staten Island establishment, is that what you said?

A I don't know that for a fact. That was
the perception that I was given from the Commissioner.

Q And by the "Staten Island establishment,"
do you mean the political leaders in Staten Island?

A Yes, I mean the political leaders in Staten Island.

Q Specifically?

A I would assume he was talking about Nick LaPorte, Sr., that's who would call periodically to
check on the progress.

Q Focusing on the words on Page 2 of Exhibit 66, "Peter has indicated the above referrals are ex-
tremely important to City Hall," what does that mean?

A That means that these were people they
would really like to see appointed.

Q Does it mean that they were to be hired
but for extraordinary circumstances?

A I don't know if the circumstances -- if
they were qualified, they would be hired. The only
reason would be, if Lenny had some real good reason,
if they were not qualified, as I say, if they were
reeking of alcohol, or something like that, the answer
would be no. Yes, they would be hired.
Q  Mr. Jean, aside from the particular titles we've discussed, was there a system in place at DOT by which you could find jobs for candidates that Peter or Jim or Mr. DeVincenzo sent you and said, these candidates are real important to City Hall?

A  I don't know that there was a system. Anything like that would, more likely, come from the First Deputy Commissioner or the Commissioner's office telling us to see if we could find something for a particular person.

Q  So do you know if there were cases where this was done?

A  Yes, there were.

Q  And was this done in instances where a bureau was not contemplating a hiring for a specific title, but then a candidate came in from City Hall and was placed in a vacant title?

A  There were times when the agency had not made a request to fill -- where part of the agency had not made a formal request to fill a position where a candidate was placed from City Hall.

Q  Can you think of any specific instances where this occurred?

A  You're going back a long time. I don't
Jean

recall specifically. Again, I didn't handle these things on a day by day basis.

Q Let's take, for example, the Secretary of the Department's job, the title Secretary of the Department; was there someone hired for that position?

A That was Nick Mancuso, I believe.

Q And could you tell me the circumstances surrounding that hiring?

A I remember that he was a referral coming from, I believe, City Hall -- again, this came down from the Commissioner's office -- and they needed to find a title for him at a particular salary, a managerial title.

Q And the title they found was?

A The title that was suggested by the Mayor's Office was Secretary of the Department.

Q And who found that title?

A I believe that was Joe DeVincenzo; that's what I was told, anyway.

Q Had that title been used at the Department of Transportation for some time before Mr. Mancuso was sent over as a candidate?

A In all my time in Transportation, I don't recall ever having that title. It was an obsolete title,
and it was a strange title to be using for what he was doing.

Q And prior to Mr. Mancuso seeking that title, you weren't seeking to fill that title?

A We weren't seeking to fill the title. I don't think we were seeking to fill those job duties, although he did do a job.

Q Do you know what the salary was for that position?

A I don't really recall. It was a managerial title and it was a good salary, but I don't remember what a good salary was then.

Q Mr. Jean, can you please look at Exhibit 67?

A I've looked at it.

Q Are you familiar with this exhibit?

A You showed it to me in the previous deposition. Before that, I don't recall having seen it.

Q Well, would you agree that it is a series of Planned Action Reports for the same position?

A Yes, it is.

Q And on the first page, the first Planned Action Report, directing your attention to the "salary range" and the "approved title," can you tell me what
they indicate?

A  The position that was requested was a Staff Analyst at 19 -- with a salary range of $19,578 to $25,318.

Q  And, that is to say, the department or bureau that was seeking to fill a position established that they needed a Staff Analyst in that particular salary range?

A  Yes, that's what it appears to be.

Q  And on the first page, still, looking at the "justification" section on the bottom half of that form, could you please read the handwritten portion and then tell me what that indicates?

A  It says: "Submitted on February, post as new item. The above is converted to PAA-3 at $28,000 for Thomas Jelliffe. Peter Gilvarry candidate from the Mayor's Office."

Q  Could you tell me what that indicates to you?

A  That the approval to hire that particular position was converted to an approval for a PAA-3 position at $28,000 for Thomas Jelliffe, so that position was converted to another one, the approval for that position.
Q Also, above the language that you just read, it indicates that the posting was waived for this position; is that correct? Still the first page, Mr. Jean.

A On the first page, it isn't -- on the second page -- I'm sorry, yes, it is. It does say, "Posting waived."

A Is the posting waived because this is a City Hall candidate?

A Well, all these notes are in a different handwriting, and it looks to me like they were written when the second -- if I go back to the second page -- when the second candidate or the candidate for the PAA-3 was appointed. In other words, it was a prior approval dated June 30, '83 for a Staff Analyst that was converted -- this says, "February post," so we are talking about six months, seven months later.

Q Mr. Jean, could you focus on the "Justification" Section at the top of page 1 and at the bottom of page 2 on Exhibit 67?

A Yes. I've looked at them.

Q Have you had an opportunity to review both of those sections?

A Yes. They are not exactly the same, but
Jean

they are essentially the same job.

Q     Well, can you indicate to me whether there are any differences in the duties for which the City Hall candidate has been hired to perform at $28,000, and the job contemplated by the bureau for a considerably lower salary?

A     They look like they are similar duties.

Q     Would you agree that this is a case wherein because it's a City Hall candidate, the agency is going to spend more money per year in filling a position than they had determined was initially necessary?

A     It would appear so, but from the way this reads -- I don't know the particular case, so I can't testify from memory. That's what it appears to be.

Q     Mr. Jean, was this type of consideration extended to candidates who came off the street?

A     I don't know that anyone came off the street. Sometimes there were people within the agency or people who were referred by someone in the agency who might be given, I don't know, special treatment. I don't know how often this kind of thing occurred, and I don't know that it was that clear cut a situation.

Six months went by in between here.

Q     Mr. Jean, were the Ferry Agent positions
Jean

hard to fill?

A I don't believe they were. I believe they were relatively easy.

Q And during the period '84-'85, was there a "no nepotism" policy in effect at the Department of Transportation?

A Yes, there was.

Q Could you please take a look at Exhibit 68?

A Yes. I see it.

Q Would the policy have to have been waived to effectuate this hire?

A Since both candidates had the same last name, I would believe that that would have been waived.

Q Who would have had to waive the policy?

A It was the Commissioner's policy; he would have had to waive it.

Q And, in your experience, what would have caused the granting of such a waiver?

A It would be extraordinary. If the position was particularly difficult to fill, if there was some kind of personal hardship involved where -- I mean, I remember one case where somebody in the Department died or was very sick, and I think they hired their son, or something, but, other than that -- or City Hall,
in this case, it appears, they made an exception for it. There weren't that many exceptions made. This was unusual.

Q Now, Mr. Jean, when you wanted to dismiss, terminate a City Hall referred candidate, was a different approach used to fire a City Hall candidate as opposed to a non-City Hall candidate?

A If they were in the process of firing someone from City Hall, we would let the Mayor's Office know that so and so was in trouble and was going to be fired.

Q In fact, didn't the Mayor's Office have the final say on whether a referral was going to be terminated or not?

A I don't know if "final say" is really true. In one or two cases, I remember them asking to send a person down to them and they would talk to him and to give him another chance. In the few other cases, and I don't remember that many, we did go ahead and fire them, we let them go. As a courtesy --

Q In any event, Mr. Jean, you had to notify City Hall beforehand?

A I don't remember whether it was written in stone that we had to notify them, we did as a courtesy.
They were the Mayor's Office. We worked with them.

Q    Mr. Jean, aside from the particular instances that we've already discussed, and, particularly pertaining to the topic of dismissing and getting City Hall's approval, is there any particular instance that stands out in your mind where special consideration was afforded a City Hall candidate?

A    There were a few musts. I remember one, and I don't remember the man's name, where the guy came in and he was behaving very strangely, and my staff in Appointments & Promotions came out and said that this guy is not too straight, he was rambling and babbling, and I went to the Commissioner and I said, "You know, this guy is a problem, but I understood it to be important to City Hall that he be put on," and he told me to hold off for a while and he would check it out, and at a certain point, he said, "Look, we have to find something for him," and we put him in the Parking Violations Bureau.

After about two weeks, I got a call from them that he was very disruptive, and I went to the Commissioner again and I said, "This guy is very bad, he's, obviously, not all there," and, again I was told, at a certain point, that we should give him another chance somewhere else, and we put him in Ferries for a while,
Jean

and I think he fell down a ferry hatch, and I don't know what happened to him. He was injured. He was on Workmen's Compensation. I don't know what happened to him after that.

There were others. You're talking about things that happened four or five years ago. Most of the time, though, that was special. Most of the time, if we wanted to get rid of someone, and they weren't any good, we got rid of them. Most of the time, we were not told that we had to put someone on.

Q  I understand.

A  If I was told by City Hall, I didn't take it from City Hall at that point. I would always go to either the First Deputy Commissioner or the Commissioner and say, City Hall says this, what do you want me to do.

(Continued on next page.)
Q: You cleared your directions from City Hall with your bosses?

A: With my bosses, yes.

Q: Mr. Jean, earlier in your testimony we spoke of the Commissioner seeking credit. If we could just clarify, what was your understanding, credit with whom?

A: With the -- with Joe DeVincenzo's office, with Mr. LoCicero, with the Mayor, with the hierarchy. I wasn't aware, specifically, but I knew that an election was coming up, and the Commissioner would have to be reappointed, so I assumed that he was trying to get credit with the Mayor, whoever made those decisions for the Mayor.

Q: Did you also seek credit or did the Commissioner tell you was seeking credit for the agency so that things would run smoother?

A: Well, that was our attitude, and I think it was his, too. In other words, I know that some other agencies had trouble with the Mayor's Office in terms of cooperating. We cooperated with them, and we did not have any problems that I can recall with them. We worked together. We were all part of the same City.

Q: And you were seeking credit with the Mayor's Office, specifically with Mr. DeVincenzo's office?
Jean

A Yes, so that our things -- if we needed a favor, if we needed to cut some corners, if we needed an approval of something, then it would run smoothly.

Q Mr. DeVincenzo's office was the one that approved all your personnel actions?

A Yes, they were.

Q And they were also the office that referred the candidates we have spoken about throughout this testimony?

A Yes, they were.

Q Did Mr. Ameruso ever give you any indication that he was seeking to obtain credit with persons at City Hall other than Mr. DeVincenzo's office?

A I don't know if he mentioned by name -- I don't know if he said specific words to me. I understood it to mean Mr. LoCicero, the Mayor, as well as Mr. DeVincenzo.

Q Mr. Jean, in terms of referring candidates, did you ever get an indication that candidates were being sent over at a higher level than between yourself and Mr. DeVincenzo?

A Occasionally, there would be a note attached, and it would -- it would indicate -- it would have Mr. LoCicero's name on it, or -- I didn't remember it
before, and I was looking at the guest list for today. I think I saw a couple with Mr. Skurnik's name on it.

Q Mr. Jean, could you take a look at Exhibit 69?

A I've looked at it.

Q Now, I want to represent to you that this is a copy of an original letter that ended up in the Department of Transportation personnel files, and, with that representation, could you now take a look at Exhibit 70?

A Yes, I've looked at it.

Q Could you tell me what Exhibit 70 is?

A Exhibit 70 is a PAR for the appointment of a Eugene Gershuny as an Administrative Staff Analyst, M-2, in the Parking Violations Bureau.

Q Now, taking Exhibit 69 and Exhibit 70 together, can you tell me what happened here?

A Well, from the record, it looks like Mr. Manes, the Borough President of Queens, wrote a letter to Mr. LoCicero, with Mr. Gershuny's resume, asking for his help in -- well, this says Mr. Gershuny, "who has applied for the position of Executive Director of Fiscal & Analytical Services at the Parking Violations Bureau. I would appreciate your assistance in this matter. Please call me."
Evidently, this went from Mr. Manes to Mr. LoCicero, either directly to our Commissioner or through Joe DeVincenzo's office. I don't really know.

Q And isn't it a fact that Mr. Gershuny did end up getting the job that he was seeking?
A Yes, he did.

Q Now, Mr. Jean, it's clear that for this individual, your agency was aware of the referral source. Were there other times, were there other indications of where City Hall candidates were coming from?
A Not normally, but occasionally, as I say, someone would leave a piece of paper attached to a resume with a name on it.

Q And aside from these pieces of paper or notes, did you ever receive other indications of source, such as phone calls from politicians checking on particular candidates?
A Yes, but that -- not on a regular basis. Occasionally, we'd get a call from -- I think my assistant got some calls from Nick LaPorte, Sr., checking on the progress. I think I talked to him once.

Q Did you talk to anybody else?
A Jay O'Donovan, who used to work for the agency, so I knew him. He would call me on occasion to check on
progress. I don't think that was more than five or six times all together.

Q Did you bring this fact to anyone's attention, the fact that referral sources might be coming known to people at the Department of Transportation?

A I think at one point I showed the Commissioner something that had been attached, that shouldn't have been.

Q What was the Commissioner's response?

A Well, his response was that people were careless.

Q Did you understand why he said people were careless?

A Well, we didn't want these names going through that way for a number of reasons. We didn't want to embarrass the Mayor's Office, we didn't want -- we didn't want our people, the whole world, knowing where they came from, because we really didn't want them getting special treatment one way or the other. And, basically, my staff, myself, we're all Civil Service, and I think it bothered them to see this kind of -- these kind of names going through on a regular basis. So, we didn't like the idea when they came through that way.

Q Now, Mr. Jean, could you take a look at Exhibit 71?
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A Yes, I've seen it. I mean, I just looked at it.

Q Well, there are several pages. If you could just take an opportunity to flip through it?

A I've looked at it.

Q Now, Exhibit 71, generally, consists of Department of Transportation internal personnel documents; is that correct?

A Yes, it does.

Q And, generally, the documents indicate things like City Hall referring specific candidates, and that posting procedure would be waived for these specific candidates, recruitment dispositions were not required, things of that nature?

A Yeah. There's something here that's written on one of these papers that recruitment disposition is waived.

Q They also contain instructions from Mr. Gilvarry in certain instances, such as, "He would like us to call his candidate in today," and, "Hold per Peter Gilvarry," things of that nature?

A There's a note signed Joe, which I assume is from Joe DeMarco to Marsha saying, "Peter stressed that we call this guy today. If any problem, let me know."

Q Can I characterize these as notes about the
Jean

Mayor's Office concerning instructions from the Mayor's Office, or the fact that these candidates --

A Yes. There are quotes. I think most of them are from Mr. DeMarco.

"Joe Schwartz" -- I guess they mean Joy Schwartz -- "of Joe DeVincenzo's office called on this."

"Peter Gilvarry had forwarded" --

Q Now, Mr. Jean --

A "Peter Gilvarry."

Q Mr. Jean, in your private testimony, you indicated to me that people were, I think the word you used was "stupid" to have put this information down on paper.

Can you tell the Commissioners why you thought this was stupid?

A Basically, from what I said before, the -- once the people came on, we didn't want the whole world knowing where they came from, because we didn't want -- we didn't want them getting special treatment.

When I had come to the agency years before, there were -- I had had conversations years before with supervisors, who said that they had so and so, he was no good, but they couldn't fire him because he was from this or that.
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One of the things we were trying to avoid was that kind of situation. We also didn't want our staff, who were our lower level staff people, seeing all these people coming in, in a lot of cases at salaries higher than they were making.

Q Was one of your concerns also that you were afraid these kinds of documents might embarrass City Hall?
A Yes.

MR. BROSnan: Mr. Chairman, I have no further questions.

THE CHAIRMAN: Thank you.

THE WITNESS: Can I just say one thing?

THE CHAIRMAN: Absolutely.

THE WITNESS: What bothers me about this, because I've been -- I've been a permanent civil servant for a long time, and I know there's been patronage for a long time. What bothers me the most about the last five or six years is the fact -- or longer, is the fact that the reason this was possible was there are no Civil Service exams given for a lot of these titles, and that's why there were so many provisional positions to fill, and that's why the opportunity was there.

That's all I'd like to say.
THE CHAIRMAN: I wonder if you could just clarify something for the record?

In response to a question concerning the Assistant Highway Repairer position, you made reference to an arrangement that involved City Hall and also, I believe, the Special Highway Deputy person, and you said, as I recall your testimony, that some of the jobs were filled as a result of names that came from the Special Highway Deputy or Director. I believe you said that you assumed that some of those jobs came from the union ranks. But, what I wasn't clear on was, you made reference to the names that came to you from that person being names of current City employees.

Do you recall that testimony?

THE WITNESS: Yes, and, if it wasn't clear to you, I'm not entirely sure. The names were sent to me by the Deputy Commissioner for Highways, Henry Folken. The names were of current Motor Vehicles Operator employees.

At one point, I heard that the union was referring -- the union was making recommendations to him on some of these people, although they were our employees.
THE CHAIRMAN: Is it your testimony that those who received jobs from those recommendations were, in fact, being promoted from other positions they held in City Government?

THE WITNESS: Yes, they were, in effect, being promoted from Motor Vehicle Operator positions.

THE CHAIRMAN: Thank you.

I don't believe there are any further questions.

COMMISSIONER HYNES: I have some.

I just wanted to follow up on the statement you made about the fact that this was allowed to happen in terms of provisional hires, because of no Civil Service exam.

When, to your recollection, was the Civil Service list covering these positions -- when did that expire, how many years ago?

THE WITNESS: Well, the Assistant Highway Repairer, there was never any list, as far as I recall. It was a relatively new title, and no exam was given. And, then, I believe the position was put in a laborer class.

Deckhand, I think there was -- when I was giving my testimony before, I saw some documents. I think the Deckhand list expired or the last test
was given in 1979. I could go on with other titles, but, basically, I don't know.

The last issue of the CHIEF, there was something like 25,000 provisionals, and the reason there are that many is, there are not exams for those titles.

COMMISSIONER HYNES: So, all of these positions we've been talking about would, in the normal course, be covered by Civil Service; is that correct?

THE WITNESS: Except some of them now have been changed in the last couple of years to laborer class, which is -- the laborer class was on the books, but it wasn't used from about 1965, when I came into the City, until something like 1985, when it was -- once they put a title in the laborer class, it did not require an examination.

COMMISSIONER HYNES: Who determines when a Civil Service exam should be given for any particular title?

THE WITNESS: Well, the rules are on the books, and I believe it's in the State Civil Service Law, but I'm a little rusty on that.

If there are provisionals in the title, the City Department of Personnel is supposed to order
Jean

an examination. If there are no provisionals, the agency will request an exam. Sometimes the agency will request the exam even though they know it's the Department of Personnel -- we would request an exam even if we knew the Department of Personnel was obligated to order one anyway, because they had a tremendous backlog. But, if there are provisionals in the title, I think it's statutory that the Department of Personnel is supposed to order an exam.

COMMISSIONER HYNES: To your recollection, was the Department of Personnel ever requesting by the Department of Transportation to have a Civil Service exam to cover any of these titles?

THE WITNESS: I remember with Deckhands, we asked for an exam on several occasions, and I think Lenny Pierkarsky was pushing for an exam also, from Ferries. At some point, I don't know if they asked me directly or through one of my subordinates -- this is just after I left in '86 -- whether or not we would go along -- I believe it was a non-competitive classification title, and I think I asked the Commissioner what he wanted me to do and he said, "Use your judgment."

I told him I wanted an examination. We followed
Jean

it up. We wrote to them in late February requesting an examination.

COMMISSIONER HYNES: That's late February of '86?

THE WITNESS: Yes.

COMMISSIONER HYNES: Has there been an exam?

THE WITNESS: Not as far as I know, but I'm not in touch with that now.

COMMISSIONER HYNES: Did you have any conversations yourself, personally, with anyone from the Department of Personnel concerning the subject having a Civil Service exam?

THE WITNESS: For that particular title, I think I talked to them directly, but it was a long time ago. I might be remembering a conversation through a subordinate.

COMMISSIONER HYNES: Do you recall whether you learned from any source a reason why the Department of Personnel was not giving Civil Service exams?

THE WITNESS: There were a lot of reasons. I originally came from the Department of Personnel before I went to Transportation. So I know a lot of the old timers there. They had a problem with writing exams that would pass court tests. In other words, a lot of exams were getting thrown out of
court. At one point, I think they were writing exams that almost everybody could pass, so that way, they couldn't be thrown out of court and the whole process, to my recollection, has been falling apart since the late '70's.

COMMISSIONER HYNES: Just for the purposes of clarification, if there's a Civil Service exam and a Civil Service list, the Civil Service list has to be -- everyone on that list either has to be hired or reject the position before you can go provisional; correct?

THE WITNESS: There's a one out of three rule. They have to be accounted for one way or the other. Either you reject them or they reject you or they get the job.

COMMISSIONER HYNES: Is it fair to say that if there was such a Civil Service list that the Department of Transportation and Mr. DeVincenzo's office, would not have the liberty of placing people unless the Civil Service list was exhausted?

THE WITNESS: Deckhands we had hired from the list for years, and as Personnel Director, it was a lot easier dealing with a list.

COMMISSIONER HYNES: A Civil Service list?
THE WITNESS: Yes. We could hire very quickly and hire large numbers of people. That's what the list was set up for.

COMMISSIONER HYNES: I think you said the last list for Deckhand was '79. The list has expired in '79. Has there been any examination for that title since 1979?

THE WITNESS: You would have to ask someone else. I think the position was put in the labor class, but I'm not sure.

THE CHAIRMAN: Mr. Emery.

COMMISSIONER EMERY: Is there any way that a qualified person applying to DOT for a job could get a job without knowing somebody?

THE WITNESS: Yes, but it would have been a lot easier if you know someone and it depended on what kind of a job. There were positions where it was difficult to find people and people would come in, but there was not a lot of advertising in the newspapers. So if someone hires someone and they don't come from the newspapers and they don't come from within, you figure they're coming in basically because someone knows them, or the Mayor's Office referred them. I don't recall a lot of people coming
off a posting cold and getting a position.

COMMISSIONER EMERY: I'm not sure whether
Mr. Brosnan covered this or not. He may have missed
it.

Do you have any sense of what the minority
makeup was from the City Hall referrals?

THE WITNESS: At the lower levels, there were
a lot of minorities, but I don't -- we weren't even
allowed to keep EEO statistics. That was kept
separately. So, this is just by guesswork. You have
to understand that I didn't deal with this on a day
to day basis. I had subordinates dealing with it
and I knew what was happening, but I didn't see a
flow of people coming through on a regular basis.

THE CHAIRMAN: Mr. Magavern?

COMMISSIONER MAGAVERN: Did you ever see any-
thing indicating that there was a deliberate policy
not to conduct exams in order to allow the
administration greater flexibility in hiring?

THE WITNESS: I have heard people say that,
but I never heard anybody say that who was in a
position to know. I don't know if that was a
deliberate policy. I do know that that is the
situation.
COMMISSIONER MAGAVERN: Thank you.

THE CHAIRMAN: Mr. Schwarz?

MR. SCHWARZ: You have used words here like "credit, deal, cooperating, agreement, things go more smoothly, I assume, if you have cooperation."

Could you explain what you mean by that?

THE WITNESS: It's not unique with the Mayor's Office. If you were in City Government or any other bureaucracy for any length of time, you deal with people whose cooperation you need to get things done. You do them favors and they do you favors, and it was the same thing with the Mayor's Office. You cooperate with them, you take a certain amount of their candidates and then when you need somebody for the agency, or when -- or if there's a dispute -- you see, we did not have disputes with them because the good will was there. It was not a question that if we were rejecting somebody that we weren't playing ball. They would listen to us a little more on those kinds of things. It meant things flowed a little more quickly and a little more smoothly, frankly.

In my position, I wanted to hire and I wanted to fill the jobs and sometimes that was the faster
Jean

way to fill it.

MR. SCHWARZ: In other words, what you are saying is, that if you did cooperate and you did get an agreement, even though the agency wanted to do something which it believed would be in the best interests of the City, that things might go more smoothly and you might not get approval if you hadn't cooperated with respect to the prior employees who were going to be hired?

THE WITNESS: Mr. Schwarz, I don't think we thought about it in the negative sense. That was a cooperative relationship that existed and we didn't think of what would happen if it didn't. That might have been in the back of our minds.

MR. SCHWARZ: You indicated in your testimony that there were agencies that had problems --

THE WITNESS: I had friends in agencies that I heard would be having problems, the kinds of problems we wouldn't have.

MR. SCHWARZ: Did you ever have any discussion with the Commissioner or Deputy Commissioner with respect to these relationships?

THE WITNESS: I don't remember specific conversations. I remember a perception that it was
the Commissioner's -- certainly the Commissioner's stance that he cooperated with them.

MR. SCHWARZ: And, in effect, the Commissioner believed he would be more likely to be reappointed if he allowed --

THE WITNESS: He said to me once, that he was trying to get some credit for himself. He didn't know if it would make any difference.

MR. SCHWARZ: Credit for his own --

THE WITNESS: I assume his own, as well as the agency's, both.

MR. SCHWARZ: You said with respect to Mr. Mancuso, that they found a title. What did you mean that they found a title?

THE WITNESS: I don't remember exactly what it was, but it was a managerial position which would involve writing up a managerial position description and a set of duties and it would be a long process and we were looking to see what the man qualified for that we could write up, and the Mayor's Office said, "Use this. This is the title you use."

MR. SCHWARZ: In other words, the agency was not looking for someone for the title. Mr. Mancuso was referred by City Hall; isn't that correct?
Jean

THE WITNESS: That's my recollection.

MR. SCHWARZ: And, in fact, you were told to find a slot for him; is that correct?

THE WITNESS: Yes. That's the way I believe it happened.

MR. SCHWARZ: Somebody at City Hall found a slot for him and said, "Use this;" is that correct?

THE WITNESS: Let's put it this way: We had a set of duties for him to perform that he performed. The title was -- the title that was used did not reflect those duties and was supplied by the Mayor's Office.

MR. SCHWARZ: So, in other words, he was slotted into a title even though he didn't --

THE WITNESS: I don't want to get technical. The essence of what you are saying is true, but it's not exactly true.

MR. SCHWARZ: Thank you.

I have nothing further.

THE CHAIRMAN: Commissioner Magavern?

COMMISSIONER MAGAVERN: You are a long-term Civil Service official in this City, Mr. Jean. I wonder if you could give us your opinion of the effect upon the morale of the permanent civil servants
Jean

in your agency and about the efficiency of your agency with respect to the kind of hiring practices you described this morning?

THE WITNESS: In terms of the morale, I think it bothered the people on the Personnel and Payroll staff, not so much at this level. You're talking about lower level positions. I'm talking about where they would come in and make more money than the people working there and get promotions and it wasn't necessarily political. They were provision-al. The permanent staff felt that in a lot of cases, they were taking their positions and as a long-term employee, I remember when I started with the Department, I came out of the City Department of Personnel and in those days, that was almost strictly Civil Service and when I came to the Department, I came into contact with a certain amount of patronage. This is like 1970, and my boss said to me, "Look, you'll have to deal with it. The Mayor has the right to put in the people he wants to put in, and if you're uncomfortable dealing with that kind of thing, then you should do something else, but you have a choice to make in the City. You can go through the Civil Service system and you have
certain protections and rights and that way, you don't have any other way, and you don't owe anybody anything, or, if you believe that these people get ahead faster and that's what you want to do, then you make a choice and you work on a campaign and start becoming politically active and you go through the system that way, and you make some shortcuts and you're also more vulnerable."

I know people for years, who started out in Civil Service and who did become active and ran campaigns and I chose not to, but I learned to deal with it. It was difficult on the part of some of my subordinates when they saw somebody -- someone who they had signed up and who they knew did not sound like someone who was capable or someone they dealt with that they knew was incapable, and they would be getting a large increase and they would know that through that person's connections either politically or personally, that they got there. It had a bad effect.

I think it was a deleterious effect in terms of the morale of the people. A lot of people we put on that way, were good people. I don't want to put down the appointments and the people that
Jean

City Hall referred.

As I said before, if they were not good people, we didn't necessarily have to take them. Once in a blue moon, there was some kind of a special case. So I don't think it was so much that these people were necessarily bad, but there were two systems and I think it does have a bad effect on the Civil Service system, and I think, again, in terms of efficiency in terms of hiring, it's a lot easier to hire when you have a fairly fresh Civil Service list with 200 names to interview from than start to deal with posting procedures, memos going back and forth, letters and phone calls, and call this one and call that one.

We were expanding. We had to hire quickly and believe me, even now, from the other end where I'm working in a line area where we have to hire some people for ourselves, this whole posting procedure really slows things down with whatever other effect it has.

COMMISSIONER MAGAVERN: Do you think the coexistence of the two systems you have described has a bad effect on the qualify of the administration of an agency?
Jean

THE WITNESS: From what I know from what happened in PVB when Jeffrey Lindenauer was talking about the hand held computers and they had a committee of people reviewing this, most of those people were provisional and were beholden -- not necessarily beholden to them, but he had a lot of power over a lot of his subordinates that he wouldn't have if they were civil servants and at some point, might have felt protected enough to say, no, I'm not going to sign this or, I'm not going to do this, but if you're in a position where you were vulnerable where you're provisional, or even past a certain point as a manager, where someone can turn around and when you say, no, I don't think this is right, or, I'm not going to sign this, where you can lose your job or be demoted, it's very unlikely that you'll say, "No," and in that sense, yes, I think it hurts the City.

COMMISSIONER MAGAVERN: And it even provides a fertile ground for corruption, in your opinion?

THE WITNESS: I don't know if I would use those words. I think it makes it a little easier.

COMMISSIONER MAGAVERN: Thank you.

THE CHAIRMAN: Mr. Jean, I would like to thank
Jean DeMarco

you for your candor and cooperation at this proceeding. Thank you.

The Commission calls Joseph DeMarco.

J O S E P H D E M A R C O, called as a witness, was asked the following questions and gave the following answers:

THE CHAIRMAN: The Chair recognizes Mr. Brosnan, again.

MR. BROSnan: Thank you, Mr. Chairman.

EXAMINATION

BY MR. BROSnan:

Q Good morning, Mr. DeMarco.

A Good morning.

Q Mr. DeMarco, could you tell us where you are presently employed?

A I am currently working at the New York City Department of Personnel. I am the Associate Personnel Director for Civil Service --

Q Mr. DeMarco, it would be easier if you could put the microphone closer to you. I'll remind you if you need to hold it even closer.

A Okay.

Q What is your permanent Civil Service title?

A Associate Staff Analyst. I'm on leave from
that title and serving in a higher title at the Department
of Personnel.

Q You are going to have to move your chair in
closer to the table. I think that will help.

A Is this better?

Q That's fine.

Could you repeat that for us?

Can you repeat for us what your current Civil
Service permanent title is?

A Associate Staff Analyst and I'm on leave from
that title from the Department of Transportation.

Q Mr. DeMarco, when did you join the Department
of Personnel?

A I served there during two different periods.

Q Well, most recently?

A In July of 1987.

Q And before joining the Department of Personnel,
where did you work?

A I worked at the Department of Transportation
for approximately ten years, from June of 1977 until
June of 1987.

Q Was all of your time at the Department of
Transportation spent in the personnel area?

A Yes, it was.
Q And, in fact, Mr. DeMarco, you were made Deputy Director of Personnel at the Department of Transportation in 1983?

A Yes, that's correct.

Q And you became Director of that Department in 1986?

A Yes, in March of '86.

Q Now, Mr. DeMarco, a significant part of your job, particularly from 1983 until early 1986 was to handle all the Planned Action Reports for the Department of Transportation; is that correct?

A That's correct.

Q And in handling these reports, did you become familiar with the posting procedures for various job vacancies?

A Yes.

Q If job vacancies or job titles were posted, is that indicated on the PAR's that sought approval for hiring candidates?

A Yes. It would be indicated internally. There would be a posting notice sent out externally and internally on the work copies of the PAR before they were sent to the Mayor's Office, there would be notes indicating that there was a posting period and when the
posting period ended.

Q And if jobs weren't posted, that would be indicated by the absence of the things you just spoke of?

A Yes.

Q Were there instances when particular titles were not posted?

A Yes, there were.

Q Do you recall which titles, specifically?

A I guess there were five or six specific titles where they were not posted on a regular basis; Assistant Highway Repairer, Debris Remover, Ferry Agent, Service Inspector --

THE CHAIRMAN: Could you speak into the microphone, please? Just concentrate on the microphone.

I have Assistant Highway Repairer, Debris Remover, Ferry hand --

THE WITNESS: Ferry Agent, Deckhand and Service Inspector.

THE CHAIRMAN: Thank you.

BY MR. BROSNAN:

Q Was there a posting for Traffic Device Maintainer?

A I believe Traffic Device Maintainer was a
title where we handled sometimes from the list and then when the list was exhausted, we may have done some posting. We filled it provisionally, at times. I don't know if we posted. I think we did.

Q And if posting occurred for any of these jobs, when did it occur, in your recollection?

A Well, we would have monthly meetings with the Commissioner to get the personnel requests approved. They would be approved without names. It might just be an approval to hire three Ferry Agents, whatever.

After the approval was in place, when a position was posted, the person in the Planned Action Report Unit would report it to me. My assistant would normally prepare a posting notice and issue it for circulation, and it would be sent to the Mayor's Office, to the Department of Personnel, and throughout the agency.

Q Well, my question is, Mr. DeMarco, did there come a point in time when these positions began to be posted for, in your recollection?

A The five or six titles I just mentioned?

Q Yes.

A No. Those were the exceptions where we did not post.

Q When you became aware that you were not posting
for these titles, did you bring it to anyone's attention?
   
   A        Well, when I first had responsibility preparing
   the Planned Action Report in late '83, I mentioned it
to my supervisor, and he informed me that's the way the
agency was operating and had operated and we should just
continue with those procedures.
   
   Q        Did you raise it with his supervisor?
Did you raise it with any Deputy Commissioner
or the Commissioner, himself?
   
   A        I did not raise it personally with those
people, but I would say they were aware of it. We were
not in Personnel in the position to make that decision
to post or not post.
   
   THE CHAIRMAN: Could I ask a question?

   If a position was to be posted, would that
mean that a notice of the vacancy would be dis-
tributed throughout the City?
   
   THE WITNESS: Yes. There was a format designed
by the Mayor's Office which would include the title,
number of vacancies in the position, the salary range
a very brief job description of the job, itself,
and the qualification requirements.
   
   THE CHAIRMAN: I take it that City employees
throughout all of the agencies of the City, then
DeMarco

would have notice of the availability of that
position and then make a choice as to whether or not
they would want to apply; is that correct?

THE WITNESS: Yes. That was the reason to
send it to the City Department of Personnel. They
would post it at their application center and we
also were required to send it to the Mayor's Office,
who monitored the posting and we would also
circulate it throughout our agency.

We had offices throughout the five boroughs.
There must have been eighty or ninety locations
where we would send it.

Also, in our recruiting office, we had
minority organizations in the non-traditional
employment groups, who would be copied on this.

THE CHAIRMAN: I take it, then, that if a job
was not posted, then none of that would take place;
correct?

THE WITNESS: Correct.

THE CHAIRMAN: Judge Meyer?

COMMISSIONER MEYER: I understand that the
Mayor's directive also included advertising in the
newspapers; is that correct?

THE WITNESS: Yes, but normally, that would be
done for a handful of positions. Advertising tended to be expensive and there were certain type occupational groups where we would constantly have a problem keeping the head count maintained. For example, in the engineering jobs, the City doesn't compete with the salaries in the private sector and because of the constant need to fill those vacancies, in that area, we had advertisements in the DAILY NEWS and THE TIMES, et cetera. For the more routine jobs, it was the exception that we would advertise in the paper.

THE CHAIRMAN: I take it that if a job were not posted, then that job would be advertised for; correct?

THE WITNESS: Most of the positions where we posted, we would not advertise.

THE CHAIRMAN: Thank you.

BY MR. BROSAN:

Q Mr. DeMarco, did you conclude that the positions that you did not post for were the same ones where you got the candidates referred exclusively by the Mayor's office and when I "the Mayor's Office," I mean Mr. DeVincenzo's office?

A Exclusively is a big word. I would say most
of the positions, more than ninety percent of the
positions where we did not post, the candidates were
referred though the Mayor's Office.

Q   And when you sent the packages in seeking
hirings of candidates for these positions, did you have
to get permission from that office to waive the posting?

A   I don't know if it was a question of getting
permission. We would have to submit a Planned Action
Report, after the fact, on every action taken, and the
Mayor's Office would review it for many reasons; to look
at the salary we employed the person at, were they in
the right title, et cetera, and they also looked at was
there a recruiting disposition attached.

With these particular five or six titles I
just mentioned, they didn't require it.

Q   Mr. DeMarco, did you ever come to an under-
standing as to why City Hall was the source, more or less,
for these particular positions?

A   No. I really didn't.

Q   Mr. DeMarco, these were generally provisional
positions with little or no experience required; correct?

A   Yes, the five or six titles I just mention,
pretty much entry level titles.

Q   For those titles, did anyone ever make a
determination that there was a shortage of candidates who were capable of qualifying for those positions?

A   No. In fact, it just seemed to be the opposite, since the positions did not require much in the way of education or experience, we would often have a lot more candidates available on the jobs.

Q   And, so, it was left up to the Mayor's Office as to who would get access to those jobs?

A   Pretty much so, yes.

Q   Mr. DeMarco, could you take a look at Commission Exhibit 66, please?

Have you had an opportunity to review that, Mr. DeMarco?

A   Yes, I have.

Q   Now, this memo is self-explanatory, isn't it?

A   Yes.

Q   Mr. DeMarco, focusing on the phrases on page 2, "Peter has indicated the above referrals are extremely important to City Hall" and he "should not reject any of these candidates without exceptional circumstances."

Can you tell me if your experience was that these statements reflect the norm and, that is, that you did not reject City Hall's candidates without exceptional circumstance?
A I would say that would be true for the most part, yes.

Q How did you know that that was the norm?

A Well, pretty much the Mayor's Office would refer the candidates and they would be interviewed and send for the position, and we just had operated that way for a lengthy period of time.

Q Mr. DeMarco, I want to talk briefly about specific positions, because we have already heard testimony concerning them, but turning to Assistant Highway Repairers, assuming that everything internally had been approved for hiring a group of Assistant Highway Repairers, where did the candidates come from?

A They came from the Mayor's Office, primarily.

Q How would the Mayor's Office know that you needed candidates?

A Well, as I said earlier, when we had a meeting with the Commissioner, about once a month, we would bring all the Personnel actions up and he would approve the requests without names, just for numbers of positions. After the meeting, we would contact the Mayor's Office. I would sometimes, and sometimes my assistant would, or one of the other managers in the Division, and notify them that we had approvals.
Q During the period we are talking about, from late '83 to early 1986, for the position of Assistant Highway Repairer, did anyone else try to submit candidates other than the Mayor's Office?

A Well, the only other recollection I have on that is, that there was a proposal at one point, to promote, internally, some of the Motor Vehicle Operators who had worked for the agency, into the Assistant Highway Repairer jobs.

Q We have also heard testimony on that, but aside from the Motor Vehicle Operators and City Hall, did the Bureau for Highways ever try to refer candidates for those positions?

A Occasionally, they might, but usually, it wasn't handled that way.

Q Well, when they occasionally did, did they have any success in getting those candidates hired, to your recollection?

A I would say no. It wasn't handled that way.

Q And did you have an understanding as to why they didn't have any success in getting those candidates placed?

A Well, it was pretty much the Commissioner's decision that the candidate would come from the
Mayor's Office.

Q I may have missed it, but you didn't post for these Assistant Highway Repairer titles; correct?

A No. There would be no posting for these.

Q Now, the candidates that would be sent in reply to your notifying City Hall that you needed candidates. Were they afforded the same or similar treatment that Mr. Jean's memo, Exhibit 66, suggested that Mr. Gilvarry's other candidates be afforded?

A For the most part, yes.

Q Would it be an exceptional circumstance when they were rejected?

A It would be exceptional if they were rejected.

Q Now, Mr. Gilvarry gave you the names of candidates. Did he communicate both in writing and by telephone?

A It was a mixture. Sometimes it would be a phone call, sometimes it would be a typed list sent over, sometimes a handwritten list.

Q And did he ever indicate to you in those communications, that the candidates he was sending had priority order?

A Yes. Sometimes the list would say, "Priority order."
Q: And did you understand why they had priority order?

A: No. I really didn't know the reason for it, just that it said it on the piece of paper.

Q: Could it happen that they would send more candidates than were jobs available and the candidates listed as a higher priority got the jobs in the priority?

A: That's possible.

Q: For the Assistant Highway Repairer job, Mr. DeMarco, I believe the only requirement was a Class 3 driver's license; is that correct?

A: That's correct. There was no educational or experience requirement.

Q: And that's just a truck driver's license?

A: Well, I believe a Class 3 is a license to operate a vehicle of a certain amount of pounds. It's a heavy vehicle.

Q: Do you remember your Department making exceptions for the candidates coming from City Hall as to fulfilling that requirement?

A: Well, what usually happened is, the candidates would not have it, or at least, some of them didn't have it, and they would be allowed ninety days after they were appointed to obtain the Class 3 license. The
Assistant Highway Repairer was usually part of a work crew, and the purpose in having the license was to drive the truck sometimes, and since you were part of the group, a decision was made that if you didn't have it immediately, as long as you got it within a period of time, it was acceptable.

Q Is it fair to say that but for the waiver of this license requirement, certain of those candidates were not qualified for the position?

A Well, that was the only requirement of the position. There was nothing else beyond that.

Q In fact, Mr. DeMarco, once these waivers were granted, no one paid particular attention as to whether anyone fulfilled that requirement after they were hired?

A Well, it was difficult to monitor, that we expected the Highway Bureau, where the employees worked, to monitor that, because we couldn't keep track of it in Personnel, there were too many items going on.

Q Do you know if anyone monitored it?

A I don't know if it was done on a regular basis by any one person.

Q Mr. DeMarco, could you please take a look at Commission Exhibit 73? Have you had an opportunity to look through it?
A Yes, I have.
Q Is it fair to say that these are working copies, internal copies of Planned Action Reports for the appointment of Deckhand in 1985?
A Yes, that's what this is.
Q Could you just, please, quickly flip through them and focus on the "Justification" section of each one, Mr. DeMarco?
A Okay.
Q What is the justification, generally, say, on these exhibits, and what does it mean, Mr. DeMarco?
A Well, it indicates that we have not posted for these jobs and that the referrals will come from the Mayor's Office through Peter Gilvarry.
Q Mr. DeMarco, could you take a look at Commission Exhibits 74 and 75, please?
A Okay.
Q Now, Exhibit 73, I think you indicated, indicated to you that you weren't posting for these jobs at a point in 1985 or a point at which those documents were dated; correct?
A That's correct.
Q And these documents have dates up through January, 1986. My question is: Do the notations on these
documents also indicate to you that you were not posting for that position during that time period?

A Yes.

Q Now, on Exhibit 74, the notation in the "Justification" section, "posting waived" is stamped on each document. My question is: Did your office go out and get a stamp made for that?

A Yes, my assistant had that made.

Q Why did he do that?

A Because -- it was a clerical convenience.

There were so many instances where they would not post, each position had a separate sheet, and to keep writing it became cumbersome, clerically, so he had a stamp made just to facilitate it.

Q Mr. DeMarco, Ferry Agent was also one of the jobs that you did not post for; correct?

A Yes. That's correct.

Q And Debris Remover was also a title you did not post for?

A Correct.

Q And you got the candidates for those jobs from where?

A Primarily, from the Mayor's Office.

Q Now, Mr. DeMarco, in testimony in private, you
indicated that the process by which persons were hired was changed, were changing, particularly with regard to posting and hiring around the time the Talent Bank was getting started. In your years as Personnel person, was it your understanding that the Talent Bank was getting started sometime in 1986?

A I think they referred to it at that time period -- it's hard to make the distinction as to when they stopped calling it Mayor's Office and started calling it the Talent Bank, but I would say it was closer to '86.

Q Well, in your various contacts with Mr. -- with persons in Mr. DeVincenzo's office, during the time period 1983, '84 and '85, were they representing themselves to be calling on behalf of the Talent Bank?

A I don't recall it that way. I remember it as Mayor's Office at that point in time.

Q So, was it your understand that the candidates that were being referred to you were coming from the Talent Bank?

A I would say during '83 to '85, no. Or, I'm not really sure. I remember it during that era as the Mayor's Office candidate referrals, not Talent Bank.

Q And during that era, when those persons were referring candidates, was it ever represented to you, or
DeMarco

1. Did it ever appear to you that the Mayor's Office was attempting to accomplish any affirmative action goals by the process of referrals?

   A. Well, when they started the posting system in late '83, it seemed to be an affirmative action goal, to have positions posted, but with the five or six titles that I described earlier, it wasn't practiced that way, no --

   Q. I'm not sure I understand your answer. Did they state that they were trying to accomplish any affirmative action goals when they were referring these types of candidates for these types of positions?

   A. For the five or six titles I defined earlier?

   Q. Yes.

   A. No.

   MR. SCHWARZ: Did you say types or titles?

   THE WITNESS: Titles.

   Q. Now, Mr. DeMarco, did the Assistant Highway Repairer job pay more than the Debris Remover job?

   A. Yes, I think it paid several thousand dollars more.

   Q. And did the Assistant Highway Repairer job and the Debris Remover job have the same qualifications but for the Class 3 license requirement that you...
DeMarco testified had been waived in certain circumstances?

A    Well, they were both similar in that there was no education or experience requirement, and the only distinction would have been the Class 3 license.

Q    And in your experience at Personnel, did you observe that a great deal of the minority candidates referred by the Mayor's Office were being referred for the Debris Remover position?

A    Yes.

Q    Was there any reason that you knew of why minority candidates were being routed to the Debris Remover position as opposed to the Assistant Highway Repairer position?

A    No, I really can't say that there was -- it was never explained to me why. It just seemed to be the practice.

Q    Mr. DeMarco, could you take a look at Exhibit No. 76, please?

MR. SCHWARZ: Excuse me, counsel. Are you finished with that inquiry?

MR. BROSnan: Excuse me?

MR. SCHWARZ: Are you finished with that one area?

MR. BROSnan: I'm finished with it, yes.
MR. SCHWARZ: Are you saying that with respect to the Assistant Highway Repairer, that there were fewer minorities being sent to that position and that there were a higher percentage of non-minorities sent?

THE WITNESS: What I'm saying is, more minorities were referred for Debris Remover.

MR. SCHWARZ: I don't know what you mean by "more." Were there more jobs or are you saying a higher percentage of people for the jobs?

THE WITNESS: A higher percentage of the people referred for Debris Remover were minorities than for the Assistant Highway Repairer, who were, primarily, white males.

MR. SCHWARZ: Thank you.

EXAMINATION CONTINUING

BY MR. BROSnan:

Q Mr. Demarco, could you take a look at Commission Exhibit 76, please? Have you had an opportunity to look at that?

A Yes, I have.

Q There's one common thing on all of these PAR's in Exhibit 76, and that is a "Z," the letter "Z" marked next to the employee's name on these PAR's.
Could you explain to me what that represents and whether there was a system in effect by which you used this lettering?

A Yes. The "Z" meant that the candidate -- this is a Planned Action Report that's reporting back to the Mayor's Office which candidate was selected and when. The "Z" is indicating that the candidate had been referred from the Mayor's Office. It's an identification system.

Q So why did you develop the "Z" to indicate that these candidates had been referred by the Mayor's Office?

A Well, the Mayor's Office would call, let's say, on a monthly basis, or, at least every five or six weeks, and they would want to know if you had a hiring plan of, say, a hundred actions with thirty or forty of the actions their referrals. They seemed to be keeping numbers on the number of actions each month that they referred, who actually obtained the jobs, and they would call asking which of these items -- which of these people are Mayoral referrals, and it was hard to keep track of them. This was just a clerical way to do it.

Q Who would call?

A Monica Fung, who worked for Jim Hein in the
DeMarco's Office, would call.

Q Monica Fung, who worked for Jim Hein, who worked for Mr. Devincenzo?
A Correct.

Q Did she ever tell you why she wanted to know?
A She told us, before the actions were approved and could be submitted, they wanted to know, out of each number of hires, how many had been referred through the Mayor's Office.

Q Well, who wanted to know?
A Mr. Devincenzo.

Q And he wanted to know how many candidates were referred by the Mayor's Office in a given PAR package before he signed off; is that correct?
A Yes.

Q Mr. DeMarco, if your department wanted to fire someone who worked at the bureau, worked at any bureau at DOT who had come over as a City Hall referral, could they simply dismiss them like a non-City Hall referral candidate?
A Well, in theory, they could, but, in reality, they probably didn't because there was a general aura about the Mayor's Office, and I think, in general, people had a concern not to take negative actions unless they
were extraordinary circumstances.

Q   Why was that?
A   Well, the Mayor's Office did approve our
actions, the pre and post-audit, and I think there was
some general concern about repercussions.

Q   Are you saying that people were fearful that
there would be an impact on the PAR packages if you
dismissed people from City Hall referred jobs?
A   I think that was the general feeling among
a lot of people. No one ever said that to me from the
Mayor's Office, but that was the general concern.

Q   The general concern amongst DOT employees?
A   Yes, I would say.

THE CHAIRMAN: Did you have that concern?
THE WITNESS: I think I had some, yes.

Q   Did you or your office operate under the
assumption that in order to receive fair or smooth
treatment from the Mayor's Office on your PAR packages,
that you had to extend certain courtesies like this one
to City Hall's candidates?

A   Well, yes. As Mr. Jean testified earlier,
we had to work with the Mayor's Office. We had a large
number of actions each month, and it wasn't conducive
to business if you didn't cooperate and work with them.
They were the oversight agency approving your actions, setting the guidelines and monitoring them, so we tried to keep a good working relationship with them.

MR. BROSANAN: Mr. Chairman, I have no further questions for the witness, but if I could, I would like to read a brief statement into the record that pertains to hiring statistics at the Department of Transportation. It's Exhibit 77.

THE CHAIRMAN: We can receive the statement. Do you want to read it, or do you just want it to be received as part of the record?

MR. BROSANAN: I want to read it.

MR. SCHWARZ: Can we wait until we finish with the witness, then you can read it.

MR. BROSANAN: Whenever is your preference.

THE CHAIRMAN: Since there may be questions that the Commissioners might have, I would suggest that you read it now.

MR. BROSANAN: "There followed two sets of statistics reflecting persons hired in 1984 and 1985 by the New York City Department of Transportation in four job titles, Assistant Highway Repairer, Deckhand, Debris Remover and Ferry Agent. Each set was compiled from a distinct source, the first from..."
the Talent Bank records, and the second from DOT
Equal Employment Opportunity and Personnel records.
Two sets were compiled because there are discrepancies
between Talent Bank records and DOT records.

"The number of employees hired for these
titles during the calendar years 1984 and 1985
through the Mayor's Talent Bank were obtained from
computerized records provided by the Mayor's Office.
The total number of DOT employees hired for these
job titles in calendar years 1984 and 1985 were
obtained from EEO records provided by DOT.

"EEO data is maintained on a fiscal year basis
but was converted to a calendar year basis for the
purpose of comparison. This data was supplemented
in certain cases by cross-matching persons hired
through the Talent Bank but whose names did not
appear on the EEO list with the information contained
in DOT Personnel files.

"EEO statistics are only a snapshot of the
work force on a particular date and do not reflect
all movement on and off the payroll during the year.
The demographic breakdowns of those employees hired
in calendar years 1984 and 1985 were obtained from
the Corporation Counsel's Office pursuant to a
request by the Commission to examine DOT Personnel records.

"The sources of the referrals of persons hired by DOT were determined by cross-matching the employee identification information in the DOT records with the information contained in the 'Black Book' (January 9, 1989 hearing, Exhibit No. 7) and additional Talent Bank computer printouts.

"The total numbers of hired candidates used in both the demographic and source of referral breakdowns are those compiled from EEO - Department of Transportation statistics."

THE CHAIRMAN: Thank you.

Are there any questions from the Commissioners?

COMMISSIONER HYNES: Mr. DeMarco, I want to ask you whether you agree with Mr. Jean's statement that the system of referrals that we've heard testimony on, that came out of the Mayor's Office, was permitted to flourish because there was a lack of a Civil Service list with names of candidates for these job titles.

THE WITNESS: Well, yes, I agree with that pretty much. The problem is, the testing system also seems to have its share of problems, so while
you solve one problem on the one hand by giving more exams, the City Department of Personnel was inundated with many law suits against their exams, and sometimes they get tied up in court for months.

COMMISSIONER HYNES: Do you have any knowledge or recollection as to when any Civil Service exam was last held for these job titles that we have been talking about, these four, five, six job titles?

THE WITNESS: There hasn't been one for Deckhand for a while. There was a proposal to put it in the non-competitive class, which would have eliminated the examination.

COMMISSIONER HYNES: When you say, "for a while," can you tell us, are we talking about 1979 or is it -- do you have any idea of what --

THE WITNESS: It's the late '70's or early '80's.

COMMISSIONER HYNES: Was the last exam on that. And what about on the other titles?

THE WITNESS: Assistant Highway Repairer never had an exam; it was a newly created title, and then it was put into the laborer class, which means it would not be tested for competitively. Similarly,
the Debris Remover title, I believe, is not in the labor class, also, which means there would not be a competitive exam.

COMMISSIONER HYNES: Were you involved in any conversations about having a Civil Service exam for the Highway title?

THE WITNESS: No, not for Assistant Highway Repairer, no.

COMMISSIONER HYNES: Do you know of any reason why they would not have a test for that, a Civil Service test for that title since either the late '70's or early '80's?

THE WITNESS: I think one of the concerns at City Personnel is, they don't know how to test for it, they don't know how to test the skills and rank people competitively for an entry level job of that sort, and, because of that, they had it classified in the laborer class. That seems to be one of the problems on how you select to fill that job.

COMMISSIONER HYNES: Is Assistant Highway Repairer now a labor classification, or it Civil Service?

THE WITNESS: I believe it's in the laborer class now, yes.
COMMISSIONER HYNES: So on the titles we have been talking about, are any of them Civil Service titles today, if you know?

THE WITNESS: I believe Ferry Agent is still in the competitive Civil Service class.

COMMISSIONER HYNES: When was the last exam for Ferry Agent?

THE WITNESS: I honestly don't know.

COMMISSIONER HYNES: But are we talking about a five, six, seven year period?

THE WITNESS: Well, based on the hiring practices at DOT, I don't think there's been one since at least '83, maybe longer.

COMMISSIONER HYNES: What other titles are still covered by Civil Service?

THE WITNESS: I think that covers it, of the five or six that I mentioned.

COMMISSIONER HYNES: No further questions.

THE CHAIRMAN: Commissioner Magaven.

COMMISSIONER MAGAVERN: Mr. DeMarco, were you here for Mr. Jean's testimony?

THE WITNESS: Yes, I was.

COMMISSIONER MAGAVERN: Do you generally agree with his assessment of the impact of this City Hall
referral process and the morale of an agency?

THE WITNESS: I don't know -- I agree with it partly, but not totally, because I think you have those morale problems no matter where the candidates are referred from. I think what he was referring to is bringing in outsiders over insiders, and I think that exists whether you post an bring someone in through normal channels, whether you put an ad in the paper, or whether it happens through the Talent Bank.

COMMISSIONER MAGAVERN: Do you think it effects morale if some people got their jobs by being placed among the top three on a competitive list and then to see others come in at higher salaries without having passed any exam at all?

THE WITNESS: Yes, I think it does.

COMMISSIONER MAGAVERN: Thank you.

MR. SCHWARZ: You made reference before to -- you said there were a lot of actions each month that had to be approved at City Hall.

Do you recall that?

THE WITNESS: Yes. The Mayor's Office is the oversight agency on hiring functions.

MR. SCHWARZ: Who would make those decisions,
as far as you knew, at City Hall?

THE WITNESS: Well, the written sign-off would come from Joe DeVincenzo's office.

MR. SCHWARZ: So, in effect, the same person who would send the names over would then have to approve the determinations which the agency would make?

THE WITNESS: Yes. That's correct.

MR. SCHWARZ: Were you aware of any -- well, did you have any awareness, one way or the other, with respect to Vietnam veterans and these people who were being placed?

THE WITNESS: Well, after I became the Personnel Director in March of '86, I guess during the period of -- between March and the summer of '86 -- I don't remember the exact month -- we had an issue where the Mayor's Office wanted us to consider Vietnam veterans for the Assistant Highway Repairer jobs, and it was an issue because we had some internal candidates that the bureau wanted to promote upward, Motor Vehicle Operators and the Mayor's Office wanted us to take the Vietnam veterans.

MR. SCHWARZ: That was in 1986. What about prior to that, when you say you became aware of it?
Prior to March of 1986, were you aware of any effort to hire Vietnam veterans for these jobs which didn't have any educational requirements?

THE WITNESS: I don't remember that before '86, no.

MR. SCHWARZ: What did "Z" stand for?

THE WITNESS: Just a letter. It could have been a check mark or an "X." It had no meaning. It just meant Mayoral referral. It could have been anything.

(Continued on next page.)
COMMISSIONER MOORE: Mr. DeMarco, have you had a chance to look at the statistics following Exhibit 7, following the breakdown of sex, ethnicity? I was wondering why you have so many black males hired as Deckhands, Debris Removers. Can you explain that to me?

THE CHAIRMAN: Counsel, can you show the witness the exhibit in question, exactly where the Bishop is referring to?

(Mr. Brosnan complies.)

THE CHAIRMAN: I would like to ask the reporter to read back the question as the witness looks at the page in question.

(Record read.)

THE WITNESS: I honestly can't. I see the numbers are high, but I can't explain it.

COMMISSIONER MOORE: Thank you.

THE CHAIRMAN: Commissioner Hynes?

COMMISSIONER HYNES: I just have some follow-up questions on your testimony about some job titles being put into a laborer category and, therefore, outside of Civil Service.

Do you know when that happened?

THE WITNESS: It happens periodically,
DeMarco

depending on the title. It's usually the result of a classification change, which is usually studied at the City Department of Personnel.

COMMISSIONER HYNES: Is it the determination of the City Department of Personnel whether a title is under Civil Service or outside of Civil Service?

THE WITNESS: Well, they make a determination on it, and then there's a public hearing, and then it goes to the State Civil Service Commission for final approval or rejection.

COMMISSIONER HYNES: Do you know when the Deckhand was taken out of the Civil Service and made a laborer title?

THE WITNESS: I think that's still pending. There was a proposal to make it non-competitive in 1986, and I think it was recently rejected at the State Commission, but I'm not positive.

COMMISSIONER HYNES: So, if your memory is correct on that, it's still covered by Civil Service?

THE WITNESS: Yes.

COMMISSIONER HYNES: What about the Debris
DeMarco

Remover?

THE WITNESS: Debris Remover, I believe, is now in the laborer class.

COMMISSIONER HYNES: Do you know when it was changed to a laborer class title?

THE WITNESS: It was either in 1986 or '87.

COMMISSIONER HYNES: The procedure for doing that is, first a determination is made by the City Department of Personnel?

THE WITNESS: Usually, they will do a job analysis, and they canvass the agencies where the people would work in that title, and then, based on that, they come to a decision as to what's the best way to keep the position classified, and then also have to test for it, or whether you can test for it.

COMMISSIONER HYNES: Did the Department of Transportation make any request of the Personnel Department to do that analysis and to take it out of Civil Service?

THE WITNESS: I'm not sure whether it originated with the DOT asking, or whether the Department of Personnel did it, because at that
point in time they were studying many entry level titles City-wide. So, they may have originated it in City Personnel.

COMMISSIONER HYNES: So, you say that, to your recollection, that title has now become a laborer category, outside of Civil Service?

THE WITNESS: Yes.

COMMISSIONER HYNES: Did the procedure of your referrals from the Mayor's Office change during the time when it was a Civil Service category and the time when it was not a Civil Service category?

THE WITNESS: No, because when -- before it was put in the laborer class, it was the provisional title, where there had been no exam, and the position was filled provisionally with candidates referred through the Mayor's Office.

Subsequently, they were referred through the Talent Bank, when it was a laborer class title.

COMMISSIONER HYNES: Did the Department of Transportation, to your knowledge, ever request a Civil Service exam for the laborer class when it was a Civil Service category?
THE WITNESS: I don't remember that, no.

COMMISSIONER HYNES: You heard Mr. Jean testify that if he was operating from a Civil Service list, it would be more efficient and quicker to fill positions.

Do you agree with that?

THE WITNESS: It depends on the title.

COMMISSIONER HYNES: How about in the laborer titles, the Debris Remover?

THE WITNESS: Entry level titles without requirements, the problem seems to be how do you test and rank people on titles that have little skills. That's the whole problem with those.

COMMISSIONER HYNES: But if you had a list, and you were operating from a list, would that speed things up for you?

THE WITNESS: Well, it would if the list wasn't challenged in court and got tied up for three years.

Often what happens is, the exam is challenged, and it gets caught in legal entanglements, and you still wait, and wind up hiring provisionally in the interim, anyway.

COMMISSIONER HYNES: But you're permitted
DeMarco

to hire in the interim, if it is challenged?

THE WITNESS: Yes.

COMMISSIONER HYNES: So, that shouldn't be a reason not to have a Civil Service exam and try to have a list?

THE WITNESS: Yes.

COMMISSIONER HYNES: I have no further questions.

THE CHAIRMAN: Thank you very much.

We will take a ten minute recess.

(Whereupon, a brief recess was begun at 11:25 o'clock a.m.)

(Thereupon, at 11:43 o'clock a.m., the following proceedings were had:)

THE CHAIRMAN: The Commission calls as its next witness, Joy Schwartz.

J O Y S C H W A R T Z, called as a witness, having been first duly sworn by the Chairman, was examined and testified as follows:

THE CHAIRMAN: Please be seated.

(Witness complies.)

THE CHAIRMAN: I would like to ask counsel,
I assume --

MR. JOHNSON: Yes.
THE CHAIRMAN: -- to identify himself for
the record, please.

MR. JOHNSON: Good morning, Commissioners.
My name is James W. Johnson. I'm an attorney with
Hill, Betts & Nash in New York City, and I'll be
representing Joy Schwartz this morning.

THE CHAIRMAN: Good morning. I recognize
the Commission's Deputy Counsel, James McGuire,
for purposes of the questioning.

MR. MC GUIRE: Thank you, Dean Feerick.

EXAMINATION BY

MR. MC GUIRE:

Q Good morning, Ms. Schwartz.

A Good morning.

Q I think what you're going to have to do
is try to get a little closer to that microphone, and
maybe you can move the book aside for the time being.

That's great.

Ms. Schwartz, are you currently an employee
of the Mayor's Office?

A I am.

Q Would you tell us when you first became
an employee of the Mayor's Office?

A March of 1980.
Q Initially, what were your duties in March of 1980?
A I was hired as an editor-writer for Mr. Joe Devincenzo.
Q Did there come a time after, when you were designated to head the Mayor's Talent Bank?
A Yes.
Q Approximately when was that?
A As I recall, it was early 1984.
Q Who designated you to head the Talent Bank at that time?
A It's unclear to me. It was either Mr. Devincenzo or Mr. Hein, who I replaced in that position.

MR. MC GUIRE: Mr. Chairman, I am not sure if the Commissioners can hear the witness.

THE CHAIRMAN: I would ask the witness if you could just speak into the microphone. It's sometimes difficult when you haven't had the experience.

BY MR. MC GUIRE:
Q I trust that you have no specific recollection of whether Mr. Devincenzo, himself, or Mr. Hein informed you that you were going to head the Talent Bank?
A That's correct.

Q In any event, to whom did you report after you headed the Mayor's Talent Bank?

A I reported to Mr. DeVincenzo, directly.

Q What, in general, were your responsibilities?

A My job was to refer candidates to jobs in -- or interviews in various City agencies for jobs.

Q In that connection, did you receive resume of candidates and names of candidates?

A Yes, I received resumes and names from both Mr. DeVincenzo and Harry Shapiro, who was the Mayor's Office Classifications Specialist.

Q Is it fair to say that Mr. Shapiro analyzed resumes for the purposes of determining what job titles the subjects of the resumes might qualify for?

A That's correct.

Q So, you received resumes both from Mr. Shapiro and, personally, from Mr. DeVincenzo?

A Correct.

Q Where, physically, was your office within the Mayor's Office during the time that you had responsibilities over the Talent Bank?

A I sat with other people in Room 1 of City Hall.
Q The basement of City Hall.
A Correct.
Q Where is Room 1 in relationship to Mr. DeVincenzo's office?
A Mr. DeVincenzo's office is a part, an internal part, of Room 1.
Q So, your office or your desk was right outside Mr. DeVincenzo's office?
A In the room outside his room, correct.
Q Did you have resumes or other documents relating to the Talent Bank and job candidates in your desk while you were in charge of the Talent Bank?
A Yes, I did.
Q Were resumes and other information with respect to Talent Bank candidates kept anywhere else?
A Yes, some material was kept in Room 3-A, which was just down the hall from Room 1.
Q Was there an employee who had responsibility over those resumes?
A As I recall, there might have been two young women, Denita Williams and Jill Garten. Both were responsible for those materials down the hall.
Q I want to move forward and ask you whether there came a time when you were relieved of your Talent
Bank responsibilities?

A Yes.

Q And about when was that?

A At the end of '84 or early, very early, '85, approximately.

Q By whom?

A Again, unclear. Since I worked for Mr. DeVincenzo, I would assume it was by him, although I don't recall being told that directly.

Q Were you told the reason why you were relieved?

A No, I was not.

Q After you were relieved, did you move out of Room 1?

A I did a short time thereafter.

Q Where did you go then?

A My office or my desk, I should say, was relocated to 52 Chamber Street, Room 112.

Q Did you take with you to 52 Chamber Street the Talent Bank documents that you had in your desk?

A Yes, I did.

Q On or about February 1st of this year, Ms. Schwartz, did you provide those documents to the Commission pursuant to a subpoena?
A I did.

Q I'd like to ask you some questions about those documents.

First, could you please take a look at the letters which are collected at Exhibit 32 to 32-EE.

MR. MC GUIRE: While you're glancing at them, Mr. Chairman, the record should reflect that Exhibit 32 consists of some 33 letters, each of which, with one exception, is addressed to Mr. DeVincenzo or a member of his staff, and they are from Mr. LaPorte, Mr. Lamberti, Mr. Friedman, Mr. LeWinter, Mr. Rubin, Mr. Gaetta, and an employee of Borough President Howard Golden's office.

The one exception is a letter addressed to Mr. LoCicero.

The record should also reflect, Mr. Chairman, that the Commission staff has redacted these letters, so that information concerning home address and telephone number has been omitted from the copies that are here today.

Q Now, first of all, could you look at -- have you had a chance to glance through them?

A Yes, I have.
Q Could you look at the first letter, Exhibit 32, addressed to Mr. Devincenzo from Mr. LaPorte, and could I direct your attention to some handwritten material next to the date 5/25, and I'd like to ask you if you recognize the handwriting on that?

A To the right of the date, Mr. McGuire?

Q Or to the left of it.

A To the left of the date, that's Mr. DeVincenzo's handwriting.

Q Could you read that for us?

A "Joy, see me," and the initial "J".

Q Would you take a look at 32-A, please, a letter addressed to Susan from Nicholas LaPorte. Let me ask you, did someone by the name of Susan work for Mr. DeVincenzo around March of 1984?

A That's correct.

Q Who was that?

A Susan Urrutia was a secretary.

Q Would you take a look at Exhibit 32-B, a letter, another letter, and let me ask you if you recognize the handwritten material in the top portion of 32-B?

A Yes.

Q Whose handwriting is that?
A: That's Mr. DeVincenzo's handwriting.

Q: Do you read that as, "Joy, see me, J"?

A: Correct.

Q: "J" being Mr. DeVincenzo?

A: Correct.

Q: I don't want to go through all the other letters, individually, but is it fair to say you recognize Mr. DeVincenzo's handwriting on a number of the other letters collected in this exhibit?

A: Yes, I do.

Q: Now, I note that some of the letters also, Ms. Schwartz, have instructions from Mr. DeVincenzo to the effect, "See me."

My question is: What did those instructions mean to you?

A: They meant that he needed to speak with me about how to deal with this group of candidates, if it was a group, or a particular candidate, if that was the case.

Q: If it was a particular candidate, did you have an understanding or belief that this was someone Mr. DeVincenzo was particularly interested in?

A: If he called it to my attention with a, "See me," note, it was my assumption that he was
interested in this person.

Q Did Mr. DeVinzenzo ever instruct you that letters from political figures, like those in Exhibit 32, should be torn up or discarded?

A Never.

Q Would you take a look at Exhibit 33 and 33-A through 33-I.

MR. MC GUIRE: The record should also reflect, Mr. Chairman, that these documents were obtained from Ms. Schwartz' files.

In fact, the Commission obtained from Ms. Schwartz' files approximately 350 documents like this, each of which bears the endorsement at the top, "Office of the Mayor, Resume Cover Sheet," and virtually every one of which has information recorded next to the space, "Referral Source."

Q Ms. Schwartz, who filled out these resume cover sheets?

A They were filled out by a variety of people in our office, including myself on occasion and other secretarial and supportive staff.

Q From whom would you receive these resume cover sheets?
If I didn't complete them, myself, they probably would have come either from Harry Shapiro's office after classification, or, perhaps, from one of the young women working down in 3-A who did the clerical function.

Can you look at the material on Exhibit 33, the first resume cover sheet, the handwritten matter in the right-hand portion?

Do you see that handwritten matter?

Yes, I do.

Is that Mr. DeVincenzo's writing?

Yes.

Do you read that as, "Joy, I am sure we can help, Joe"?

Correct.

With respect to 33-A, another resume cover sheet, do you recognize the handwritten material appearing in approximately the same portion?

Yes, I do.

Could you read that for us?

It says, "7/20/84, Ellin, see me, Joe," and that's his handwriting, as well.

Who is the "Ellin" referred to there?

I believe this is a reference or a note to
Ellin Hauser, another Mayor's Office staff member.

Q And on 33-B, in roughly the same area, do you see a handwritten word there?

A Yes, my name in Mr. DeVincenzo's handwriting.

Q I'd like to direct your attention now to some of the other documents obtained from your files. First, could you please take a look at those collected at Exhibit 34? When you've had a chance to glance through them, would you let me know?

A Okay.

Q Do you recognize the handwriting on Exhibit 34, the first document?

A Yes. It's -- all the writing, I believe, is in my hand. I'm not talking about the numbers that are indicated off to the right, however.

Q Is this a listing of candidates to be forwarded to an agency for consideration?

A Yes, it is.

Q For what types of positions?

A Well, it says for five Shop Clerks and two Office Associate positions, and the agency named is DEP.

Q Could you take a look, briefly, at 34-B?
I'd like to ask you to compare that, briefly, with 34-A, or 34, actually. I'm sorry.

Do you recognize the handwriting on 34-B?

A Yes, that's my handwriting, once again.

Q You'll note that there are some numbers written on 34 on the right-hand side, the numbers 1 through 11?

A Yes.

Q Do you have an understanding concerning the significance of those numbers?

A I didn't write them. My assumption is that they were a priority indication, perhaps for DEP, if this list went this way.

Q Well, in that connection, with respect to your assumption, could you look at Exhibit 34-A? Are the names of the candidates appearing on the left-hand portion in your handwriting?

A Yes, they are.

Q At the bottom, it states that the "above listing is in priority order"; is that correct?

A Correct.

Q Is that also in your handwriting?

A Yes, it is.

Q Now, if you'll note, the numbers on 34,
No. 1 through 11 correspond to the same priority ordering as in 1 through 11 in 34-A.

Do you see that?

A  Yes, I do.

Q  In other words, on 34, a candidate who is listed next to the name Vianni as No. 1, that's the same candidate that appears on 34-A in the first position, and so on?

A  Yes.

Q  Now, is it your understanding that with respect to Exhibit 34, the names of the individuals on the right-hand side reflect the referral source of these resumes?

A  Yes.

Q  Now, did you determine priority orderings?

A  No. I was instructed by Mr. DeVincenzo as to what the priority order for a particular group of candidates was.

Q  Did he explain to you what the priority order was, or did he just tell you?

A  No, I didn't know why, but it was his instruction.

Q  I'd like you to take a look, briefly, at 34-D, E, F and G, and I just wanted to ask you if each
of those documents also contains referrals source
information in your hand?

A  Yes.

Q  Thank you. You can put aside those for a
moment.

Ms. Schwartz, I'd like to direct your
attention to Exhibit 36, the materials collected
underneath Exhibit 36. These are also exhibits obtained
by the Commission from your files.

Now, what is Exhibit 36, the first one?

A  It seems -- it appears to be a listing of
laborers up on top. It's typewritten, and up on top
there's an indication that these came from R. Rubin
of Donald Manes' office.

Q  Can you read the handwritten matter next
to the first candidate, Frank D'Amato?

A  "Rejected for laborer, but," and then an
arrow, "Effective 5/7 Shop Clerk DEP."

Q  Is that handwritten matter in your hand?

A  Yes, it is.

Q  Would it be your understanding that you
wrote the word, "Rejected for laborer," after learning
what the result of the laborer pool was at DEP?

A  That's quite possible and likely.
Q Could you read the matter right above the material reading, "Effective 5/7, Shop Clerk"?

A "3/29, per Joe, Fred should make D'Amato,"

and the word is crossed out, which I can't decipher. It may be "laborer", but I'm not certain. And, substituted, the words, "Shop Clerk."

Q And then, immediately below that is an indication that this gentleman did, in fact, become a Shop Clerk; is that correct?

A Correct.

Q Now, is the Joe referred to there, "Per Joe, Fred should make D'Amato a Shop Clerk," Mr. DeVincenzo?

A Yes.

Q Who was the Fred?

A Fred Carfora at DEP, a personnel staff member there.

Q Now, does this notation reflect an instruction from Mr. DeVincenzo to you?

A That's the way I understand it.

Q I'd like you to take a look at Exhibit 36-B.

MR. SCHWARZ: Excuse me. Are you finished with 36?

MR. MC GUIRE: Yes, for the moment.
MR. SCHWARZ: The references below 3/27, where it says, "D'Amato, 9:25, no answer," and "3/28, 11:10, no answer," is that all in reference to D'Amato, also?

THE WITNESS: I believe that information reflects attempts to reach Mr. D'Amato by phone. It's in my writing. Either I did it, personally, or a secretary in the office. Do you recall, specifically.

MR. SCHWARZ: Am I correct that all of this work, back and forth phone calls and so forth, was being done in order to find this No. 1 priority from Rubin's, from Manes' office, a job as a laborer?

THE WITNESS: So it seems, yes.

COMMISSIONER EMERY: The note below the one that Mr. Schwarz was asking about, it says, "3/28." Can you read that, almost on the bottom right-hand corner?

THE WITNESS: Sure. It says, "Joe with Manes - Manes will have D'Amato come in."

COMMISSIONER EMERY: Thank you.

MR. MC GUIRE: May I continue, Mr. Chairman?

THE CHAIRMAN: Yes.
CONTINUING EXAMINATION

BY MR. MC GUIRE:

Q I'd like you to take a look at Exhibit 36-B and, specifically, the matter written next to the name of the third candidate.

MR. MC GUIRE: The full name of that candidate has been redacted, Mr. Chairman.

It appears on 36-B as John W.

Q Do you see that?

A Yes, I do.

Q Can you read the handwritten matter to the right of John W.'s name?

A There's a portion crossed out and something under it. Do you want both pieces of that read, Mr. McGuire?

Q I'm sorry, yes. Could you please read that?

A It says, "Rejected - seemed not with it," and then that's crossed out, and the word, "Accepted," is written in.

Q Is any of that writing yours?

A I believe it's all mine.

Q Is it your understanding that this document is a list of laborer candidates supplied by Mr. Golden's office?
A: Yes.

Q: I want to direct your attention to the bottom right quarter of this document, the additional handwritten material under the name, "Golden". Do you see that?

A: Yes, I do.

Q: Now, first of all, is that in your hand?

A: Yes.

Q: I'd like to show you the original copy of that, and just read it to yourself. The reason I want you to read it to yourself is because I don't want you to make mention of the name of the person there.

A: Okay.

Q: Have you had a chance to look at it?

A: Yes.

Q: Let me ask you this: Is it your understanding that the handwritten matter there says, in substance, "Per Golden, reconsider Mr. W., relayed to Fred on 3/28/84"?

A: Correct.

Q: Immediately beneath that is an indication that this individual was hired at DEP?

A: Correct.

Q: Now, was that an instruction that you received from someone, that this individual should be
reconsidered?

A From what I wrote here, I'm not certain that -- I don't recall ever speaking with Mr. Golden, but it was an instruction that might have come to me through Joe from Golden, but it's an instruction from Golden, as I read it.

Q Thank you. I have no further need of the original.

Could you please take a look at Exhibit 37, Ms. Schwartz, and can you tell us, if you recognize the top document, what kind of a document it is?

A This is a correspondence tracking sheet, which is used by the Correspondence Service Unit in the Mayor's Office to keep track of correspondence.

Q And the next document, would you look at that?

A Yes.

Q Now, is that a letter referring a gentleman by the name of Lee Silverstein for possible appointment?

A Yes, it is.

Q Now, back to the first page of 37. In the right-hand portion, there's some handwritten matter, "Joy, see me, J."

A Yes.
Q  Do you see that?
A  Yes.
Q  Is that in Mr. DeVincenzo's hand?
A  Yes.
Q  Underneath that, the balance of the matter is in your hand?
A  Correct.
Q  Could you read that material for us, please?
A  It says, in my writing, "Okay - keep pushing Lee Silverstein, 11/27," or 23, I'm not certain, "Call to MH, follow-up on DEP. She'll get back."
Q  Is it your understanding that the MH is a reference to Marlene Hochstadt?
A  Correct.
Q  Now, with respect to the matter reading, "Keep pushing Lee Silverstein," is that an instruction you received from someone?
A  It's an instruction which I, undoubtedly, received from Mr. DeVincenzo.
Q  Did anyone else give you instructions while you had responsibility for the Talent Bank?
A  Nobody else did.
Q  You didn't determine on your own to push a candidate or not push a candidate?
A  I never made such a decision on my own.
Q  All right.

Could you turn back to Exhibit 33-C, and can you read the handwritten material appearing next to the date 3/23 in the upper right-hand portion of the document?

A  I can't read the first word, but I can read the balance of it. Something, "Pete and Jim - must be hired."

Q  Is it your understanding that's an instruction you received that the candidate referred to in this resume cover sheet must be hired by an agency?

A  Yes.

Q  Again, who would you have received such an instruction from?

A  Mr. DeVincenzo.

Q  Could you take a look now at Exhibit 34-C, another one of the documents that the Commission obtained from your files?

Is that a listing of candidates to be sent to DEP for Shop Clerk positions?

A  Correct.

Q  Are the names of the candidates in your hand?
A The candidates' names are, yes.

Q Is it your understanding that the ordering, 1 through 8, is a priority ordering?

A In all probability it was. It doesn't say it here, but I would expect it was.

Q All right. Could I direct your attention to the handwritten material appearing to the right of the name of the third candidate, Gabriel Resnick, under the date, 4/6?

A Yes.

Q Is that in your handwriting?

A Yes.

Q Could you read that for us, please, Ms. Schwartz?

A "4/6 - told Fred Resnick must be placed. 4/9 per Sheri - Resnick will be interviewed today."

Q Is the Sheri a reference to Sheri Roth?

A As I believe, yes.

Q She's a Personnel individual at DEP?

A Yes.

Q Again, is it your understanding that this endorsement to the effect that you told Fred Resnick must be placed is an instruction you received from Mr. DeVincenzo?
That's correct.

On the left-hand side of this document, there's information to the left of the candidates' names. Do you see that?

Yes, I do.

Is that in your handwriting?

On the left, initially, there's some ditto marks. The first reference is missing, and then the other writing is in my handwriting, yes.

Well, perhaps in the copy that you have in front of you it's not clear. Next to the first candidate on the copy, in any event, the letters, "JL" appear.

Do you see that?

Not on mine, but that's okay. It's written on the right in somebody else's handwriting.

Would it be your understanding, in any event, that the first four candidates were referred by Mr. LoCicero?

Yes.

And could you now please let me move forward?

Again, I'm sorry to keep jumping around, but could you look forward at Exhibit 36-A?

We've looked at this document before, and I just want to -- I'm not sure if this is going to clarify
it or not. Let me seek to do it.

Is it your understanding that the candidates listed on Exhibit 36 are in priority order?

A I can't say conclusively. It doesn't indicate that here, but it's as likely as not that they are in priority order.

Q Well, is it your understanding -- next to the first candidate, Philip Cavalieri, is that your handwriting, where the word, "Joe D." appears?

A Yes, it is.

Q And the other information next to the names of candidates, is that in your handwriting, also?

A Yes.

Q Is that referral source information?

A Yes.

Q Now, will you now, please, Ms. Schwartz, that the last four candidates whose names are typed Nos. 7 through 10 have the endorsement PWP next to them?

A Yes.

Q Do you know what PWP means?

A Is that Public Works Project?

Q Public Works Program?

A Something like that.
Q Given the four candidates whose names are typed from PWP, does that tell you that they are in priority order?

A I'm not absolutely certain.

Q I would like to ask you a couple of brief questions about some of the letters.

Could you turn back to 32 and 32-A? Will you note, please, Miss Schwartz, that both these letters are letters referring candidates in a stated priority order; do you see that?

A Yes.

Q What did you do if you got a letter listing candidates in a priority order?

A At Mr. DeVincenzo's instruction if this is the way he wanted it to go, then that's the way we did it.

Q Well, did you assume that if you got the letter it was Mr. DeVincenzo's instructions that you act on the priority order?

A Only if it was indicated in some way that he had seen it, unless he had indicated otherwise, but I wouldn't, on my own, do it.

Q What concretely would you do in terms of carrying out the priority?
A I might compose or draft a list very much like the list we have seen here; names, possibly referral sources in some cases in numerical order and indicate to the agency that this is the way they would be handled in this priority.

Q I would like you to turn to the document collected under Exhibit 35 and let me represent to you, Miss Schwartz, that each of the documents collected under Exhibit 35 were documents obtained by the Commission not from your files, but from the files of Environmental Protection.

I would like to ask you a few questions about some of them.

First, could you look at Exhibit 35-A? Is the name Lamberti in your hand?

A Yes.

Q Was it your understanding that this would be a list of labor candidates referred by Mr. Lamberti?

A Yes.

Q Could you look at 35-B and I would like to ask you if the word Manes appearing in the upper portion is your hand?

A I'm not certain. It doesn't really look like my handwriting.
Q Is it your understanding that this is a list of candidates referred by Mr. Manes?
A Yes.
Q Could you look at Exhibit 35-C in the upper right portion following -- it says, "N. LaPorte, Sr.," is that in your hand?
A Yes.
Q Is it your understanding that the list of twelve candidates here were supplied by Mr. LaPorte?
A Yes.
Q Could I direct your attention to the name Philip Mancino, Jr.? Do you read that material there as only one of two?
A Yes.
Q Do you know what that means?
A There are two candidates, No. 1 and No. 2, with the same last name. Perhaps it's an indication that only one of them should be hired. I don't know if they lived at the same address or if they are related.
Q Is it your understanding that this listing of laborers is a listing in priority order? And in that connection, you might want to refer back to one of the letters and I believe it is 32-A. 32-A as you will
note indicates the same two candidates as the first
two in priority order.

A  It looks like 35-C duplicates 32-A.

Q  So, in other words, document 35-C is a
listing of candidates in priority order?

A  Correct.

Q  Could you look at 35-D and at the top of
that document there's the word, Manes that appears?

A  Yes.

Q  Do you know whether that is in your hand
or not?

A  I don't think so.

Q  But is it your understanding, is it a list
of candidates supplied by Mr. Manes' office?

A  Correct.

Q  Do you recall Mr. DeVincenzo instructing you
at any time that agencies should not be apprise of re-
ferral source information?

A  I don't recall that in particular, and I
see here that certain documents did, in fact, include
referral sources.

So, they did go in some circumstances.

Q  You have no specific recollection of receiv-
ing instructions from Mr. DeVincenzo not to let agencies
know of referral sources?

A I don't remember that.

Q Just a few final questions.

Did you, while in charge of the Talent Bank, do reports concerning referrals by Mr. Golden, Howard Golden?

A I believe there was such a report.

Q Do you recall, approximately, when?

A No.

Q Well, could you take a look at Exhibit 38? The contents of Exhibit 38 are matters obtained by the Commission from your files.

Let me just make a representation to you, Miss Schwartz, and that is, that each of the materials in Exhibit 38 was in a folder of yours marked on its face, "Report on Howard Golden Referrals 12/5/84", and so, if I were to tell you that, would it be your understanding that you would have worked on this report around December of '84?

A Yes.

Q Now, did you prepare the materials collected as Exhibit 38 in connection with that report?

A The last page is in my writing. I know I did that. The other two pages are typewritten with
some of my handwritten notes accompanying the names on the lower right. I don't recall preparing this, but I won't say that I did not.

Q If you prepared it, would it have been at someone's request?

A Yes.

Q Would that be Mr. DeVincenzo?

A Yes.

Q Do you recall whether you gave this report to Mr. DeVincenzo?

A No, I don't.

Q Would you look also at Exhibit 39, and I particularly want to direct your attention to the second to last page.

A Okay.

Q What is that document the second to last page of Exhibit 39?

A It has a handwritten name up at the top referring what seems to be a report listing Golden's candidates.

Q That's okay. Let me just ask you this question:

Is it your understanding this is a Talent Bank computer printout?
A Yes.

Q Now, Miss Schwartz, these documents collected as Exhibit 39 were in the same file as yours concerning the Howard Golden referrals. Just let me ask you, given that, is it your understanding that the Talent Bank had the capacity to generate lists of candidates by referral source in 1984?

A It could, to some limited degree. It was only beginning at that point to be --

MR. SCHWARZ: It got better as you went along?

THE WITNESS: Yes.

MR. SCHWARZ: As you went along, you were able to keep track of the referral sources better than in '84?

THE WITNESS: I would think so, because my involvement ended afterwards.

BY MR. MC GUIRE:

Q I take it that you are aware or you have heard of the black book; is that correct?

A Yes.

Q Did you ever see that document, the black book?

A No, I did not.
Q Miss Schwartz, the Commission has heard evidence regarding the destruction of Talent Bank records in early 1986. Let me ask you if you were performing Talent Bank duties at that time?

A I was not.

Q Were you present at or aware of any destruction of Talent Bank records?

A I was not.

MR. MC GUIRE: No further questions.

THE CHAIRMAN: Thank you.

Commissioner Emery?

COMMISSIONER EMERY: Just a couple of questions.

Is it fair to say from your review of these documents that cover sheets and letters that accompanied referrals were used as part of the administrative process to communicate from Mr. DeVincenzo to you, and then for you to keep track of what was going on with those referrals in the process of your attempts to place these people?

THE WITNESS: Correct.

COMMISSIONER EMERY: Those cover sheets and the letters with the referral names in them,
and the other information with attached lists, they would be in Mr. DeVincenzo's hand, and then given to you in some kind of office procedure to go into your hands?

THE WITNESS: That's correct.

COMMISSIONER EMERY: Do you know of any period of time when you were working with these materials that there was anyone in Mr. DeVincenzo's office at his instructions or otherwise who destroyed these cover sheets or these letters with the referrals in them?

THE WITNESS: I don't know if any such occurrence.

COMMISSIONER EMERY: And do you know of anyone, Mr. DeVincenzo himself or anyone at his request that made an effort to eliminate the political referral names, the names of the political leaders, especially the ones we have seen here, the County Leaders in large part from those documents, any effort to eliminate those names, the names of political leaders from the documents that were used in this placement process as you have just described?

THE WITNESS: Not from documents he
received, I would think not, but when the lists were from the agencies, the referral source was not always indicated.

COMMISSIONER EMERY: You were the head of the Talent Bank; correct?

THE WITNESS: Yes.

COMMISSIONER EMERY: Between you and Mr. DeVincenzo, those referral sources were common place every day?

THE WITNESS: Absolutely.

COMMISSIONER EMERY: There was no effort to eliminate the names of the politicians from the materials you were receiving?

THE WITNESS: There was no effort to do that.

COMMISSIONER EMERY: I take it that even to the extent that there was some effort for the agencies not to receive them, there were some instances when the agencies did receive them in one form or another?

THE WITNESS: Yes, sir.

COMMISSIONER EMERY: Now, at any point to your recollection -- I take it that on a daily basis you were dealing with the agencies
in the attempt to place these people that were
on the lists and priorities in political posi­
tions and you had contact with the agencies
yourself in doing that?

THE WITNESS: Yes.

COMMISSIONER EMERY: Some of these notes
refer to that.

At any point, to your recollection, in
dealing with perhaps Fred Carfora, Marlene
Hochstadt and I believe one person who was in
here, Mr. Jean from the Department of Transporta­
tion, I noticed that as we were going through
this and also from others, at any point did you
have any conversations with them about what
their obligation was to take these referred
people?

You have notes there that say, "Must be
hired." Did you have conversations that con­
veyed that information to the people you were
talking to at the agencies?

THE WITNESS: I did from time to time,
because the notes indicated that, yes.

COMMISSIONER EMERY: How did those con­
versations go? Can you give an example?
THE WITNESS: It's hard to remember, but I must have said something to the effect that it's important that this person be placed and please try your best to do so, and keep us posted on how it goes, and where you send him, and whether he shows and what the process -- how the process works.

COMMISSIONER EMERY: Now, when you knew the referral to be -- for example -- we saw a couple in here -- John LoCicero, did you say in conjunction with -- did you say that Mr. LoCicero wants this person placed?

THE WITNESS: I don't think I would have personally done that. I think it would have been enough just calling from Joe's office for this person on the other end and saying that it was important, but not providing details.

COMMISSIONER EMERY: Did you mention Mr. DeVincenzo's name in any of these conversations?

THE WITNESS: If I got someone who didn't know who I was, I would say Mr. DeVincenzo's office, but I was pretty much known to be from Joe's office, so it wasn't necessary.
COMMISSIONER EMERY: Was it your perception that the people on the other end of the line knew that these were political placements?

THE WITNESS: It's hard to say. We might have, in some circumstances, yes.

COMMISSIONER EMERY: Did they ever question you when you emphasized the importance of placing --

THE WITNESS: I don't know.

COMMISSIONER EMERY: Can you remember any instances where there were complaints from people that you called for purposes of placement, not necessarily -- any of the agencies you called saying oh, if you don't place these, our PAR's will be held up, our personnel actions will be held up or other retaliatory actions will be taken against us?

THE WITNESS: I remember hearing that, but I wasn't involved in PAR's or personnel action, so I might not be the one to receive those complaints.

COMMISSIONER EMERY: Thank you very much.

THE CHAIRMAN: Commissioner Hynes?

COMMISSIONER HYNES: When you became
Director of the Talent Bank in '84, did anyone describe the purpose of the Talent Bank to you?

THE WITNESS: At that moment, no.

COMMISSIONER HYNES: At any time when you were the Director of the Talent Bank, did anyone describe what the purpose of the Talent Bank was?

THE WITNESS: No.

COMMISSIONER HYNES: Did anyone tell you that the purpose of the Talent Bank had anything to do with hiring minorities or affirmative action hires?

THE WITNESS: I knew that from the time the Mayor made his announcement in '83 that there would be a Talent Bank and that's what it's purpose was.

COMMISSIONER HYNES: Was any consideration given, to your knowledge, as to whether they reflected minorities or affirmative action candidates?

THE WITNESS: Yes, there was to some degree. In fact, I was responsible for gathering female candidates from a group called Non-Traditional Employment for Women and referring these women to jobs, and the sort of work women don't
ordinarily do. So, there was that interest.

COMMISSIONER HYNES: These referrals would come after the priority referrals that we have seen listed from the priority referral sources; correct?

THE WITNESS: I don't recall that.

COMMISSIONER HYNES: Do you recall if they were put ahead of any political referral source --

THE WITNESS: I don't remember.

COMMISSIONER HYNES: Likely that they were not, though?

THE WITNESS: Likely not.

COMMISSIONER HYNES: No further questions.

THE CHAIRMAN: You indicated on a couple of occasions in response to Commissioner Emery that you would communicate with an agency that it was important that someone be hired; do you recall that response?

THE WITNESS: Yes.

THE CHAIRMAN: Was it your understanding that as a rule, that when you indicated that it was important that someone be hired, that that person was subsequently hired?

THE WITNESS: I was not really totally
aware of what hires to place. That was handled by a different group of people in the office. I occasionally had learned that and the documents showed that, but I was not so much in touch with that.

THE CHAIRMAN: Are you aware of any case where you indicated that it was important that somebody be hired, that that person was not hired?

THE WITNESS: No.

THE CHAIRMAN: Commissioner Magavern?

COMMISSIONER MAGAVERN: Ms. Schwartz, I would like to place the history of a letter coming in from a political leader addressed to Mr. DeVincenzo.

That letter would arrive in Mr. DeVincenzo's office and would you take us through the various steps it would go through before it finally came to rest in someone's file?

THE WITNESS: I think it would then go to the secretarial person in the office who is responsible for logging the mail and all mail was logged in and stamped with a date of receipt and a number and a chronological file was kept,
a mail log was kept that it had been received in the office.

After that step, all of the mail, as I recall, went to Mr. DeVincenzo. He read it, reviewed it, I guess, and sent out what needed to be sent out to various people by indicating their name and again, a staff member would gather the letters that had my name and bring them to my attention --

COMMISSIONER MAGAVERN: Did you understand that job recommendations from political leaders would be routinely referred by Mr. DeVincenzo to you?

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

COMMISSIONER MAGAVERN: Would you routinely refer letters with job recommendations from political leaders to you?

THE WITNESS: I got a log of them.

COMMISSIONER MAGAVERN: As they got to you, you have described how you would try to carry out the instruction.

THE WITNESS: Yes.

COMMISSIONER MAGAVERN: What would then happen to the letter, anything further?
THE WITNESS: It would be passed along.

COMMISSIONER MAGAVERN: Do you know if those letters, at any point, went from Mr. DeVincenzo's office up to Mr. LoCicero's office?

THE WITNESS: I have no idea.

COMMISSIONER MAGAVERN: Did you have any communication with Mr. LoCicero's office?

THE WITNESS: I didn't.

COMMISSIONER MAGAVERN: Do you have any information as to whether Mr. DeVincenzo's actions in determining which candidates should have what priority and how much efforts should be used to place them, whether his actions were on his initiative, or whether he was acting on the guidance of anyone else?

THE WITNESS: Sometimes I had the feeling that he was being asked to do certain things and I can't give you anything conclusive. It was an intuitive feeling that he would seem upset or nervous, and it occurred to me that he might have been under pressure from elsewhere. I have no basis, in fact, and I would hazard to guess --

COMMISSIONER MAGAVERN: Would he ever refer to any names on those occasions?
THE WITNESS: No, he would not.

COMMISSIONER MAGAVERN: Thank you.

THE CHAIRMAN: Mr. Schwarz?

MR. SCHWARZ: Just so the record is clear, with reference to the question that Mr. McGuire asked, your office was not in the Talent Bank; is that correct, physically?

THE WITNESS: No. When I was in charge of the Talent Bank, I had a desk in Room 1.

MR. SCHWARZ: So if there were a destruction of documents at some time, you would have not been physically located at that place; is that correct?

THE WITNESS: I don't know anything about the destruction of documents.

MR. SCHWARZ: How much time during your normal work day did you spend as we have seen in these documents, chasing down people who were on a priority list to see that you were called back --

THE WITNESS: It's hard to say. There were a couple of hours a day spent, perhaps.

MR. SCHWARZ: How much time a day did you spend, for example, going after Viet Nam veterans organizations to get people placed through the
Talent Bank?

THE WITNESS: I didn't deal with that organization at all. I did spend time on the phone with MTW. That group that tried to place women. I spent a lot of time with them.

(Continued on next page.)
MR. SCHWARZ: The women you got from that list would then go, I believe, as Commission Hynes asked you, on a list after the priority list from Mr. DeVinzenzo?

THE WITNESS: I said I wasn't certain, but it's likely that they said.

MR. SCHWARZ: Was there someone under you at that time who was in charge of getting people from different groups, from Vietnam veterans, blacks, women, et cetera?

THE WITNESS: No. There was not.

MR. SCHWARZ: Do you know how much time was spent on the Talent Bank where you would be the Director of lining up potential employees for the Talent Bank --

THE WITNESS: Can you rephrase that?

MR. SCHWARZ: Were there people under you when you were the Director, who were going out meeting with black organizations, Chinese organizations, women's organizations, Vietnam veterans organizations, to get people to place through the Talent Bank consistent with the publicly-announced purpose of the Talent Bank?

THE WITNESS: At that time, I know of no such
efforts.

MR. SCHWARZ: So, in effect, you were chasing down people -- more time chasing down people on Mr. DeVincenzo's list than the people --

THE WITNESS: It would appear so.

THE CHAIRMAN: Commissioner Emery?

COMMISSIONER EMERY: What period of time were you physically sitting outside of Joe DeVincenzo's office in City Hall?

THE WITNESS: From the time I was hired in March, 1980 until I moved to 52 Chambers Street in June of 1985.

COMMISSIONER EMERY: So that in 1983, did you assume the Talent Bank duties?

THE WITNESS: Early '84.

COMMISSIONER EMERY: During the time you were in Room 1, were you in a placement physically where you could see who went into Mr. DeVincenzo's office and when he left his own office?

THE WITNESS: Sure.

COMMISSIONER EMERY: Can you recollect any times when Mr. LoCicero visited that office?

THE WITNESS: Yes.

COMMISSIONER EMERY: Did that happen
regularly?

THE WITNESS: Not regularly, but it did happen from time to time. I wouldn't say once a week, but periodically.

COMMISSIONER EMERY: Can you estimate? Was it once every two weeks? What would be your best estimate?

THE WITNESS: A couple of times a month, that's it.

COMMISSIONER EMERY: Were you physically in that area when Deputy Mayor Brezenoff was at City Hall?

THE WITNESS: I believe I was.

COMMISSIONER EMERY: Let me ask you the same question with respect to Mr. Brezenoff. Were there occasions when he went to Joe D's office?

THE WITNESS: I didn't see him downstairs.

COMMISSIONER EMERY: What about the Mayor?


COMMISSIONER EMERY: Do you have any knowledge of occasions when Mr. DeVincenzo went upstairs to visit any of these three officials that I just named?
THE WITNESS: He went upstairs, but I never accompanied him.

COMMISSIONER EMERY: You had no knowledge of where he was going? He didn't say or his secretary didn't say, I'm going up to the Mayor's or Mr. LoCicero's office or Mr. Brezenoff's office?

THE WITNESS: Not that I heard.

He said, I'm going upstairs. Maybe he said, I'm going to Brezenoff's office, if he had a specific memo or message to deliver, but it was not a regular occurrence that he would say that.

COMMISSIONER EMERY: Did he go upstairs often?

THE WITNESS: I think every day.

COMMISSIONER EMERY: Thank you.

THE CHAIRMAN: Thank you very much.

We'll now break for lunch and we have changed the schedule. Instead of resuming at 1:45, we'll resume at 1:30.

(Whereupon, at 12:15 o'clock, the hearing adjourned for luncheon.)

A F T E R N O O N  S E S S I O N

(Time noted: 1:35 o'clock p.m.)

THE CHAIRMAN: The Commission calls as its
next witness, Jerry Skurnik.

Mr. Skurnik, would you stand, please, and raise your right hand?

JERRY SKURNIK, called as a witness, having been first duly sworn by the Chairman, testified as follows:

THE CHAIRMAN: Please be seated.

I would like to ask counsel if he wouldn't mind introducing himself.

MR. KRISH: Arnold N. Kriss, on behalf of Jerry Skurnik, from the law firm of Kriss & Zechione, 500 Fifth Avenue, New York, New York 10110.

Good afternoon, Commissioners.

THE CHAIRMAN: Thank you.

I recognize the Commission's Deputy Counsel James McGuire for questioning.

MR. MC GUIRE: Thank you, Dean Feerick.

BY MR. MC GUIRE:

Q Good afternoon, Mr. Skurnik.
A Good afternoon.

Q How are you currently employed?
A I have my own business. It's a consulting firm.
Q As Mr. LoCicero's Executive Assistant, did one of your responsibilities entail reviewing resumes of candidates for City jobs?

A Yes.

Q Could you tell us how that came about, that particular function?

A Well, after the Mayor was elected, during the transition, a group was appointed that reviewed the thousands of resumes that came in, that were sent to the Mayor or, Mayor-Elect, actually. I was not involved in that group at all.

Suddenly, January 2nd comes along and —

Q Is this January 2nd of 1978?

A January 2nd, '78.

— and we are in City Hall, the people who are reviewing those resumes either were not working for the City or wanted nothing to do with resumes, and they handed them all over to me.

Q And Mr. LoCicero?

A Well, literally, it was me. It was our office. Then what happened is — and then it became our responsibility to — number one, resumes from political leaders and county leaders who we had dealt with, generally sent their resumes — sent resumes or
letters either to Mr. LoCicero or myself, and letters
that were sent directly to the Mayor referring to
resumes or job openings, were forwarded to me by the
Mayor's Correspondence Unit.

Q Can you give us an idea of the approximate
volume of resumes your office received and, by "your
office," I mean you and Mr. LoCicero?

A Well, originally, it was quite a few. I
mean, there were -- that first batch, when we took
office, were a few thousand and, for the first, I would
say, few months, there were probably on the average of
one hundred or so a week. It gradually dribbled down
to, near the end of my tenure in government, maybe five
to ten a week.

Q Now, after the initial deluge of resumes,
I take it, the number of resumes slowed down; is that
right?

A That's right.

Q At the time when the resumes, the number of
resumes started to slow down, can you tell us whether
the resumes that were received by your office were from
political figures?

A Well, the resumes that were received, sent
directly to our office, were, predominantly, from people
somewhat active in politics; it can range from someone who had been a volunteer in the Mayor's campaign up to a Congressman or Borough President or U.S. Senator. The resumes that came in through the Mayor's Correspondence Unit could be from anywhere.

Q It might be from a politically-active person, it might be from a candidate himself or herself?

A That's right.

Q With respect to the ones that came directly to Mr. LoCicero's office, putting aside the ones that went to the Mayor's Correspondence Unit, can you give us an idea of the proportion of resumes that were from persons active in politics?

A I would guess 90 percent.

Q All right. What function did you and Mr. LoCicero perform in connection with reviewing these resumes?

A What we did was, we looked at the resumes and forwarded them to the agency that it seemed to us that the person was, or at least on paper, qualified to be working in, or if they specifically requested an agency or a job, to that agency.

Q In other words, if the resume or any cover letters indicated a specific job at a specific agency,
you would forward it to that agency?

A That's correct.

Q Other resumes and accompanying letters didn't indicate a particular job?

A That's right. If they were like that, I reviewed it myself and decided what agencies I thought the person might fit the qualifications for.

Q Did you or Mr. LoCicero keep records indicating who had referred whom?

A Well, what I did was, I either kept the cover letter with the resume or wrote a note, you know, in pencil, on the resume who referred it, unless I knew for sure I would remember who it was.

Q So you didn't keep any kind of master log indicating what individual or group had referred each candidate?

A No.

Q Did you personally review all the resumes that came in?

A I would say the vast majority, not -- there were times I was on vacation or I wasn't in or -- I -- usually, Mr. LoCicero's mail, his secretary, when she opened the mail in the morning, put them in a folder, and I reviewed that folder before I went to Mr. LoCicero,
unless it was marked "Personal," or "Confidential,"
and if it was a resume, I usually reviewed it before
giving it to Mr. LoCicero.

Q Did Mr. LoCicero personally review all the
resumes?

A No.

Q Was there any kind of basis upon which it
was determined which resumes Mr. LoCicero would look at
personally?

A Well, the ones I reviewed first, if the
person, in writing the letter, had made a reference to
a conversation with Mr. LoCicero, he reviewed them, and
if it was for a very high level job that I didn't feel
I could judge what to do with the resume, he reviewed
them. But if it was something that it was pretty clear
what you should do with the resume, I would send it --
I would just hold it myself, and he would never see it.

Q When you forwarded a resume to an agency,
would you send it to the Commissioner at the agency or
some lower level employee?

A In most cases, the Commissioner. There were
cases it was lower level people.

Q Would that be because you were personally
acquainted with the lower level employees?
A It was either I was personally acquainted or we were instructed by the agency that that was the person to send resumes to.

Q When you forwarded resumes over to agencies, would you include, along with the resume, any accompanying cover letters from political figures or third parties who had referred the candidate to your office?

A In most cases, yes.

Q What exceptions?

A Well, if, for example, the cover letter was referring someone for a specific job and we were sending it to another agency on the feeling in my own mind or heart, that while that person might want to be in one agency, he would not be adverse to being interviewed for another job; I would send it without the cover letter, because the cover letter would confuse Agency X if it were referred to Agency Y.

Q I take it there were times when you would receive a cover letter from a political figure which would recommend a person for one particular job and -- in one agency, but you would also forward the resumes to another agency?

A That's correct.

Q What was Mr. LoCicero's practice --
MR. KRISS: Excuse me for one second, Mr. McGuire.

(Whereupon, the witness confers with Mr. Kriss.)

MR. KRISS: Sorry. Thank you.

Q What was Mr. LoCicero's practice, Mr. Skurnik, with respect to forwarding on to agencies cover letters from political figures and others?

A I think he didn't have a specific policy. I think sometimes he did and sometimes he didn't.

Q Did Mr. LoCicero, himself, make the decision as to whether or not cover letters from political figures would be sent on?

A I don't know.

Q Did Mr. LoCicero's secretary play any role in that regard?

A Well, what usually happened with resumes that he sent, he sat down with the secretary, and I wasn't usually in those meetings, so I don't know if she decided to do what he said, send a cover letter or not. It usually wasn't a major issue in our mind what to do with cover letters.

Q If Mr. LoCicero had any criteria in mind by which he determined when to send the cover letter and when not to send the cover letter, are you not aware of...
any such criteria?

   A  I'm not aware of any such criteria.

COMMISSIONER MAGAVERN: Could I just ask if 
this testimony goes to the entire time you worked 
for Mr. LoCicero.

THE WITNESS: Yes.

   Q  Mr. Skurnik, we may have just covered this. 
I apologize if we have. But, I take it, that sometimes 
you were the one who would send a resume over to an 
agency as opposed to Mr. LoCicero?

   A  Yes. In both cases, it was myself.

   Q  In general, would it be fair to say that 
Mr. LoCicero would send on resumes for higher level 
appointments?

   A  In general, yes.

   Q  Would there be any other reason why you would 
send a resume on to an agency as opposed to Mr. LoCicero?

   A  No. It was either, as I said before, a 
cover letter referred to a phone call or a conversation 
that the person had with Mr. LoCicero, or if it came 
in an envelope that was marked "Confidential," which 
neither the secretary nor I opened up. I mean, these 
are very rare cases, though.

   Q  If you personally didn't know a Commissioner,
would you be the one that would forward the resume?

A That's right. No, I didn't. When the Commissioners, who didn't know me at all, I -- at least I believed they didn't know me -- in those cases, I usually drafted the letter for Mr. LoCicero which he then initialed, not the secretary.

Q I would like to ask you if there came a time when your office began sending resumes your office had received, to Mr. DeVincenzo's office, as well as to agencies?

A Yes.

Q Was that in the second administration?

A Well, what happened, a few times in the first administration, just when I had no idea what agency the person might be qualified for, or when we were informed that Mr. DeVincenzo's office -- that there were job openings in certain agencies, but, primarily, it was in the second administration we sent, in most cases, beside the agencies, every rresume that came in went down to Mr. DeVincenzo's office, also.

Q So, are we clear that after the second administration, it became a regular practice of your office to send resumes to Mr. DeVincenzo's office as well as to agencies?
A That's correct.

Q And when this regular practice began, was this before or after the Mayor's Talent Bank was created, do you recall?

A It was when the Talent Bank was created.

Q And what was the purpose of forwarding resumes to Mr. DeVincenzo's office?

A Well, he had -- his office had a much -- they were much more or much better informed of what agencies had job openings, how peoples' qualifications meshed with the job qualifications, and it was just widening the net that we could, hopefully, get people jobs.

Q Was there any decision, that you're aware of, by the Mayor or a Deputy Mayor, that the resumes received by Mr. LoCicero's office should be forwarded to Mr. DeVincenzo's office?

A A decision? I just remember when the Talent Bank was formed -- I don't recall if anyone specifically told me to send resumes to Mr. DeVincenzo's office or it was just a logical thing based on knowing of the Talent Bank's formation.

Q When you did send resumes down to Mr. DeVincenzo's office, did you also include any cover letters relating to the resume?
A Yes, I did.

Q Cover letters from political figures, from civic groups?

A Whatever cover letters there were, I sent.

Q Were there any kinds of jobs for which you wouldn't include the cover letter when you sent resumes to Mr. DeVincenzo's office?

A Not that I recall.

Q How about laborers?

A Well, laborers, we often did not get letters at all. They were often called in on the telephone, and, in those cases -- and I don't recall ever getting resumes for laborers, so --

Q All right. Did you receive, from time to time, letters from political figures, such as County Leaders, that contained names of candidates on them?

A That's right.

Q Would you forward those letters?

A No. In those cases, what I usually did, and I may have not -- in one or two cases, I may have sent down the letter from the elected official or others, but what I usually did was, I compiled my own list of people for laborer jobs every week or so. I just let them -- whatever names I got that week -- and I sent
them down on just my own letterhead.

Q As between yourself and Mr. LoCicero, do I take it that you were the one who forwarded names of laborer candidates to Mr. DeVincenzo's office?

A That's correct.

Q Did the list of names that you made up to send to Mr. DeVincenzo's office identify the political figures who referred candidates?

A No.

Q Did you not forward the letters regarding laborer candidates to Mr. DeVincenzo's office for any particular reason?

A It was just easier for me to -- you know, for my own way of keeping track of it, just to do it once a week, or so, rather than every other day sending down -- making a copy and sending it down.

Q So as you received letters, you, I take it, would retain them in your files and from time to time create your own list?

A Actually, what I did was, the ones I didn't send down, I left in a file on my desk. I put them in the file after sending the notes to Mr. DeVincenzo's office.

Q Did you also send the names of laborer
candidates that your office received to the agencies
or just Mr. DeVincenzo's office?

A We usually sent them to agencies, also, when
we were informed that agencies were in the process of
hiring laborers.

Q Did there come a time when your office began
to contact, on a regular basis, political figures and
invite them to supply names of laborer candidates?

A Yes.

Q When about was that?

A It was either 1981, '82 or '83. I really
can't recall when.

Q Sometime in that time period?

A Right.

Q How did that practice of calling political
figures come about?

A Well, I was informed that the City would now
be in the process, in the next period of time -- would
be hiring a lot of laborers. I think it had to do with
finally having enough money to have a capital budget, and
that we should contact the County Leaders and other
elected officials to ask them to submit names of people,
telling them the qualifications were a driver's license
and New York residence, and that I should then send those
names down to Mr. DeVincenzo's office when they came in.

Q You said you were told to contact County Leaders and other elected officials. Were any categories of elected officials mentioned?
A No.

Q Were the names of elected officials mentioned?
A No.

Q Who was it that told you that your office should contact County Leaders and other elected officials?
A It was in a meeting with Mr. LoCicero and it was either Deputy Mayor Leventhal or Brezenoff, I don't recall which one.

Q Do you have a recollection as to whether anyone else was present aside from yourself, Mr. LoCicero and either Mr. Brezenoff or Mr. Leventhal?
A I don't believe so.

Q And do you know where the meeting was?
A In the Deputy Mayor's office.

Q Whose office?
A Brezenoff succeeded Leventhal.

Q So it definitely couldn't have been both?
A No. It was either one of them.

Q Was anything said at this time with respect to certain political figures that should not be contacted
for laborer vacancies?
   A  No.

   Q  Now, after this meeting, did your office, from time to time, contact County Leaders and other elected officials?
   A  Either them or their representatives, yes.
   Q  When would you do that?
   A  Would that be in response to learning of the existence of vacancies at a particular agency?
   A  That's correct.

   Q  Who would tell you that there were vacancies at a particular agency?
   A  It was somebody in Mr. DeVincenzo's office.
   Q  Did any particular City agencies have more laborer vacancies than others?
   A  Yes.
   Q  What were those agencies?
   A  Department of Environmental Protection and Department of Transportation.

   When we say laborers, I mean the general description of people doing laboring work.

   Q  That is a good point. In other words, you are aware that the term "laborer," can have some specific significance in the employment context; right?
A That's right.

Q I take it that you have been using the term "laborer" as I have to indicate, basically, physical labor, unskilled jobs, regardless of the specific titles assigned to those jobs?

A That's correct.

Q Was there any division of labor between yourself and Mr. LoCicero in terms of contacting political figures about laborer vacancies?

A I did it, not him.

Q And you would speak -- what political figures did you regularly contact when you learned about laborer vacancies?

A The Assistant for the Democratic County Leaders were the people regularly contacted. Occasionally, we would contact some City Council members.

   We also got unsolicited names of people suggested for laborer jobs from the same people who were suggesting other people for other jobs, too, and we sent those names down, also.

Q Were the unsolicited referrals for laborer jobs a minority of the names received?

A I would say it was close to fifty-fifty. Probably slightly more, the ones we reached out to.
Q When you contact County Leaders, what would you say to the County Leaders or their representatives about the number of the vacancies and the number of names they should supply you with?

A Well, it was always the representatives. I don't recall ever discussing it with a County Leader. I sometimes said the City is about to hire X amount of laborers. Can you send us Y amount of names less than the number they were hiring. I often just said, we're going to be hiring a bunch of laborers. Are there any names of any people that you have who would be interested.

Q I take it that what you are saying is that sometimes you would indicate total number of laborers to be hired, but wouldn't specify a particular number of names that should be submitted from the County Leader's office?

A Occasionally, I would say, don't send us more than ten, for example, but other times I didn't say anything about how many names they should submit.

Q I think what you are saying is that on other occasions you would inform the representative of a County Leader's office of the total number of vacancies and invite the office to submit some fraction thereof?

A Yes, sometimes.
Q Would it generally be to submit names for one-fourth of the total number of vacancies you knew about?

A One-third to one-fourth.

Q After you had one of these telephone conversations, did you receive names in the mail in the form of letters?

A Sometimes in the mail, sometimes on the telephone.

Q More often than not, you would get a letter with the names?

A Well, usually, if I got something in the mail, all it was was a letter with the names. It would be just here are the names of people to be considered for laborers, and then a list of names. There wasn't another letter with it.

Q Were there any occasions when you invited County Leaders' offices to submit names and they didn't respond by giving names?

A Not that I can recall.

Q How regularly would your office contact the County Leaders?

MR. KRISS: As far as laborers are concerned?

MR. MC GUIRE: Yes.
A Usually, every few months. Sometimes it might be twice in a month and then not for another six months, and then it might be every three months. It was really an ad hoc basis.

Q Did it depend in part upon when you learned about vacancies?

A My contact with them depended upon the vacancies.

Q What happened on an ad hoc irregular basis was that you were learning of vacancies?

A That's correct.

Q Were there any County Leaders whose names you did not contact and invite to submit laborer candidates?

A We didn't contact the Right To Life and the Republican and Conservative parties. After '82, we didn't contact the County Leaders' office of Manhattan.

Q With regard to the five County Leaders, I take it the only one you didn't contact after '82 was the Manhattan Democratic County Leader?

A Of the five Democratic County Leaders, right.

Q Was that because the Manhattan Democratic leader was an opponent of the Administration?

A That's right.
Q Do you know who made the decision not to contact the Manhattan County Democratic Leader?

A I made the decision, but it was just a logical decision to make. It was for the same reason we did not contact County Leaders of the other parties.

Q In other words, you don't have a recollection of anyone telling you or advising you that the Manhattan Democratic County Leader should not be contacted with respect to these laborer vacancies?

A That's right.

Q Was it your understanding that that was consistent with the general practice of the Administration?

A I don't know about the general practice of anyone else in the Administration.

Q Is it fair to say that you didn't think you were doing anything inconsistent with the policies, as you may have understood them?

A Well, our policy in my office was to deal with, your know -- anybody can call us whether they were friends of opponents of the Administration, and we dealt often with opponents of the Administration, but reaching out on something like this, it was just logical on my part. I was not hired just in an administrative role. I have my own knowledge of politics and it was an obvious
decision not to contact the Manhattan County Leader, because he was an opponent of the Administration.

Q Was Mr. LoCicero aware that you were not contacting the Manhattan Democratic County Leader?
A I believe so.

Q Let me ask you a question about your practices in general, and that is laborers' and non-laborers' positions.

Did your office ever not forward a resume that you had received because of the identity of the person who had referred it?

A I don't think so.

Q In other words, if your office received a resume even from a political opponent, you would still forward it on to an agency?
A That's right.

MR. SCHWARZ: Did that happen frequently?
THE WITNESS: I couldn't say frequently. It happened more than ten times in eight years.

MR. SCHWARZ: More than ten times in eight years?

THE WITNESS: Yes. Probably less than a hundred and more than ten.

Q Let me go back to the laborer positions again
for a moment.

Was Mr. DeVincenzo's office also receiving laborer candidates from County Leaders?

A I don't know. Well, I guess I do know. Yes. Infrequently, he used to send us lists that he got from County Leaders asking us if it was okay if he put those names into a pool.

Q And when you say "us" --

A Mr. LoCicero's office.

Q Would Mr. DeVincenzo himself, or a member of his staff contact your office?

A I think it was, usually, a member of his staff. Sometimes it just came through the interoffice mail.

Q What, specifically, would come through the mail?

A A list from a County Leader or someone else.

Q More often County Leaders than Borough Presidents and other kinds of leaders --

A Yes.

Q Would it be a list that you would receive in the interoffice mail as opposed to a letter from a County Leader or Borough President containing the names of candidates?
Usually, it was a letter that included a list in it.

And then there were other occasions when you would be advised that Mr. DeVincenzo's office had received candidates for laborer positions over the telephone?

Yes. I can recall that happening.

In other words, a member of Mr. DeVincenzo's staff would say, himself, that they had received candidates from a particular political figure, and was it okay.

That's correct.

Were you the one who determined whether or not it was okay to add those candidates to the pool?

Yes.

Did Mr. LoCicero play any role in that, do you know?

Not that I can recall.

Did you always approve or only sometimes approve?

I can't remember any case of not approving.

What was your purpose in reviewing them?

I don't know. I mean, it was Mr. DeVincenzo's office who asked me to review them. Usually, it was the same people who were sending names to me.

In other words --
A: I don't recall any case of even there being a decision to be made.

Q: Is what you are saying is that you are not aware of any instructions or directions requiring Mr. DeVincenzo to send these names to your office?

A: That's correct.

Q: Do you have any understanding how that happened, how that came about?

A: No.

Q: Was it your understanding that only candidates referred by political figures would be considered for laborer jobs at DEP and DOT?

A: No, it is not my understanding.

Q: It is your understanding that the candidates that were forwarded to agencies by your office had to compete with the general public?

A: Had to compete with other people whose names were sent in. I don't know if it was the general public or people in the agency. I don't know how other names got considered. They had to compete with somebody.

It wasn't only political figures whose names I sent down for laborers. Other peoples' names were sent down, too.

Q: I think you mentioned that earlier. I may
havemisunderstood you, but I think you indicated that it was about fifty-fifty, the names of laborers whose names came from political figures.

A  No. I said it was fifty-fifth unsolicited as opposed to my contacting political figures.

THE CHAIRMAN: Might it happen that the fifty percent that you didn't solicit might come from the very sources that you had solicited from?

THE WITNESS: Some did, yes.

Q Mr. Skurnik, did Mr. DeVincenzo, to your knowledge, from time to time, determine not to forward to agencies candidates for laborer positions received by your office?

A I don't know.

Q When you contacted County Leaders' offices about laborer vacancies, did you say anything about referring minorities?

A I may have once in a while said, make sure you include some minorities in there, but not very often, because they usually did include minorities in there.

Q When you, from time to time, indicated that they should send minorities, was that your own idea or somebody direct you to do that?

A No. I think it was either Mr. DeVincenzo --
whoever from Mr. DeVincenzo's office called or Mr. LoCicero may have asked me to do that.

Q  When County Leaders sent letters with names of laborer candidates to your office, did the letters contain information regarding the ethnicity of the candidates?

A  Only by looking at the name and the address, but no notation on the side or anything like that.

Q  In other words, only to the extent that you could infer information about ethnicity from the name of the candidate?

A  That's correct.

Q  When you forwarded laborer candidates on to Mr. DeVincenzo's office, did you at any time give any preference to candidates from one county to another?

A  Usually -- from time to time, in just a manner of balance, if we had -- this wasn't a case where I was reaching out to them, but the names I had already kept on file, and if Mr. DeVincenzo's office send down ten names and I had twenty-five names, I would sort of divide them up among the counties myself.

(Continued on next page.)
Q All right. Well, that was an effort to treat each county of the four County Leaders' candidates equally?

A Right.

Q Were there any occasions when you forwarded more candidates from one county than you ordinarily would have?

A Well, I -- if Mr. DeVincenzo's office wanted to just send down as many names as you had, and we had more from one county than another, we would send down more.

Q Were there ever any occasions --

MR. KRISS: -- let me have a moment.

(Off the record conference between the witness and his attorney.)

MR. KRISS: thank you.

Q Did it ever happen that your office sent more candidates from a County Leader in response to complaints received by a County Leader?

A Yeah, there may have been -- there were a few occasions where, if a County Leader or an elected official was complaining about their -- either somebody from their county not being treated fairly, or just in general complaining that other counties were getting an
advantage, we would have sent, for example, instead of
four from one county, maybe six.

Q Six candidates from the complaining county?
A That's correct.
Q When you did that, will you tell the County
Leader's office that you were doing that?
A No.
Q Was there any reason why?
A Well, because I knew there was no guarantee
that these people were going to be hired anyway, so, if
we told them that we're submitting more of your people
for laborer jobs, and then none of them got hired, it
would just get them even more angry.
Q But when you did decide to send, for example,
six rather than four, I take it it was your belief that
you might be increasing the chance that some of those
people would be hired from that county?
A That's correct, but that was no guarantee.
Q Were there ever occasions when you sent six,
for example, as opposed to four, not in response to
complaints from a County Leader?
A Yes. There were a few occasions where a
County Leader might have done -- somebody from a county
may have done something the Administration felt generally
good about, and we felt that maybe we should try and do something a little extra for that County Leader, for example, by sending six more names.

For example, if a Borough President had voted in favor of putting a jail in his borough, going against, you know, his colleagues, and supported a City-wide position.

Q Was this an effort, in part, to, in effect, return the favor? Is that what you're saying?

A It's not really returning the favor, because it wasn't much of a return. We were just sending -- increasing his numbers in the pool, which, as I -- I didn't mention earlier, but I said it eventually evened out in the future, sending down names.

Q In other words, you believed that, over time, things would balance out?

A That's correct.

Q Among the four County Leaders?

A That's right.

Q Who made the decisions to send more candidates from a particular county, either in response to complaints or in response to some favorable action from a County Leader or Borough President?

A Well, I usually did it, and mentioned it to
Mr. LoCicero.

Q  Did you feel that you had the authority to make those decisions on your own?

A  That's correct.

Q  You did feel that you had the authority to make these decisions on your own?

A  Well, I had the authority after I mentioned it to him. Let me -- clearly, I think I had the authority on balancing -- on a County Leader complaining, I recall mentioning it to Mr. LoCicero a few times that I might have done that.

As far as the County Leader, I felt that I would -- I would make sure from Mr. LoCicero that my general feeling that that County Leader was someone that had been helpful to the Administration just recently was correct, and I would say something like, "Gee, you know, we're supposed to send down some names of laborers. Should we send down a few more from County X, since State Senator Y just voted in favor of the tax increase?" Just in case I was wrong and maybe the County Leader had nothing to do with State Senator Y voting in favor of the tax increase.

Q  Were there times when Mr. LoCicero told you he did think you were wrong and you shouldn't send more
candidates?

A I don't recall. This was maybe, my guess, two or three times that this ever occurred. I don't remember ever not doing what I was planning to do, anyway.

Q On those two or three times when you may have sent more candidates from a particular county in response to some favorable action taken by the County Leader or someone else, did you inform the County Leader that you were doing that?

A No.

Q Is that for the same reason that you mentioned before?

A That's correct.

Q In other words, you wouldn't want to create the expectation that the candidates would be hired?

A That's right.

Q So, this is not -- you're not describing any quid pro quo situation?

A That's correct.

Q Did you learn, from time to time, that persons placed or referred for laborer jobs, in fact, got jobs?

A Yes.

Q Did you report that to anyone?

A I usually reported -- well, I always reported
it to the referring source. I might have -- I sometimes probably mentioned it to Mr. LoCicero.

Q When you receive letters from -- let's focus on the County Leaders for the moment.

Did the letters ever contain lists of candidates in priority order?

A Well, I -- I don't recall ever seeing that, but in our private depositions, you showed me some. So, I guess I did, but I had not recalled it until then.

Q Well, on the basis of having your recollection refreshed, do you recall whether you did anything to act in accordance with the priority ordering?

A I literally don't remember. I guess I must have, but I don't remember doing that.

Q Well, did you ever get calls from Mr. DeVincenzo or a member of his staff asking if you had any priorities with respect to the candidates for laborer positions that you had previously forwarded to Mr. DeVincenzo's office?

A Yes.

Q Who did you receive those calls from?

A It was members of his staff. I don't remember which -- it could have been Mr. Hein, Mr. Gilvarry.

Q What would they say to you?
A Well, "We have ten names down here, and the agency is only going to hire three. Which names do you want us to send over? Do you have a preference?"

Q How would you resolve that?

A My preference would usually be, all other things being equal, somebody who was recommended -- either somebody I knew, personally, or somebody who worked in the Mayor's campaign in '77 or '81. They would be ranked ahead of a County Leader or other elected official.

Q Did you have any conversations with any members of Mr. DeVincenzo's staff, in which you stated that you believed candidates that had been referred by your office should be ranked above or below candidates that Mr. DeVincenzo's office had received?

A No.

Q Would you take a look at an exhibit? It's Exhibit 57.

MR. MC GUIRE: For the record, it's a one-page memorandum, dated August 22, 1983, addressed to Mr. Skurnik from Jeffrey L. Somer, First Deputy Commissioner, Department of Environmental Protection.

Q Mr. Skurnik, I note that this memo identifies three candidates who have been found acceptable for a job at the Department of Environmental Protection, and
with respect to two of the candidates, the memorandum indicates that those candidates had been referred by a Congressman, in one case, and a State Senator in the other.

At the end of the memorandum, it states, "I would appreciate your letting me know if these candidates are acceptable or if you have additional candidates you wish to be interviewed."

My question is: Did your office get asked by agencies from time to time whether potential hirerers were acceptable?

A Once in a while; very rarely.

Q Did it have to do with the fact that some of the potential hirers had been referred by political figures?

A I think so, yeah. Most every case I can recall us ever being asked was because of that.

Q Do you have an understanding concerning why agencies would make these inquiries?

A Well, in the case of Upstate, the Upstate jobs, it was primarily because the names that we got directly were usually from the elected official, the public officials Upstate, who are Republicans, and they would check with us. They would have been recommended by Democrats.
As far as other jobs, I don't know why they asked. I mean, I can guess, but I don't know why.

Q Well, did Mr. LoCicero ever disapprove of a hire because of the particular political figure who had referred a potential hire?

A Well, we never -- to my knowledge, we never had authority to disapprove. If they were asking our opinion, what did we think of this elected official -- I don't recall we ever disapproving anybody or saying don't hire this person because of who recommended him.

Q Is what you're saying, you don't know whether you had veto power or not?

A That's right.

Q Did you ever express the opinion that a particular person shouldn't be hired because of the political figure who had referred the potential hire?

A Not to the agency. I may have expressed that to Mr. LoCicero or to the world, in general, but not to anybody -- my own personal opinion, but never to an agency.

Q One moment, please.

Let me just direct your attention to Page 179 of your March -- excuse me -- February 28th testimony before this Commission, and I'm going to read you a
a question and answer and ask if that refreshes your recollection.

MR. MC GUIRE: It's Line 19, Mr. Kriss.

Q "Question: When the veto, however effective it may have been, was issued, on what basis would it be issued?"

"Answer: Well, for example, if they listed -- if there were three vacancies, and they mentioned they came from three political leaders, one of whom had just -- was an Upstate Senator who voted in favor of cutting the City's budget, you might have said no, don't do him any favors. The other cases may have been, if we knew there were two other people recommended for jobs, recommended by City Assemblymen, as opposed to Upstate representatives."

My question is: Having read that testimony to you, does that refresh your recollection with respect to ever indicating to any agency that they shouldn't hire someone?

A Yeah, we never did. This was just a theoretical basis.

You asked me if there was any basis that we could do it. That would have been it.

I don't recall any case of it every happening,
of an Upstate Senator who just voted against the budget, or Democrat -- I mean, there were cases I remember specifically, Upstate, where we said, "Why don't you also consider some that were recommended by a Democrat," but we never said hire them ahead of those that they were already considering.

But, that was like -- I consider that question a theoretical question.

Q You were referring only to internal discussions between yourself and Mr. LoCicero?

A Well, really, internally, in my mind, not even with Mr. LoCicero.

Q All right. Just a couple of more questions, Mr. Skurnik.

The Commission received a report at its January hearing which indicated that in the calendar year 1984, 30 percent, over 30 percent of DEP's laborer hires were from Staten Island, and only 5 percent were from Manhattan County, and, in 1985, 21 percent of DEP's laborer hires were from Staten Island and 5.8 percent were from Manhattan.

I am wondering if you have any information you can give us as to whether or not, to your understanding, more candidates from Staten Island were hired for
laborer positions in those years?

A I don't have any information on how many people are hired from what county or anyplace else.

Q Well, did Staten Island refer more candidates to your office?

A I have information on who referred more to my office, but not on who was hired. Staten Island referred considerably more than any other county, and much more than Manhattan, since Manhattan, as I said earlier, we never got any names from the County Leader. We might have gotten some unsolicited or from other elected officials.

MR. MC GUIRE: Thank you. I have no further questions.

THE CHAIRMAN: Thank you.

I'd like to go back to some testimony you gave today.

THE WITNESS: I'm sorry, I didn't hear what you said.

THE CHAIRMAN: I'd like to go back to some testimony you gave today to see if I understand it. I take it from what you testified to earlier in your testimony concerning laborers, that you would receive resumes and cover letters of people for
particular -- who had an interest in working for the City; correct?

THE WITNESS: That's correct.

THE CHAIRMAN: And I think you testified that at the very beginning of your employment, you had received, literally, thousands of names, and then it sort of got down to a much smaller group do you recall that?

THE WITNESS: That's right.

THE CHAIRMAN: I take it that the job in question reflected on those resumes weren't just laborer jobs?

THE WITNESS: That's right.

THE CHAIRMAN: Would I be correct that a number of those positions might be higher level positions in the Administration, as well?

THE WITNESS: That's correct.

THE CHAIRMAN: And I take it, from what you testified, that you would then send those communications you had received on to the appropriate agency, as they might be --

THE WITNESS: Yes.

THE CHAIRMAN: I think it was your testimony that you would send on even the cover letters that
you received that might indicate political sponsor­ship; correct?

THE WITNESS: Yes.

THE CHAIRMAN: What volume of letters would you be passing along on a yearly basis? Put aside the bigotting. Where you mentioned you had a thousand names or so.

THE WITNESS: I would get probably about four, 500 a year.

THE CHAIRMAN: And of the four or 500, how many would have some indication of source?

THE WITNESS: You mean a cover letter?

THE CHAIRMAN: Right.

THE WITNESS: Probably maybe 200. I mean, those are really guesses. I mean, it might be four or 600. The percentages, I think, are correct; 40 percent.

THE CHAIRMAN: Excuse me?

THE WITNESS: 40 percent, I would say.

THE CHAIRMAN: I take it, if I heard your testimony correctly, of the names that you sent out to agencies, 90 percent or so came from political sources? I am not saying the cover letters added up to 90 percent of the cases, but I thought you
had some testimony here earlier today --

THE WITNESS: Political sources meaning including people I just knew from politics, not necessarily elected officials.

THE CHAIRMAN: It could be party officials, people you knew?

THE WITNESS: That's correct; campaign volunteers, just -- someone I met at a Democratic Club.

THE CHAIRMAN: Did you ever consider the impact on an agency person from a letter or a resume that reflected a political sponsor?

THE WITNESS: Yes.

THE CHAIRMAN: Did you discuss the impact of that type of communication to an agency with others in your office?

THE WITNESS: No.

THE CHAIRMAN: But you considered the impact, and I take it that you had no communication that changed what you were doing; correct?

THE WITNESS: That's correct.

THE CHAIRMAN: Did you consider the possibility that the person receiving a resume with an indication of political sponsor might feel pressured to be responsive to that resume coming through you,
because of the sponsor?

MR. KRISS: May I have a moment, please?

THE CHAIRMAN: Yes.

(Off the record conference between the witness and his attorney.)

THE WITNESS: Yeah, my feeling -- my knowledge of the impact was it would have no impact, because the Mayor had directed all agencies that all they were supposed to do with resumes that came from political leaders or from our office, was just to consider them like any other resumes-- and my experience is, that's what it was.

In some cases, I know that it hurt when someone had a political reference. So, I know what the impact was. The impact was nil.

THE CHAIRMAN: Was that communication of the Mayor, to which you made reference, in writing?

THE WITNESS: I don't know.

THE CHAIRMAN: Do you recall when that communication was made to the agencies?

THE WITNESS: I was told sometime in the first week of January, 1978, that the Mayor had communicated that to all agency heads, and that was the policy we were supposed to go on.
THE CHAIRMAN: Do you recall any additional communication along those lines from the Mayor that you're aware of since 1979?

THE WITNESS: No.

THE CHAIRMAN: But it's your testimony here today that it's your belief that there wouldn't be any impact on an agency person by virtue of receiving a letter from you with a political sponsor; is that correct?

(Off the record conference between the witness and his attorney.)

THE WITNESS: Well, I don't know what the person getting it might have thought in their own mind. Maybe they didn't believe what the Mayor told them. I know what I was told, which was that we were getting no special favors by sending resumes, and all we can do is ask agencies to consider them.

THE CHAIRMAN: Don't you think it would be the better practice, when you're forwarding names of people to agencies for consideration of all the other names they might receive. that the political sponsor not be reflected on those transmittals?

THE WITNESS: Well, if you want my personal
opinion on a better practice, I would tell you what that is.

My personal opinion is that the better practice is, this Mayor could have done what previous Mayors, Governors did, have an Appointments Office, which goes over the resumes before sending them to agencies.

I don't agree with the practice that Commissioners had the ultimate authority to hire and fire exactly who they wanted. I think the Mayor should have grabbed that responsibility, himself, because he was elected to have that responsibility.

THE CHAIRMAN: I take it that you don't view that practice of forwarding the political -- the name of the political sponsor to an agency person as a practice to be preferred?

THE WITNESS: No. The practice I did was at least giving the agencies full information, so they would know, yes or no, whether -- sometimes I know they wanted to know -- an agency might not want to hire someone in a job, they might think it might be too sensitive for someone political.

If I just sent in a resume, they might hire -- someone experienced on paper might seem good, but
they didn't want someone active in politics.

I think the agency should be aware of whose names I was sending, that they weren't coming from personal friends of mine or people I knew anything about.

THE CHAIRMAN: Would you be surprised if an agency person said to you that he or she felt the pressure of a communication from you that reflected the political sponsor of an applicant?

MR. KRISS: It would be very nice to know who that person would be, so we can respond to it effectively.

THE CHAIRMAN: My question is meant to be a hypothetical question.

THE WITNESS: I wouldn't be surprised if they said that, but it shouldn't have -- they had no reason to feel that.

THE CHAIRMAN: Thank you.

Judge Meyer?

COMMISSIONER MEYER: Was any thought given at all to the effect, not on the agency, but on the people who worked in the agency, the effect on their morale of political references being sent over?

THE WITNESS: Any thought by me, or --
COMMISSIONER MEYER: You, Mr. LoCicero, anyone.

THE WITNESS: All I can think is not by me. On the political morale, on the morale, most agencies had people, you know -- my experience in City Government is, people who had been active in politics work side by side with people who never worked in politics, and it doesn't affect morale at all, in my experience.

I used to work for the City in the Lindsay Administration, with people sitting at the same table, some who worked in politics and some not, and I didn't notice any effect on morale at all.

COMMISSIONER MEYER: There were no situations with people who came with political sponsorship that got promotions?

THE WITNESS: Based on my experience, not based on their political sponsorship.

COMMISSIONER MEYER: Was there any effort made to find out whether the people came with political recommendations performed on the same level as those who did not?

THE WITNESS: Well, the agency was supposed to do that, not me.
COMMISSIONER MEYER: Your office paid no attention to that?

THE WITNESS: I feel it -- my responsibility wasn't to determine how well the civil servant or political appointee, or Deputy Mayor, or policeman, functioned.

Sometimes, you know, when I sent a resume, I got a call from the agency asking me if I knew that person, personally, and what did I think, if they could do this job. In those few cases, where I knew the person, personally, I told them. In other cases, I told them that I don't know this person from Adam. I don't know if they can do this job or not.

COMMISSIONER MEYER: Thank you.

THE CHAIRMAN: Commissioner Hynes.

COMMISSIONER HYNES: Did you perform any followup function or did anyone in your office, for the resumes you forwarded to agencies and thereafter to Mr. DeVincenzo's office?

THE WITNESS: Sometimes.

COMMISSIONER HYNES: And what was the purpose of the followup?

THE WITNESS: Usually, to find out what was
happening, whether the person who was being inter-
viewed -- for Mr. DeVincenzo's office, it was to
whata agency he had been sent to, was the person
being considered. If I knew he had been inter-
viewed, when a decision was going to be made,
whether he had a real chance.

COMMISSIONER HYNES: You described situations
where you received resumes from various people
who were either active in the campaign, County
Leaders, elected officials.

Did you do that followup if you had forwarded
the resume you received from the street?

THE WITNESS: Well, usually, I didn't do
the followup unless I received a call from whoever
it was who sent me the resume.

COMMISSIONER HYNES: How frequently did you
receive calls from people who sent you resumes?

THE WITNESS: Maybe once or twice a week.

COMMISSIONER HYNES: And --

THE WITNESS: That's a lot. Once or twice
every two weeks, probably.

COMMISSIONER HYNES: So, whether it's once
or twice every week or every two weeks, you would
then, in turn, call the agencies?
THE WITNESS: Sometimes. Sometimes I knew what the answer was, and I wouldn't call.

COMMISSIONER HYNES: How would you know, because the agencies had notified you they hired the person that had been referred?

THE WITNESS: Or they hired somebody else, or "This person is totally ridiculous. Why did you send me this resume?"

COMMISSIONER HYNES: Did you ever consider that the followup calls you were making to these agencies on a once or twice-a-week or two-week basis, had any pressure point for that agency to more favorably consider that candidate as opposed to some other candidate?

THE WITNESS: No. It was to pressure them into giving me an answer, yes or not, whether they were being considered.

COMMISSIONER HYNES: Did you ever consider that they, at least, had to give you an answer to why an action wasn't taken with respect to that candidate?

THE WITNESS: Well, no, not why, but whether. It was supposed to pressure them to answer me whether or not they were considering the person, not why.
COMMISSIONER HYNES: What agencies would you be contacting on a regular basis for these kinds of responses?

THE WITNESS: No agency on a regular basis. It was whatever the person was -- whatever agencies the resume was sent to.

COMMISSIONER HYNES: Did I understand your testimony that there was at least a time frame when you were directly referring resumes to agencies prior to the time that you went through Mr. DeVincenzo's office?

THE WITNESS: Well, I referred resumes even after we went to Mr. DeVincenzo's office.

COMMISSIONER HYNES: Let me just clarify something.

You said that there was a point in time where resumes were sent to Mr. DeVincenzo's office. Those resumes were then dealt through the office of Mr. DeVincenzo, and not also sent to --

THE WITNESS: No, they were also sent on by me.

COMMISSIONER HYNES: So, the agency could have gotten it from two sources, from you and from Mr. DeVincenzo?
THE WITNESS: Could have, yes.

COMMISSIONER HYNES: What was the purpose in duplicating it and sending it to the agency and also sending it to Mr. DeVincenzo's office?

THE WITNESS: Well, I don't know what Mr. DeVincenzo was doing with the resumes. If I saw a resume, and it was somebody who seemed to me qualified for two or three agencies -- this is on paper, I don't know if they were really qualified, based on their education and experience -- I would send it to those agencies, like I was doing before.

I would then send it to Mr. DeVincenzo, for them to put into the Talent Bank and to do whatever they did in the Talent Bank.

COMMISSIONER HYNES: Would you notified Mr. DeVincenzo that you had sent it already to two or three agencies?

THE WITNESS: Well, they -- I believe I notified them that I still kept them and was sending them to the agencies. I did not notify them what specific agencies I sent it to.

COMMISSIONER HYNES: Were you concerned that there would be duplication, that the Talent Bank might send it out to the same agency that you'd sent it out to?
THE WITNESS: No.

COMMISSIONER HYNES: Did the purpose of sending it to the Talent Bank have anything to do with statistics?

THE WITNESS: No. The purpose of sending it to the Talent Bank was to try and increase the person's chances of getting a job.

COMMISSIONER HYNES: What was the purpose, as you understood it, of the Talent Bank?

THE WITNESS: To reach out to increase -- to reach out and increase the number of people being considered for jobs in the City.

COMMISSIONER HYNES: Was there a particular emphasis on increasing number of minorities and women?

THE WITNESS: No.

COMMISSIONER HYNES: There wasn't?

THE WITNESS: Not to my knowledge.

COMMISSIONER HYNES: For the Talent Bank?

THE WITNESS: That's right.

COMMISSIONER HYNES: That wasn't a function, as far as you were concerned?

THE WITNESS: As far as I was told.

COMMISSIONER HYNES: And you are referring to
what?

THE WITNESS: The Mayor's press conference, where he announced the Talent Bank, which I attended.

COMMISSIONER HYNES: Okay. So, as far as you were concerned, you didn't have to have any concern as to whether there were more numbers of minority applicants or women being referred to the Talent Bank or not?

THE WITNESS: Well, we had a general concern to try and increase the number of minorities hired, and that was from day one, in '78, but not because of the Talent Bank.

COMMISSIONER HYNES: Did you request the Talent Bank to provide you with any feedback on the resumes that you had sent to them?

THE WITNESS: Only when I called and asked specifically about somebody.

COMMISSIONER HYNES: But you did call and ask specifically?

THE WITNESS: Not the Talent Bank. I called Mr. DeVincenzo's office.

COMMISSIONER HYNES: Well, Mr. DeVincenzo?

THE WITNESS: At times I called, same as your
first question.

COMMISSIONER HYNES: So, that could be once or twice a week, or once or twice every two weeks?

THE WITNESS: Or less.

COMMISSIONER HYNES: Or more? Okay.

Then, would you get reports back from Mr. Devincenzo as to what had been done with a particular applicant or applicants?

THE WITNESS: Well, a staff member, usually, yes.

COMMISSIONER HYNES: But somebody go back to you from that office?

THE WITNESS: And told me, yeah.

COMMISSIONER HYNES: Did you ever complain that non-sufficient action had been taken on a resume forwarded to Mr. Devincenzo's office, that you had gotten those complaints?

THE WITNESS: No.

COMMISSIONER HYNES: Did you ever complain to Mr. Devincenzo's office that somebody had to be placed in a position?

THE WITNESS: Never.

COMMISSIONER HYNES: Did you ever make that statement to anyone in an agency?
THE WITNESS: Never.

COMMISSIONER HYNES: Were you ever told by anyone in the agency that they felt pressured by receiving these inquiries, either from your office or Mr. DeVincenzo's office, with respect to candidates that had been referred?

THE WITNESS: No.

COMMISSIONER HYNES: It was not part of your knowledge at the time that you worked for Mr. LoCicero?

THE WITNESS: That's right.

COMMISSIONER HYNES: I have no further questions.

THE CHAIRMAN: Commissioner Emery?

COMMISSIONER EMERY: Now, you were Mr. LoCicero's primary aide; is that fair to say?

THE WITNESS: Yes.

COMMISSIONER EMERY: Up until what date?

THE WITNESS: The last Friday in January of 1986. I don't know what the specific date was.

COMMISSIONER EMERY: I wasn't here at the very beginning. Did you say what you're presently doing?

THE WITNESS: I have my own political
public relations consulting firm.

COMMISSIONER EMERY: And you're consulting on
Mayor Koch's campaign now?

THE WITNESS: Among others, yes.

COMMISSIONER EMERY: Now, as Mr. LoCicero's
chief aide, what were your -- what were Mr. LoCicero's
responsibilities, first of all, generally, as a
Special Assistant to the Mayor?

THE WITNESS: He was on a -- well, it was a
liaison to community groups and elected officials,
and other odd jobs.

COMMISSIONER EMERY: He was a political
aide, was he not?


COMMISSIONER EMERY: Well, was one of his
primary functions to act as a political liaison
between, for instance, the county organizations,
neighborhood organizations, and other elected
officials, as you described them, to make the job
of Mayor easier, in terms of governing?

THE WITNESS: Yes.

COMMISSIONER EMERY: That was his primary
function, was it not, or still is?

THE WITNESS: A primary function, yes.
COMMISSIONER EMERY: Now, the work that you've described in response to Mr. McGuire's questions and Dean Feerick and Commissioner Hynes' questions, was in pursuit of that function, was it not?

THE WITNESS: Yes.

COMMISSIONER EMERY: It was his political function, in the capacity that you, acting as his aide, were referring and parceling out these jobs that you've described, whether they be laborer or other jobs, based on resumes sent to agencies? It was in your capacity and in assistance of Mr. LoCicero's political function?

MR. KRISS: I'd like to break that question down.

COMMISSIONER EMERY: Do you understand the question, Mr. Skurnik?

THE WITNESS: First of all, I didn't parcel out any jobs.

COMMISSIONER EMERY: Well, you sent out resumes?

THE WITNESS: Yes. That's quite a difference from parceling out jobs.

COMMISSIONER EMERY: All I'm asking is, was
that a function, as you testified to here today,
in pursuit of a primary function of Mr. LoCicero's
as a political liaison?

THE WITNESS: Yes.

COMMISSIONER EMERY: Now, when you answered
questions earlier, I believe you testified that
approximately 40 percent of the resumes that you
sent out to agencies included the political referral
letter?

THE WITNESS: Well, referral letter. It may
not have been political.

COMMISSIONER EMERY: The referral letter?

THE WITNESS: Yes.

COMMISSIONER EMERY: Were there occasions
when you took the referral letters off?

THE WITNESS: Only when -- there may have
been only one or two cases, which is by accident,
where I lost it, but the only time I intentionally
took it off is if the referral letter referred to
a specific job, which was not the job I was sending
the resume for.

COMMISSIONER EMERY: General practice was to
have the referral letter with the resume?

THE WITNESS: Yes.
COMMISSIONER EMERY: And you were acting, were you not, in your capacity as a political aide, by letting the agencies know what the political background was of the candidate you were sending over?

THE WITNESS: Letting them know the background, which included the political background, yes.

COMMISSIONER EMERY: Now, when you decided -- when you referred laborers to Mr. DeVincenzo, or -- what was your testimony with respect to the political referral information?

THE WITNESS: I didn't include it at all.

COMMISSIONER EMERY: Why the discrepancy? Why, when you sent out resumes, you did, and why when you sent the material down to Mr. DeVincenzo, you didn't?

THE WITNESS: Because I didn't feel someone's political background had anything to do with their position as a laborer, while I -- two reasons. One is the cover letter said a lot more than who referred him. It said something about the person and the experience that the Assemblyman or the Congressman who, by the way, were a lot more often the case in cover letters than County Leaders had
about the person. So that was one reason.

If an agency was getting somebody's resume for somebody to be considered for a Deputy Commissioner, if a Congressman, who was a Chairman of a committee was involved in that issue, you said, this person worked for me, and he knows a lot about this issue.

I thought it was important for the agency to know that.

Basically, the whole idea was full disclosure to the agency.

But, the laborer, I didn't think that was significant at all. In no case -- I don't think there were many cases where a public official was recommending somebody for a laborer, because they did a great job of tearing up their driveway.

COMMISSIONER EMERY: when you referred the laborers to Mr. DeVincenzo's office, I take it, that those were in -- the referrals were in response, generally speaking, to the availability of laborer jobs that you wanted parceled out to the County Leader, is that correct, the four County Leaders?

THE WITNESS: I didn't want any jobs
COMMISSIONER EMERY: You knew there were jobs available?

THE WITNESS: I knew there were jobs available, yes. Sometimes I also sent down -- if I had ten or fifteen laborer names in the active file that I hadn't sent down to Mr. DeVincenzo or the agency, I wasn't going to wait for them to call me. I would send them down once it reached a certain critical mass, whether I knew there were jobs available or not, just so they would keep them on their file.

COMMISSIONER EMERY: You would assume -- this is what I don't understand. Did you assume they knew the jobs were available down in Mr. DeVincenzo's shop, or did you make it known to them that the jobs were available?

THE WITNESS: No. Mr. DeVincenzo's -- I assumed Mr. DeVincenzo's office knew when there were jobs available from the agencies.

COMMISSIONER EMERY: Now, you were making the referrals, were you not, again, in your political function as an aide to Mr. LoCicero?

THE WITNESS: Yes.
COMMISSIONER EMERY: Now, in that regard, you said that you reported and sometimes responded to complaints by giving more laborer referrals to a certain Upstate County Leader on some occasions than you would on others; is that correct?

THE WITNESS: Yes.

COMMISSIONER EMERY: And that was also as an aide in your political function or an aide to Mr. LoCicero's political function?

THE WITNESS: Yes.

COMMISSIONER EMERY: Now, how often was it -- now, let me ask you this: What knowledge do you have of Mr. Brezenoff's knowledge of this whole process of referring either laborers or other resumes or candidates for jobs?

MR. KRISS: You're seeking only conversations he had with Mr. brezenoff, or are you asking for an opinion?

COMMISSIONER EMERY: No, not an opinion. I'm asking for what he observed, his perception of what Mr. Brezenoff knew about the system of referrals, based on resumes received by your office and the process of sending them down to -- sending laborer candidates down to Mr. DeVincenzo,
and your own process of sending resumes out to agencies.

(off the record conference between the witness and his attorney.)

COMMISSIONER EMERY: Do you have any knowledge with respect to that?

THE WITNESS: I know he was aware that I sent the resumes to agencies, and I know he was aware I sent laborers' names to Mr. DeVincenzo's office.

COMMISSIONER EMERY: How do you know that?

THE WITNESS: Well, as far as laborers, in fact, in both cases, I think I discussed it with him at least once or twice.

COMMISSIONER EMERY: Did you ever --

THE WITNESS: In fact, as far as agencies being -- he formally headed, I sent resumes to him.

COMMISSIONER EMERY: Did you discuss with him as a rewarding or responding to the complaints of the County Leader by sending more in certain cases?

THE WITNESS: I don't believe so, no.

(Continued on next page.)
COMMISSIONER EMERY: Now, what about the Mayor? Do you have any knowledge with respect to whether the Mayor was aware of your activities in this regard on behalf of Mr. LoCicero?

THE WITNESS: Direct conversations with Mayor Koch, his perception -- direct conversations -- I had some direct conversations or I might have mentioned at times that I sent a resume or two. I don't know if he was aware that I was sending resumes all the time.

COMMISSIONER EMERY: You mean you don't know whether he was aware that that was one of your regular functions?

THE WITNESS: I don't know from direct conversations that he was aware of that.

COMMISSIONER EMERY: Do you have an opinion as to whether he was aware of that?

THE WITNESS: I assume he knew that I was sending resumes. I have no way of knowing whether he knew anything about the laborers.

COMMISSIONER EMERY: Now, just a couple of more points: Do you have any knowledge of any practice in the Talent Bank or by Mr. DeVincenzo of taking
off referral information whether it is a cover letter or cover sheet from resumes that he received?

THE WITNESS: Well, I read his testimony before this Commission where he said that. That was my only knowledge of it.

COMMISSIONER EMERY: That's the only time you ever heard or have come to know of that matter?

THE WITNESS: Yes.

COMMISSIONER EMERY: During the period that you worked there -- how often did you come in contact with Mr. DeVincenzo?

THE WITNESS: A few times a week.

COMMISSIONER EMERY: Did he come up to see you upstairs?

THE WITNESS: It included passing him. Sometimes he came up to see me and sometimes I would come down. Sometimes he would be looking for a staff person and we would be passing each other.

COMMISSIONER EMERY: Did you talk to each other on the telephone?

THE WITNESS: Sometimes.

COMMISSIONER EMERY: Now, in those contacts during the period that you worked there, up and through '86, did you ever have any information that
cover sheets or referral letters were torn off
resumes or other information about job candidates
before they were passed on to other people by
Mr. Devincenzo or --

THE WITNESS: No.

COMMISSIONER EMERY: So, the first you knew
of this is when you read his testimony?

THE WITNESS: That's correct. Well, I read
the newspaper accounts before I read his testimony.

COMMISSIONER EMERY: Do you know whether it's
correct or not?

Do you have any information as to whether
it's correct or not?

THE WITNESS: No.

COMMISSIONER EMERY: Now, in that regard,
were there resumes passed back and forth between
Mr. Devincenzo or his shop and you or Mr. LoCicero?

THE WITNESS: What do you mean back and forth?

COMMISSIONER EMERY: Did Mr. Devincenzo ever
pass resumes by you or Mr. LoCicero before he acted
upon them?

THE WITNESS: I don't know if it was before
he acted upon them. There were times when we got,
as I said before, with laborers, I think there were
times when he got resumes sent up from Mr. DeVincenzo's office saying that we received this person. What should we do with him, and we always said, put it through the Talent Bank.

COMMISSIONER EMERY: Was that a regular occurrence?

THE WITNESS: Not regular, no.

COMMISSIONER EMERY: A rar occurrence?

THE WITNESS: Yes.

COMMISSIONER EMERY: Do you know what years that may have occurred?

THE WITNESS: The Talent Bank would have started in '82 or '83, I don't recall when; from then on.

COMMISSIONER EMERY: That was a rare occurrence?

THE WITNESS: Yes.

COMMISSIONER EMERY: Otherwise, you would not receive resumes, to your knowledge, from DeVincenzo or his aides?

THE WITNESS: That's right.

COMMISSIONER EMERY: Just a couple more questions.

Do you have any knowledge other than what you may have read in the papers recently or through
testimony, concerning the so-called "Black Book"?

THE WITNESS: No.

COMMISSIONER EMERY: Have you ever seen any computer printouts from the Talent Bank that contained referral sources?

THE WITNESS: Yes.

COMMISSIONER EMERY: Under what circumstances?

THE WITNESS: When I gave my depositions to the Commission staff.

COMMISSIONER EMERY: I mean when you worked at City Hall.

THE WITNESS: No.

COMMISSIONER EMERY: There were no occasions when you received the computer printouts as part of your follow-up that Ms. Hynes questioned you about?

THE WITNESS: No.

COMMISSIONER EMERY: Did you have any knowledge that the people you were talking to down at the Talent Bank were Mr. DeVincenzo's area, that they were referring to computer printouts --

THE WITNESS: No. No knowledge at all.

COMMISSIONER EMERY: Finally, let me just ask you: What is your recollection of the frequency with
which Mr. LoCicero came in contact with Mr. DeVincenzo?

THE WITNESS: Probably a little better than me. You know, if I saw him four times a week, maybe Mr. LoCicero three. If I saw him three, maybe it was two. Also in passing.

COMMISSIONER EMERY: That was in DeVincenzo's office or Mr. LoCicero's office --

THE WITNESS: Generally Mr. LoCicero's office.

COMMISSIONER EMERY: So, Mr. DeVincenzo came upstairs?

THE WITNESS: Yes.

COMMISSIONER EMERY: Are you generally in those conversations?

THE WITNESS: Sometimes.

COMMISSIONER EMERY: Did those conversations include discussions of the matters we have heard you testify about today, that is, job referrals or applicant referrals?

THE WITNESS: Sometimes. Less than half the time, I would think.

COMMISSIONER EMERY: But approaching half the time?

THE WITNESS: No. Well, less than half.

COMMISSIONER EMERY: How often would they
discuss the issue of referrals through the process you have described today?

THE WITNESS: Through the process we described?

COMMISSIONER EMERY: Well, through the process you have described, the issues you have testified about today.

THE WITNESS: Maybe once every couple of weeks.

COMMISSIONER EMERY: Do you remember any of those conversations?

THE WITNESS: Sure.

COMMISSIONER EMERY: Can you tell us what the sum and substance of any of them was, or as many as you can remember?

THE WITNESS: That's every couple of weeks over eight years.

COMMISSIONER EMERY: What do you remember about them?

Did they fall into any general category?

THE WITNESS: No. It was agency X wants to promote this person who works there, but he wants more money than agency X wanted to give him.

Commissioner Y is going to fire this guy and he doesn't have the guts to tell them and he reason is, that he doesn't think he's doing a good job and
he wants to put the blame on City Hall, things like that.

COMMISSIONER EMERY: Who would say things like that?

THE WITNESS: Mr. DeVincenzo would say that to Mr. LoCicero.

COMMISSIONER EMERY: Were those City Hall referrals?

THE WITNESS: No, just people we knew in City Government.

COMMISSIONER EMERY: Were these conversations part of Mr. LoCicero's duties as part of a political aide to the Mayor?

THE WITNESS: No. I would say it was just because of the fact that he was an aide to the Mayor. It had nothing to do with politics.

COMMISSIONER EMERY: What authority did Mr. LoCicero have over matters such as you described in these conversations?

THE WITNESS: He didn't have authority, but he had more access than Mr. -- he was higher -- a higher City official than Mr. DeVincenzo. So, he had higher access to people.

Secondly, Mr. DeVincenzo was often asking his
opinion or --

COMMISSIONER EMERY: When you say, "higher access," do you mean to the Mayor?

THE WITNESS: And the Deputy Mayor.

COMMISSIONER EMERY: Mr. Brezenoff?

THE WITNESS: Any of the Deputy Mayors and also Mr. LoCicero dealt more often -- Commissioners were more likely -- if there were seven calls to be returned, Mr. LoCicero would get them more often than Mr. DeVincenzo.

THE CHAIRMAN: Commissioner Moore?

COMMISSIONER MOORE: It is my understanding that the Mayor set up the Talent Bank for a specific purpose, namely, to attract minorities and women. Did you say earlier --

THE WITNESS: Yes. Your impression is wrong. It's an impression that has been formulated by people on the Commission and also the press, but at the Mayor's press conference, THE NEW YORK TIMES said the next day, that it was not set up for the sole purpose of affirmative action.

COMMISSIONER MOORE: Then I'm confused.

THE WITNESS: You guys can keep saying over and over that it was set up under the guise of
affirmative action, but it doesn't make it any more true.

THE CHAIRMAN: I don't think it serves anyone's purpose to engage in argument. It doesn't help --

THE WITNESS: It works both ways.

THE CHAIRMAN: The Commission has received testimony from a lot of people that forms the basis of questions that have been put to you.

It is not clear to me whether you have clearly responded to the question by the Commissioner.

I would like to ask the reporter to read the question and also what the witness has said in response to the question.

(A portion of the record was read by the reporter as above requested.)

THE CHAIRMAN: I think you have responded to the question.

Commissioner Magavern?

COMMISSIONER MAGAVERN: Did you learn from anywhere other than attending the Mayor's press conference on the formation of the Talent Bank what its purpose was?

THE WITNESS: Only the news conference the next day.
COMMISSIONER MAGAVERN: You never received any instructions from Mr. LoCicero, Mr. Brezenoff, on that subject?

THE WITNESS: Just to send resumes down.

COMMISSIONER MAGAVERN: Did you understand it to be one of the purpose of the Talent Bank to recruit additional numbers of minority and women candidates?

THE WITNESS: Yes.

COMMISSIONER MAGAVERN: What steps, if any, did you take to promote that purpose?

THE WITNESS: At times, I asked people who I referred to to see if they could find a minority for jobs, but other than that, that wasn't my role.

COMMISSIONER MAGAVERN: What was your major role, then?

THE WITNESS: A political and community liaison of the Mayor.

COMMISSIONER MAGAVERN: Did it ever come to your attention that Mr. DeVincenzo's office was pressuring agencies to hire candidates referred from Mr. LoCicero or candidates referred from political figures?

THE WITNESS: No.
COMMISSIONER MAGAVERN: Do you have any information at all that would indicate why, in some instances, Mr. DeVincenzo would communicate to an agency that a candidate must be hired even if that required creating a position the agency did not intend to fill?

THE WITNESS: No.

COMMISSIONER MAGAVERN: Let me go back to the flow of paper and communications between your office and Mr. DeVincenzo's office.

If a letter came in addressed to Mr. DeVincenzo from a County Leader or some other political figure recommending names for employment, was it your practice and Mr. DeVincenzo's practice that those names and that that communication would be forwarded up to your office?

THE WITNESS: Well, there were times when it was sent to my office, but I don't know whether it was his practice or not. It was not my practice.

COMMISSIONER MAGAVERN: Did it appear to happen routinely throughout your term of office with Mr. LoCicero?

THE WITNESS: It happened occasionally. I don't know if it was routinely or not. I don't know
COMMISSIONER MAGAVERN: And this would usually come by inter-office mail, would it?

THE WITNESS: I believe so.

COMMISSIONER MAGAVERN: Then, how would you respond, in what form?

THE WITNESS: Usually, I would call back down and tell them that's okay.

COMMISSIONER MAGAVERN: Would you send the paper back again?

THE WITNESS: I don't think so. I really don't remember. It wasn't a major event in my life.

COMMISSIONER MAGAVERN: When it came up to you with a letter from the political source, would you send the political source's letter back down to the Talent Bank?

THE WITNESS: As I said, I don't remember whether I sent it back down at all.

COMMISSIONER MAGAVERN: You normally did it by telephone?

THE WITNESS: I usually responded by telephone. Sometimes they called us and sometimes we sent it up, but I really don't remember what I did with them.

COMMISSIONER MAGAVERN: Did that suggest that
letters that came up to you were copied and not
the original letter received by --

THE WITNESS: At the time, I assumed they were. I have since read Mr. DeVincenzo's testimony where he said they were originals, but I don't know.

COMMISSIONER MAGAVERN: Do you recall getting letters with the original signatures of the political sources on them?

THE WITNESS: At the time, I just assumed they were copies. Like I said, I have since read Mr. DeVincenzo's testimony and he said they were originals, so I don't know.

COMMISSIONER MAGAVERN: Wouldn't it follow that if you were communicating back again, that it's okay by telephone call and you had the original, that that would have struck you odd?

THE WITNESS: Yes, but at the time, like I said, I didn't think they were originals. I thought they were copies, but if you ask me, I don't know.

COMMISSIONER MAGAVERN: Good enough.

Thank you.

You testified that you have read Mr. DeVincenzo's testimony. Did you find in his testimony, any points at which you disagreed with him as to his perception
of the facts?

MR. KRISS: I won't let the witness answer that question, Commissioner. It's unfair. It's calling for a conclusion by this witness --

COMMISSIONER MAGAVERN: I'll defer to the Chairman for a ruling on it, Mr. Kriss, but I'm asking for his own knowledge today in his recollection, if, after reading that testimony, he found any points with which he disagreed with Mr. DeVincenzo's testimony. That, I think, is a fair question.

THE CHAIRMAN: The witness can answer the question.

THE WITNESS: Well, based on my experience with Mr. DeVincenzo on his dealings with my office, there was nothing in there that I felt was untrue. As I told you, I left City Government in February of 1986.

(Continued on next page.)
COMMISSIONER MAGAVERN: Did you find anything in his testimony other than in his dealings with your office that you found to be untrue or, in your opinion, possibly untrue?

MR. KRISS: Commissioner --

THE WITNESS: Possibly untrue?

COMMISSIONER MAGAVERN: In your opinion.

MR. KRISS: On that question I respectfully request a ruling. That's grossly unfair.

THE CHAIRMAN: It has not been our practice to engage in rulings, but I would like to suggest to Commissioner Magavern that perhaps he can rephrase the question.

COMMISSIONER MAGAVERN: I will.

MR. KRISS: Thank you very much, Mr. Chairman.

COMMISSIONER MAGAVERN: In any part of Mr. DeVincenzo's testimony is there any part after you read it that you found your knowledge was at variance with his testimony?

THE WITNESS: No.

COMMISSIONER MAGAVERN: What did you understand Mr. DeVincenzo's reporting role to be?

I'm sorry. I'll rephrase that.
To whom was he to report, to your knowledge?

THE WITNESS: Deputy Mayor Brezenoff and Diane Coffee.

COMMISSIONER MAGAVERN: What was Mr. LoCicero's authority to give guidance to Mr. Devincenzo?

THE WITNESS: I don't think he had any formal authority. Often Mr. Devincenzo asked Mr. LoCicero's guidance and advice.

COMMISSIONER MAGAVERN: Do you think that informally in the reality of things Mr. LoCicero had the ability to give guidance to Mr. Devincenzo?

THE WITNESS: What do you mean by guidance?

COMMISSIONER MAGAVERN: To give him suggestions with the expectation that they would be carried out?

THE WITNESS: I really don't -- he definitely could give him suggestions. He couldn't order him around, though.

COMMISSIONER MAGAVERN: Did you at any point become aware that Mr. Devincenzo was creating priorities among the candidates other than you have transmitted them to him?
THE WITNESS: Among the candidates I submitted to him, or among all the candidates he got?

COMMISSIONER MAGAVERN: Let's take it in parts. First, let's take the ones you submitted to him. Did you ever become aware whether or not he was putting his own priority order with respect to the candidates you submitted to him?

THE WITNESS: No.

COMMISSIONER MAGAVERN: Did you become aware that he was putting priority orderings on candidates other than who came from you?

THE WITNESS: No.

COMMISSIONER MAGAVERN: That's all.

Thank you.

THE CHAIRMAN: Mr. Schwarz?

MR. SCHWARZ: Just going back again, please:

Was it your understanding that the Talent Bank had as a major component affirmative action?

THE WITNESS: A major component?

MR. SCHWARZ: Yes.

THE WITNESS: Not to my knowledge and understanding.

MR. SCHWARZ: Nobody ever told you?
MR. SCHWARZ: Did you consider the activities you were undertaking with respect to these matters that we have been discussing consistent with what you understood your job to be and what Mr. LoCicero's duties to be?

THE WITNESS: Yes.

MR. SCHWARZ: And you didn't consider what you were doing to be unauthorized at any time?

THE WITNESS: That's correct.

MR. SCHWARZ: You testified earlier that on some occasions you would learn that a particular agency was going to hire a fewer number of people than the number of candidates that you had sent over; do you recall that testimony?

THE WITNESS: Well, no. Usually I almost always sent in more names than I was told there were vacancies, not the --

MR. SCHWARZ: Occasionally someone would call and ask for a priority list?

THE WITNESS: You are right, yes.

MR. SCHWARZ: So, you would know at that time based on the priority list that you gave the candidate -- that the jobs would be filled
with your candidates; is that correct?

THE WITNESS: No. I wasn't told the candidates sent down would get the job. Those would just be the names sent over.

MR. SCHWARZ: You testified, I believe, that you knew that you were told that the agency was going to hire fewer people. I think you used an example of three in one case.

THE WITNESS: Well, if the agency wanted three names.

MR. SCHWARZ: And you were asked which three names or what the priority --

THE WITNESS: To be sent over, yes.

MR. SCHWARZ: So, at that time, you knew, did you not, that those three people would be the three the agency would pick for the three jobs in question; is that so, assuming they were otherwise qualified?

THE WITNESS: No. Those were the three people being considered. As far as I knew there were three being considered for one job or three being considered for nine jobs, with the other six being filled by friends or relatives of the people in the agency.
MR. SCHWARZ: What do you mean by friends and relatives --

THE WITNESS: Deputy Commissioner Carfora's testimony before the Commission which I didn't know before then was how did they get names of people to fill laborer vacancies, other than from the Mayor's Office and he said, usually from people who already worked in the agencies recommending friends and relatives.

MR. SCHWARZ: You testified, did you not, that political background had nothing to do with laborers?

THE WITNESS: With their qualifications, yes.

MR. SCHWARZ: Based upon your own judgment, your testimony is that you excluded the Manhattan District Leader from your job search inquiries; correct?

THE WITNESS: County Leader.

MR. SCHWARZ: And I believe counsel asked you if you had any understanding as to the numbers or the few numbers of Manhattan people compared to Staten Island people, and you testified -- you gave that answer with reference to the
exclusion of the County Leader as one possibility --

THE WITNESS: As possibly why there were
less names that I submitted, yes.

MR. SCHWARZ: Did you consider at the time
that you were working for a City whose Mayor had
indicated that he wanted people employed throughout
the City?

THE WITNESS: Yes, and I'm also aware that
Manhattan is not under-represented in City employ-
ment, and I'm also aware that this is a City which
includes -- it's also a country that includes
Republicans and when President Carter was President,
he didn't accept resumes from Jesse Helmes.

THE CHAIRMAN: I would like to ask the
reporter to read back the question.

(The pending question was read by the
reporter as above requested.)

MR. SCHWARZ: That calls for the "yes"
or "no" answer.

THE WITNESS: Yes.

MR. SCHWARZ: Did you also consider that
by excluding the County Leader that you would be
decreasing the likelihood that any Manhattan
residents, blacks, Hispanics, Viet Nam Veterans,
women, who happened to live in Manhattan would be getting these jobs?

THE WITNESS: No, because people who were sent in as laborers --

MR. SCHWARZ: No. From your own efforts you understood that you would be excluding those people from your efforts?

THE WITNESS: I wasn't involved in hiring people.

MR. SCHWARZ: Sir, you were excluding those people from your efforts, were you not?

THE WITNESS: I was excluding people recommended by the Manhattan County Leader. I wasn't excluding people from Manhattan because we got resumes from elected people in Manhattan as well.

MR. SCHWARZ: Can you tell me if the jobs being filled through at the laborer level were being filled through the Talent Bank and that comprised most of the jobs, that is those who came from political leaders comprised most of the jobs, that would mean that those in Manhattan who wanted jobs as laborers were likely to be excluded; isn't that so?

THE WITNESS: Can you repeat the beginning of
the question?

THE CHAIRMAN: I would ask the Reporter to read it back.

MR. SCHWARZ: I'll rephrase the question.

If the jobs for laborers were being filled by the Talent Bank -- do you understand that part of the question?

THE WITNESS: Yes.

MR. SCHWARZ: -- and the Talent Bank was submitted mostly political referrals, then it follows, does it not, that Manhattan residents would be excluded from the laborer jobs; is that correct?

THE WITNESS: No, not excluded.

MR. SCHWARZ: Included in a much lesser proportion?

THE WITNESS: Right. Your first two if's were true.

MR. SCHWARZ: Did you think any of these actions with respect --

Strike that.

Did you discuss with Mr. LoCicero the exclusion of the Manhattan County Leader?

THE WITNESS: I don't think we ever discussed
Skurnik

it, no.

MR. SCHWARZ: Did you think it was authorized on your part?

THE WITNESS: Yes.

MR. SCHWARZ: And he never told you to seek out political referrals from Manhattan, did he?

THE WITNESS: Not in Manhattan, generally.

MR. SCHWARZ: You also testified, I believe, that you read Mr. DeVincenzo's testimony, do you recall that?

THE WITNESS: Yes.

MR. SCHWARZ: Prior to your testimony here today, did you discuss your testimony with any present member or employee or representative of the City?

THE WITNESS: Only that I was going to testify.

MR. SCHWARZ: As far as you know did your lawyer do so?

MR. KRIS: I think he should not be permitted to answer as to what I did or did not do. He would have no knowledge at all.

MR. SCHWARZ: When did you discuss that you would testify here today?
THE WITNESS: I told Mr. LoCicero today that I would be testifying today instead of tomorrow since it wasn't clear until this morning as to when I would be testifying.

MR. SCHWARZ: Was that the sum and substance of your conversation with Mr. LoCicero?

THE WITNESS: He wished me good luck.

MR. SCHWARZ: Aside from his wishing you good luck, did you have any other substantive discussion with him with respect to your testimony?

THE WITNESS: Only with regard to the time of the testimony.

MR. SCHWARZ: Aside from that?

THE WITNESS: No.

MR. SCHWARZ: Prior to that, up to the last time you gave testimony to the Members of the Staff of the Commission, did you have any discussions with Mr. LoCicero or any present employee or past employee of the City?

THE WITNESS: Past employee?

MR. SCHWARZ: Yes, no longer present employee.

THE WITNESS: Well, I discussed that I
testified with some past employees of the City.

    MR. SCHWARZ: No, not that you did testify, but that you were going to testify here.
    THE WITNESS: Oh, yes.
    MR. SCHWARZ: With whom?
    THE WITNESS: Who did I discuss that I would testify today with?
    MR. SCHWARZ: Present employees of the City or ex-employees of the City.
    THE WITNESS: Present are Mr. LoCicero, George Arzt, the Mayor's press secretary. Former -- well, Mr. Kriss is a former employee and my business partner who used to work for the City also.
    MR. SCHWARZ: And the only discussion you had with Mr. LoCicero --
    THE WITNESS: I don't hear you.
    MR. SCHWARZ: Your only discussion that you had with Mr. LoCicero since your last deposition with the Commission staff until today is what you just related to us a few minutes ago?
    THE WITNESS: Yes. And, I also think I related that Mr. McGuire would do the questioning.
    MR. SCHWARZ: Did you read anybody else's
testimony --

THE WITNESS: Mr. Carfora's, Mr. Hein's
and Mr. LoCicero's depositions. With Mr. LoCicero's
depositions I didn't read it. I saw them. Mr.
Kriss filled me in on a few pages of it with re-
ference to questions they had about me.

MR. SCHWARZ: With reference to today, you
looked at Mr. LoCicero's deposition?

THE WITNESS: I looked at portions of it.

MR. KRISS: Just so the record is clear,
the Commission provided to us copies of Mr.
Hein, Mr. Carfora and Mr. LoCicero's testimony
in preparation for one of the private depositions
out of the three at which Mr. Skurnik appeared at
your offices between November and March and as
far as Mr. LoCicero's testimony is concerned, I
don't want any inference drawn to the contrary.
That testimony was provided to me. I have re-
viewed it and in the agreement I had with counsel
for this Commission, only excerpts of the portion
I thought relevant to Mr. Skurnik's testimony was
reviewed. Based on the spirit of that agreement,
the intent, I believe, was lived up to. That's
the only review of material. He didn't go out
and search it out himself.

MR. SCHWARZ: I'm glad you said that, because I wasn't trying to place anything on the record where anyone would draw that inference, and you apparently did --

MR. KRISS: Well, now I have peace of mind.

MR. SCHWARZ: One other question, sir, and that is on what basis did you think you were authorized to exclude the Manhattan County Democratic Leader?

THE WITNESS: Just in general, the known feeling that he was an enemy of the administration, political opponent.

MR. SCHWARZ: On an enemy list?

MR. KRISS: I object to that. That's totally unfair.

MR. SCHWARZ: I have nothing further.

MR. KRISS: Thank you.

THE CHAIRMAN: Commissioner Hynes?

COMMISSIONER HYNES: I just have some follow-up questions for the witness regarding issues raised with respect to the Talent Bank.

At the time you were asking County Leaders
to give you laborers' names, did that continue after the time that the Talent Bank was in existence?

THE WITNESS: Yes.

COMMISSIONER HYNES: And it was your understanding that when they gave you the names, those names would be forwarded to be considered by the agency that had the laborer openings; correct?

THE WITNESS: Yes.

COMMISSIONER HYNES: In order to do that, you referred it to Mr. DeVincenzo's office, who then referred it to the agency who had the laborer openings, or did you do it directly?

THE WITNESS: I sometimes sent it to the agencies also.

COMMISSIONER HYNES: In addition?

THE WITNESS: Yes.

(Continued on next page.)
COMMISSIONER HYNES: Now, we have as part of the exhibit book that I believe is in front of you, Exhibits 17 and 18, regarding the Talent Bank. Let me first direct you to Exhibit 17 and let me ask you by way of background: It was your understanding that when the laborers names you got from the County Leaders were sent down to Mr. DeVincente's office, they were part of the Talent Bank, was that your understanding?

THE WITNESS: Yes.

COMMISSIONER HYNES: The first paragraph in Exhibit 17, "How does the Mayor's Talent Bank work" is the question.

"When the Mayor's Talent Bank is notified of a job vacancy by an agency, the computer searches for all candidates with the qualifications and interest to fill that qualification," and if you look at the back of Exhibit 17, you'll see a list of jobs and it includes laborers.

So, my question is that, to your knowledge, the computer wasn't searching for all qualified candidates, was it?

In fact, the situation was, that you were getting referrals for Laborer positions and I'm
referring really, in my question, to Laborer positions -- you were getting names for Laborer positions from the County Leaders and they were being referred to the agencies directly for consideration; isn't that correct?

THE WITNESS: Number one, I was never aware of a computer. I don't know how they selected the names. I had never seen this flier. All I know is, I sent names down there and I was told they were going to be sent to agencies.

COMMISSIONER HYNES: You had a very strong recollection as to what the purpose of the Talent Bank was. How did you think the Talent Bank operated?

Do you have a strong recollection as to how the Talent Bank was to operate?

THE WITNESS: You mean physically?

COMMISSIONER HYNES: How it was going to carry out its function?

THE WITNESS: Mr. DeVincenzo's office would be informed -- my knowledge -- what I thought at the time was, that Mr. DeVincenzo's office would be informed of vacancies. They would match names of people with those vacancies and send them to the agency.
COMMISSIONER HYNES: You knew it wasn't random selection?

THE WITNESS: Like I said, I never even heard of a computer. I mean, I heard of a computer, but not in the Talent Bank. I was never told at all about a computerized search.

COMMISSIONER HYNES: Whether it was computerized or not computerized, you knew it wasn't random selection?

THE WITNESS: I was never told of random selection, that's right, but I don't know, precisely, how it worked.

COMMISSIONER HYNES: In fact, your knowledge was that you were soliciting from County Leaders laborers names and those were the names given to agencies for job openings.

THE WITNESS: Some of those names were given to agencies, I know that.

COMMISSIONER HYNES: You always gave the agencies more names from your referral process than there were job openings?

THE WITNESS: No. When I was told of job openings, I -- when I sent them to agencies, I don't know how many names Mr. DeVincenzo's office sent to
agencies.

COMMISSIONER HYNES: When you sent the names to Mr. DeVincenzo, you sent an equal number of names if not more --

THE WITNESS: No. Sometimes less if I had less. I sent the names I had on hand, is what I sent.

COMMISSIONER HYNES: So, you have no knowledge up until the time you left City Government that there was a computer at the Talent Bank?

THE WITNESS: That's right.

COMMISSIONER HYNES: I guess we should clarify the record: Would you turn to Exhibit 18, which is another flier on the Talent Bank? I think it's the second page, the back page of that exhibit, which is a quote from the Mayor in 1983. Do you see that, where it says, "What is the Mayor's Talent Bank?"

"My objective in establishing this procedure --" and he's referring to -- I'll let the document speak for itself. "My objective in establishing this procedure is to be sure that you (the agencies) will have the widest selection of candidates from which to choose, including qualified women and members of minority groups."

Is that the statement you were referring to?
THE WITNESS: I think this is a statement he sent to the agencies, but not his statement in the press conference, but it's part of it, sure, but I don't remember the precise words, but I don't think that that is inconsistent with what I said, and, in fact, it is totally consistent with what I said.

COMMISSIONER HYNES: I'm not suggesting that it's inconsistent.

I want to know --

THE WITNESS: I don't know if that's what he said at the press conference. I don't know. Maybe, maybe not.

COMMISSIONER HYNES: Did you have conversations with Mr. DeVincenzo as to how the Talent Bank did operate?

THE WITNESS: No.

COMMISSIONER HYNES: No further questions.

THE CHAIRMAN: I think we have reached the point where we should conclude the testimony. I would just say to you and your counsel, that if there's anything additional that you would like to provide in the way of a supplemental statement, we'll receive it.
MR. KRISS: After today, we can submit also?

THE CHAIRMAN: Absolutely, yes. It's our interest to collect all the information we can on this subject.

Thank you, and we'll take a short recess at this point.

(Whereupon, a recess was taken.)

THE CHAIRMAN: The Commission calls as its next witness, Peter Gilvarry.

PETER GILVARRY, called as a witness, having been first duly sworn by the Chairman, was examined and testified as follows:

THE CHAIRMAN: I would ask counsel to identify himself, please?

MR. AUERBACH: Martin J. Auerbach.

THE CHAIRMAN: Mr. McGuire?

MR. MC GIUE: Thank you.

EXAMINATION

BY MR. MC GIUE:

Q Good afternoon, Mr. Gilvarry.

A Good afternoon.

Q Mr. Gilvarry, you're currently an employee of the Mayor's office; is that correct?

A Yes.
Q What is your position with the Mayor's Office?
A I'm Director of Fiscal & Operating Services.
Q When did you assume the position of Director of Fiscal & Operating Services?
A In June of 1985.
Q When did you first become an employee of the Mayor's Office?
Q For whom did you work beginning January of 1978?
A Mr. DeVincenzo.
Q What were your responsibilities at that time?
A I was a PAR liaison. That is, a Planned Action Report liaison with approximately eleven agencies. I reviewed Planned Action Reports.
Q A total of eleven --
A Approximately eleven, yes, sir.
Q Where, physically, did you work, Mr. Gilvarry, in Room 1?
A Yes.
Q Outside of Mr. DeVincenzo's office?
A Yes.
Q I just want to ask you some questions, Mr. Gilvarry, solely on the question of Laborer hiring.
Did you have responsibility for referring Laborer candidates to City agencies in the 1983 to '85 period?
A  Yes, I did.
Q  From whom did you obtain names of Laborer candidates?
A  They came to me from Mr. DeVincenzo's office.
Q  In what form, would it be in the form of letters, lists?
A  Both. They would be lists of candidates, as well as possibly resumes or possibly names written on scraps of paper.
Q  How about names on letters, Mr. Gilvarry?
A  Yes.
Q  Who were these letters addressed to, Mr. DeVincenzo?
A  I'm not quite sure. I believe so. In many cases, yes.
Q  Who were they sent from?
A  Various sources, political sources, referrals.
Q  Do you recall any of the names of the particular political --
A  Stanley Friedman would be one. Ralph Lamberti --
Q  Is Borough President of Staten Island?
A  The Borough President, yes.
Nick LaPorte, the County Leader of Staten Island.

Q Were these letters on the stationery of these figures, Mr. LaPorte, Lamberti and Mr. Friedman?
A I know for a fact that they were with Mr. Friedman. I'm not sure about the others.

Q Any other County Leaders or Borough Presidents that you can think of that send letters with names of Laborer candidates?
A No. I can't, offhand.

Q Do you have a recollection as to whether or not more Laborer candidates came from one county than another?
A No, I can't say that I do.

Q Was it your understanding that some of the candidates whose names you received from Mr. DeVincenzo came from Mr. LoCicero's office?
A It was my understanding, yes.

Q And was it also your understanding that the candidates that came from Mr. LoCicero's office were candidates who had been referred by political figures?
A It was my assumption.

Q Was there any basis for that assumption, do you recall anything?
A No, sir, no.

Q Did you ever meet any of these persons, these Laborer candidates?

A No, I did not.

Q Did the letters from County Leaders and other political figures contain information regarding the ethnicity of the candidates that they were supplying the office with?

A No, sir.

Q What did you do with the lists and letters that you received from Mr. Devincenzo?

A I kept them in a folder. Generally, they were for Laborer and I kept them until such time until an agency requested Laborer candidates.

Q And at that time, did you create a list of your own?

A Yes. As I received these lists, I maintained a cover sheet or my own list of the candidates and I included the candidate's name and the referral source.

Q Any other information?

A No.

Q Just the name of the candidate and the name of the political figure who referred the candidate?

A Yes.
Q What would you do with the lists when you learned that an agency was planning to hire laborers?
A I would give it to my boss, Joseph DeVincenzo, when it was complete.
Q And did Mr. DeVincenzo approve the list of names before they were sent to agencies?
A Always.
Q Now, were any of the City's agencies different in this regard? In other words, were there any other lists that Mr. DeVincenzo reviewed other than the lists that you gave him?
A In DEP's case, Commissioner Carfora brought with him a list of candidates and he discussed those candidates with Joe DeVincenzo.
Q Were you a participant in these discussions?
A No, I was not.
Q Where did they take place?
A Within Joe's office behind a closed door.
Q How would you learn of the list that Mr. Carfora brought over?
A Well, I would -- the list that I gave Joe, when it came back out, it had additional names on it.
Q Mr. DeVincenzo would give it to you?
A Yes.
Q So, in other words, Mr. DeVincenzo, after the meeting with Mr. Carfora, would give you back the list with additional names on it?

A That's correct.

Q Was there information concerning the referral sources of those additional names?

A I can't remember that.

Q You are not sure?

A I'm not sure.

Q Now, with respect to the list that you provided Mr. DeVincenzo, when it came back, were there names crossed off?

A Yes.

Q Did you ever notice, over time, whether the names of candidates from any particular referral sources, were crossed out more often than others?

A No. I never noted that.

Q Did it happen from time to time that you learned the results of agency labor pools?

A Yes.

Q Would you inform anyone?

A I would inform Joe DeVincenzo.

Q In what manner, would you make a list?

A I would make a note on my list, as my agency
contact would let me know the dispositions, I would write them right onto my list and I would show them to Joe.

Q Whose idea was it to put referral source information on the list that you give to DeVincenzo?

A That, I believe, was my idea.

Q Did Mr. DeVincenzo ever tell you he objected to seeing that information?

A He never did.

Q Did you think it had any significance?

A It may have, but I don't know for sure.

Q Do you think the information concerning the political referral source had something to do with the selection process?

A It may have, or the decision process as to who should go on the final list. I'm not absolutely sure.

Q In any event, Mr. DeVincenzo is the person who decided which candidates on the list would be forwarded to the agencies?

A That's correct.

MR. MC GUIRE: I have no further questions.

Thank you.

THE CHAIRMAN: Commissioner Magavern.

COMMISSIONER MAGAVERN: Mr. Gilvarry, did you, on occasion, communicate to the agencies priorities
for hiring for Laborer positions?

THE WITNESS: I don't remember ever doing that, sir.

COMMISSIONER MAGAVERN: If you look at Exhibit 65, please, in the book and see if that refreshes your recollection and, at the same time, perhaps you can look at Exhibit 66.

THE WITNESS: Okay. I have reviewed both exhibits.

COMMISSIONER MAGAVERN: Is it fair to say, then, having reviewed those documents that, on occasion, you either directly communicated or caused to be communicated to agencies, information that certain candidates should be given special consideration or priority?

MR. AUERBACH: Commissioner, the document speaks for itself in saying that AHR's are listed in priority order. I think that priority and special consideration are two distinguishable categories.

COMMISSIONER MAGAVERN: Take priority.

THE WITNESS: I'm sorry. It really doesn't. The cover sheet which I did write on, Joe DeVincenzo's buck slip does indicate that they're listed in priority order. I don't know -- I don't remember
doing this. It clearly states that they were in
priority order.

COMMISSIONER MAGAVERN: Who is Marsha?

THE WITNESS: Marsha Singer was one of my
contacts in the Department of Transportation.

COMMISSIONER MAGAVERN: You were communicating
this priority, at least, in an agency?

THE WITNESS: That's fair to say.

COMMISSIONER MAGAVERN: In the case of
Exhibit 66, which is not your document, but refers
to a telephone call from you indicates that Peter
Gilvarry called today with candidates, a list of
candidates" and it says that "Peter has indicated that
the above referrals are extremely important to
City Hall."

You have no reason, I take it, to dispute
the accuracy of the recording of the record of a
phobe call from you?

THE WITNESS: I don't remember the call, but
I don't object to it.

COMMISSIONER MAGAVERN: It would have been
within the normal course of your duties to communicate
such information?

THE WITNESS: Absolutely.
COMMISSIONER MAGAVERN: Thank you. That's all.

THE CHAIRMAN: Commissioner Emery?

THE WITNESS: Commissioner, may I say something here?

COMMISSIONER MAGAVERN: Certainly.

THE WITNESS: My counsel has just pointed out a sentence that says "Peter has indicated that the above referrals are extremely important to City Hall."

Now, I don't recollect saying that. It may have been the Department of Transportation's assumption of what I meant. I don't know if they were extremely important or not. I don't remember.

COMMISSIONER MAGAVERN: You don't remember one way or the other?

THE WITNESS: I don't.

COMMISSIONER MAGAVERN: And you have no affirmative reason to dispute the accuracy of that conversation, have you?

THE WITNESS: I can't remember it.

COMMISSIONER MAGAVERN: So far as you know, it may just as well be true?

THE WITNESS: It may be true.

COMMISSIONER MAGAVERN: And it wouldn't have
been contrary to your policy to have made such a
telephone call --

THE WITNESS: Sir, I wouldn't say these
candidates are extremely important. I don't think
I would say that. Generally speaking, all City Hall
candidates were important. I don't think I would
say that some were more important than others.

COMMISSIONER MAGAVERN: Going back to 65, you
would have communicated priority order there that
some were more important than others, I take it?

THE WITNESS: That's what it seems to indicate.

THE CHAIRMAN: Commissioner Emery?

COMMISSIONER EMERY: Mr. Gilvarry, have you
ever heard the term "City Hall special"?

THE WITNESS: Yes, I have.

COMMISSIONER EMERY: In what connection?

THE WITNESS: Well, I heard it from Sherri Roth's
testimony and I do know the meaning, sir.

COMMISSIONER EMERY: Did you ever hear it while
working for Mr. DeVincenzo?

THE WITNESS: I don't recall hearing it, no.

COMMISSIONER EMERY: Were there times when you
contacted City agencies after a resume had been
referred, not necessarily Laborer, but another
resume to determine what had been happening as to whether somebody had been hired?

THE WITNESS: Of course.

COMMISSIONER EMERY: You made follow-up calls?

THE WITNESS: Of course.

COMMISSIONER EMERY: Did that happen on occasion that you would make several follow-up calls about the same candidate to a particular agency?

THE WITNESS: I don't recall making several follow-up calls. Generally, my contact at the agency would call me back.

COMMISSIONER EMERY: Did you ever have situations where there was a sense of urgency about getting somebody hired at a particular agency whose resume had been referred there?

THE WITNESS: No, not a sense of urgency, no.

COMMISSIONER EMERY: Did you ever have conversations with people at agencies either DOP or DOT where you had gotten a message from Mr. DeVincenzo that there was a person of special interest and that you wanted to have some action on this person?

THE WITNESS: No, sir. I can't recall any
sort of conversation where I said that this person is very special and that we needed action quickly.

COMMISSIONER EMERY: Or words to that effect?

THE WITNESS: I did follow up with agencies when I sent what Sherri Roth terms as a special resume to an agency. I would certainly follow up within a few days with my agency contact, to find out what the status was, and generally, that would be the end of it.

COMMISSIONER EMERY: How would that happen?

What would you say when you followed it up?

THE WITNESS: I would ask if that individual had been interviewed, if there was a job and if that person had been interviewed and if so, was he or she selected.

COMMISSIONER EMERY: If they weren't selected, would you ask why?

THE WITNESS: Yes. If the person had been interviewed and wasn't selected, I would ask the reason why.

COMMISSIONER EMERY: Were there occasions when you asked -- under those circumstances, were you asked if that person could be reentered?

THE WITNESS: Only if it was an occasion where
they could not give me a reason why the candidate had not been selected.

COMMISSIONER EMERY: A reason to your satisfaction?

THE WITNESS: Correct.

COMMISSIONER EMERY: I believe you described your position as a Planned Action Report Supervisor, is that it?

THE WITNESS: No, a representative to eleven agencies. I reviewed Planned Action Reports for eleven agencies.

COMMISSIONER EMERY: And did you speak to the same people at those agencies about PAR's, as they are known, as you did in your discussions of follow-up on the issues of referrals of resumes?

THE WITNESS: Yes, I did.

COMMISSIONER EMERY: They were the same people?

THE WITNESS: Yes.

COMMISSIONER EMERY: The same people who you were talking about following up particular candidates knew you were Mr. DeVincenzo's representative on PAR's?

THE WITNESS: Exactly.

COMMISSIONER EMERY: Now, where did you work,
Gilvarry

physically, in relation to Mr. DeVincenzo's office?

THE WITNESS: I worked outside of his office, his outer office, along with Jim Hein, John Miliotti, Joy Schwartz.

COMMISSIONER EMERY: Was there ever an occasion where, to your knowledge, Mr. DeVincenzo, or any of his other assistants or yourself, removed cover sheets or letters that include referral sources from resumes before they were passed on to the Talent Bank or passed on to agencies?

THE WITNESS: Well, those were our instructions, yes. Joe instructed us to tear off any referral source or cover sheets from a political source before the resume left the office.

COMMISSIONER EMERY: Have you seen Exhibit 34? I believe that was discussed earlier today with relation to Mr. -- it's a compendium --

Is that the correct exhibit, Mr. McGuire?

MR. MC GUIRE: I believe you may be referring to Exhibit 35.

THE CHAIRMAN: Just before Commissioner Emery follows through with that question, I think you said that it was his instruction to you to tear off the cover sheet before it left the office. When you
made reference to "the office," did you mean City Hall, before it goes to the agency?

THE WITNESS: Yes, sir.

THE CHAIRMAN: In other words, you didn't mean before it went from your office to the employees of the Talent Bank, did you?

THE WITNESS: I generally didn't send resumes to the employees of the Talent Bank.

THE CHAIRMAN: Let me see if I understand your testimony: It is that the cover sheet indicating political sponsorship should not be forwarded to the agency?

THE WITNESS: That's correct.

THE CHAIRMAN: Thank you.

COMMISSIONER EMERY: When did you receive those instructions?

THE WITNESS: Many times. Many times.

COMMISSIONER EMERY: Now, were the instructions the same with respect to forwarding the resumes to the Talent Bank?

THE WITNESS: I just remember any resumes leaving the office could not have a cover sheet or any notation that it was from a political source.

COMMISSIONER EMERY: Now, looking at Exhibit 32,
I believe it is a series of letters and a referral with political sources on a number of them that Joy Schwartz testified this morning she provided this Commission.

Let me ask you this: To your knowledge, Joy Schwartz was the head of the Talent Bank; correct, during the period '84 - '85?

THE WITNESS: She was for a period of time, but I do not remember the exact years.

COMMISSIONER EMERY: You were physically just outside of Joe DeVincenzo's office?

THE WITNESS: Correct.

COMMISSIONER EMERY: Did you, on occasion, see Mr. LoCicero go to that office?

THE WITNESS: Yes, I did.

COMMISSIONER EMERY: How often, to your knowledge?

THE WITNESS: I can't remember.

COMMISSIONER EMERY: Approximately?

THE WITNESS: I can't remember. It would be unfair to say anything. There were so many people walking in and out of that office, that's an unfair question.

COMMISSIONER EMERY: How about Mr. Brezenoff?

Well, let me just stop and say that I don't
Gilvarry

think it's an unfair question. It's just that you
are unable to answer it; is that right?

THE WITNESS: I'm unable to answer the question.

COMMISSIONER EMERY: How about Mr. Brezenoff?

THE WITNESS: I don't know.

COMMISSIONER EMERY: Do you know how often
Mr. DeVincenzo went upstairs to see either
Mr. Brezenoff or Mr. LoCicero?

THE WITNESS: He was upstairs on a daily basis
at least once a day, I don't know to see who, but he
was upstairs.

COMMISSIONER EMERY: I have no further
questions.

THE CHAIRMAN: Commissioner Magavern?

COMMISSIONER MAGAVERN: Mr. Gilvarry, do you
have any information as to whether Mr. DeVincenzo
was acting solely on his own or whether he was
getting guidance from anyone else in determining
what names should be on the list that finally went
to the agency?

THE WITNESS: I have no idea, sir.

COMMISSIONER MAGAVERN: Thank you.

THE CHAIRMAN: Mr. Schwarz.

MR. SCHWARZ: Just one question: Mr. DeVincenzo
did put pressure on you from time to time, with respect to particular candidates, did he not?

THE WITNESS: How do you mean that, sir?

MR. SCHWARZ: He would put pressure on you to pursue particular candidates, ask you what was happening with the candidates, to follow up and track a particular candidate; is that so?

THE WITNESS: He would ask me, from time to time, what is happening on a particular candidate. Is that what you mean by pressuring, sir?

MR. SCHWARZ: That was my question.

THE WITNESS: Then the answer is no.

MR. SCHWARZ: And you considered that pressure, didn't you?

THE WITNESS: I considered it to be part of my job.

MR. SCHWARZ: You recall having your deposition taken at the Commission headquarters?

MR. AUERBACH: At what time, Mr. Schwarz?

MR. SCHWARZ: At what time of the day was his deposition?

MR. AUERBACH: No.

MR. SCHWARZ: March 7th at 9:30 in the morning.

Do you recall being deposed at that time?
THE WITNESS: Yes, I do.

MR. SCHWARZ: Do you recall on page 397 --

Mr. Auerbach, the following question and the following answer --

MR. AUERBACH: I'll have an easier time recalling if we could see the testimony.

THE CHAIRMAN: I think the witness should be shown a copy --

MR. MC GUIRE: I would suggest perhaps that Mr. Schwarz reads it and then counsel can look at it himself. I don't think we have another copy available at the moment.

MR. SCHWARZ: I'll read it to you and then I'll let you read it.

MR. AUERBACH: I think we have the testimony. The page is?

MR. SCHWARZ: Starting at 396, line 15. At the top of the page 395.

(Whereupon, a portion of Peter Gilvarry's deposition was read.)

MR. SCHWARZ: Do you recall giving that answer?

THE WITNESS: Yes. It may not have been because...
of a candidate. It may have been because of Mr. DeVincento's mood that day.

MR. SCHWARZ: Nothing further.

THE CHAIRMAN: Thank you very much.

THE WITNESS: Thank you.

MR. AUERBACH: Thank you.

(Witness excused.)

THE CHAIRMAN: Our final witness for this afternoon is Mr. Harold Herkommer.

HAROLD HERKOMMER, called as a witness, having been first duly sworn by the Chairman, was examined and testified as follows:

THE CHAIRMAN: Would counsel identify himself, please?

MR. DAVID: Reuben David.

THE CHAIRMAN: I recognize Alexandra Lowe, Staff Counsel for the initial questioning.

EXAMINATION

BY MS. LOWE:

Q Good afternoon, Mr. Herkommer.

A Hello.

Q Where do you work?

A Pardon?

Q Where do you work?
A Where?
Q Yes.
A 220 Church Street, Manhattan, at the New York City Retirement System.
Q What is your position there?
A I'm Executive Director.
Q How long have you been the Executive Director?
A Since June of 1977.

MS. LOWE: Mr. Chairman, I'm having some difficulty hearing. Are the microphones on?

THE WITNESS: I am, too.

THE CHAIRMAN: As far as I know, they are on. Just move closer, please.

Q In that black exhibit book on your table there, I would ask you to turn to what we have marked as Exhibit 45.

A In which book?
Q There's a black book of exhibits on the table. If you could take a look at 45?

THE CHAIRMAN: I take it there are two copies of the book. Counsel can have the benefit of one copy and the witness may look at the other one.

MR. DAVID: Thank you.

A 45?
Q Yes, please.
A Yes. I have it in front of me.

Q Are you with me?
A Yes.

Q Do you see something that says "service for time of uniform --"
A Yes.

Q Is that Mr. DeVincenzo's application for retirement from service with the City of New York?
A Yes, it is.

Q And if you look, you'll see that in the initial part of the text underneath where it says "important," there is a section which says, "in accordance with the provisions of law governing the New York City Employees Retirement System, I hereby make application for retirement from City service to take effect on --" and there's a handwritten date in there, is there?
A Yes, there is.

Q What is that date?
A April 23rd, 1989.

Q Now, in point of fact, Mr. DeVincenzo did not retire on April 23rd, 1989, did he?
A I can't hear you.

Q Mr. DeVincenzo did not, in point of fact,
retire on April 23rd, 1989?

A He did not.

Q He retired sometime before that in February of '89; correct?

A Yes.

Q And you received this Exhibit 45 sometime in January of '89; is that right?

A That's correct.

Q Now, in your capacity as the Executive Director of the New York City Employees Retirement System, over the years, you have come in contact with Mr. DeVincenzo, is that right?

A That's correct.

Q You have, from time to time, had business dealings such as various committee meetings with him going back to the fiscal crisis sometime in the 1970's; is that right?

A That's correct.

Q Somewhat more recently, have you and he socialized to some extent?

A We, on occasion, had lunch in a group.

(Continued on next page.)
Q Would it be fair to say that some time recently, say 1987 and 1988, he asked you to include him when you got together from time to time with some of your colleagues who retired from City service; is that correct?

A That's right.

Q Can you give us an idea of how many times in 1988 he attended those reunion lunches with your former colleagues?

A Altogether we had lunch in that group three times between '87 and '88. So, it could be twice in '88 or once in '88.

Q On those occasions Mr. DeVincenzo joined you and your former colleagues; is that correct?

A Yes.

Q Do you remember having a meeting with Mr. DeVincenzo to discuss his retirement plans before Exhibit 45 was filed with your office?

A Yes, I do.

Q Where was that meeting held?

A Well, we met once in the morning over a cup of coffee, but we actually had a cup of coffee in the diner at nine o'clock in the morning. We met at a specific corner and proceeded to a diner for a cup of
coffee.

Q What specific corner did you meet him on, do you remember?

A Yes. It was West Broadway, which my building is located on and Chamber Street.

Q And you went from there to a nearby diner; correct?

A Yes.

Q Whose idea was it to meet at the diner to discuss his retirement plans?

A That was Joe's suggestion.

Q And do you know why he wanted to meet you in a diner to discuss his retirement plans?

A Well, he claimed that if he was seen entering my office since there are other City agencies that occupy my building, he would be recognized and immediately rumors would begin about his retirement and for the same reason I assume that he didn't want me coming over to City Hall.

Q When you say rumors about his retirement, what do you mean by that?

A Many times I confer with Commissioners or other people, high elected officials who prefer to get pension information on a confidential basis. It
may not be because they are anticipating an immediate 
retirement, but they want some information if they 
want to do so in the future, but they are not ready 
to have this known yet publicly. I deem the relation-
ship like a lawyer-client relationship, something I hold 
in confidence.

Q Can you think of any other City officials 
who have asked you to meet them in a diner or coffee 
shop to discuss their retirement plans?

A I met one other Commissioner under similar 
circumstances, yes.

Q Who was that?

A Mr. Ameruso.

Q Now, what do you recall of your discussion 
with Mr. DeVincenzo that you can describe taking place 
in the diner before Exhibit 25 was filed?

A The first meeting before he filed his appli-
cation?

Q Yes. What do you remember about the dis-
cussion?

A The main thrust of his questions were with 
reference to filing for thirty days, when would the 
application go into effect, would it be the close of 
business, five o'clock or close of business midnight,
that kind of thing, you know, how do we file for thirty
days.

Q This was in January before he actually filed
for retirement; is that correct?

A Yes.

Q Do you remember him asking you who would be
notified of his retirement if he did file for retire-
ment?

A Yes, he did.

Q And what did you tell him?

A I told him that we normally notify the
Department of Investigation for every retirement appli-
cation we receive.

Q Did you have the impression that he wanted
to know whether you would be notifying the Mayor's
Office about his retirement?

A No.

Q There was no discussion about whether or not
his employer would be notified about his retirement?

A No. I don't believe so.

Q To your knowledge did anyone in your agency
notify the Mayor's Office after Mr. DeVincenzo filed
his retirement papers with you in January?

A Well, at one point an Agency Head Certificate
was sent.

Q That was in March of 1989; is that right?
A I'm not sure what the date was, but I think it's one of the exhibits.

THE CHAIRMAN: Would counsel show the witness the document?

MS. LOWE: Yes.

Q Why don't you turn to Exhibit 55, if you would, in that booklet on the table?

A That's correct.

Q Exhibit 55 is this Agency Head Certificate that you are talking about?
A Yes.

Q And that was sent according to the cover sheet there on March --
A March 1st.

Q And Mr. DeVincenzo had left City service by March 1st?
A Yes.

Q His retirement had become effective --
A That's right.

THE CHAIRMAN: I take it that that's the witness' testimony that that is the first communication to the employer?
THE WITNESS: To my knowledge, yes.

Q Now, it's true, it is not, Mr. Herkommer, that the rules under which you operate allow you to disclose the fact of the filing of the retirement papers to the employees agency head, is that correct?

A Yes, if requested.

Q Well, the language of the rule dealing with confidentiality is, I believe, Rule 45 of your current rules; is that correct?

We don't happen to have an exhibit for that. We can supplement the record if necessary.

Let me represent to you that you and I have discussed this before.

A We have. Right.

Q Rule 45 is a confidentiality rule that provides that all records of the retirement system shall be confidential and no member of the staff shall divulge any information appearing to any person other than to the member concerned or to a board member or to his or her agency head or agencies lawfully entitled to receive the information requested except on the member's authorization.

I take it the idea is that you don't need the member's authorization to notify the agency head; is that correct?
A    That's right.

Q    Now, at any point did anyone in the Mayor's Office ask you to alert them if Mr. DeVincenzo filed his retirement papers?

A    No.

Q    As far as you know, did anyone in the Mayor's Office ask anyone to alert them, anyone in your office, if Mr. DeVincenzo filed his retirement papers?

A    Not to my knowledge.

Q    Did anyone in Government in the City of New York ask you to notify them if Mr. DeVincenzo filed his retirement papers?

A    No one did.

Q    Now, going back to what you and Mr. DeVincenzo discussed in the diner in January before his retirement papers were filed, I think you mentioned earlier that you told him that the only person to be notified was the New York City Department of Investigation; is that correct?

A    That's correct.

Q    Did Mr. DeVincenzo also want to know how long it would take you to notify DOI?

A    Yes, he did.

Q    And what did you tell him?
A Any requests from three to eight days, depending upon how our computer was bringing out the list.

Q When you say three to eight days, measuring from what point?

A From the point that the application is received, clocked in.

Q Could you go back to 45 that we looked at initially?

A Yes. I'm still there.

Q You personally received Mr. DeVincenzo's retirement application; is that correct?

A That's correct.

Q What can you tell us about the circumstances under which you received that?

Let me withdraw that.

Why don't you describe when you received it, how you received it?

A I received the application on a Monday morning 8:00 o'clock, and it was brought to me by Mr. Robert Valenotti.

Q When you say Monday morning, do you know what date it was brought in?

A January 23rd.

Q Had there been an attempt prior to that Monday
to file Mr. DeVincenzo's retirement papers?

A Yes, on the preceding Friday.

Q Which was the 20th of January; is that right?

A That's correct.

Q The next exhibit is a calendar, if that will help you at all. It's a 1989 calendar.

A Thank you.

Q What can you tell us of the events -- I take it the attempt to file his retirement papers on that Friday was not successful; is that right?

A That's correct, it was not.

Q What can you tell us about what happened on Friday, January 20th?

A I received a phone call at my home, I would say in the vicinity of 5:00 o'clock, give or take fifteen minutes and it was from the receptionist in the Executive Area, saying that a Miss Jean Ross was there wanting to file an application on behalf of Mr. Joseph DeVincenzo.

Q Jean Ross is his secretary; is that right?

A Secretary, aide or something. I'm not quite sure what the precise title is.

Q You were no longer in the office at that time?

A I just walked in the door of my home.

Q What happened?
A I suggested that Miss Ross be brought down to the Information Room to the supervisor in charge, who was in charge of accepting applications for retirement so she could review it for accuracy, to make sure everything was in proper order, clock it in, and make sure everything that was supposed to be done, was done with it.

Q Was the application taken down --

A At that point, I hung up and five minutes later, I got a call from the room saying that the form was defective in that he failed to indicate a beneficiary on the form, and I informed my supervisor that that was not a basis for refusing to accept it, because it was not a pertinent part of the application.

She further pointed out to me that he failed to complete the signature portion and I said that that was not a reason for not accepting it.

At that point, she indicated to me that the application had not been signed.

Q By Mr. DeVincenzo?

A By Mr. DeVincenzo. So I immediately asked to speak to Jean Ross, who was put on the phone and I said, Jean, the application is invalid. It's not signed. There's no sense in us accepting an invalid application.
If you wish, we'll then notify you that it was not accepted because it was invalid.

She said, how long are you going to be open?

Perhaps I can go back and get Joe's signature.

My Information Room closes at 5:30. At this point, it was 5:20. I asked my supervisor if she would be willing to stay longer so Joe could have an opportunity to sign it and at that point, Jean got back on the phone and said, I think it's going to be impossible. Why not wait until Monday, at which point, the conversation ceased.

(Continued on next page.)
Q When your supervisor in the information room was pointing out to you over the phone defects in the applications that came in on Friday, do you remember her telling you that the line, which is presently filled in to read April 23, 1989, the line for the effective date -- do you remember her telling you that that line was also blank?

A Yes, I think she did, you're right.

Q In other words, Mr. Devincenzo had failed to provide an effective date for his retirement?

A That's true. That was blank. Then, it would -- automatically, it would have been a thirty day application. That's our procedure.

Q If someone fails to fill in the date, you consider it to be effective within thirty days?

A It becomes the earliest legal retirement date under the statute. The application would automatically assume to have been met.

Q You've described the events of Friday. Did you have any conversations over that weekend with either Mr. Devincenzo or anyone acting on his behalf about the filing of his retirement application?

A I definitely did have conversation. To the best of my knowledge, it was both with Jean and
Joe.

Q What was the gist of those conversations?

A "Will you be available Monday morning to have someone bring the application to you to accept it?" And I said, "Yes."

Q When you say, "Will you be available," was the idea whether you, personally, would be available to receive it?

A Yes, me, personally.

Q Was there a time that you discussed with those people about when you would be available?

A I am sorry?

Q Did you and Mr. DeVincenzo and Jean Ross discuss what time the following Monday you would be available?

A Yes. They asked me if I would be in my usual time, which is 7:30, and I said yes, I would be.

Q Did they come in at 7:30 that following Monday with the retirement application?

A No. As it was, I arrived at the office, I would say, about 7:40, at which point I was told by one -- a fellow, that one of my employees down the hall, that a phone call had come into my office, and she had picked it up, and it was Mr. Valenotti asking
if I was there. The lady indicated that I had not arrived yet. So, he called back about a quarter to eight, at which point I was there, and then, at that point, he said, "I'll be up there in ten minutes," and ten minutes later he was there, around eight o'clock, about the form.

Q This was all on Monday, the 23rd of January; is that correct?

A That's correct.

Q If you look at Exhibit 45, there is a date stamp and a time stamp on the upper right-hand corner, and if I read it correctly, the stamp, itself, not looking at the handwriting, but the stamp, itself, says January 24th, 11:15 a.m. '89, and the 24 is crossed out, and there's the handwritten 23 below the 24, with some initial, PB after that.

What does that mean to you?

A Well, the printed material is a clock-in stamp that we have in the Department, and every document, every significant document, anyway, every retirement application being one, is clocked in to indicate precisely the time it supposedly is received, and it's something we're very careful about.

Obviously, in this case, there was a problem,
because I did sign that I accepted this on the 23rd.

Q And that's the handwritten note on the left-hand side?

A That's the handwritten, "Receipt issued," which is my handwriting.

Q When did you write that note, "Receipt issued 12/23/89"? Did you write it then?

A That's correct, while Mr. Valenotti stood in front of me.

Q I take it, to your office, it's a matter of importance to avoid the kind of discrepancy we see reflected in this retirement application, where the retirement application comes in one date, and then gets clocked in on the next; is that correct?

A Yes, it's very much so.

Q Does that matter concern you, that there's such a discrepancy?

A Absolutely.

Q Did you conduct an investigation when you found out about this?

A I did.

Q And did you find, when your staff looked into this, that every other document that they looked at in their sample that was received on January 23rd was
Herkommer

clocked in on January 23rd?

A Yes. I had a trace done, going back and checking all other documents.

Q Do you have any explanation that would account for the fact that his application was not clocked in until over twenty-four hours after you say you received it?

A Absolutely not.

Q Now, going back to the discussion about the DOI, you told Mr. DeVincenzo that DOI does get notice of an employee's retirement; is that correct?

A Yes.

Q And, in the normal course of events, how does that notification take place?

A It's in the form of an IBM list that is produced. As soon as the application is clocked in, it gets certain cursory reviews, and is then sent into a room that puts it into a computer. The computer lists are produced and sent out to another division that reviews that the input was correct. Once that's verified, it goes back to the computer room, where eight copies are produced, and, at that point, one of those copies goes to the Department of Investigation.

Q Could you look with me at Exhibit 49 in that

NATIONAL REPORTING INC.  (212) 732-3120
book there?

Are you with me?

A Yes, I am.

Q This consists of several printouts, the first of which is printouts for the date -- if you look at the date in the center of the page, January 24, 1989, is this the printout that contains the retirement information for Mr. DeVinzenzo that got sent to DOI?

A Yes, it is.

Q And, to the best of your knowledge, this printout was sent to the New York City Department of Investigations?

A Well, yes, it was put in the out-box for the messenger to pick up.

Q Now, has DOI informed you that they are missing the printout, the first printout which is part of Exhibit 49?

A I'm sorry, what was the beginning of that question?

Q Has DOI informed you they are missing the printout?

A To the best of my knowledge, DOI informed my First Deputy, during the week of -- I have to go
back here a minute. The calendar is which one?

Q The calendar is Exhibit 46.

I believe those conversations you are referring to, I think you told me, took place on February 24th.

A Yes, February 24th, when I was in Florida, I received a phone call or I called the office and was told by my First Deputy that he had been notified that DOI never received this listing.

Q Are you aware of anyone in your agency who did anything that could have caused that printout not to reach DOI?

A No.

Q Now, the printout, Exhibit 49, contains several printouts. Are you aware that the other printouts were also sent over to DOI as part of the same package as Mr. DeVincenzo's printout?

A That's correct.

Q Are you aware that it's DOI's contention that they did not receive any of the printouts in the package, also in the package, with Mr. DeVincenzo's printout?

A That's what I understand, yes.

Q Did DOI ever ask you, tell you to tell them
if your agency learned that Mr. DeVincenzo had put in his retirement papers?
   A No, they did not.
   Q You do have a system, don't you, whereby, in the past, DOI has called you up and said, "Please let us know if employee XYZ has put in his retirement papers"; is that right?
   A That's right.
   Q And you have a system for tickling your files at NYCERS to enable you to respond properly to those kinds of requests; is that right?
   A Yes.
   Q But you received no such requests from DOI in Mr. DeVincenzo's case; is that correct?
   A No, I did not.
   Q Now --

THE CHAIRMAN: I was not clear, in light of what he just testified. He also made reference to a telephone conversation, I believe, on February 24th which reflected a communication of DOI. Would you clarify that for me?

Q I guess what I am asking about is, other than that discussion on February 24th, prior to February 24th, when your Deputy had the discussions with
DOI about the missing printouts, prior to that time,
I take it you never got a call from anyone at DOI
asking you, or anyone in your agency, to alert them
as soon as Mr. DeVincenzo put in his retirement papers?
A That's correct.
THE CHAIRMAN: I take it there will be more
about what transpired on February 24th?
MS. LOWE: I'm going into that now.
Q You were not in the office on February 24th?
A No, I was on vacation in Florida, and I
called into the office on February 24th. My Deputy
advised me or informed me that the listing containing
Joe D.'s notification of retirement to the Department
of Investigation was never received by them.
THE CHAIRMAN: Did he reflect a communica-
tion he had received from the Department of
Investigation?
THE WITNESS: I believe that was all by
telephone.
THE CHAIRMAN: That he had received a
telephone call from the Department of Investiga-
tion?
THE WITNESS: Yes, I believe by telephone.
Q Going to another issue for a minute, under
the rules of the Uniform Sanitation Force Retirement Plan, for which Mr. DeVincenzo was eligible, is it correct that there is a requirement that the employee provide the City with a minimum of thirty days notice before his retirement becomes effective?

A Yes, there is such a requirement.

Q In other words, the earliest date his retirement can take effect is thirty days from the date he files his retirement application; is that correct?

A That's correct.

Q And there's also a requirement that the employee still be on the City payroll on the 29th day of that waiting period; is that correct?

A That's correct.

Q If an employee who was eligible for that plan is fired during that thirty day period, he loses his right to a pension; is that right?

A That's correct.

Q And, if the employee is demoted and his salary is decreased, his pension will be affected by that salary decrease; is that correct?

A We are still, specifically, speaking of the twenty years Sanitation --
Q Yes, exactly.
A In that case, yes.
Q And that's because in the Sanitation Plan, the single largest component of your pension is one half of your salary on your last day of City service; is that correct?
A Yes, that's correct.
Q Now, I think you told us earlier, in your meeting with Mr. DeVincenzo in the diner, one of his concerns at that point in January of '89 was how do you figure this thirty day waiting period; is that correct?
A That's correct.
Q And that, in fact, was a concern of his throughout the January-February, 1989 time frame; is that right?
A Yes, January for sure.
Q Do you have some idea of how many different discussions you had either with him or with Jean Ross or someone else from his office about the thirty day waiting period, and how is it calculated, and how is it computed?
A Well, I would say possibly as many as five or six between the two of them.
Q You wouldn't say it was as high as eight or twelve?

A Eight or twelve? There were eight or twelve discussions. I don't know, necessarily, that we discussed mainly the thirty day issue at all twelve, but certainly half of the twelve would more than likely have highlighted only the thirty day calculation.

Q Do you remember having a discussion with Mr. DeVincenzo's secretary or assistant, as you described her, Jean Ross, which spanned a three day period involving the thirtieth day issue?

A Yes, I do recall a sequence like that.

Q What can you tell us about that?

A I received a call at my home one evening from Jean Ross asking what his thirtieth day would be. I tried to calculate it, to the best of my ability from home, without the records in front of me, and I gave her a date. She claimed that that was an erroneous -- I didn't calculate it properly.

So, I said that I would prefer to have my staff do it tomorrow, people that are used to doing this calculation, and I would get back to her.

I had my staff do it the next day. She called me at home the next evening, and I, again, gave
her the date, and it happened to be the same date I had originally given her. She still insisted I was wrong.

I imagine I probably, at that point, suggested, "Why don't you come to the office tomorrow morning. We'll sit down with my staff and myself and show you how we are doing the calculation," which we did.

So, that was the third day then that she came to the office, and I sat with one of my Deputies, who normally is involved in this kind of calculation, and she calculated the date, and Jean still insisted we were wrong.

So, we went to the computer printout program that we have in my office, in my outer office, and brought the screen up that showed when Joe filed and basic information, and that's when we noted the screen had the 24th as the filing date.

Q January 24th?

A January 24th, and we both, my Deputy and I, were going by the January 23rd date, and that's why Jean was saying we were wrong.

Q Because she was going by the 23rd date?

A Because she was going by the 23rd.

Q I thought you were going by the 23rd.
A  I'm sorry, I was going by the 23rd. My Deputy was going by the 24th, because she had used
the computer, and I had just miscalculated the first
time.

Q  Jean Ross was going by the 23rd, as well?
A  She was going by the 23rd.
Q  When you were in your kitchen looking at
the kitchen calendar -- on the first evening of this
conversation with Jean Ross, when you were in your
kitchen looking at the kitchen calendar and counting
the thirty days, what date were you using as your
starting point?
A  January 23rd.

THE CHAIRMAN: Counsel, can you pinpoint
the first of these three or four conversations?

MS. LOWE: I am going to ask that next,

Mr. Chairman.

Q  Did these conversations with Jean Ross
take place some time before February 15th of 1989?
A  I just can't recall right now.

THE CHAIRMAN: Can we come at it the other
way?

Q  Let me ask you this: You and I have dis-
cussed these issues before, during your private
testimony before the Commission, and at that time, I believe, you and I looked at an exhibit. Let me find that for you. It's Exhibit 52 in your book, the papers that Mr. Devincenzo filed in lieu of an original birth certificate.

A Okay, that was February 15th, I believe.

Q My understanding is, if you look, the clock-in date there is February 15th, and, as I recall -- and, again, stop me if I am wrong -- my understanding when we discussed this before was that you believed Jean Ross had begun to have this discussion at some point before the 15th.

Seeing these papers, does that seem to refresh your recollection that the discussion was some time before February 15th?

A I would tend to believe so, yes, it was before the 15th.

Q Do you remember what happened on the 15th? Do you remember getting these birth certificate related papers?

A Yes. This is one of the days that Joe asked -- Mr. DeVincenzo asked to meet me at a diner.

Q At a diner?

A A coffee shop, in the morning.
Q This is another occasion?

A This is the second occasion, to meet with him, right.

Q And what transpired in that second meeting?

A The main reason, I believe, for the meeting was for him to bring me these documents, because, if you go back to the pension application, you'll see, on top of that, there's a notation saying something to the effect, birth certificate to file, or missing, or something like that, because when that application was filed, he didn't provide us with proof of birth, which we required to finalize a pension calculation, but that can be brought up at any point later on.

That was, I think, basically the reason for Joe asking to meet me, to bring me those papers, and take them back to my office.

Then, in addition to that, as we were having a cup of coffee, he asked me if I would bring him or give him an affidavit which we use to change retirement dates within thirty or ninety days.

Q There's a special form you use to change your retirement date?

A Yes.

Q He asked for that in the same conversation
that you're relating?

A While we were having a cup of coffee, yes, he asked if I could bring him one of those.

Q Do you remember how you got that affidavit to him?

A Yes. I recall saying to him, "Why don't you come upstairs with me?"

Q To your office?

A To my office, because we passed right in front of my building. He preferred not to go upstairs. I said, "Why don't you wait down here. I'll take these documents upstairs, get you one of those affidavits, bring it down to you. In the meantime, we'll Xerox all these documents, have somebody pick them up in the afternoon, and you can get back the originals," because we do not keep originals.

Q You went up to your office and brought down the affidavit?

A I brought this up, brought down the affidavit, and he left on his way.

Q Did he, again, tell you why he didn't want to come up to your office on that occasion?

A I don't think it was necessary to say. It was always still the same reason, he didn't want
anyone to see him.

Q Why didn't he want anyone to see him?

A At that point, it made no sense, because the papers were -- the papers were already in. So, I don't understand why he didn't want to.

Q But, by "papers in," you mean the retirement papers?

A The retirement application at that point was already in.

Q Did you say something to him like, "DOI was already notified, I don't understand why you feel this way"?

A I said to him, "I don't understand why you still feel this way," but I don't believe I said anything about DOI having already been notified.

Q Okay. Going back to this conversation with Jean Ross about the thirty days, did you and she and your staff determine the thirtieth day was February 22nd? Did you finally agree that was the correct date?

A We finally agreed the right filing date was the 23rd, that I had initials.

Q And counting thirty days from that, did you all agree that February 22nd was the thirtieth day?
A That's correct.

Q By, "thirtieth day," we mean that was the first day his retirement would be effective?

A That's correct.

Q Now, did you ever ask Mr. DeVincenzo why, if he was interested in the thirtieth day, why did he put in initially for retirement in ninety days?

A What was the beginning of the question?

Q You had testified that you had a number of conversations with Mr. DeVincenzo about what the thirtieth day was and how you computed it. If his interest, as he described it, was in a thirty day retirement period, do you know why he initially, in January, put in for a retirement date of ninety days?

A Well, after the fact, I found out, because I asked him why he did that.

Q What did he tell you?

A The answer I was given was he wanted to give the City plenty of time to do whatever they thought they had to do.

Q And do you know what he meant by that?

A I just assumed that he meant that, at that point, he would either be cleared of any charges that might be pending, or this investigation would be over.
That was really his personal business.

Q Why don't you turn to Exhibit 50, please. Are you with me?

A Yes.

Q Can you tell us what Exhibit 50 is?

A It's the affidavit which we use in order for an individual to avail himself of the right to change his retirement within the thirty/ninety day framework.

Q And it was the blank version of this that you brought down to Mr. DeVincenzo after your meeting at the diner on February 15th; is that right?

A That's right.

Q Exhibit 50 is the completed version of that, that Mr. DeVincenzo submitted to your office?

A Yes, it is.

Q If you look at the back, can you tell us what time that was clocked in by your office?

A February 21st at 4:59 p.m.

Q Do you remember having some discussion with Mr. DeVincenzo prior to February 1st at 4:59 p.m. -- prior to February 21st, about what was the last time or what was the latest time on the last day of the waiting period he could put in this sort of an affidavit.
to change his retirement date?

A I believe we did have some discussion about that.

Q And what do you recall about those discussions?

A Well, I remember saying something to the effect, "Don't wait as long as you waited or as late in the day as you waited to file that original retirement application. Obviously, people are not around after five o'clock, and, also, our clock-in stamp is shut down, so we're not able to clock forms in after five o'clock, they require a hand process for time recording, which we do not like to use when we don't have to."

Q Now, do you remember the tenor of his discussion, his question to you? I want to focus on that.

Was the gist of his question to you, how late can I get this to you on the 21st?

A I would think, yes, that was the gist.

Q Now, Mr. DeVincenzo had a good reason for wanting to change his retirement date from ninety days to thirty days, in order to lock in his pension; is that correct?

MR. DAVID: Are you asking him for a conclusion?
MS. LOEW: Yes.

Q Did you have an understanding that the reason he wanted to change from ninety days to thirty days was to lock in his pension, so that he would be off the payroll before any charges could be brought against him?

A Well, first of all, I wasn't here when he did this. As I said, I was in Florida. I only found out about it afterwards.

In subsequent conversations with Joe, I did question why he changed precisely to the thirtieth day, and his answer to me was that he had been asked by City Hall to leave.

Q I would like to just dwell on this point for a minute, and if you have on your table there a copy of your private testimony at our previous deposition on this, I'd like you to turn to Page 108.

A Okay.

Q I would like to read -- well, I'd like to read into the record my question and your answer and see if this refreshes your recollection about your thoughts on this matter, and I'd like to know if you still think this is the case.

I'd like to read with you on Page 108, if
you don't mind. My question was:

"I want to follow up on your comment that this an ace in the hole in case something went wrong. What does that mean to you?

"Answer: In case he is in real trouble, if there really is anything to the charges, and he is found guilty of something, then, obviously, he would be in trouble, right.

"Question: Why would that lead him to want to change his retirement date?

"Answer: Well, in order to lock in his retirement, so he cannot have charges brought against him, because he is off payroll then.

"Question: In order not to lose his pension?

"Answer: To lock in his pension, right."

You testified to that previously; correct?

A Yes, I did.

Q Now, Mr. Herkomm, it is true, is it not, that until January of 1989, it was the practice of your agency to require the approval of the employee's agency head before an employee could change his retirement date; is that correct?

A That's correct.

Q And that was the practice of your agency as
far back as you've been able to determine; is that right?

A That's right.

Q For example, if Mr. DeVincenzo had filed for retirement in November of 1988, and sought to change the retirement date in December of 1988, instead of January or February of 1989, the Mayor's Office would have been notified of his proposed change in retirement date, and that change would have required the approval of the Mayor's Office; is that right?

A That's right.

Q Now, the approval of the Mayor's Office was not sought for Mr. DeVincenzo's change of retirement date, was it?

A That's right.

Q And that was because, in January of 1989, you eliminated the practice of requesting approval of the employee's agency head in cases where the employee wanted to change his retirement date; is that correct?

A That's correct.

Q You did not consult with the New York City Department of Investigation before changing that practice, did you, I take it?
A No, I did not.

Q Did you consult with your Board of Trustees before eliminating that practice?

A No, I did not.

Q Did Mr. DeVincenzo ever suggest to you that you should change this practice of requiring the approval of the employee's agency head when the employee wanted to change his retirement date?

A No, he did not.

Q Did you ever discuss that issue with Mr. DeVincenzo in any way?

A No, no way.

Q Now, if you look at what we have pre-marked as Exhibit 51 --

MR. SCHWARZ: Excuse me. Did you get a date for when the change was made in January?

Q Can you tell us when that change was made in January, the point at which the policy changed from one of requiring the agency head approval for a change in date to a practice of no longer requiring that approval?

A The first case that fell under the new directive was done by a letter dated January 4, 1989. So, some time prior to that I had changed instructions.
to my staff.

Q  Do you know --

Q  Can you look at -- do you have Exhibit 51 handy?
A  Yes.

Q  Now, this is a letter, dated February 22, 1989, from Michael Weil of your office to Ellin Hauser of the Mayor's Office; is that correct?
A  That's correct.

Q  This letter informs the Mayor's Office that Mr. DeVincenzo has changed his retirement date; is that correct?
A  That's correct.

Q  On February 22, 1989, Mr. DeVincenzo's retirement date was a fait accompli; is that correct?
A  That's correct.

Q  Is there some reason why you provided that notice to the Mayor's Office, but did not tell them in the first instance in January that Mr. DeVincenzo had filed his retirement papers?
A  It's -- my staff tells me this is their practice. That they, as a courtesy, notify an employer.
when an employee changes his retirement date.

Q At what point did you learn that Mr. Devincenzo had been subpoenaed to testify before this Commission?

A I would have no idea. Probably from the newspapers, whenever it was published.

Q Well, I think the record should reflect that Mr. Devincenzo was subpoenaed on December 21, 1988.

A December?

Q December 21, 1988. Did you have any discussions with Mr. Devincenzo subsequent to that point about his being subpoenaed to testify before this Commission?

MS. LOWE: Let me withdraw that.

Q Did you have any discussion subsequent to December 21, 1988 and prior to January 4, 1989 with Mr. Devincenzo?

A Between the 21st and the 4th?

Q Yes, if you can recall.

A I can't recall anything in that narrow a range.

MS. LOWE: I have no further questions,

Mr. Chairman.
MR. SCHWARZ: I just want to clear something up.

You remember December 21st as the date of this change?

THE WITNESS: December 21st as the change?

No, this happened some time between the 21st of December, '88 and January 3rd, I would say, of '89.

THE CHAIRMAN: No further questions of this witness?

MR. SCHWARZ: I have some questions.

I just have a few minutes of questions.

What do you remember on the 21st?

THE WITNESS: The 21st is a crucial date for me, because that's the date the Board of Trustees changed the rule on withdrawing retirement applications.

Prior to that time, there was a rule on the books that required several things before a retirement application could be withdrawn, and I'm emphasizing the word "withdrawn" as opposed to changing within the thirty/ninety days. That required the approval of an agency head, as well as the approval of the Board of Trustees to become
effective, the withdrawal.

The Board, on the 21st of December, dropped that rule, eliminating any approval from any employer, as well as their own approval to effectuate a withdrawal of a retirement application.

In light of that, I knew what the intention of the Board would be in reference to dropping this in-house procedure, and that's why I did not go to the Board for the change of procedure. It conformed to the rule they changed on the 21st.

MR. SCHWARZ: One other question:

On Exhibit 45, there's a number at the top, 002, and there's the same number on the computer printout that I saw before, 002, and that's Exhibit 49.

THE WITNESS: Exhibit 45?

MR. SCHWARZ: 49 and 45, there's a number at the top right-hand side, 002. Do you see that number?

THE WITNESS: Yes.

MR. SCHWARZ: What is that number?

THE WITNESS: To the best of my knowledge, that's a log number.
MR. SCHWARZ: A log number?

THE WITNESS: These are logged also in registers.

MR. SCHWARZ: Would that be a particular day?

THE WITNESS: No.

MR. SCHWARZ: So, there would be a 001 and a 003?

THE WITNESS: 002, I believe, is the Mayor's Office. It's a bank and department code used on payrolls, H002. They don't put the H in, just 002. That indicates Mayor's Office.

MR. SCHWARZ: Who is Robert Valenotti who notarized the document, Exhibit 45?

THE WITNESS: To the best of my knowledge, he's the Chief Clerk over in the Mayor's Office.

MR. SCHWARZ: He's the Chief Clerk in the Mayor's Office?

THE WITNESS: I believe so.

MR. SCHWARZ: Thank you.

THE CHAIRMAN: That concludes the questioning this afternoon.

I understand there's another function that's
about to begin. Actually there's another function
that's about to begin. Actually, it's been a half
hour delayed pending the conclusion of this hearing.
So, I would ask everyone if they could remove
whatever material they might have here, so the
other function can begin.

(Time noted: 5:00 o'clock p.m.)
STATE OF NEW YORK
COMMISSION ON GOVERNMENT INTEGRITY

PUBLIC HEARING

"NEW YORK CITY HIRING PRACTICES"

April 5, 1989
9:15 o'clock a.m.

Held At

The Association of the Bar
of the City of New York
42 West 44th Street
New York, New York

BEFORE: JOHN D. FEERICK, Chairman
RICHARD D. EMERY
PATRICIA M. HYNES
JAMES L. MAGAVERN
BERNARD S. MEYER
BISHOP EMERSON J. MOORE,
Commissioners

APPEARANCES:

PETER BIENSTOCK, ESQ.,
Executive Director

THOMAS SCHWARZ, ESQ.,
Special Counsel

JAMES M. MC GUIRE, ESQ.,
Deputy Chief Counsel

TIMOTHY BROSnan, ESQ.,
Staff Counsel

ALEXANDRA LOWE, ESQ.,
Staff Counsel

STEWART NISSENBAUM
-and-

HAROLD RABINOWITZ
-and-

LEONARD SWEET

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THE CHAIRMAN: This public hearing is now in session.
The Commission calls as its next witness
Gerald Levy.

G E R A L D L E V Y, called as a witness, having been first duly sworn by the Chairman, was examined and testified as follows:

THE CHAIRMAN: Please be seated.
(Witness complies.)

MS. ARCHER: Good morning.
THE WITNESS: Good morning.
THE CHAIRMAN: I'd like to recognize Commission Staff Counsel, Diane Archer.

EXAMINATION

BY MS. ARCHER:

Q What is your current employment?
A I'm Chief Investigator with the Commission on Government Integrity.

Q How long have you held that position?
A Since the inception of the Commission in 1987.

Q Prior to becoming Chief Investigator with the Commission, where were you employed?
A I was a Supervisory Investigator with the Internal Revenue Service.
Q How long were you at the Internal Revenue Service?
A About twenty-five years.
Q As a Supervisory Investigator, what were your responsibilities?
A To conduct investigations.
Q Did those investigations involve statistical analyses?
A Yes, it did.
Q In connection with the Commission's investigation into the role of the Mayor's Talent Bank in placing job candidates, did you perform certain statistical analyses?
A Yes, I did.
Q Are the results of your analyses contained in Exhibit 72?
A Yes, they are.
Q What documents and other source material did you use to derive those statistics?
A We used records of the Talent Bank, records of the Parks Department, and we also -- I looked at the testimony from Parks Department employees.
Q Turning your attention first to the Talent Bank placements between 1983 and 1986, did you derive
statistics regarding numbers of Talent Bank placements?

A Yes, we did.

Q What are they?

A In 1983 -- and 1983 is a partial year, because the Talent Bank only really became operational in about May of 1983 -- they placed 173 individuals.

In 1984, they placed 431 individuals.

In 1985, they placed 487 individuals.

In 1986, they placed 345 individuals.

Q Where did you secure this information?

A These -- this information came from Talent Bank records.

Q Did there come a time when there was an increase in the Talent Bank's annual number of placements?

A Yes. In 1987, it jumps to 855 placements.

Q Are you aware of anything to account for this increase?

A In -- sometime in 1987, based on a directive from the Mayor's Office, the method of selecting laborer type employees was changed, procedures, hiring procedures.

Q How did those procedures change?

A Prior to late 1986, laborer type employees could be hired and recruited by the individual agencies.
A Yes, very often it was the agency that recruited the candidate, and it just came back to them, and they picked it up.

Q And here we are talking about the Parks Department, specifically; is that right?

A Well, that was a major component of those statistics.

Q Was the increase in the Talent Bank statistics accounted for by the placement of laborers at one particular agency?

A Yes, that was the Park Department.

Q How many persons did the Talent Bank place at the Parks Department prior to the institution of this new procedure?

A In 1983, they placed one person.

In 1984, they placed one person.

In 1985, they placed one person.

In 1986, they placed eighteen individuals, but they all occurred in December, 1986, which was after the implementation of the new directive.

In 1987, they placed 531 individuals.

Q When you say they placed 531 individuals, that was at the Parks Department?

A Yes. They placed 855 all together. They
placed 531 at the Parks Department.

Q And what percentage was that of the Talent Bank's total placements?

A Sixty-two percent of their total placements was at the Parks Department.

Q Do the records indicate that the Talent Bank recruited all those individuals?

A No, quite the opposite.

Q What do the records indicate in 1987?

A In 1987, Talent Bank records indicate they placed 531 people at the Department of Parks.

The records of both the Talent Bank and the Department of Parks indicate that 434 or eight-one percent of them, were individuals who originated at the Parks Department, were sent to the Talent Bank, and when they came back to the Parks Department, they were hired.

Q Were there any cases in which you had no information regarding referral source?

A Yes, in some, neither record -- neither the Parks Department record nor the Talent Bank record would indicate what the referral source was. In that case, we just assumed it did not come from the Parks Department and came from the Talent Bank or other sources.

Q Would it be accurate to say that the
the Parks Department figures for those same years?

A Yes.

Q What did you find?

A The Talent Bank records in 1987 indicate 531 people were placed with the Parks Department. The Parks Department records indicate they only hired 340 of the 531.

Q How about in 1988?

A The Talent Bank records indicate 394 people were placed. The Parks Department records indicate, of those 394, they hired 273 in 1988.

Q Is there any explanation for this discrepancy in the numbers?

A Yes, there is. In part, of the 531 people listed as Talent Bank hires in 1987, of course, 340, Parks Department records indicate they hired in '87. Their records also indicated they hired five in '86, 78 in '88, and one was hired in '89.

Q How about the remaining 107 placements?

A 107 -- Parks Department records indicate they never hired these individuals at all.

Q What about in 1988?

A In 1988, Talent Bank records indicate 394 people were placed with the Department of Parks. The
Parks Department records, of course, show they hired 273 in 1988. They also show they hired 4 in 1986, sixteen in '87, and seven were hired in 1989.

Q How about the other ninety-four individuals?
A The Parks Department records indicate that they never hired the other ninety-four individuals.

Q Can you offer an explanation for the Parks Department having no record of hiring those persons, but the Talent Bank listing them?
A Well, there are some indications of two different explanations. The Talent Bank would receive back from the Parks Department indications of individuals being hired, and it appears that they would include that individual as a hired statistic.

However, Parks Department, if that individual never did show up for work, let's say he didn't -- he changed his mind, he didn't want to job, or for some reason he never appeared, it appears that Parks Department did not include him as a hired individual.

The other possibility is that some of these individuals were not placed with the Parks Department, but might have been placed with another agency.

Q Turning your attention back to the 107 individuals listed as 1987 Talent Bank placements, the
Parks Department has no record of ever hiring. Did the Parks Department ever inform the Talent Bank that several of these persons were not going to be hired?

A Yes, there were indications where the Parks Department would say -- would send back a memo indicating "rejected" or "candidate not interested." The Talent Bank would receive those memos.

Q And those memos were in 1987?

A In 1987, correct.

Q Did you also analyze the numbers and percentages of minorities and women laborers hired by the Parks Department?

A Yes, we did.

Q What documents did you use to perform this analysis?

A For that, we used Parks Department records that indicated their EEO activity.

Q Is this for laborer hires?

A Laborer hires, right.

Q And for what time frame?

A Well, we analyzed two time frames, fiscal year 1986, which was July 1st, '85 through June 30, '86, and fiscal year '88, which was from July 1st, '87 through June 30, '88.
Q Why did you select those time frames?
A Well, one time frame falls completely before the new directives, and one time frame falls completely after the new directives.

Q Did the percentage of minorities and women hired by the Parks Department increase between fiscal 1986 and fiscal 1988?
A Yes, they did.

In fiscal 1986, out of 540 total hires, 274, or approximately fifty percent, were minorities.

In 1988, out of 385 total hires, 219, or approximately fifty-seven percent were minorities.

Q And how about the percentage of female hires at the Parks Department?
A In 1986, 61 out of 540, or approximately eleven percent were female hires, and in 1988, 53 out of 383, or approximately thirteen percent were female hires.

Q Would it be accurate to say that there was a seven percent increase in minorities and a two percent increase in women hires by the Parks Department between fiscal '86 and fiscal '88?
A Yes, that's correct.

MS. ARCHER: Thank you.
THE CHAIRMAN: No questions.
Thank you, Mr. Levy.
The Commission calls as its next witness,
Helen Mosley.

HELEN MOSLEY, called as a witness,
having been first duly sworn by the Chairman, was
examined and testified as follows:

THE CHAIRMAN: I recognize Peter Bienstock,
the Commission's Executive Director.

MR. BIENSTOCK: Thank you.
Can counsel state his appearance?
MR. MOSLEY: James C. Mosley.

EXAMINATION

BY MR. BIENSTOCK:

Q Good morning, Ms. Mosley.
A Good morning.
Q By whom are you employed?
A The Office of the Mayor, City of New York.
Q For how long have you been so employed?
A Almost four and a half years.
Q Are your responsibilities to supervise the
computerization of the Mayor's Office and the computer
activities of the Mayor's Office?
A That's correct.
Q Since 1984, what building have you worked in?
A 52 Chambers Street.
Q And since 1984 and until recently, has your supervisor been Mr. DeVincenzo?
A Directly or indirectly?
Q Yes.
A I report to Peter Gilvarry, who reports to Mr. DeVincenzo.
Q Now, prior to that, you worked for the City for about two years, first at the Off Track Betting Corporation and then at the Financial Services Information Agency, or FISA; is that correct?
A That's correct.
Q Can you tell us what your Civil Service titles are?
A Currently, my Civil Service title is Computer Systems Manager. Prior to that, at the Mayor's Office, it was Computer Associate - Operations. At FISA, my Civil Service title was Program Analyst and at Off Track Betting, it was Programmer Analyst Trainee.
Q Am I correct that those are all provisional titles?
A Most are all Civil Service titles to which I was appointed provisionally.
So, you have no Civil Service status; is that right?

I'm currently on a Civil Service list for Computer Specialist - Software.

But you have not yet been appointed off the list?

Not yet.

Since 1984, your responsibility for the Mayor's Office computer operation, has that also included the Talent Bank computers?

Yes.

Prior to the time you moved to the Mayor's Office in 1984, when you were employed at FISA, did you attend meetings with Mayor's Office representatives concerning the Talent Bank computer, setting up the Talent Bank computer operation?

Yes, I did.

And during those meetings, were there discussions of what types of information the Mayor's Office personnel wanted in the computer system?

Yes.

Did you understand at that time that they wanted information in the computer system to include political source information?
A They wanted a field to include source information, referral source information.

Q Was that important to them?

A Yes. I would assume that if they asked for any field in the data base, that they considered it important. That was one of the main fields.

Q Did they indicate, in any way, that that field was particularly important to them?

A No, they did not indicate that.

Q Who attended those meetings for the Mayor's Office?

A I did not attend early meetings when the first system was developed. It was later that I attended the meetings. So, I don't know everyone who attended all the meetings, but I do recall that Jim Hein was there, Vickie Moffitt was there, Joy Schwartz was there and Peter Gilvarry was there.

Of course, there were a number of people from FISA, including myself, who were also at some of those meetings.

Q Ms. Mosley, would it refresh your recollection about the importance of the source information in the computer system if I told you that Vickie Moffitt has testified privately to this Commission that it was,
in fact, important to them?

A    Well, if I'm doing the computer part of this work, I wouldn't say this particular field has X percent weight of importance and another field -- if it's there and taking up space, to me, as a programmer, these things would have equal importance. I couldn't make a judgment on them.

MR. BIENSTOCK: Ms. Buolo, would you please show the witness what has been marked at previous hearings as Exhibit 7, what has commonly come to be referred to as the "Black Book"?

(Document handed.)

Q    Now, Ms. Mosley, directing your attention to the Black Book, did there come a time in July of '85 when you created the Black Book?

A    Well, I probably started working on it prior to July, '85, but this book contains a report and, yes, I did this.

Q    Would you tell us, the Commissioners, what the source of the material is that is in the Black Book?

A    The Talent Bank data base information.

Q    That was as of the summer of 1985?

A    Yes.

Q    Would you tell us how you created the Black Book?
A I designed several reports and I printed out
the information in the data base. I told the computer
to print out those reports.

Q Why did you create the Black Book?

A I had just gotten a new laser printer. Prior
to that and currently, also, the reports are printed
out on continuous form computer paper. I thought that
it might be nice to take all the information and to
put it into a looseleaf binder; that it would be easier
to look things up than looking them up on a printout.

So, I put this report together in a book format.

Q And is it divided, the Black Book, into three
different types of reports; one alphabetical by candidate,
second by referral source --

A Yes.

Q -- and the third by vacancy notice?

A Yes.

Q Did you not also create the Black Book because
you wanted to respond to your superiors' complaints
about getting information that they wanted quickly?

A In a timely manner. Well, there were complaints
about getting reports in a timely manner and I thought
that if all the information was in one place and was
updated periodically, they wouldn't even have to ask for
reports. They would have everything.

Q Who was complaining?
A Well, Mr. DeVincenzo was complaining, but I don't recall that he complained directly to me or someone told me that he was complaining.

Q And he was complaining that he couldn't get information quickly out of the computer?
A Yes.

Q Did you select the three types of breakdowns?
A Yes, I did. Doing the report in this format was totally my idea, and I don't think I ever discussed it with anyone. I just did it.

Q Now, after you created that book in July of '85 did you bring it over to City Hall and put it in the custody of Jean Ross, Mr. DeVincenzo's assistant?
A I didn't put it in her custody. I brought it into the office. I told Jean Ross that I had this Talent Bank information in a looseleaf binder, and I asked her if it was all right if I put it on top of the file cabinet where I saw other binders, and she said yes. She said it in a very offhand manner. She really wasn't paying too much attention to what I was saying.

Q And you left it there; is that right?
A Yes.
Q And after that, did you go back and retrieve it at least once?
A Yes, I did.
Q And maybe two or three times?
A I went back at least once, and I took the book and put in updated information. I think I went back on at least one or two other occasions and gave updates to someone over there. They didn't seem particularly interested in them. They may have just thrown them away without putting them into the book. I don't think they were in the book.
Q Each time you made updates and put them in the book, what did you do with the book?
A The one time I clearly recall updating it, I took the book -- well, I think I'll take that back. I don't know that I really recall.
   The one time I updated it, I took it off the file cabinet and put it back on the file cabinet.
Q You put it on a file cabinet in proximity to Jean Ross' desk?
A Yes. It would be about as far away from her desk at that table is from me.
(Witness indicating.)
Q And how far is her desk from Mr. DeVincenzo's
office?

A The door of his office might be eight or ten feet behind the desk.

THE CHAIRMAN: I would note for the record that the witness referred to that table from her, and I would approximate a distance of about six feet.

MR. BIENSTOCK: Thank you, Mr. Chairman.

Q Did you ever see the Black Book anywhere else in Room 1 or in City Hall?

A No, I did not.

Q Did you ever see it in Mr. DeVincenzo's office?

A I did not.

Q Who is Judy Barlowe?

A She's an employee of Mr. DeVincenzo's.

Q If I told you that Ms. Barlowe has testified privately that she observed the Black Book in Mr. DeVincenzo's office, would that change your testimony?

A No, it would not. She worked in there and I did not.

Q Now, did there come a time in February of 1986 that you had a conversation in which Jim Hein asked you to delete certain information from the Talent Bank computer?

A On the day that you are speaking of, I have
to state that I'm not totally clear on everything and I have misrepresented some things, but I'll tell you that as I recall it, yes.

Q Let me ask you, at that time, was Jim Hein your superior?

A No, he was not.

Q You did not report to Mr. Hein?

A I did not.

Q Who did you report to?

A Peter Gilvary.

Q And he reported to Mr. DeVincenzo?

A That's correct.

Q Where did this conversation take place?

A In the Talent Bank room.

Q And who else was present within earshot?

A I clearly recall that Jim Hein was in there and Nydia Padilla was in there, and I was in there and other people were in there, and I don't remember who the other people were.

Q Were the other people within earshot of your conversation, as far as you know?

A I don't know. It's not that large a room where there are a number of people in there. Someone may have overheard the conversation.
Q Was Ms. Padilla within earshot?
A I don't remember.
Q Tell us what Mr. Hein said to you and what you said to him.
A Starting from the beginning, or the part about the referral source?

THE CHAIRMAN: I would suggest the entire conversation.
A The entire conversation, as I recall it, when I went into the room, Jim Hein told me to pull the plug, meaning the plug on the computer.

I said, "What do you think will happen if I pull the plug?"

He said, "Everything will be gone."

I said, "I'm telling you, plug it back in again."

So, he said, "Can you erase it all?"

I said, "I can, but I won't."

Then Jim said -- I said, "What's your problem," and he said something like -- not wanting it to look political and taking out the referral sources he said, "Can you take out the referral sources?"

I said, "I could, but I won't." I may have stated somewhere in that conversation, that unless I got
an instruction from Mr. DeVincenzo, I wouldn't do it, but that was what I was implying, in any case, that if Mr. DeVincenzo didn't tell me to do it, that I wouldn't do it.

So, I suggested to Jim that I could change the referral sources from a name to an abbreviation, which is what I wanted to do, anyway, for the sake of accuracy and consistency. He agreed to that, and I started to work on it at that point.

(Continued on next page.)
Q Did you, in fact, remove the referral source information from the list of candidates who had been hired?

A Yes, I did. I didn't remember that until I saw the tape back-up that I had made that day.

Q I'm about to get to that, Ms. Mosley. You anticipated my question.

At the end of your work on that day, did you make a back-up tape and bring it home?

A Yes, I did.

Q Now, do you recall when I asked you why you brought it home, at your private testimony, you gave two answers, one having to do with wanting back-up material off site?

A That's correct.

Q And could you tell us what the second reason was?

A I was afraid that Jim Hein would erase the data.

Q And you were afraid of that based on your conversation that day with Mr. Hein?

A Yes. Jim Hein was very anti-computer.

Q Now, did you ever bring -- the back-up tape that you made on that day and brought home, did you ever
bring that tape back to work?

A  Yes, I did.

Q  Was that in June of 1988, over two years later?

A  Yes. There's one other thing I might have -- I was trying to think if that was the original tape. It was either the original tape or it was the tape that I might have brought home within a week or so later, after that date. It's possible that that was not the tape I brought home on the day that I made the changes. I might have, a week later, backed up the data base again and brought that one home. I'm not sure. I just won't swear that that was the original tape. It was from, approximately, that time period, within a week or two.

Q  Focusing on the time that you brought it back to the office, --

A  Yes?

Q  -- at that time, did you perform statistical analyses off of that data base on the office computer?

A  Yes, I did.

THE CHAIRMAN: Have you identified the time?

MR. BIENSTOCK: I thought I did, Mr. Chairman.

Q  This is June of 1988, is that right?

A  That's correct.

Q  Why did you do that?
A What the time contained was, in effect, a snapshot of the data as it looked on that particular day, and before I informed my superiors that I had it, being that I was the computer person, I thought I should also be able to inform them as to what the -- type of data it was and what was in there. I thought, also, that it might be helpful. At the time, there were reports in the paper about this Commission, and I was rather distressed by them because they were substantially different from my own knowledge and experience of the Talent Bank.

Q Did you do the statistical analyses because you thought it would be helpful to Mr. DeVincenzo's defense?

A No. I did it because I hoped it would be helpful to the Mayor's Office in general and to Mr. DeVincenzo. I wasn't aware at that time that he would need any kind of defense.

THE CHAIRMAN: Can I just be sure that the record is clear? You worked out, in June of 1988, a snapshot from this computer disk, a snapshot of the period of time in 1986; correct?

THE WITNESS: That's correct.

THE CHAIRMAN: I take it that that period of
Mosley

time, in 1986, was February of '86?

THE WITNESS: Yes.

THE CHAIRMAN: Thank you.

THE WITNESS: Or, possibly, late January.

Late January or February.

THE CHAIRMAN: Thank you.

Q Now, you were having conversations with the Commission's staff around about that time, June of 1988; is that right?

A That's correct, May and June of '88.

Q Did you inform us that you had that back-up tape at that time --

A No, I did not.

Q You have to allow me to finish so that Mr. Nissenbaum can get it.

A Sorry.

Q Did you inform Commission's staff at about that time that you had the back-up tape?

A No, I did not inform Commission staff at that time that I had the back-up tape.

Q Did you promptly inform Mr. DeVincenzo that you had that back-up tape?

A I would say not promptly.

Q Within a week?
A I don't think so.

Q I want to direct your attention to the exhibit book on the table -- I believe there's one for counsel, as well -- and ask you to look at Exhibit 20 in that book.

A Yes.

Q Ms. Mosley, Exhibit 20, is that a letter that you prepared on or about June 21st, 1988 and hand delivered to Joe DeVincenzo?

A Yes, it is.

Q Does that refresh your recollection about how promptly you informed him of the existence of a back-up tape?

A I found the tape after the first time I went to the Commission and before the second time I went to the Commission. I don't remember the exact dates, so, how promptly it was, it seemed like a very long time to me because I was distressed when I found it.

MR. BIENSTOCK: For the record, the first paragraph of the letter reads: "Last week I discovered a back-up copy of the Talent Bank data that was made early in 1986 on the day the State Committee is questioning us about."

Q When you said, "on the day the State Committee
is questioning us about," you understood that Mr. Devincenzo would understand what you were referring to, right?

A  Well, I assumed that he would understand what I was referring to since it had been in the newspapers, and so forth.

Q  What did you mean by, "the day the State Committee is questioning us about"?

A  The day that I made those changes to the data base and the day that, allegedly, certain documents were destroyed by the Talent Bank staff.

Q  Now, you hand delivered this letter to Mr. DeVincenzo; is that correct?

A  That's correct.

MR. BIENSTOCK: For the record, Mr. Chairman, I want to state that this letter, Exhibit 20, has been produced for Commission staff by Mr. DeVincenzo's private counsel on request of the Commission.

Q  There are misstatements in Exhibit 20, are there not, Ms. Mosley?

A  Yes.

Q  Let's take them one at a time. In the, "For example," paragraph, you said, on June 21st, 1988,
"Most of the referral sources were not political."

You had no idea, did you, what a political source was?

A Well, I had -- I have an idea of what a political source is not.

Q Did you make a misstatement when you said, "Most of the referral sources were not political"?

A I didn't think I did.

Q Did you testify under oath that you did?

A That I made a misstatement?

Q Yes.

A I might have testified under oath that I wasn't sure, that I didn't know.

THE CHAIRMAN: I would suggest that the witness be shown the testimony in question.

MR. BIENSTOCK: Absolutely.

A When I wrote this, I looked at the data that I had and I made a judgment that most of the political sources were not political. When I wrote this, I don't -- I wasn't lying in this letter to Mr. DeVincenzo, knowingly.

Q Ms. Mosley, I want to direct your attention to page 288 of your deposition.

THE CHAIRMAN: Can we get a date on the
deposition, please?


Q Do you recall being deposed in our office two weeks ago?

A Yes, I do.

MR. BIENSTOCK: Do you have it, counsel?

MR. MOSLEY: That's the last time she was here?

MR. BIENSTOCK: Yes.

MR. MOSLEY: Yes, I have it.

Q Line 20, page 288. I want to read to you the questions and the answers.

"Question: So how would you know that most were not political?

"Answer: This is actually a little bit of an error, too, because it shouldn't have said, 'most of the referral sources were not political,' since I don't know which ones were political. It should have said, 'most of the candidates were not referred,' that's how I should have stated it."

Does that refresh your recollection as to whether you testified that you were in error?

A You were asking me a lot of questions that day and I was getting a little bit uptight about the
terminology this way and that way. What is it that you're asking me here?

Q When you said on June 21st, 1988, to Mr. DeVincenzo, in writing, that, "Most of the referral sources were not political," did you have a basis for making that statement?

A Yes.

Q How did you know which referral sources were political and which were not?

A I knew which were not, and I assumed that if an elected official sent in one or two resumes, that wasn't a political referral, that was just somebody sending in a resume.

THE CHAIRMAN: Can I interject again?

I take it, that at the deposition session in question, the witness was represented by counsel.

MR. BIENSTOCK: Absolutely.

Q Let's take the next statement.

"A small percentage, about twelve percent of the politically referred candidates, got jobs."

Was that an accurate statement at the time you made it?

A No.

Q What should it have said?
A    It should have said, "A small percentage, about twelve percent of the referred candidates, got jobs." I think I picked up the expression, "politically referred," from the newspaper.

Q    I'm sorry. I missed the last part of your answer.

A    I said I think I picked up this expression, "politically referred," from the newspaper. What I actually meant was, "referred" and not "politically referred."

Q    So that the small percentage were those who were referred by political sources --

A    I wasn't separating --

Q    Can I finish? -- and those who were referred by sources which weren't political; is that right?

A    When I used this expression here, "politically referred," I meant was referred, only referred, all referred.

Q    Now, skipping down to the fourth statement in the "For example." The first sentence says, "No records of resumes, vacancy notices or hires were removed from the computer."

A    That's correct.

Q    Is that a correct statement?
A To my knowledge, it is a correct statement unless others of the Talent Bank staff removed some of these records that were all still there.

Q So when you testified that you removed the political source information with respect to hireds, you weren't including that in the phrase, "No records of hireds were removed from the computer"?

A Okay. A record means a whole record, name, address, the agency that hired, salary, the title they qualify for, the areas of expertise, et cetera. That's the whole record.

A field means one item in that record. So, "No records were removed," to my knowledge, unless someone else did it, would be a correct statement.

Q I believe, in response to one of my questions before, you said that, "The day documents, allegedly, were destroyed."

A Yes.

Q Were documents destroyed in the Talent Bank on --

A I have heard that they were.

Q You were in the Talent Bank; is that right?

A Yes, I was.

Q Now, moving forward, later in 1988 or early
this year, did you meet at the City offices with private attorneys for Mr. DeVinzenzo?

A I believe there was a meeting in the training room and I sort of forgot about that because -- until you mentioned it, and I'm really not clear on it. I also met with someone from Mr. DeVinzenzo's attorney's office who came to my office and looked at some of the data that was in this -- in the computer from February of '85 -- '86.

Q Did you turn over to Mr. DeVinzenzo's private attorneys, statistical information which you thought would be helpful to Mr. DeVinzenzo's defense --

A Yes, I did.

Q Excuse me. I'm sorry. I know it's a burden on you, Ms. Mosley. It's also a burden on Mr. Nissenbaum. If you don't wait until I finish, he can't record it.

Q Did you turn over statistical information to Mr. DeVinzenzo's private attorneys which you believe would be helpful to Mr. DeVinzenzo's defense?

A I gave some information to Mr. DeVinzenzo's private attorneys, and I thought that it would be helpful, yes.

Q Did you ever hear back from them?

A No.

Q Now, I want to move even further forward to
current days. Have you been working, in the last few
weeks, on statistical analyses from the Talent Bank
data base tape that you testified to previously?

A Yes, I have.

Q Have you also included in the data base,
information from the "Black Book" that you created
in the summer of 1985?

A I was instructed not to discuss this because
-- and I believe that the reason is, it's lawyers' work
and, therefore, I shouldn't discuss it. I've never
been released from those instructions, so I don't know
if it's okay to discuss it now.

Q Is that an indication of some sort of
privilege?

MR. MOSLEY: I was not the attorney --

THE CHAIRMAN: Are you here as her attorney?

MR. MOSLEY: I am today.

THE CHAIRMAN: I would suggest that there is
a question that has been asked of the witness. If
the witness could confer with her counsel, and after
conferring with counsel, perhaps she can answer the
question.

Can we have the question read back, please?

(The record was read by the reporter.)
MR. MOSLEY: I think she can answer the question.

THE CHAIRMAN: Excuse me?

MR. MOSLEY: I think she can answer the question.

THE CHAIRMAN: Fine.

A Most of the data that was in the "Black Book" was still in the data base in February of 1986. It had not been removed.

Q You recall, we discussed the subject two weeks ago, and you said that you were working on a project which, if you could do everything you wanted to do, would take you three or four weeks; do you recall that?

A Yes.

Q Did you give that testimony?

A Yes, I did.

Q Now, just a few more questions, Ms. Mosley.

A That was not the data that I worked on for the Mayor's counsel. That was other things I was doing on my own that I did not complete that portion of it.

Q But you've completed analysis for Mayor's counsel, haven't you?

A That's correct.
Q Now, just harking back to the day in 1986, February --

MR. SCHWARZ: Can we find out if that analysis has something to do with what we are talking about now?

MR. BIENSTOCK: I'll get into it, if you want.

MR. SCHWARZ: Is it relevant to this issue?

Q Let me read you a statement, Ms. Mosley.

"We recently did an analysis of a document referred to by the Commission as the 'Black Book.' That document contains the names of a certain number of pending candidates in the Talent Bank files as of August of 1985, breaks down how many of those were street resumes, how many had specific referral sources, how many had an unknown source referral. We tracked all of those candidates to see who received job offers."

I am reading, for the record, from the Mayor's statement, which I saw for the first time this morning, pages 19 and 20.

What I just read to you, does that sound like a product of the work that you have done recently?

A Yes.

Q Going back to the day in February, 1986, did
you see documents being destroyed on that day?

A No. I was working at the computer, which faced the wall.

Q I'm sorry?

'A I was working at the computer, and I was facing the wall, so I didn't see anyone destroy any documents --

Q You were working --

A -- that I recall.

Q How long were you in that room?

A I was in the room for several hours. I really don't remember whether it was closer to two hours, or closer to five hours. It seemed like a very long time, but I don't know how long it was.

Q And you spent all of that time facing the wall?

A Unless I got up and left, and came back for some reason.

MR. SCHWARZ: Is this the same room? Can we get a description of it?

MR. BIENSTOCK: Yes.

Q I believe you testified before that this is the small room; is that right?

Q Well, it was a small room for the number of
people that were in there.

Q     How many people were in there?

Q     I think there were about six desks in there, and it seemed, you know -- it wasn't terribly cramped, but it was -- there was certainly not much space.

Q     Were there at least six people in there on that day?

A     I'd say that there were surely at least five people in there, and possibly more.

Q     Now, you were in there, and that wasn't your usual work station; is that right?

A     No, not at that time. Prior to that, I had worked in that room.

Q     And Mr. Hein, you testified, was in there, and that wasn't his work station?

A     That's correct.

Q     Now, I just want to be clear. I believe you testified about this previously, but just to be clear, on that day, is it the case that you erased from the computer data base the referral source with respect to hired candidates?

A     That has to be correct. I don't recall doing it, but it -- it wasn't on the tape, so I must have done it.
I'd like to say, the reason I probably did it was that I was having trouble with the data base crashing, and just did something for the sake of expediency.

MR. SCHWARZ: Can we get that answer read back, please?

(Record read.)

Q So that, is it your testimony that you erased the referral source out of expediency?

A Yes. Should I explain that?

THE CHAIRMAN: Yes, would you?

A When you're working, at that time, because the software wasn't very good -- it wouldn't happen now, but it did then -- you would work with a big data base and try to change the structure. It sometimes would crash and start turning into machine code. Then, whatever I was doing, I would have to start it all over again. I may have done that a number of times, and then finally just accepted whatever I had at a certain point, and saved it that way. I didn't purposely go to remove the referral source from hireds.

Q Now --

MR. SCHWARZ: Can I get that answer read back?

(Record read.)
Q Now, is it your testimony that you didn't observe what people were doing on that day?

A It's my testimony that I don't remember, specifically, what people were doing that day.

Q Did you observe anyone removing materials in green garbage bags?

A I heard people did that, and I may have seen it. I just don't clearly recall that I saw it.

MR. BIENSTOCK: Mr. Chairman, I have no further questions.

THE CHAIRMAN: Commissioner Hynes.

COMMISSIONER HYNES: I just have some clarifying questions, Ms. Mosley.

You testified that Jim Hein came to you one day and told you that he wanted to "pull the plug", and you had a conversation with him about "pulling the plug", and he further stated that he wanted to remove referral source information, because he did not want it to look political.

The field that you removed information from was the referral source field; is that correct?

THE WITNESS: Well, first of all, he didn't come to me. I was called to come into --

COMMISSIONER HYNES: But that was the gist of
the conversation, whether he came to you or you came to him? The gist of the conversation was that he wanted you to remove referral source information; isn't that correct? That's what you testified to earlier?

THE WITNESS: Yes.

COMMISSIONER HYNES: Okay. And, indeed, it was the referral source information field that you did remove information from?

THE WITNESS: In the hireds, not in the candidate.

COMMISSIONER HYNES: Did you remove information from any other field other than a referral source on that day?

THE WITNESS: I noticed in the hired, not one, but two fields were missing, both the area field and the referral source field.

COMMISSIONER HYNES: The area field is what?

THE WITNESS: The area field is area of expertise, and that's where I put the referral source abbreviation in the candidate field, and where I intended to put the referral source information in the hired field. The fact that both of those were missing would indicate to me something
occurred, and probably a number of times, when I was attempting to make that --

COMMISSIONER HYNES: You also testified this morning when you had the conversation with Mr. Hein about "pulling the plug," that you told him you would not remove information unless Mr. DeVincenzo told you?

THE WITNESS: That's correct.

COMMISSIONER HYNES: Did Mr. Hein give you assurances that Mr. DeVincenzo -- that this was the wish of Mr. DeVincenzo, to remove referral source information?

THE WITNESS: No, he did not. I had quite the opposite impression, since he didn't push it when he told me to erase it.

COMMISSIONER HYNES: But you, nonetheless, went ahead and removed it?

THE WITNESS: Well, I changed it. I went ahead and changed it.

COMMISSIONER HYNES: Did you have a conversation with Mr. DeVincenzo before you removed it?

THE WITNESS: No, I didn't.

COMMISSIONER HYNES: Was there -- did anyone, anybody else, give you assurance, other than
Mr. Hein, that this was something Mr. DeVincenzo wanted you to do?

THE WITNESS: No.

COMMISSIONER HYNES: Did you become convinced that it was something he wanted you to do before you removed it?

THE WITNESS: No.

COMMISSIONER HYNES: Was there anything that made you change your mind from the earlier statement that you wouldn't remove information unless you were assured it was Mr. DeVincenzo's wish?

THE WITNESS: No.

COMMISSIONER HYNES: I have no further questions.

THE CHAIRMAN: Mr. Schwarz?

MR. SCHWARZ: Commissioner Hynes asked my questions.

THE CHAIRMAN: Thank you very much.

(Whereupon, the witness was excused.)

THE CHAIRMAN: The Commission calls the next witness, John LoCicero.

JOHN L O C I C E R O, called as a witness, having been first duly sworn by the Chairman, was examined and testified as follows:
THE CHAIRMAN: Please be seated.

(Witness complies.)

THE CHAIRMAN: Counsel, would you please identify yourself for the record?

MR. KASANOF: My name is Robert Kasanof.

THE CHAIRMAN: I recognize the Commission Deputy Counsel, James McGuire.

MR. MC GUIRE: Thank you, Dean Feerick.

EXAMINATION BY

MR. MC GUIRE:

Q Good morning, Mr. LoCicero.

A Good morning.

Q Mr. LoCicero, could you begin by telling us your present position in the Mayor's Office?

A I'm a Special Adviser for the Mayor.

Q How long have you been the Mayor's Special Adviser?

A Almost twelve years.

Q Basically, could you give us a synopsis of your duties as Special Adviser to the Mayor?

A Yes. I am in charge of the unit called the Community Assistance Unit. We deal with community boards, community groups, I interface with the elected officials, I work with our lobbying offices in Albany,
Washington, I work with the City Council and the Board of Estimates.

Q Has one of your functions as a Special Adviser to the Mayor been to review resumes of job candidates?
A That's one of them.

Q How did that responsibility come about?
A When the Mayor first became Mayor, everybody started sending resumes from all over the country, all over the City, and we had thousands of resumes, and they sent them in to me. That was in the beginning.

Q Were they all sent to you, the resumes?
A I don't think so, but a lot of them were.

Q Were they sent to other employees of the Mayor's Office, and they would forward them to you?
A I think they were also sent to the Deputy Mayors and to Commissioners. There was no system.

Q Was it at the Mayor's request that you reviewed resumes that came in in 1978?
A No, it just evolved.

Q Over the course of the following years, did you continue to receive resumes?
A On a much less basis. It trickled down.

Q Could you give us an approximate idea of the volume in later years?
A I don't know, twenty a month.

Q Did the Mayor ever communicate any policy to you with respect to reviewing these resumes?

A The Mayor said, at the beginning of the Administration, "John, just submit resumes, don't propose, don't tell people who to hire. Just circulate resumes."

That's what he said in the beginning, and he continued to say that.

Q Did he say anything about whether anybody could submit a resume?

A Yes, anybody could submit a resume.

Q I'd just like to define a term, Mr. LoCicero, the term "political figures", so we both understand each other.

By that term, I mean to include persons who were elected to public offices, and persons holding political party offices, such as County Leaders and District Leaders.

My question is: Did political figures, as I've just defined that term, forward resumes to your office?

A Yes.

Q When you did receive a resume from a political figure, was the resumes usually accompanied by some sort
of cover letter or note?
   A Yes.
   Q Did those cover letters or notes ever indicate
that the candidate being referred was important to the
political figure?
   A I don't think so, but they might have said,
from time to time, "this is important to me." But, over­
all, no.
   Q Well, if they ever indicated that, do you have
a recollection as to whether you did anything different
when --
   A No.
   Q Did any letters from political figures ever
request any special information?
   A I'm sure from time to time they did.
   Q Would you give any kind of special attention
or special consideration?
   A No.
   Q When you forwarded resumes to agencies,
Mr. LoCicero, who did you send them to?
   A To Commissioners.
   Q Did you have any practice with respect to
sending along with the resumes any cover letters from
political figures?
A I think that most of the time I did not send
a cover letter.

Q Is there a reason why you did not send a cover
letter most times?

A I did not want an advantage or disadvantage
either way.

Q Did you from time to time when you sent a
resume to a Commissioner indicate the identity of the
person who had referred the person to you?

A It's possible that it happened.

Q If it did, was it accidental or intentional?

A Accidental.

MR. KASANOF: May I have the indulgence of
the Commission?

THE CHAIRMAN: Would you like to confer
with your client?

MR. KASANOF: I would love to.

THE CHAIRMAN: Oh, absolutely.

(Pause.)

Q Mr. LoCicero --

MR. KASANOF: Excuse me: May I invite counsel
to permit the witness to clarify his answer?

THE CHAIRMAN: If the reporter could read
the question and answer, the witness' response?
1  (A portion of the record was read by the reporter as above requested.)

2  A When I say accidental, I mean to say that it wasn't part of my system.

3  Q Did you ever tell Mr. Skurnik that you didn't think it advisable to send cover letters when you sent resumes to Commissioners?

4  A I don't think I had a conversation with Mr. Skurnik one way or the other.

5  Q Do you know what Mr. Skurnik's practice was with respect to forwarding resumes?

6  A I have now learned that he always sent a cover letter.

7  Q At the time Mr. Skurnik worked for you, you didn't know one way or another?

8  A No.

9  Q Mr. Skurnik stopped working for you in about June of 1986; is that right?

10  A Yes.

11  Q When you, yourself, forwarded resumes to agencies, did your secretary type up cover slips for you, transmittal memoranda?

12  A Yes.

13  Q Did you check to see if they included a
cover memo or not?

A    I might have. I would just sign it most of the time just relying on her efficiency.

Q    Did you ever give your secretary any instructions as to whether or not the cover letter should be included or not?

A    I don't recall.

Q    Mr. LoCicero, did there come a time when, in addition to sending resumes to agencies, that you also sent them to Mr. DeVincenzo's office?

A    Yes.

Q    And was that in the second administration?

A    I really don't know when it started.

Q    Do you have a recollection as to whether or not it was around the time the Talent Bank was created?

A    It was probably before that.

Q    Whenever it was that you started to send resumes to Mr. DeVincenzo's office, did you just send the resumes to Mr. DeVincenzo's office or would you send any cover letters relating to the resume you received?

A    I probably sent everything to him.

Q    Any reason why you sent everything to Mr. DeVincenzo and not to the Commissioners?
A He is part of City Hall. I mean he was part of City Hall.

Q Did you and Mr. Skurnik contact County Leaders or other political figures to invite them to submit names of candidates for laborer positions?

A Yes.

Q Whose idea was that, Mr. LoCicero?

A Are you talking about when we set up the Talent Bank?

Q No. My question was whether you or Mr. Skurnik contacted County Leaders or other political figures to invite them to submit names for laborer positions?

A I don't know whose idea it was. We did it.

Q Do you have any recollection of a meeting attended by yourself and Deputy Mayor Brezenoff or Deputy Mayor Leventhal during the course of which Deputy Mayor Leventhal or Deputy Mayor Brezenoff said that County Leaders should be contacted with respect to laborer vacancies?

A I don't remember.

Q In any event as between yourself and Mr. Skurnik, who contacted County Leaders and other political figures with respect to laborer vacancies?
AUsually Mr. Skurnik.

QWas the Manhattan Democratic County Leader called and invited to submit names for laborer vacancies?

ANot that I recall.

QDo you have an understanding concerning the reason why the Democratic -- Manhattan Democratic County Leader wasn't contacted?

AWell, after 1982, I never called the County Leader and he never called me.

QDid you ever instruct Mr. Skurnik that he shouldn't call the Manhattan Democratic County Leader?

AI think it was understood.

QDid you discuss the subject of not contacting the Manhattan Democratic County Leader with any Deputy Mayor or the Mayor?

ANo.

QDid you or Mr. Skurnik ever send more of the County Leaders laborer candidates in response to complaints by County Leaders?

AI don't know. It's possible, though, a County Leader may have complained that they weren't getting enough positions and Mr. Skurnik may have tried to resolve it, but I don't remember.

QWell, do you have a recollection of County
Leaders complaining that they weren't getting enough positions?

A They complained about everything.

Q So it's your testimony that you recall that there were complaints from County Leaders, but you don't recall whether Mr. Skurnik did anything in response to those complaints or not?

A That's correct.

Q Did you and Mr. Skurnik ever send more candidates from a County Leader in response to the County Leader or the Borough President from that county taking some action that you viewed as favorable to the administration?

A Could you repeat that question, please?

Q Did you and Mr. Skurnik ever send more laborer candidates from a County Leader in response to the County Leader or the Borough President from that county having taken some action that you viewed as favorable to the administration?

A No, and there was never any on my part, in my head, any reward or punishment for anything anybody ever did. It was never a quid pro quo.

Q Do you have any recollection of Mr. Skurnik ever saying to you that a particular political figure
has just taken some action and asking you whether you
thought that he should send a few more names?

A I don't remember that at all.

Q When Mr. Skurnik called County Leaders with
respect to the laborer vacancies, did he ever ask County
Leaders or their representatives to submit names of
minority candidates?

A Well, he should have if he didn't. I don't
know.

Q Did you ever tell him that he should?

A I was always looking for minorities. I
know I did and I assumed that he did because I would
call minority legislators and try to get minorities.

Q Well, did you ever tell or instruct Mr.
Skurnik that when he called County Leaders, he should
ask them to supply the names of minority candidates?

A I can't tell you what I said six years ago,
but I'm sure I told him to. I can't say for sure, but
I know that's what I did and I assumed that I told him
to, but I can't say -- you know.

Q Did you contact County Leaders with respect
to laborer vacancies?

A Yes, once in a while.

Q Do you recall whether you asked County
Leaders at any time --

A  I always did.

Q  Did County Leaders provide names of minority candidates in response to your requests?

A  I'm sure they did.

Q  Do you know whether they did or not?

A  You look at the paper and how can I tell?

Q  County Leaders would send lists of candidates to your office for laborer positions; is that right?

A  Yes.

Q  Did those lists contain information concerning the ethnicity of the candidates?

A  No.

Q  Did Mr. Devincenzo receive names of laborer candidates from County Leaders and other political figures?

A  I assume he did.

Q  Do you have a recollection of him ever telling you that he received names of laborer candidates from County Leaders and other political figures?

A  I have no recollection of that.

Q  If Mr. Devincenzo or his staff were receiving candidates for laborer positions from County Leaders, would you have wanted to know about it?
A Yes.

Q For what purpose?

A I like to know what's going on.

Q The Commission, Mr. LoCicero, has received evidence yesterday and last January that most of the candidates interviewed for laborer jobs by the Department of Transportation and the Department of Environmental Protection in 1983 through 1985 were candidates referred by City Hall.

Was that your understanding?

A I don't understand your question.

Q The Commission has received evidence that in 1983 through at least 1985, when DEP and DOT interviewed candidates for laborer positions, most of the candidates were candidates referred by City Hall and my question is: Was that your understanding in 1983 and 1984 and 1985 that agencies were primarily interviewing City Hall candidates?

A I didn't know they primarily -- I thought they also received through other sources. I didn't know that it was just primarily City Hall.

Q Did you learn about laborer vacancies from time to time?

A Yes.
Q Who would you learn from?
A Mr. DeVincenzo.

Q Could you please take a look at Exhibit 57?

MR. MC GUIRE: Mr. Kasanof, I believe there's
a binder there and the tab will have the exhibits
handy.
A 57?
Q Yes, 57.

MR. MC GUIRE: For the record, 57, Mr. Chair-
man, is a memorandum addressed to Jerry Skurnik
from Jeffrey L. Summer and it's dated August 22nd,
1983.

Q In about August of 1983 do you recall seeing
this particular memorandum at any time?
A No.
Q Did you receive at any time communications
from agencies asking you if a potential hire who had
been hired by a political figure was acceptable to you?
A Yes.
Q Was that a regular occurrence?
A I doubt it.
Q What would you do in response to communica-
tions from agencies asking you if a potential hire who
had been referred by a political figure was acceptable?
A I would see if I had an option with another candidate.

COMMISSIONER HYNES: We didn't hear the answer.

THE WITNESS: I said I would look to see if I had other candidates to submit also.

Q Would you always look to see if you had other candidates?

A Most of the time.

Q Did you sometimes not look for other candidates if the potential hire had been referred by a political figure that you viewed as favorable to the administration?

A Probably I wouldn't.

Q In other words, if you understood that the potential candidate had been referred by a political figure whom you viewed as favorable to the administration, that you might not look for additional names?

A That's true.

Q Do I take it, then, that if you learned that the potential hire had been referred by a political figure whom you viewed as an opponent of the administration you would be more likely to look for names?

A I usually didn't try to help people who were
trying to hurt me.

Q Well, my specific question, though, was:
Were you more likely to look to find other names when
you learned that the potential hire had been referred
by someone whom you viewed as an opponent of the admin-
istration?

A That's true.

Q Did you ever tell an agency in response to
being asked whether a potential hire had been referred
by a political figure --

MR. McGUIRE: Let me rephrase the question.

I'm sorry.

Q Did you ever seek to veto a hire, potential
hire at an agency on account of the political figure who
had referred the potential hire to the agency?

A Not from the source. It would be for the
candidate if I didn't think the candidate was good.

For instance, you mentioned Manhattan.

It happens to be that Denny Farrell is a friend of
mine. I wouldn't try to hurt him. I may call up
Fred Samuel and tell him, Fred, do you have a candidate?

I knew he would give me a minority and I
would try to do it that way, but I -- you use these
terms -- Denny Farrell happens to be an Assemblyman.
Locicero

He always votes most of the time with the administration. He helps in a lot of ways. It's not that I'm trying to hurt him, but if his candidate I didn't think was particularly good, I would try to get an option, another candidate.

Q My narrow question was whether, in response to inquiries from agencies, whether a person was acceptable or not, did you ever tell an agency that the candidate, the potential hire was not acceptable?

A I don't ever recall doing that. It's possible that it might have happened in twelve years, but I don't recall ever doing that.

Q Could you please take a look at Exhibit 58.

MR. MC GUIRE: Mr. Chairman, for the record, Exhibit 58 is a memorandum to Mr. Brezenoff from Mr. DeVincenzo dated March 26th, 1987.

Q I would like to direct your attention --

MR. KASANOF: Excuse me.

(Pause.)

MR. KASANOF: Yes? I'm sorry.

THE CHAIRMAN: Is there a question?

MR. MC GUIRE: Yes.

Q I want to direct your attention to the second to the last sentence of Exhibit 58 which read as follows:
"Recently we have been receiving pressure from Ross Sandler, Bob Esnard and others saying that the Talent Bank is being too objective in its selection."

- Did you ever voice any complaints or say to Mr. DeVincenzo that the Talent Bank was being too objective in its selection of laborer candidates?
  A I don't know what he means by "too objective."

Q Well, did you use those words?
A No.

Q Did you ever voice any complaints to Mr. DeVincenzo about the Talent Bank's selection of laborer candidates?
A We were having a problem getting them through. We thought the computer, or whatever, wasn't operating properly.

Q What kind of problems does the computer have?
A We weren't getting any jobs coming out.

Q When you say "we weren't getting any jobs," who are you referring to?
A The people we were submitting weren't coming out. None of them were coming out.
Q The people who were referred by political figures?
A The people that I referred, whether political, community or union people.
Q Were the people you referred primarily people who were referred primarily by political figures?
A I would say they probably were.

MR. SCHWARZ: Can we get a time frame on this?
Q Mr. LoCicero, you indicated that there were problems with the computer selection; is that right?
A Yes.
Q And do you have a recollection as to when the Talent Bank instituted a system of computer selection of laborer candidates?
A Oh, it was probably the beginning of 1986.
Q So, these problems with candidates being referred by your office not getting enough placements, that was after 1986?
A Yes.
Q Now, do you have an understanding concerning why the Talent Bank process was changed to have a computer selection process for laborer vacancies?
A The Mayor has always been for a lottery
system and we had a meeting -- I can't remember when, but he insisted that it be a lottery system put into the computer.

THE CHAIRMAN: Can you give us a date in terms of a year?


THE CHAIRMAN: Thank you.

Q The idea of instituting a selection system, computer selection system, had that been discussed with the Mayor --

A I can't recall. He did that on the summer job program. When he first became Mayor, he insisted that the summer jobs be selected by a lottery. He had always been for that. Whether we had conversations about that afterwards, I don't recall.

Q Do you know of any reason why the computer selection process wasn't instituted earlier?

A I don't think anybody thought about it.

Q I want to direct your attention to the period following the time Mr. Brezenoff became the First Deputy Mayor. Did he ever say anything to you about having to increase the number of minority laborer hires?

A Yes.
THE CHAIRMAN: Can we get a date on that?

MR. MC GUIRE: I was just about to do that.

Q Do you have a recollection as to when Mr. Brezenoff became First Deputy Mayor?

A I can't recall the date, no.

Q Would it jog your recollection if I told you that it was in late 1985?

A No. You are wrong. You said --

Excuse me. Would you repeat your question?

Q Let's take it this way: Mr. Brezenoff became a Deputy Mayor some time in early 1984; is that right?


Q He became First Deputy Mayor in 1985?

A I'm sorry. As far as I was concerned he was always that.

Q Is it your recollection that Mr. Brezenoff said something about increasing the minority laborer hires after he became a Deputy Mayor?

A Yes.

Q So, it would have been some time in 1984, do you believe?

A Yes.

Q What did Mr. Brezenoff say about increasing
the number of minority hires?

A He said the figures that are coming in show that there are not enough minorities in laborers. He said would you try harder?

I said I always do, but I'll try harder.

Q Did you try harder thereafter?

A Yes.

Q What did you do?

A I called around and said I wanted more minorities.

Q County Leaders and others?

A Yes.

Q Could you take a look at Exhibit 59, please, Mr. LoCicero?

MR. McGUIRE: Mr. Chairman, it's a letter to Jerry Skurnik dated May 22nd, 1984 from Nicholas LaPorte.

MR. KASANOF: Could I inquire through the Chair: Would counsel be gracious enough as to the previous exhibit whether my client had ever seen it before it was shown to him by the Commission and whether contemporaneous with the memo here, he had an understanding of its existence?
THE CHAIRMAN: Mr. McGuire.

MR. MC GUIRE: I would be happy to ask the question.

Q With respect to Exhibit 58, do you recall when you first saw Exhibit 58?

A Your office.

Q Is that within the last month?

A Yes.

Q Can we turn now to Exhibit 59. Did you know County Leaders were referring candidates in priority orderings to Mr. Skurnik?

A I assume so, because they didn't all get people placed, so they might have said, you know, I would rather have this person than that person. I just assume it.

Q You don't have any recollection of seeing letters from County Leaders with candidates in priority order?

A No.

Q Did you have any understanding concerning whether Mr. Skurnik did anything when he received lists of laborer candidates in priority order?

A I just assumed he submitted them.

Q When you say, "submitted," submitted the
entire list?

A Yes.

Q You don't know whether Mr. Skurnik sent only the first few candidates in priority order and held back on the others?

A I don' know.

Q Would you take a look, please, at Exhibit 60?

MR. KASANOF: May we have the same question put as to Exhibit 59 or would --

THE CHAIRMAN: I would like to ask counsel to do so.

MR. MC GUIRE: I'm happy to do so.

Q Do you have any recollection of seeing this particular letter, Exhibit 59?

A No.

Q But, nonetheless, I take it, I believe you said it's your assumption that Mr. Skurnik was receiving lists of candidates in priority order?

THE CHAIRMAN: I'm not sure the witness heard the last question. Let's go back, Mr. LoCicero. There was a question asked. I don't believe you heard it.

I would ask the reporter to read the question, please.
(The pending question was read by the reporter.)

A Yes, and the first time I saw this was in your office.

THE CHAIRMAN: And, "this" refers to exhibit --

MR. KASANOF: 59.

THE CHAIRMAN: Thank you.

Q Do you have Exhibit 60 in front of you, Mr. LoCicero?

A Yes.

Q Have you ever seen this document, Exhibit 60, before?

A The first time in your office.

Q Does the name Gabriel Resnick ring a bell to you?

A It does not. I mean now, because you showed it to me in your office.

Q At that time, when I first showed it to you, you didn't recall Gabriel Resnick?

A Right.

Q Did you ever tell Mr. DeVincenzo or a member of his staff that a candidate referred by you had to be placed?

MR. KASANOF: Could I ask the Chairman to
have counsel be a little more fixed as to time
and place?

THE CHAIRMAN: Counsel?

Q Well, let's focus first on the period follow-
ing the creation of the Talent Bank. Did you ever tell
Mr. DeVincenzo or a member of his staff that a candidate
had to be placed?

A It's possible that I might have said that I
would like this person hired, but I don't recall. From
time to time, I might have said that.

Q Did you ever tell Mr. DeVincenzo, in the
period after the creation of the Talent Bank, that you
favored one candidate over another?

A It's possible.

Q Why might you have favored one candidate over
another?

A I might have known the person.

Q Any other reason?

A I can't tell you one right now.

Q When you say, "the person," are you referring
to the candidate or the person who referred the candi-
date?

A The candidate.

Q Did you ever express to Mr. DeVincenzo that
you favored one candidate over another because the person who had referred one of the candidates was not getting his or her fair share?

A It's possible.

MR. MC GUIRE: One moment, please.

(Pause.)

Q Let me just see if I can perhaps refresh your recollection.

MR. MC GUIRE: Mr. Kasanof, I assume you have available to you page 143 of Mr. LoCicero's deposition.

MR. KASANOF: No. I don't bring that stuff with me.

MR. MC GUIRE: We will make it available to you. It is, in fact, there.

MR. KASANOF: Is this it? Thank you very much.

THE CHAIRMAN: What page are you referring to?

MR. MC GUIRE: 143.

MR. KASANOF: 143.

MR. MC GUIRE: Line 15.

Q "Question: When you indicated to Mr. DeVincenzo at times that you preferred someone to
be hired, what reasons might have prompted you to inform Mr. Devincenzo that you preferred that somebody be hired?

"Answer: Well, one, that the person who was submitting the name hadn't been getting his fair share. Two, it might have been a minority, if I knew about it. Three -- that's it.

"Question: When you indicated one reason might be because the person submitting might not be getting his fair share, do I understand you to be referring to, by the use of the word 'person,' a political figure, as we've defined that term previously?

"Answer: Right."

A  Okay. Yes.

Q  So do you have -- my question is: Do you have a recollection of telling Mr. Devincenzo that you preferred one candidate because the person referring that candidate hadn't been getting his fair share?

MR. KASANOF: May I inquire through the Chair, if there's a specific question, might counsel fix it, which would help him recall. I think his testimony has been, consistently, that conversations of that tenor may well have
taken place, and if the Commission seeks to elicit testimony beyond that, I think it would be helpful if counsel could be more fixed in time and place. He said conversations of that sort may have taken place.

THE CHAIRMAN: Mr. McGuire?

MR. MC GUIRE: The question was fixed in time and place to the extent of asking about conversations with Mr. DeVincenzo after the creation of the Talent Bank. I believe the witness' answer to the question --

THE CHAIRMAN: Can you answer that, Mr. LoCicero?

A It was not usual, but it's possible that a conversation like that did take place. It's not the usual practice, though.

Q Did you have any means available to you to determine if one referral source was or was not getting their fair share?

A I did not keep a record.

Q Would you have had any way of knowing whether someone, a political figure, was getting his or her fair share of referrals?

A I mean, you know, they complained. They
Q Did you have any way of knowing whether the complaints were founded or not?
A I would ask Mr. Skurnik if it's true.
Q Did Mr. Skurnik have any records available to him to determine whether one political figure was getting his or her fair share?
A I did not ask him if he kept a record. I just assumed he might know.
Q Did Mr. DeVincenzo, to your knowledge, have any records available to him --
A Not that I know of.
Q Did you ever have a conversation with Mr. DeVincenzo in which he asked you to rank candidates in any kind of priority order?

MR. KASANOFS: Mr. Chairman, --

MR. MC GUIRE: I'll fix the question in terms of after the creation of the Talent Bank, if that's helpful to counsel.

THE CHAIRMAN: I was distracted for a moment. Can I have the last question, please?
(The last question was read by the reporter.)

THE CHAIRMAN: Can you answer that question?
MR. KASANOF: May I address the Chair?

THE CHAIRMAN: Yes.

MR. KASANOF: I have a concern which is now recurring, and I would like to address the Chair, and that is, the question is, "did you ever," and it is much more helpful if counsel has a time in mind. I think it would be fairer and more helpful if we can be fixed.

When you say, "did you ever," and, "of a general nature," that's very difficult to answer except in very great generality, and if there is something specific, by and large -- I would like the record to reflect that we have -- Mr. LoCicero has appeared for -- was interviewed by Commission staff and examined twice under oath, and a great many documents were shown to him which are like the documents which we are being asked about, and that was commendably fair, gave him an opportunity to reflect on them, and I have a feeling that when you ask universal questions, if the question has a particular conversation, I think it would be fairer and more expeditious if counsel would focus the witness so he can be helpful or responsive or
not responsive, as he has been, with all of
the exhibits which have so far been asked
about.

THE CHAIRMAN: The Chair will rule as
follows: It seems to me that there will be
questions of a general nature and weight and
substance will be given to generalized questions
at one level, and there will be other questions
of a more specific nature that we, obviously,
focus on in terms of specificity. It seems to
me the question is appropriate. It's a ques­
tion that talks about a point in time after
the creation of the Talent Bank, which I
understood to be some time in the year 1983,
running up to the present, and I recognize that's
a period of several years, and the extent to
which counsel can break it down more specific­
ally, I'm sure he will, but if he can't, I will
still allow the question and I'll ask the witness
to give his best response.

MR. KASANOF: And he will respond, but I
think the Chairman is quite right, that that
response, necessarily, has an inherent vague­
ness in it, because the question spans -- and
it's a characterization --

THE CHAIRMAN: I don't want you to put words in my mouth.

MR. KASANOF: I didn't mean to do that.

THE CHAIRMAN: I didn't make reference to vagueness or any inherent flaw. I said there's a different level of weight to be accorded to generalized questions from specific questions, that's all I said.

If the reporter can read back the question, I'll allow the witness to respond to the question.

(The pending question was read by the reporter.)

THE CHAIRMAN: Now, I take it, Mr. McGuire, you're referring to the period since the creation of the Talent Bank; is that correct?

MR. McGUIRE: Yes.

THE CHAIRMAN: Mr. LoCicero, can you respond to that question, please?

(Continued on next page.)
A Since I saw the document showing that we
did submit names in preferential order, I assume that we
did have conversations, but I can't recall any.

THE CHAIRMAN: Which document are you referring
to?

MR. KASANOF: This is Exhibit 60 we're looking
at; is that right?

MR. MC GUIRE: I think we should ask Mr.
LoCicero whether he was referring to Exhibit 60.

A The previous document, 59, says: "I am
listing below in priority order." So, I assume when
we sent the document in priority order, we might have
had a conversation to that effect. But the document went
to Mr. Skurnik, and it came from Mr. LaPorte. Whether
I saw it or not, I don't know.

MR. MC GUIRE: I believe, Mr. Chairman, that
when the witness just stated, "the document," he was
clearly referring to Exhibit 59.

THE CHAIRMAN: That's what I understood the
witness' reference to be, 59.

Am I correct?

THE WITNESS: Yes.

THE CHAIRMAN: Next question.

Q With reference to Exhibit 60, would you just
take a look at Exhibit 60, and let me ask you whether, having had an opportunity to look at Exhibit 60, whether that refreshes your recollection with respect to whether you ever told Mr. DeVincenzo that a candidate referred by you should be ranked in a particular priority order?

THE CHAIRMAN: Since the creation of the Talent Bank?

MR. MC GUIRE: I'll take that first, yes, Mr. Chairman.

THE CHAIRMAN: The question is --

MR. KASANOF: I understood the question to invite his attention to the document before him.

MR. MC GUIRE: Yes, Exhibit 60. And I asked whether that refreshed his recollection with respect to whether he had a conversation with Mr. DeVincenzo.

A If you look at the document --

THE CHAIRMAN: Which document?

THE WITNESS: The one I'm invited to look at, 61.

Q Is that 60 or 61?

A Didn't you ask for 61?

Q No, Exhibit 60.

A I'm sorry. The document -- what about that
document?

THE CHAIRMAN: Which document, again?

THE WITNESS: Number 60.

Q Let me rephrase the question. My question is: Having had a chance to see that document, Exhibit 60, does that refresh your recollection with respect to ever having a conversation with Mr. DeVincenzo after the creation of the Talent Bank, in which you told him that a candidate referred by you should be ranked in a particular order?

A No. But if you look to Number 61, it seems like it might have happened, but I don't recall it in conversation.

Q In other words, you don't exclude the possibility that you told Mr. DeVincenzo that a candidate should be ranked in a particular priority order?

A I don't exclude that.

Now, if you look at 61, there are a list of names. On the left-hand column, it's 1 to 15, and then you look at the right-hand column, and you'll see next to the name LoCicero, 5, 6, 9, 10. That's a big deal. I'm so important, these other people are getting ahead of me.

So, you know, it's possible I might have said
to Mr. DeVincenzo, "How come they're getting and I'm ranked." It's possible. I don't remember seeing this, but just looking at it -- I mean, I don't want to characterize other people, but I certainly think -- I am not going to characterize other people.

Q All right. Mr. LoCicero, I want to ask you a few questions about some testimony you gave the Commission privately on March 27th.

MR. MC GUIRE: Mr. Kasanof, you may wish to refer to Page 156. I don't think you'll need to.

THE CHAIRMAN: That's the year 1989?

MR. MC GUIRE: That's correct, Mr. Chairman.

Q And, basically, you had indicated to the Commission at that time that you, in substance, always pushed for your own candidates.

Do you recall that testimony?

A Yes.

Q Could you explain what you mean when you "pushed," you pushed your candidates?

A We're not talking about the Talent Bank now, we're talking about in general, aren't we?

Q Well, let's talk about in general.

A That's what I remember the conversation to be.
Q Let's talk about in general, then. What would you do?

A In general, if I knew there was an opening, say, for a Deputy Commissioner, Commissioner, and I know somebody and I know that person is good, I would submit their resume to whoever is making that decision, just recommending them.

Q Would you speak to the Commissioner about a candidate?

A I would recommend the person, if I knew the person, and I knew that person to be very good.

Q So, in other words, when you say -- when you had said on March 27th that you always pushed your own candidates, you meant you pushed candidates that you knew?

A Oh, of course. I wouldn't recommend someone I didn't know. If -- let's be -- if I know someone, X, is a terrific housing person or finance person, if I happened to know, I've worked with them, they're in the government, and there's another opening, send a resume. I would ask the Commissioner to look at that person, that I've worked with that person.

If I don't know the person, I just send the resume and tell them to interview.

Q Did you ever push a candidate because a
candidate has been referred by a political figure?

   A   I recommended by sending the resume over, but not -- if I don't know the person, it's a rare day that I'm -- except if the resume -- you know, you look at these resumes and some of them, they look just like the person should be President of the United States.

   So, there's an opening, and you say that resume is terrific.

   If that's what you mean by "push," that's the way I --

   Q   I was asking you what you mean when you used the word "push."

   A   That's the way I use it.

   Q   Did you ever receive any complaints from Commissioners to the effect that Mr. DeVincenzo had been delaying approval of agency personnel actions?

   A   From time -- yes.

   Q   When did you receive those complaints?

   A   In twelve years, it happened a few times.

   Q   Can you recall any specific complaints?

   A   I can't give you a specific complaint, but half -- I don't know, a lot of times the agency was wrong, because they always blamed City Hall, and when you check into it, it's their own Personnel Department that didn't
send the personnel action over.

Q Who checked into that?

A I called Joe DeVincenzo and I'd say, "The Commissioner is complaining."

He said, "John, I didn't even receive it yet,"

and it turned out, most of the time, he was right.

Q How did you find out that Mr. DeVincenzo was right?

A I took his word for it.

Q Did Mr. DeVincenzo --

A Excuse me.

Then I would call the Commissioner back and tell him, and he would check into it, and usually he was right.

Q In other words, the Commissioner would come back to you and tell you that he had previously been wrong?

A "I'm sorry, it's in our Personnel Department."

Q Did you ever discuss these complaints from Commissioners with any Deputy Mayors?

A No.

Q How about with the Mayor?

A No.

Q Did Mr. DeVincenzo forward you resumes that
he received from political figures?

A    Yes.

Q    How did that come about?

A    He sent the resumes up, I looked at them and sent them back down to him.

Q    Did you ever have a conversation with Mr. DeVincenzo in which you asked him or directed him to send to you resumes he received from political figures?

MR. KASANOF: May I ask the Chair to invite counsel to -- this is one of these questions from the beginning of time, back to the Euphrates Valley, and it's difficult. It would be helpful for there to be something --

THE CHAIRMAN: Mr. McGuire, any response?

MR. MC GUIRE: I don't want to debate with Mr. Kasanof, Mr. Chairman, but I have asked a question which, it seems to me, the witness would well recall whether he ever had such a conversation or not.

THE CHAIRMAN: Do you recall the question, Mr. LoCicero?

MR. KASANOF: May I have it read?

THE CHAIRMAN: Yes.

(Record read.)
MR. KASANOF: Could that be broken into two parts? It's a compound question and it would not be possible to determine which part of the question the witness was affirming or denying.

THE CHAIRMAN: Let me ask the witness: Do you understand the question?

THE WITNESS: No.

THE CHAIRMAN: Would you restate it, Mr. McGuire.

Q Did you ever have a conversation with Mr. DeVincenzo in which you told him that he should forward to you resumes he received from political figures?

MS. SCHWARZ: Mr. Chairman, can we get answers from the witness?

THE CHAIRMAN: The Chair will allow a certain latitude between counsel and the witness. I would ask the witness to respond to the question.

A It's possible. I don't remember any conversation to that effect.

Q What would you do with resumes that Mr. DeVincenzo forwarded to you from political figures?

A I'd read them and then send them back to him.

Q Did you always send them back?
A I think so.

Q Can you think of any reason why you might not have sent a resume back?

A I cannot think of any.

Q Did you talk to Mr. DeVincenzo about the resumes he sent to you?

A Very rare.

Q Did you keep any records of who had referred the candidates on the resumes that were sent to you by Mr. DeVincenzo?

A I did not keep any records.

Q Other than adding to your knowledge about who had referred whom, did your review of resumes from Mr. DeVincenzo serve any other function?

A No.

MR. MC GUIRE: Mr. Chairman, I have no further questions.

THE CHAIRMAN: Mr. LoCicero, early on in your testimony you made reference to your practice, I take it, of not forwarding resumes with cover letters that you moved on to agencies.

Do you recall that testimony today?

THE WITNESS: Yes.

THE CHAIRMAN: I think you said, in response
to counsel's question, that you did not want any advantage or disadvantage to accrue with respect to that resume as a result of forwarding a cover letter, so you didn't forward the cover letter.

Would you explain what you meant by "advantage" or "disadvantage"?

THE WITNESS: Well, if it's a political figure, you don't know if that Commissioner likes that political figure or dislikes that political figure. Why should they be making the judgment about a candidate because of the source of the resume?

THE CHAIRMAN: I take it that what you're saying is that if a cover letter accompanied the resume, it might be possible for a judgment to be made on that candidate by virtue of the political sponsor; isn't that so?

THE WITNESS: That's true.

MR. KASANOF: Mr. Chairman, could I have the Commissioner's indulgence for about two minutes?

THE CHAIRMAN: We'll take a short recess.

MR. KASANOF: Thank you very much.

(Whereupon, a brief recess was begun at
10:55 o'clock a.m.)

(Thereupon, at 11:10 o'clock a.m., the following proceedings were had.)

MR. KASANOF: Thank you very much, Mr. Chairman.

THE CHAIRMAN: Not at all.

Why don't we now go to questions to the witness from the Commissioners. I recognize Commissioner Hynes.

COMMISSIONER HYNES: Mr. LoCicero, of the candidates that you referred for labor positions through Mr. DeVincenzo, did you ever ask for any followup on what happened to the candidates?

THE WITNESS: I don't remember. I assume Mr. Skurnik did all that.

COMMISSIONER HYNES: You said that from time to time, you made some calls to County Leaders and asked for candidates?

THE WITNESS: That's right.

COMMISSIONER HYNES: Did you ever receive calls from County Leaders saying, "What happened to my candidate, I never heard back?"

THE WITNESS: They would have called Mr. Skurnik.
COMMISSIONER HYNES: Even if you had placed
the call?

THE WITNESS: Well, because the County Leader
had someone who worked in his office and, I assume,
the Leader would tell that person to call Mr.
Skurnik to find out what happened to the candidate.

COMMISSIONER HYNES: So, was it your understand­ing
that Mr. Skurnik, from time to time, would
receive calls asking about followup?

THE WITNESS: I assume so.

COMMISSIONER HYNES: Do you know whether Mr.
Skurnik obtained any information on what actually
had happened to those candidates?

THE WITNESS: I assume so.

COMMISSIONER HYNES: Do you know where he
went to obtain that information? Did he ask Mr.
DeVincenzo?

THE WITNESS: I assume he went to Mr. DeVincenzo,
yes.

COMMISSIONER HYNES: Did you ever hear any
complaints that Mr. Skurnik was not able to get
followup information from Mr. DeVincenzo's office?

THE WITNESS: I never received a complaint
about Mr. Skurnik.
COMMISSIONER HYNES: No, but you never received a complaint, did you say, about Mr. Skurnik?

THE WITNESS: Yes. Your question was, did I ever get a complaint from a County Leader about information.

COMMISSIONER HYNES: No. My question was — maybe I misstated it, but my question was:

Did you ever receive a complaint from Mr. Skurnik that he was not able to get backup, followup information from Mr. DeVincenzo's office?

THE WITNESS: We're talking about laborers?

COMMISSIONER HYNES: Yes.

THE WITNESS: I don't recall any.

COMMISSIONER HYNES: Is it fair to say, Mr. LoCicero, that you understood that there was some system of tracking the referrals from your office to Mr. DeVincenzo's office?

THE WITNESS: On laborers?

COMMISSIONER HYNES: On laborers.

THE WITNESS: I assume so, yes.

COMMISSIONER HYNES: And, is it also fair to say that you were aware that there was some system of tracking referrals other than laborers?
THE WITNESS: No, I did not know of any system, I didn't keep a record, I didn't know if Mr. Skurnik kept a record.

If someone called and asked what happened to a particular candidate for whatever position, I asked them to call down to see if that person -- he might have had a resume in a file, but I didn't know if he kept any record.

COMMISSIONER HYNES: What ws your understanding of the tracking system as it related to laborers?

THE WITNESS: I had no understanding of the

COMMISSIONER HYNES: Did you receive calls, from time to time, for followup on candidates that you referred for other than laborer positions?

THE WITNESS: Yes.

COMMISSIONER HYNES: What would you do upon receiving such a call?

THE WITNESS: I'd ask Mr. Skurnik to find out if the person ever got interviewed. Most of the time, we didn't know if they got the job, whether they got interviewed, because we had no system.

COMMISSIONER HYNES: Do you know what Mr. Skurnik did in response to your request to find out?
Do you know who he contacted?

THE WITNESS: I just assumed that he called Mr. DeVincenzo's office to find out what happened, because --

COMMISSIONER HYNES: You were asked about whether you received any complaints about Mr. DeVincenzo delaying any personnel actions from Commissions, and you said that you thought, in a good number of those situations, the paperwork wasn't even in the office, and it was really in the Personnel Department of the Commissioner's agency.

Were there any circumstances where there was a delay that related to Mr. DeVincenzo's operation?

THE WITNESS: Yes.

COMMISSIONER HYNES: And did you inquire as to the circumstances as to why there was a delay in Mr. DeVincenzo's operation?

THE WITNESS: NO.

COMMISSIONER HYNES: So, if a Commissioner complained about a delay and you found out that the delay really was with Mr. DeVincenzo, you didn't inquire further?

THE WITNESS: I asked him to try to speed it up.
COMMISSIONER HYNES: Did the Commissioners -- did anyone, Commissioner level or anyone under Commissioner level, ever advise you that they thought Mr. DeVincenzo was holding up personnel actions because they weren't cooperating with hiring with Mr. DeVincenzo?

THE WITNESS: I never heard that.

COMMISSIONER HYNES: Can you tell me what your understanding is as to how this lottery system works today?

You said that in 1986, there was a lottery put into place. Can you tell me how it works from 1986, your understanding?

THE WITNESS: For the laborers?

COMMISSIONER HYNES: Yes.

THE WITNESS: In 1986, we instituted this lottery system, so everything went through the lottery system.

COMMISSIONER HYNES: And under the lottery system that was instituted in '86 for laborers, was there any reference given to political referrals?

THE WITNESS: NO.

COMMISSIONER HYNES: Were political referrals for laborer positions still obtained?
THE WITNESS: Yes.

COMMISSIONER HYNES: And once you obtained them, what was done with them?

THE WITNESS: We sent them down to be put through the Talent Bank.

COMMISSIONER HYNES: So, there was a change, I take it, then, in '86, where it was a lottery system for the laborer positions as opposed to before 1986, where there was not a lottery system for laborers?

THE WITNESS: That's true.

COMMISSIONER HYNES: Before 1986, was it your understanding that the system in place was that the referrals that came from your office, or from political candidates or from any of the sources that you named, community, unions, or the pool that was used to fill laborer positions?

THE WITNESS: Yes.

COMMISSIONER HYNES: I have no further questions.

THE CHAIRMAN: Commissioner Magavern?

COMMISSIONER MAGAVERN: Mr. LoCicero, I would like to ask you a few questions that are not aimed at personal criticism of you at all, but recognizing the fact that you have been in
government for a long time at a high level, and
looking for insight into the natural tendencies that
may be at work in patronage, using the term not in
an invidious sense, were you aware or did you
consider it to be a major component of the Mayor's
policy to set up the Talent Bank to increase the
numbers of women and minorities in City Government?

THE WITNESS: Was I aware?

COMMISSIONER MAGAVERN: Yes. Did you consider
that to be one of --

THE WITNESS: It was a component.

COMMISSIONER MAGAVERN: Pardon me?

THE WITNESS: It was a component.

COMMISSIONER MAGAVERN: Was it a major

component?

THE WITNESS: I don't know what you call "major." The component was to get people who
were women, minorities and political people in the
Talent Bank. There was no measurement.

COMMISSIONER MAGAVERN: The weight of the
emphasis as between women and minorities on the
one hand and political people on the other hand,
in your view, was that equal or not equal?

THE WITNESS: I didn't discuss this. The
Mayor said, "We've got the Talent Bank," and that's what he wanted, and that's it.

COMMISSIONER MAGAVERN: What did he say?

THE WITNESS: You'll have to read the Executive Order. I don't have it in front of me, but he did want new talent coming in, new blood. He wanted minorities, he wanted women and he didn't stop political referrals.

COMMISSIONER MAGAVERN: Now, in your activity in soliciting candidates from political figures, you would, on occasion, ask them to send in minorities; correct?

THE WITNESS: We always did.

COMMISSIONER MAGAVERN: When the names came in, they came in without any ethnic identification; is that right?

THE WITNESS: You're talking about the laborers?

COMMISSIONER MAGAVERN: Take laborers, yes.

THE WITNESS: If you were taking laborers, there were no ethnic identifications.

COMMISSIONER MAGAVERN: You would take the names coming in from --

THE WITNESS: But you have to understand that
we had black advisors, Hispanic advisors. We had people who were reaching out to bring in candidates also.

COMMISSIONER MAGAVERN: Were many of the names that came in from the Democratic County Leaders of the boroughs other than Manhattan?

THE WITNESS: I'm sorry. I don't understand your question.

COMMISSIONER MAGAVERN: Can you give us your estimate of the proportion of the referrals you received that came from the Democratic County Leaders from the boroughs other than Manhattan?

THE WITNESS: I cannot.

COMMISSIONER MAGAVERN: Was it a significant part of the number of referrals that you got?

THE WITNESS: On laborers, yes.

COMMISSIONER MAGAVERN: Did you understand -- did you have any way of knowing what proportion of those names coming in from those sources were minority candidates?

THE WITNESS: No.

COMMISSIONER MAGAVERN: Did you do anything, then to follow up to assure that those referrals coming in would not overwhelm the objectives of
the Talent Bank and result in a placement of a large number of white males as distinguished from women and minorities?

THE WITNESS: I just kept asking for more minorities and called black elected officials, Hispanic elected officials.

COMMISSIONER MAGAVERN: You have no sense of the relative contribution from the black and Hispanic elected officials as compared to the white political leaders?

THE WITNESS: No.

COMMISSIONER MAGAVERN: Would you have expected that a large proportion of the referrals from the white political leaders, County Leaders, would have been white males?

THE WITNESS: No. It's supposed to be from the whole borough.

COMMISSIONER MAGAVERN: Nevertheless, understanding the dynamics of the system, would you expect the political workers that they referred to be white males?

THE WITNESS: If you're a County Leader from Brooklyn or the Bronx, you have a large minority population. I assume that there would be
a balance.

COMMISSIONER MAGAVERN: You left it to your assumption then?

THE WITNESS: Yes.

COMMISSIONER MAGAVERN: You did not do followup, then, to see what effect that referral system was having on the objective of placing more minorities and women candidates?

THE WITNESS: Yes.

COMMISSIONER MAGAVERN: Do you think now, reflecting on it, looking back on it, that this referral system may have had a tendency to subvert the affirmative actions component of the Mayor's policy?

THE WITNESS: We did change the system. We did go to TAP Centers in 1986 which radically changed the complexion of the personnel that were being hired for laborers.

COMMISSIONER MAGAVERN: Fair enough. And was that in recognition that prior to '86, the referral system wasn't really working to place increased numbers of minorities and women?

THE WITNESS: As well as it could, that's what we did.
COMMISSIONER MAGAVERN: Did you ever become aware that either Mr. Skurnik or Mr. DeVincenzo was selecting from among the referrals, including the minorities on candidates as he forwarded them to the agencies?

THE WITNESS: As I testified before, I saw that there were some letters with preferential treatment, so I assume I might have known about it, because not everyone got hired.

So, if there was preferential treatment, some people didn't get hired.

COMMISSIONER MAGAVERN: Those are preferences from the sources, though, that you are referring to; correct?

THE WITNESS: Yes.

COMMISSIONER MAGAVERN: I'm asking if you were aware that Mr. Skurnik was doing his own selection from among the referrals and determining which ones to forward and which ones to put priority on?

MR. KASANOF: May I ask for a clarification, because I'm not sure I understand the question.

COMMISSIONER MAGAVERN: Okay. Can you tell me which aspect of it you don't understand, please?
MR. KASANOF: I think your question is, was Mr. LoCicero aware that Mr. Skurnik was bouncing or preferring sources from one County Leader as opposed to the other, that he was weighing among the sources?

COMMISSIONER MAGAVERN: I'll rephrase the question. It was not balancing or weighting. Did you become aware at any time that Mr. Skurnik was imposing his own priority criteria among the candidates he was sending down to Mr. DeVincenzo?

THE WITNESS: Not at the time.

THE CHAIRMAN: Can I just interject? I think it would be helpful to the expedition of the proceeding that when a question is asked, if we have the witness' response to the question. There may be a request by counsel to confer with the witness, and I would like to have that request on the record.

MR. KASANOF: I would be happy to do so, but I think it should be clear that I'm not here to sit, as the saying goes, as a (inaudible).

THE CHAIRMAN: We would like the witness' response.
MR. KASANOF: You'll have the witness' response, and that response will be consistent with the responses he had given to the Staff, but this is a circumstance in which he is entitled to have some advice as to what the question may contain. It's not a badinage.

COMMISSIONER MEYER: It would be better if you stated your objection on the record rather than conferring with Mr. LoCicero, because that gives the appearance that you're suggesting answers to him.

MR. KASANOF: I think it's perfectly clear that I'm not suggesting answers, but I'm focusing him on his own prior testimony, on other questions, and I think he is entitled not to be obliged to match wits.

I'm not getting the answers out of the air, but I'm trying to give him the opportunity to focus on testimony that I think it's fair to know. There's no doubt that he has been examined endlessly by the Commission Staff, and I don't suggest that it's the case, but I would also suggest that it's not unreasonable to turn this into something which is responsive, and if the Chairman
LoCicero

asks me for an opportunity to confer on the record, I'll do so.

THE CHAIRMAN: Let me just go over what I would request of the witness and counsel:

If a question is put by a Commissioner or, in this case -- I think it's important that you let us know that you don't understand the question and the Commissioner will reask the question.

If counsel wishes to confer with the witness or the witness wishes to confer with counsel, please make that request on the record.

MR. KASANOF: I would be happy to do so, Mr. Chairman.

THE CHAIRMAN: Thank you.

Commissioner Magavern?

COMMISSIONER MAGAVERN: May I have the last question and answer read?

(A portion of the record was read by the reporter as above requested.)

COMMISSIONER MAGAVERN: Any problem with that question, Mr. Kasanof?

THE CHAIRMAN: I have heard no objection.

I would ask that the witness answer the question.

COMMISSIONER MAGAVERN: It has been answered.
That was the occasion for the last conference, and I would like to know that the witness had a chance to answer fully with full advice from his counsel.

MR. KASANOF: May I address the Commission?

COMMISSIONER MAGAVERN: There's a followup question coming from that, and if you have a problem with that question --

MR. KASANOF: Fine. Let me wait for the followup question, which might clarify my problem.

COMMISSIONER MAGAVERN: Have you become aware of that since then?

THE WITNESS: I have heard the testimony. Mr. McGuire has shown me some testimony by Mr. Skurnik where he might have.

COMMISSIONER MAGAVERN: Do you think that if Mr. Skurnik was doing that, that is, imposing his own priorities and criteria, that that was in violation of his role as your subordinate?

MR. KASANOF: May I confer with my client?

THE CHAIRMAN: Yes, you may.

(Pause.)

THE WITNESS: He certainly had no orders from me

COMMISSIONER MAGAVERN: Was that activity of
his consistent with his role, as you understood it, in your office?

THE WITNESS: He worked for me for eight years and pretty much was on his own. I didn't give him orders how to operate, how to file resumes, how to submit lists. I just assume he did his job.

COMMISSIONER MAGAVERN: Did you ever become aware that he did not consider within his responsibility in processing those laborer referrals to promote the affirmative action policy.

THE WITNESS: You keep inferring that there was an affirmative action policy. There was no affirmative action policy just to laborers. We tried to get minorities in all fields. You infer from your question that he was purposely trying not to get minorities.

COMMISSIONER MAGAVERN: No, I'm not --

THE WITNESS: That's the way I'm taking it.

COMMISSIONER MAGAVERN: Let's have the question again.

Could we have it read, please?

(A portion of the record was read by the reporter as above requested.)

THE CHAIRMAN: Let the record reflect that
the witness is conferring with counsel.

THE WITNESS: I always tried to get minorities and he knew I tried to get minorities, and he was under, you know -- any discussion we always had was to try to get minorities. If he didn't do it, I'm not sure that I knew about it.

COMMISSIONER MAGAVERN: If he didn't do it, that would be in violation of the guidance he was receiving from you?

THE WITNESS: But I doubt that he wouldn't do it. He wouldn't go out of his way not to get minorities.

COMMISSIONER MAGAVERN: On what basis do you think he was trying to get minorities?

THE WITNESS: Like I said --

COMMISSIONER MAGAVERN: I'm specifically asking about Mr. Skurnik.

THE WITNESS: I can't tell you what he did.

COMMISSIONER MAGAVERN: Did you ever instruct him that as he processed these referrals that he should seek to place more minorities --

THE WITNESS: Yes.

COMMISSIONER MAGAVERN: Did you ever become aware that Mr. DeVincenzo was making his own
selections of making his own priority determinations on the referrals that he sent out to the agencies?

THE WITNESS: I have no knowledge of that.

COMMISSIONER MAGAVERN: If he was doing that, would you have considered that a violation of his responsibilities?

THE WITNESS: He is Personnel Director. He got jobs from a black advisor, a Hispanic advisor. He tried to get women. He went to non-traditional groups to get women. He went to the Vietnam Veterans Association to get Vietnam veterans. We got political referrals. So I knew he was always trying to get more in.

COMMISSIONER MAGAVERN: If the records show --

THE WITNESS: I'm not --

COMMISSIONER MAGAVERN: Have you finished? Have you finished your answer?

THE WITNESS: Yes.

COMMISSIONER MAGAVERN: Let the record show that in the year 1985, that as a result of the referrals from laborer referrals from Mr. DeVincenzo's office, that a higher proportion of black males were going into a Debris Removal title, and a higher proportion of white males were going into a higher
title that had the same qualifications, excepting that it required a Class 3 driver's license, which was routinely waived. If the records show that state of fact to you, would you consider Mr. DeVincenzo to have been performing his responsibilities, as you understood them?

THE CHAIRMAN: Let the record --

MR. KASANOF: Yes. I'm conferring -- the witness is not really in a position of having supervision of Mr. DeVincenzo. May he express his view on passing on whether -- I would object to the wording of the question.

Will you permit the witness to answer the question if --

COMMISSIONER MAGAVERN: I'll point out that "supervision" is not part of the question. I'll take his answer on his own terms.

THE WITNESS: I would be disappointed.

COMMISSIONER MAGAVERN: Thank you.

Did you ever become aware that at times through Mr. DeVincenzo's office, agencies were being pressed to hire people for positions which the agencies had not even previously contemplated filling?
THE WITNESS: I don't know anything about that.

COMMISSIONER MAGAVERN: If that happened, would you consider that to be a violation of the Mayor's principles of government?

THE WITNESS: Yes.

COMMISSIONER MAGAVERN: Considering your experience in '86 with instituting a lottery system, the changes you made in '86, and looking back on this experience with the Talent Bank, do you see any tendency for patronage considerations in the day-to-day workings of government to tend to overwhelm such things as affirmative action, efficiency or economy?

THE WITNESS: There are civil servants and there are provisionals. If you want everybody to be a civil servant, then change the law in the State Legislature to have everyone a civil servant. The State Government doesn't operate that way and the Federal Government doesn't operate that way. I have worked with civil servants and I have worked with provisionals.

In the twelve years I have worked -- I don't ask somebody if there are a civil servant or a provisional. We work on issues and we do the job.
COMMISSIONER MAGAVERN: Mr. Locicero, I am not sure you understood the question. I won't ask to have it read again.

I'll ask you another question, and at this time I'll put it in the form of a suggestion, and, believe me, it's not a hostile question to you, personally.

What I am looking for is insight into the natural workings of politics and government, so that if we understand that, we can be better equipped to deal with them.

My suggestion is that by looking at the record of the Talent Bank experience and looking at the changes made in '86 and, in fact, the improvement in its performance made in '86, as you recognize them, that we can see that government officials who were trying to deal with day-to-day problems and pressures from political allies, supporters and the like, are going to tend to be placing people at the request of their supporters, allies, workers, and the like, and that tendency may subvert other objectives of government, even unconsciously, and those objectives are receiving more women and minority candidates, and running the government...
as efficiently as possible. That's my suggestion, and I would welcome your views on that subject, based on your many years of experience in a high position in government.

THE WITNESS: In the almost twelve years I have been in government - I was in private industry before I came to this government. I have worked pretty much with every agency. There are civil servants, civil servant tests. They're sued. We can't hire off of them.

Look at the Police Department and what happened with the Fire Department. When we came into office -- I don't know the figures, but minorities were below twenty-five percent. This administration went out and recruited, tested in all parts of the City.

If you look at the record now, I would venture to say that the majority of people working in this government are minority. So I don't think there was any moral problem.

Anybody that had a problem -- we have civil servants that have a moral problem. They don't have it because they're working next to a provisional. Civil servants get in trouble and we
have the Civil Service Commission always is investigating them.

So, I think you've got a distorted view.

You want to take the laborers? That was a separate thing. But overall, we have a majority of minorities working in the last few years. We have increased it immeasurably. So I don't know where your moral problem comes in.

COMMISSIONER MAGAVERN: I don't want to argue with you, Mr. LoCicero. I think you'll recognize that I have said nothing about "moral" in my question, and perhaps your answer wasn't responsive. But let me go on. I'll try to make this my last question, but I won't promise you.

You have recognized yourself and told us that in '86, you made changes in the Talent Bank, particularly, I think, with respect to laborer-type positions and until that point, you had recognized that the Talent Bank had not been operating effectively to realize the objectives of Mayor Koch's administration.

Now, my question is: What is your analysis and why, up until that point, the Talent Bank was not performing satisfactorily.
THE WITNESS: I didn't run the Talent Bank. I didn't know how it operated. I can only tell you that when you change to a lottery system with regard to laborers, we also went out to the TAP Centers, which are almost all minority.

By overwhelming the system with minorities, the numbers had to go up. We could have done better before the lottery system. We should have done better, but once we instituted it, we stamped it in the other direction, because if you go to a TAP Center, you'll know what will come out of the TAP Center and that is what is going to come out of the lottery.

COMMISSIONER MAGAVERN: Doesn't that suggest that soliciting names from political leaders, black, Hispanic, white and others, was not in itself a sufficient means to realize your affirmative action objectives?

THE WITNESS: Look, as I said, when we came into government, we saw how many minorities we had and we went out and instituted policies to increase our minority participation, and we succeeded. Maybe not with the laborers, but we succeeded with the other positions and all you have to do is ask
for the figures from Personnel and you'll find out that we succeeded.

THE CHAIRMAN: Can I have the question back, please?

(The pending question was read by the reporter as above requested.)

THE CHAIRMAN: Do you want to add to the answer you gave?

THE WITNESS: No.

COMMISSIONER MAGAVERN: I have no further questions.

(Continued on next page.)
THE CHAIRMAN: I recognize Commissioner Emery.

COMMISSIONER EMERY: Following up a little bit in the same vein as Commissioner Magavern, I feel the need from you to have a little more perspective on this, and I'll take a step back and ask you some questions that are a little bit in a more general sense than the counsels' questions, and some others, and see if I can understand the reality of the situation that you were placed in as the Mayor's chief political aide.

It's correct that you were the Mayor's chief political liaison with community groups, and otherwise, as you described your duties, is it not?

THE WITNESS: Community and political, yes.

COMMISSIONER EMERY: And, in that role, I take it, in governing this very complicated city, with all its very conflicting and competing political interests, it was, at least, a good part of your job to try and smooth that process of government; is that fair to say?

THE WITNESS: Yes.

COMMISSIONER EMERY: I mean, that was your primary responsibility as a Special Assistant to the Mayor? I'm happy to have your comment.
THE WITNESS: No, that was not my primary responsibility.

COMMISSIONER EMERY: Well, what was your primary responsibility as compared to that, how did you parcel up your tasks in relation to what you just said was at least in part your responsibility?

THE WITNESS: Jobs are --

COMMISSIONER EMERY: I'm not talking about jobs. I'm not asking you about jobs. I'm asking you about paving the -- smoothing out the various political difficulties that the Mayor and his administration face in the governing of this incredibly complicated city with all its conflicting interests.

Isn't that your primary responsibility?

THE WITNESS: It's one of them, yes.

COMMISSIONER EMERY: Now, some of the main forces in this City that are conflicting and that require smoothing out, that require your attention, are, among many, some of them are the five County Leaders; isn't that fair to say?

THE WITNESS: Yes.

COMMISSIONER EMERY: And you have to deal with them on a regular basis in order to perform your
functions for the Mayor?

THE WITNESS: Yes.

COMMISSIONER EMERY: And you deal with them and you deal with their designees and you deal with the Borough Presidents, directly, I guess, county elected officials, as well; is that fair to say?

THE WITNESS: Yes.

COMMISSIONER EMERY: And that's part of your function, as you've initially outlined it, I believe, your duties with respect to the Mayor's program and the Board of Estimate?

THE WITNESS: Yes.

COMMISSIONER EMERY: Is that fair? You don't contest, do you, that in the traditions of this City and, in fact, an issue in Mayor Koch's 1977 campaign was to try and change those traditions, traditions of this City that are that the County Leaders have substantial patronage with the City administration?

I'm not talking about -- I know your claim is that that did not occur after Mayor Koch was elected and under your administration, but the traditions of this City are that patronage was
rampant; isn't that fair to say? You don't have to agree with the word "rampant." It was a major factor?

MR. KASANOF: Mr. Chairman, if this is to be a discussion, I would think words like "rampant" -- if the Commissioner is asking for my client's views on the nature of government, then I think he ought to ask --

THE CHAIRMAN: Let me just say, this is more than a discussion. This is a public hearing. Witnesses are testifying under oath, and Commissioners are putting questions to the witness, seeking the witness' response.

As I noted before, if the witness doesn't understand the question, if counsel doesn't understand the question, let us know. If either one want to confer with the other, let us know on the record and, aside from that, I would expect and request that the witness respond to the questions put.

MR. KASANOF: The witness has responded to every question put by the Commission.

THE CHAIRMAN: The record speaks for itself. I'm simply making a request that he continue to
LoCicero

do so.

COMMISSIONER EMERY: I'm perfectly happy
to have Mr. LoCicero -- in fact, I would
appreciate it if he explains his answers or
discusses them in any way he sees fit. I'm not
asking for yes or no answers.

Now, in this regard, I take it, that there
was a history in New York City of substantial
political patronage prior to 1977, to the County
Leaders, they made choices about who got which
jobs?

THE WITNESS: That's true.

COMMISSIONER EMERY: Now, prior to the Talent
Bank operation, that is, sometime in late '83 or
early '84, or thereabouts, I take it you were the
prime -- you and Mr. Skurnik, your office, was
the primary repository for requests for jobs.

THE WITNESS: That is not true.

COMMISSIONER EMERY: Let me put it this way:

Discretionary jobs.

THE WITNESS: That is not true.

COMMISSIONER EMERY: All right. You did
receive many, many requests, as you testified
earlier --
THE WITNESS: Yes.

COMMISSIONER EMERY: -- for jobs. You said many in the beginning.

THE WITNESS: I was guessing.

COMMISSIONER EMERY: Did you receive requests from the County Leaders for jobs?

THE WITNESS: They would submit resumes to me.

COMMISSIONER EMERY: Did you have meetings with them where they said, I would like so and so to be seriously considered for a Deputy Commissionership in this agency, or so and so to be considered for a commissionership in this agency, and the like?

THE WITNESS: They would submit a resume. They would call on the phone.

COMMISSIONER EMERY: Call on the phone and send over a resume?

THE WITNESS: Yes.

COMMISSIONER EMERY: Did you also have meetings with them?

THE WITNESS: It's possible.

COMMISSIONER EMERY: You had meetings with Mr. Friedman, for instance, when he was County Leader of the Bronx?
THE WITNESS: I very rarely had meetings with County Leaders. Donald Manes was the Borough President. I usually saw him on Board of Estimate day, but I rarely had meetings with County Leaders.

COMMISSIONER EMERY: But the County Leaders called you regularly?

THE WITNESS: Yes.

COMMISSIONER EMERY: How often would they call you about trying to get a particular person a job?

THE WITNESS: Maybe once a month.

COMMISSIONER EMERY: And not more than that?

THE WITNESS: It was a rare occasion.

COMMISSIONER EMERY: Now, do you know, do you have any sense of what they thought your ability was to get a job for one of their candidates? I'm asking if you had any sense of that.

THE WITNESS: Yes, I have a sense of it.

COMMISSIONER EMERY: What is that?

THE WITNESS: They didn't think I had the ability to get them a job.

COMMISSIONER EMERY: So they were using you, basically, as a messenger to convey their resume to the appropriate people who could get the person
a job?

THE WITNESS: That's true.

COMMISSIONER EMERY: So, your function, then, was not in any way, shape or form -- or, let me put it this way: Your powers were not in any way, shape or form -- I'm saying "your powers" carefully -- in any way shape or form to deliver jobs, that you could not deliver jobs?

THE WITNESS: That's true.

COMMISSIONER EMERY: When you testified before that there were certain determinations or certain considerations that Mr. Skurnik and you made about -- well, I think your term was "fair share" of the jobs -- what did you mean by that?

THE WITNESS: We were talking about laborers.

COMMISSIONER EMERY: Okay, in the case of laborers. Let's stop for a second before we go to the laborers. Was there ever a consideration with respect to fair share of jobs in the non-laborer jobs that you took resumes for?

THE WITNESS: As I testified before, Mr. Emery, County Leaders were always complaining they never got jobs.

COMMISSIONER EMERY: Is that the non-laborer
area as well as the laborer area?

THE WITNESS: That's what I'm talking about, the non-laborer.

COMMISSIONER EMERY: So there was a consider-

ation of a County Leader having a fair share in
the laborer area, as well as the non-laborer area?

THE WITNESS: In his mind, not in my mind.

COMMISSIONER EMERY: But, I take it, that

there was a consideration by you and Mr. Skurnik

as to whether you would recommend someone in any

way, somebody who was not getting their fair share;

is that wrong?

THE WITNESS: It's wrong.

COMMISSIONER EMERY: Did you have any

consideration whatsoever in dealing with the job

candidates that came to your office with respect

to fair share, your consideration?

THE WITNESS: Never thought of it in fair

share. If a person looked like they were a good

candidate, we sent the resume over. If they were

submitting someone for a particular job, that's

up to the Commissioner, and they make the decision.

I just submitted the resume.

COMMISSIONER EMERY: Now, was there ever an
occasion that you can remember, here today, on
which you got a resume from a County Leader of
someone you didn't know but the County Leader told
you, either on the phone or at a meeting, or anywhere
else, that this person is really qualified and
I really want this person hired, where you did what
you described before, doing for people who you knew
to be qualified, namely, you helped them, you
followed up?

THE WITNESS: Mr. Emery, I'm sure, in twelve
years, that I followed up and made a phone call to
see if the person got interviewed and how well
they did.

COMMISSIONER EMERY: For a County Leader as
opposed to someone who you knew?

THE WITNESS: Yes, yes.

COMMISSIONER EMERY: And to you have any
recollection of specific instances of that occurring?

THE WITNESS: No.

COMMISSIONER EMERY: And what about the
situation with respect to certain agencies which,
traditionally, had had County Leaders pick
commissioners, let's say, traditionally, and I'm
not talking about -- I understand your contention
with respect to the Koch administration, but I'm talking about prior to that, for instance, the Taxi & Limousine Commission where there are a group of commissioners which head the Commission, as I understand it, and the -- was there any consideration of allowing the County Executives -- I mean the County Leaders to have a fair share of those commissionerships, that you're aware of?

THE WITNESS: You're talking about not jobs but the people who serve on the commissionership?

COMMISSIONER EMERY: Yes.

THE WITNESS: We had to have input from the City Council and County Leaders to get the passed through the City Council, yes.

COMMISSIONER EMERY: So, in those areas, the TLC, for instance, there was input by the County Leaders; is that correct?

THE WITNESS: Yes, through their councilmen, yes.

COMMISSIONER EMERY: Did they have the choice, did they have the final choice, the County Leader, as a practical matter, given the Council's role in the process?

THE WITNESS: Not to my knowledge, that they
had the final choice, no.

COMMISSIONER EMERY: Did you work out who
the nominees would be with the County Leaders?

THE WITNESS: It came through the City Council.
In order to get someone passed through the City
Council, those commissioners had to go through
City Council and they came through their Council
delegation, their borough delegation.

COMMISSIONER EMERY: Were they proposed by
the Mayor?

THE WITNESS: There's a division. There were
ours and there were the Council's. The Council's,
the borough delegations, submitted the names to
get through. Ours were ours.

COMMISSIONER EMERY: And when you picked yours,
were those that were the Mayor's, picked by the
County Leaders, were the County Leaders influencing
those?

THE WITNESS: They might have submitted
someone, but, usually, they were ours, our candidates.

COMMISSIONER EMERY: So they did not choose
the Mayor's representatives on the TLC, for
instance?

THE WITNESS: They might have submitted a
name, but they didn't choose. Nobody chose our candidates.

COMMISSIONER EMERY: Would you adopt them as one of the ways to smooth out --

THE WITNESS: If we thought the person was good, yes.

COMMISSIONER EMERY: Was it a political consideration in terms of governing the difficult city which I described earlier, in order to deal--to give them something to make them happy?

THE WITNESS: Yes.

COMMISSIONER EMERY: Now, what about the Tax Commission, is that a similar situation?

THE WITNESS: Yes.

COMMISSIONER EMERY: You would describe that, virtually, the same way?

THE WITNESS: They had to be qualified. They had to be interviewed by the Corporation Counsel. There was a committee that interviewed them. If they thought they were good, they would submit them to the City Council.

COMMISSIONER EMERY: But the County Leader played a role in that process, as well, in submitting the names?
THE WITNESS: Yes.

COMMISSIONER EMERY: And Board of Standards & Appeals, is that a similar situation?

THE WITNESS: Yes. But just let me -- Board of Standards & Appeals, you have to be an architect, you have to be an engineer. We are not talking about people that don't have any qualifications. Other people don't understand that.

COMMISSIONER EMERY: I understand.

THE WITNESS: Okay.

COMMISSIONER EMERY: I'm glad you added that.

THE WITNESS: And the Tax Commission people have to be qualified, and they have to go through the committee that the Corporation Counsel headed.

COMMISSIONER EMERY: But, in the bottom line, the County Leaders played a very substantial role in choosing the various people that were nominated for those commissionerships?

THE WITNESS: That had to go through the City Council, yes.

COMMISSIONER EMERY: And that was part of your role in working for the Mayor and dealing with political realities of New York City?

THE WITNESS: Yes.
COMMISSIONER EMERY: All right. Now, when you would go to community meetings or when the Mayor was -- when you went with the Mayor to go to some public function or on a public occasion and you were working -- you were preparing for that public event, whether it was a speech, a community meeting, or whatever, in Brooklyn or in Queens, as part of the Mayor's constituent service functions, did you ever talk to him and brief him in advance to remind him or tell him that at such and such a meeting you might see such and such a person from that community and that we gave that person -- or we had a role in helping that person get X person a job who was his recommendation, can you remember instances like that?

THE WITNESS: No. But I'll tell you, this is how it operates: We have a town hall meeting or we are going to a community meeting, and we've had hundreds, maybe thousands, we give him a briefing on what the issues are in that community, what the problems are. We brief him on it. He goes and he answers questions from anyone and anybody. That's our mission when he goes to a community. We don't discuss who's getting a job.
It is possible, in twelve years, I might have said, so and so is going to be there, but it's really on issues and what affects the community.

COMMISSIONER EMERY: I understand. I'm saying something above and beyond your substantive preparation. I'm talking, really, more about pure political -- if there is any -- preparation of saying -- knowing that the Mayor is going to shake hands with this leader, with that person, this County Leader or this important political person at that meeting -- would you say, you know, Mr. Mayor, we just got this person -- this person just asked to have this person ask for a job and that person just got hired in one of the executive agencies?

THE WITNESS: Mr. Emery, it might have happened, but, very rare, if it did.

COMMISSIONER EMERY: Now I want to direct your attention to what appears to have been something of a change in the function of receiving resumes at City Hall around late '83, early '84 where, apparently, prior to that, you and Mr. Skurnik had received all the resumes and, thereafter, those went to the Talent Bank either through you or directly.
Is that a fair characterization of the change?

THE WITNESS: No. Most of the resumes did not come to Mr. Skurnik and myself. A lot of people just sent them to other Deputy Mayors, to other advisers, to commissioners, directly. We were just one of the functions.

Go ahead.

COMMISSIONER EMERY: Sorry. I wanted to let you finish.

THE WITNESS: Well, we were not the primary source, and even after the Talent Bank, there might be a resume that I might have seen that I thought really qualified for a particular position and then didn't send it to the Talent Bank and sent it to a commissioner to look at it.

COMMISSIONER EMERY: I understand, and I think that's a very important qualification. I don't want to leave the inference otherwise.

Now, the question is: You were, however -- I take it that before '83, the other commissioners, Deputy Mayors or commissioners, or others who might receive resumes, may have forwarded them to you for whatever purpose appropriate; is that true?

THE WITNESS: They may have and they may not.
A lot of times, they didn’t.

COMMISSIONER EMERY: Now, what I’m asking

THE WITNESS: Yes.

source, were filtered -- were given to Mr. Devincenzo?

after 1983, Resumes that you received, from whatever

COMMISSIONER EMERY: Is it not the case that

the question?

THE WITNESS: Mr. Emery, would you repeat

COMMISSIONER EMERY: Mr. Kasanof, may the record reflect that

MR. KASANOF: Excuse me

COMMISSIONER EMERY: To Mr. Devincenzo. Let

MR. KASANOF: Except me --

resumes down to the Talent Bank?

for the highest level employees -- to filter those

primary activity at that point was for -- except

COMMISSIONER EMERY: And after ’83, your

THE WITNESS: That’s true.

the outside?

from other Mayoral officials and not only from

COMMISSIONER EMERY: But you received resumes

Locicero

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THE WITNESS: Can I just expand on that answer?

COMMISSIONER EMERY: Sure.

THE WITNESS: You have to understand, in 1981 and 1982, I was not at City Hall. I was running the Mayor's campaign in 1981 for the Mayor, and in 1982, I was running the Mayor's campaign for Governor. So -- did you hear me?

COMMISSIONER EMERY: Yes, I did.

THE WITNESS: So, really, from '81 and '82, I wasn't around much, and so when '83 came in and they effectively changed the system and made a Talent Bank, obviously, Mr. DeVincenzo had been getting resumes, probably, in '81 and '82. I don't know who was getting the resumes.

COMMISSIONER EMERY: What I'm asking you is, after Mr. DeVincenzo started getting the resumes that had previously gone to other officials at the Mayor's Office, that function was centralized in his job function, including the Talent Bank, it was a fact, was it not that the job placement function was combined in the same office as the person who had had the personnel action function?

THE WITNESS: For the resumes that came to
City Hall, but ninety-nine percent of the resumes did not come to City Hall.

COMMISSIONER EMERY: I understand that, but, for those --

THE WITNESS: Mr. Emery, you may understand it, but the people that you're talking to in the press and the lobby, they don't understand that.

Your question refers that all resumes and all these jobs are going through Mr. DeVincenzo. In fact, they're not, and, in fact, it's infinitesimal. Most of the jobs are going -- jobs are posted, they go to the agencies, Civil Service tests. He's just a small cog in this whole government.

COMMISSIONER EMERY: What I'm asking you is, very simply: It's true, is it not, that the jobs that were handled at City Hall did go to the person who was also handling the personnel actions?

THE WITNESS: Yes.

COMMISSIONER EMERY: And that was not true when you were handling the jobs directly, you were handling referrals directly?

THE WITNESS: That's true.

COMMISSIONER EMERY: So that the allegations and the testimony that we've heard about the
potential for holding up personnel actions in order to place jobs only effectively possible after that change, and not before it?

MR. KASANOF: I don't think he should -- I object to that question. I object to -- one, it's unintelligible, because it has allegations and testimony. We do not know --

COMMISSIONER EMERY: I just said I'll withdraw it, Mr. Kasanof.

MR. KASANOF: Thank you very much.

COMMISSIONER EMERY: Mr. LoCicero, with respect to Mr. Skurnik's testimony, did you hear Mr. Skurnik's testimony?

THE WITNESS: No.

COMMISSIONER EMERY: Have you reviewed it in any way?

THE WITNESS: No.

COMMISSIONER EMERY: Mr. Skurnik testified yesterday --

MR. KASANOF: -- excuse me. My client misspoke himself. Counsel for the Commission showed him portions of Mr. Skurnik's testimony.

THE CHAIRMAN: I think the question was with reference to his public testimony.
COMMISSIONER EMERY: Right, from yesterday's public testimony.

THE WITNESS: I should answer that, because the counsel to the Mayor came back and told me a couple of things that he said.

COMMISSIONER EMERY: Now, my question, simply, is: Mr. Skurnik testified yesterday that there were occasions in which he gave more laborer jobs to particular County Leaders, gave more -- not laborer jobs, referred them more opportunities for applicants when they had performed some function which was favorable to the administration.

In your opinion, is that the right or the wrong thing for Mr. Skurnik to have been doing?

THE WITNESS: He certainly didn't get that from me.

COMMISSIONER EMERY: In your opinion, is it the right or wrong thing for him to be doing?

THE WITNESS: He knew I didn't operate that way, and I don't know why he said that.

COMMISSIONER EMERY: Let me just ask you a couple of more questions.

Are you aware of any referrals, either to or from the Department of Investigation, about
Mr. DeVincenzo's job placement function, let's say, prior to January, 1989?

MR. KASANOF: Excuse me --

COMMISSIONER EMERY: I'm just asking if he's aware of any.

MR. KASANOF: Commissioner Emery, because of the testimony which was given yesterday, I wonder if you could sharpen your question? You say any referrals?

COMMISSIONER EMERY: No, I'm wondering -- I'm simply saying whether he knows of any complaints to the Department of Investigation or any investigations by the Department of Investigation prior to the beginning of this year concerning Mr. DeVincenzo's job placement functions.

MR. KASANOF: Is this purely for clarification?

(Off the record conference between the witness and his attorney.)

THE WITNESS: Prior to -- I don't know the date, but I know that with regard to Mr. Carfora, that was a Department of Investigation -- but I don't know -- I learned later Mr. Carfora was making all these charges, but that's the only thing I know.
COMMISSIONER EMERY: Finally, let me ask you this: Were you at a meeting discussing Mr. DeVincenzo's retirement on 2/16 with the Mayor and with Mr. Brezenoff and with other persons?

THE WITNESS: I never discussed the man's retirement, Mr. DeVincenzo's retirement, in a meeting with the Mayor.

COMMISSIONER EMERY: On February 16th?

THE WITNESS: You can give me Christmas Day. I couldn't tell you.

COMMISSIONER EMERY: That's all.

THE CHAIRMAN: Bishop Moore?

COMMISSIONER MOORE: Mr. LoCicero, I just have one question, and it's kind of a philosophical question that I have. I'm the only non-lawyer in this group, this distinguished group.

THE WITNESS: I'm in the same boat.

COMMISSIONER MOORE: But would you, in your own words, just reflect with us a few moments on your views of the virtues and vices of the patronage system as it's practiced in this administration, and how the system at present impacts upon the Mayor's desire to see affirmative action practiced in this town?
I think we might get lost in a lot of details here. I think -- I hope the administration would want would be an equality of hiring, hiring decisions to benefit all of the citizens of this town, particularly minorities, women, Vietnam veterans, et cetera.

So, if you could just give your own point of view, your own philosophy?

THE WITNESS: Bishop Moore, I'll even expand on my prior answer.

If you look at this administration, we've broken ground. We have commissioners that were never black, Deputy Mayors that were never black, commissioners that are Hispanic that were never Hispanic, Deputy Mayors that are Hispanic that were never Hispanic, women that were Deputy Mayors, women that headed our Lobby Office, Lobbying Office in Albany. No woman ever worked in Albany.

At one time, most of the women -- the people working in our Albany office were women, headed by women.

We had a Ports & Terminals Commissioner that never would have been a woman. We had a Budget Director that was a woman, a Deputy Mayor for
Finance. We have a Police Commissioner that is black. We had the first black Parks Commissioner. We had the first black Finance Commissioner.

I can go on and on. No government -- and when it comes to judges, the Mayor has appointed more minorities and women than all the governments put together. No one ever gives him credit for doing things like that.

As I said before, when we came in, the percentage of minorities was very low. He sent out his personnel directors. We went out into neighborhoods. We put -- so-called enemies, not enemies, people who disagreed with the Mayor -- we put posters in their neighborhoods. People have attacked him and called him the most reprehensible things. We put those people on posters saying, try to be a policeman.

So, I want the Commission to understand that you've been getting a distorted viewpoint of this administration. And, in fact, we have done wonders for minorities and for women. What people call patronage, I'm not going to characterize what Mr. DeVincenzo said. You'll hear from Mr. -- Mayor Koch this afternoon. But, patronage, by
submitting resumes, to me, is not patronage. People, the Commissioners, make the final decision on who they hire.

I never called a Commissioner up and no one in our government, almost -- you know, it's possible that the Mayor wanted a Deputy Commission or something, but I didn't tell them you had to hire someone. Interview, that's what I wanted, somebody to be interviewed.

MR. KASANOF: Could we have --

THE CHAIRMAN: I don't expect we'll be going much longer, but I don't preempt Mr. Schwarz from what he wants to ask.

MR. KASANOF: If he's going to be more than -- obviously, we'll stay as long as necessary, but would it be possible for my client to have a constitutional, if there's a break in the format?

MR. SCHWARZ: I'm going to be very short.

THE CHAIRMAN: We'll let you know if we reach that point.

MR. SCHWARZ: I'll be less time than the discussion about how long I'll be.

Can you tell me where your office was, how often you saw Mr. DeVincenzo on a daily or weekly
THE WITNESS: My office is on the main floor of City Hall. Mr. DeVincenzo's was in the basement, along with the Deputy Mayor, who was a Deputy Mayor, Inter-governmental Director, the press, the police and several other people.

MR. SCHWARZ: How often would you see Mr. DeVincenzo?

THE WITNESS: I have no idea. I have no idea.

MR. SCHWARZ: Once a month, once a week, once a day, once an hour?

THE WITNESS: Do you think I measure the people I meet from day to day? When you're walking in City Hall, you're talking to people all the time.

MR. SCHWARZ: So, on a frequent basis?

THE WITNESS: Yes.

MR. SCHWARZ: In answer to Commissioner Hynes' question, you said that you assumed there was some system of tracking with respect to laborers, but not with respect to others.

Do you recall that testimony?

THE WITNESS: Yes.

MR. SCHWARZ: Why did you assume yes with
respect to laborers, but you didn't make any assumption with respect to others?

THE WITNESS: Because they were keeping a list, I assumed they were keeping a list. The documents you saw, they were put into priority order.

MR. SCHWARZ: So, in other words, just from the amount of them or the numbers of them, you assumed that?

THE WITNESS: Yes.

MR. SCHWARZ: You said that Mr. DeVincenzo got -- you testified there was a Black Adviser and a Hispanic Adviser. Were they giving resumes to you or to Mr. DeVincenzo?

THE WITNESS: Most of the time they sent them to Mr. DeVincenzo.

MR. SCHWARZ: So, the record should reflect that those people, as referrals, their resumes then went out to the agencies?

THE WITNESS: I can't hear you.

MR. SCHWARZ: My point is, it wouldn't be buried with you, their resumes wouldn't come from you and then, in effect, have your name on them?

THE WITNESS: No. It's possible -- excuse me,
it's possible that they asked me to place somebody, and I used their resume, but most of the time, I suggested they send them on to Mr. DeVinzenzio.

MR. SCHWARZ: Just two other questions.

Did you follow up at any time with Mr. Skurnik with respect to what he was doing with minorities and Vietnam veterans? After the Talent Bank was created, did you have any discussions with him, follow-up, to see what he was doing, or you, essentially, left him on his own, assuming he was doing what you wanted?

THE WITNESS: I, essentially, left him on his own.

MR. SCHWARZ: No further questions.

THE CHAIRMAN: Before we conclude, I just would like to -- I think fairness requires me to remind everyone, and, Mr. LoCicero, you, as well, what this hearing is and what it is not.

First of all, this hearing is taking place as part of our mandate to look at the functioning of government, to see whether there are procedures and regulations that ought to be changed to improve the functioning of government.

We have been focusing in these hearings on

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the operations of the Mayor's Talent Bank, we
have been looking at the relationship to some
extent, in the hiring practice area between City Hall
and certain agencies.

This hearing is not to be understood as
suggesting that the administration's commitment.
overall, to affirmative action is other than what
is it. That's not this hearing.

So, I don't want you to leave here or anyone
to leave here feeling this is a hearing looking
at affirmative action in all of its aspects in
the City of New York.

We've been focusing on, as I put it in my
opening statement in January, a slice of political
life, seeing whether that slice suggests, as I
believe it does, that there ought to be improvements
in terms of more procedures and regulations, and,
when we issue our final report, we will make that
clear.

MR. KASANOF: Mr. Chairman, for our part, I
would like the record to reflect that our meetings
with Commission counsel have been prompt, courteous,
fair, professional, and while I think there are
deep disagreements, philosophical ones, those are
issues of public debate.

My client has responded to every question put to him by this Panel, and while all government and everyone might wish that things were better, he has been happy to be of assistance to the Committee in its work, and we thank the Commission's staff for its courtesy.

THE CHAIRMAN: Thank you very much.

Thank you, Mr. LoCicero.

THE WITNESS: Thank you.

(Whereupon, the witness was excused.)

THE CHAIRMAN: The Commission calls as the next witness, Stanley Brezenoff.

STANLEY BREZENOFF, called as a witness, having been first duly sworn by the Chairman, was examined and testified as follows:

THE CHAIRMAN: Be seated, please.

(Witness complies.)

MR. SCHAPFER: Can I have one moment, please?

THE CHAIRMAN: Yes.

(Off the record conference.)

THE CHAIRMAN: Just for the record, there's been a discussion with counsel concerning the schedule for the rest of the day, and, specifically,
the time allotted for testimony.

It's my impression that at this point, we will break for lunch around 2:00 o'clock, and that the -- perhaps a little earlier -- and then the Mayor's testimony will commence at 2:30.

I'd like to ask counsel to identify himself for the record, please.

MR. SCHAFFER: Good morning, Mr. Chairman, members of the Commission and staff. My name is Frederick Schaffer. I'm Counsel to the Mayor.

THE CHAIRMAN: Thank you.

I'd like to recognize Commission Deputy Counsel James McGuire.

EXAMINATION

BY MR. MC GUIRE:

Q Good afternoon, Mr. Brezenoff.

A Good afternoon.

Q Could you please, beginning with 1978, provide us with a brief sketch of your employment with the City of New York?

A In 1978, I was named Commissioner of the Department of Employment, January or February of that year.

In May of 1979, I became a Commissioner of
the Department of Social Services and Administrator of
the Human Resources Administration.

In March of 1981, I became President of the
Health and Hospitals Corporation.

In February of 1984, I became Deputy Mayor
for Health and Human Services.

In April of '84, I became Deputy Mayor for
Operations.

And, in November of 1983, I became First
Deputy Mayor.

Q Who did you succeed as Deputy Mayor for
Operations?

A Nathan Leventhal.

Q Would you just give us a brief outline of
your responsibilities as Deputy Mayor for Operations, what they were?

A Basically, to oversee the operations of the
various municipal agencies engaged in the delivery of
services and in support services.

Q Could that include oversight responsibilities
for the Department of Personnel and, more generally,
personnel policies and practices in the City?

A Yes.

Q When you became First Deputy Mayor in late
1985, did you, essentially, retain the responsibilities you had as Deputy Mayor of Operations?

A  Yes.

Q  And when you became a Deputy Mayor for Operations, did Mr. DeVincenzo report to you?

A  Yes, he did.

Q  And continued to thereafter, when you became First Deputy Mayor?

A  Yes, he did.

Q  As, I believe you're aware, Mr. Carfora testified before the Commission concerning a meeting between yourself and he at Ellen's Restaurant, and I'd just like to give you an opportunity to provide us with your recollection of that meeting.

A  Of the meeting?

Q  Yes, and who prompted it.

A  The Mayor had concluded that Mr. Carfora, who was a candidate for the Deputy Commissionership at the Department of Environment Protection, had been passed over and because of what had been reported to him as a perception of anti-Italian bias in that agency, he had concluded that Mr. Carfora should, in fact, have the job as Deputy Commissioner.

He advised me of his conclusion, and we
agreed that I would interview Mr. Carfora.

I arranged to interview Mr. Carfora at that restaurant early one morning, went over his resume, talked to him about his experiences and reported back to the Mayor that he did, indeed, seem qualified for the job, that his background and experience and knowledge of the agency were such that he appeared that he could do the job.

The Mayor then set about seeing that he was appointed.

Q I take it that the purpose of your interview was to determine whether Mr. Carfora was qualified?

A Was to assure that he was qualified.

Q And prior to that meeting, had you previously interviewed high level management candidates at City agencies?

A Yes.

Q And, thereafter, was that a part of your responsibilities?

A On occasion, yes.

Q Now, I'd like to ask you some questions about the procedures, Talent Bank, and you may want to refer to Exhibits 5 and 6. You may not need to.

But, my question is: When procedures for
Brezenoff

hiring -- did there come a time when procedures for hiring laborers in the City were changed and agencies were required to hire laborer candidates referred to them by the Talent Bank?

A  Yes.

Q  When was that change made?

A  July or August of 1986.

Q  You're referring to Exhibit 5 and 6?

A  Yes, I am.

Q  Memoranda to yourself from Mr. DeVincenzo?

A  Right, and there's a follow-up memo in August of '86.

Q  So, is it your understanding that sometime after the August memorandum, that this procedure went into effect?

A  Yes.

Q  Can you tell us who decided to make these changes, and what prompted the changes?

MR. SCHAFFER:  Could we have one question at a time? Can we start with who decided?

MR. MC GUIRE:  Sure.

Q  First of all, who made the decision to change the laborer hiring procedures to require, among other things, I take it, that agencies only hire from the
Talent Bank?

A Essentially, it was my decision, but with the approval and concurrence of the Mayor.

Q Now, could you tell us what the reasons were for making that change?

A For some time, I had been concerned about the fact that there were a disproportionate number of white males receiving laborer positions. That concern had been compounded by the attention that the comparable work issue was getting, beginning about mid-year of 1985 or the fall of 1985.

We had had a study going on for some time of positions that had disproportionately low numbers of minorities and women, and those positions figured prominently in that review.

I had, in fact, waited about a year to take this kind of fundamental action. When I first was apprised or learned of this problem, I directed that certain steps be taken, and they did result in some improvement in the number of minorities and women receiving those positions, but not enough, especially in light of our comparable worth examination.

So, I directed a more fundamental change.

(Continued on next page.)
Q. And that was the change that required all laborer candidates to be hired from the Talent Bank?
A. From particular sources where the numbers of minorities and women would be substantially greater.
Q. Can you give us an approximate time frame when you first learned of the representation problem you mentioned a moment ago?
A. As I told you, it's harder to do. I believe it was at the earliest, the end of '84, the beginning of '85. There's a memo that I received from Joe DeVincenzo on equal opportunity issues generally, and the first part of that memo dealt with the Talent Bank. That's the first tangible thing that I can point to. That was '85.

MR. MC GUIRE: Mr. Schaffer, do you have the reference?
MR. SCHAFER: Yes. It's Exhibit 12.
May I confer for a moment before we continue?
THE CHAIRMAN: Yes, you may.
Q. Are we clear, then, that it was certainly by February of '85 that you became aware of a problem concerning the disproportionate number of white males in certain jobs?
A. Again taking into account it's a long time ago, I believe so.
Q What were you told about the extent of the 
over representation of white males in laborer positions?
A Well, I was told that it was attributable in 
part because of the nature of the referrals which were 
coming very heavily from elected and political officials 
and unions and Viet Nam Veterans and that steps were 
being taken, efforts were being made. I was told to 
expand Outreach, but that they had not taken hold and, 
as a consequence, the numbers of laborers, particularly 
those in the over $20,000 position were disproportionately 
white male.
Q Do you have a recollection as to the extent 
of the disproportionate representation of white males in 
the laborer positions?
A I have it somewhere, but the percentage in 
1983 and '84 of minorities and women amongst laborers 
was fairly low. I don't recall the percentage.
Q Who did you find out from about this problem 
with over representation of white males?
A Joe DeVincenzo.
Q Was that at a meeting?
A I assume it was. I can't remember the 
meeting, but I did have that memo and my guess is 
I discussed it with him.
Q Was it Mr. DeVincenzo who informed you that an explanation for the over representation of white males in the laborer position was that the referrals were coming in from County Leaders, elected officials and unions?

A Yes.

Q Was it your understanding at that time that Mr. DeVincenzo's office was receiving referrals from County Leaders and elected officials --

A I don't recall that I focused on it to that degree, but somehow those names were getting there.

Q Did Mr. DeVincenzo tell you as well that the resumes he was receiving from County Leaders and other political figures were resumes or names of prominently white males?

A I'm sorry. I missed the middle of it. Could you repeat it?

Q I gather that it was some time around February of 1985 where you learned from Mr. DeVincenzo that resumes or names of laborer candidates were coming from County Leaders and other political figures and union officials?

A That's correct.

Q I want to know if you also learned from
Mr. DeVincenzo that the ethnicity of the referrals by County Leaders and other political figures was predominently white male?

A I don't know how exactly he stated it, but I certainly learned that at the same time.

Q Was it at about that time that you learned for the first time that Mr. DeVincenzo's office was receiving referrals from County Leaders and other political figures?

A Well, no. I don't think that would have been the first I would have been aware that political and elected officials and the like could submit resumes, no. I don't believe that would have been the first time I learned that.

Q Did you have an understanding around this time, February of '85, that the majority of the referrals for labor positions were coming from County Leaders?

A I think I had that understanding in light of the numbers that I was looking at.

Q Would it be your belief that you would have learned that from Mr. DeVincenzo?

A Yes.

Q Now, you said that you took certain steps or
you directed that certain actions be taken after you learned of the problem concerning under representation of minorities and I'm wondering if you could tell us what those actions were?

A I asked Mr. DeVincenzo to expand his Outreach, which I should interject he said to some degree he was already doing, but I asked him to intensify that effort, made some suggestions as to where he might make contacts, told him that I thought he should solicit resumes from names of candidates from the advisers to the Mayor for Hispanic and black affairs, respectively, and said further that the referral sources that he had been getting names from up to the point should be advised that they would have a better chance of placing nominees, candidates if they were minorities and women.

Q Did Mr. DeVincenzo thereafter report back to you, in effect, that he had told referral sources including County Leaders that they would have a better chance if they submitted the names of minorities and women?

A From that time on, I can't tell you how frequently Mr. DeVincenzo did tell me that he was reaching out to these organizations, was talking to the Mayor's advisers on black and Hispanic affairs
and had so advised the various elected officials and so on of the need to recommend minorities and women.

Q Are we clear that these conversations with Mr. DeVincenzo you just talked about were prior to the period in late 1986, July or August, where changes with respect to the Talent Bank were implemented?

A Yes.

Q At that time, at the time you told Mr. DeVincenzo to tell his referral sources that they would have a better chance if more minorities and women were placed, did you have an understanding concerning as to how the referral sources would have an opportunity to have a better chance at obtaining placements?

A You mean in terms of the details --

Q How would it have worked that by submitting more names of minorities that they would have had a better chance?

A I don't think I can answer that question. I don't think I had an understanding of how it would work. What I was requiring was that it worked. That, in fact, it translate into increased numbers of blacks, Hispanics and women.

Q Did you become aware at any time that the Manhattan Democratic County Leader was not solicited for
names of laborer candidates?

A    Not particularly for laborers. That is, I was generally aware that the Manhattan County Chairman was unlikely to be solicited for resumes for any jobs.

Q    Did you receive -- let me withdraw the question and phrase it differently.

Did there come a time after you became First Deputy Mayor that you received reports from the Talent Bank concerning its placements?

A    Reports from the Talent Bank concerning its placements?

As to what agencies they were placed?

Q    No.

In general. I think you made reference to Exhibit 12, which I think is November of 1985 and I trust you'll agree that that is a report from Mr. DeVincenzo and it contains -- excuse me, February of 1985 and it contains information regarding the numbers of Talent Bank placements.

MR. SCHAFFER: I am not sure that's correct, Mr. McGuire. I think the data attached on attachment A to that memorandum is not broken down specifically by Talent Bank.

MR. MC GUIRE: I was referring to the numbers
Brezenoff

on the very front page of it, under, "Current and
Recent Initiatives."

A Let me just say that this memo was not
particularly a report on the Talent Bank. It was,
I believe, again four years ago, a response to my
inquiries on EEO generally, through the Members of the
EEO Committee, and I think the Talent Bank reference is
a part of Mr. DeVincenzo's response. I don't recall
receiving regular reports on the Talent Bank. Frankly,
it was a small part of Mr. DeVincenzo's operation and
certainly a very small part of overall EEO activity and
a very, very small part of what I was responsible for.

MR.SCHAFFER: Mr. McGuire, before you ask
the next question, could I request a new pitcher
of water for the witness?

THE CHAIRMAN: That's a reasonable request.
You can have mine.

THE WITNESS: What's in it?
(Laughter.)

THE WITNESS: I'll share it.
Thank you.

Q Prior to the changes in late 1986, pursuant
to which the Talent Bank became the source of laborer
hires for City agencies, did you have an understanding
as to how the process worked before that in terms of who determined which candidates should be forwarded by City Hall to the agencies?

A At the time that I directed the change, my primary focus was on the relatively modest improvement that had been registered in about the prior year since I first looked at it and since the comparable worth issue surfaced intensified. I'm not sure I ever, until recently, looked at how the Talent Bank operated day to day, point by point, piece of paper by piece of paper. I just wouldn't have been interested in it. I was interested in what the results were.

Q Do you have a recollection as to whether Mr. DeVincenzo ever told you that he determined which of the candidates Talent Bank had received for labor positions would be sent for interviews?

A No, he did not.

Q As you may be aware, Mr. Brezenoff, the Commission has heard evidence from Jerry Skurnik that, from time to time, he would forward more laborer candidates from a County Leader in response to complaints from a County Leader. Were you aware if that occurred?

A No, I was not.

Q Would you take a look at Exhibit 9, a
memorandum dated November 21st, 1986 to you from Mr. DeVincenzo?

Do you recall this memorandum?

A Not offhand, but I understand what it is.

Q Let me see if we can agree on something:

Is this a report to you regarding the ethnicity and gender breakdown of a proposed Talent Bank candidate pool?

A Yes, it is.

Q At the end of the memorandum, Mr. DeVincenzo, in effect, seeks your approval of the pool; is that right?

A Yes.

Q Do you recall whether you approved this particular pool?

A I don't recall. I probably did.

Q Prior to the date of this memorandum, November 21st, 1986, had you previously been advised by Mr. DeVincenzo concerning the ethnic and gender breakdown of laborer pools?

A No. I think the first -- I think it stems from the changes we had made in some of the turmoil that was attendant to those changes.

Q By the changes, you are referring to the
process by which the Talent Bank became, in effect, the sole source of laborer hires?

A Yes, because this is a pretty unique memo. I know of no others like it.

Q Your last answer prompts me to ask what was the turmoil that you referred to?

A After I had directed this rather dramatic change in how laborers would be recruited and allocated to the agencies and so on, with a heavy emphasis on job tap centers and similar referral sources to change the mix of laborers, some of the agencies complained. Some of the complaints were associated with what I supposed could be called normal start-up problems, the rate at which they were getting the referrals. They complained about the percentage of people who were showing up. Again, I guess, quarrelling with the pool that I was drawing from and after receiving those complaints and a number of discussions, I talked to Joe DeVincenzo and told him that some of the complaints were understandable, but I wasn't going to be deterred from the change.

Therefore, we had to make this new system work and the way to make it work was not only to insure a good mix of candidates, that is with a higher
representation of minorities and women, but a sufficient number of candidates so that the agencies would not be slowed up in their hiring and therefore, in their projects, and that they would, therefore, get candidates who could meet their requirements.

So, I think, -- again, this is historical reconstruction. I don't actually remember it. I think Joe sent me this to both show the numbers and to show that they were sufficient in number to meet the agency's needs.

MR. MC GUIRE: Mr. Chairman, I think the record should reflect that when Mr. Brezenoff said, "this" he was referring, apparently, to Exhibit 9.

MR. SCHAFFER: That's correct.

THE WITNESS: Sorry, Mr. Chairman.

Q Now, in early 1987, Mr. Brezenoff, were further changes made with respect to the process of hiring laborers?

A Yes, there were.

Q What was the change?

A The Mayor directed me to institute a lottery to take this new system one step further. To retain the mix of referral sources, but to assign the jobs on a
lottery basis similar to the one I instituted in the Department of Employment years before.

Q Assign the jobs or assign the selection of the candidates to be considered for the job?

A Generate lists of candidates to be considered on a lottery basis.

Q When, approximately, in 1987 was that?

A I think fairly early. I think the first quarter of '87.

Q Just in the interest of perhaps assisting you, you might look at Exhibit 7. It might help you with respect to the date. It may not. It's a memorandum to Mr. Brezenoff from Mr. DeVincenzo dated January 6th, 1987.

A It does talk about the computer, but to tell you the truth, I don't know if this, necessarily, is the lottery.

Q Could you tell me whether there were any particular reasons which prompted this change to the lottery system?

A The Mayor has often, in relation to areas where there are more candidates for homestead buildings or summer use employment, advocated the lottery. So, it's not surprising that he wanted to do a lottery here.
What prompted his attention is that the Commissioner of the Human Resources Administration, William Brinker, had proposed taking the laborer positions and holding them exclusively for homeless individuals. The Mayor initially thought that was a good idea. I disagreed. I thought the agencies would have a great difficulty with a labor pool of such uncertain quality and I argued that I thought we should stick with the mix we have now, maybe add some percentage of the best homeless candidates.

The Mayor agreed, but in reflecting on it, he said, why don't we do this as a lottery?

We have done other employment programs in that way.

So, I asked Joe DeVincenzo to do it.

Q Around this time in 1987, did you receive any complaints from union representatives concerning the laborer hiring practices?

A Yes. The complaints were partially, I guess, focused on the lottery. They were also focused on the limited universe of referral sources that I had established in mid '86. Both of these two things even separately, but certainly together, made the unions concerned about the fact that the workers in lower level...
what they perceived to be dead-end positions would have no opportunity to advance and that they saw individuals coming in from the outside to laborer positions and they had no shot at those positions.

Q Was there some impediment with the lower level employees having an opportunity at the higher end --

A An unintended by-product of my change to increase the numbers of minorities and women, because it was limited to those sources that we established did, in fact, exclude them, and the unions brought that to my attention.

Q It was your understanding that that was a problem that had arisen as a result of the changes you had implemented?

A Primarily, yes.

Q Now, did there come a time in 1986 or thereafter where you received any complaints from County Leaders or other political figures to the effect that too few of their candidates were obtaining placements?

A This is a general complaint of elected officials and political leaders and so on. They are always complaining about this. I don't recall particularly after '86.
Q Is it that the complaints are so frequent that you can't differentiate whether some were prompted --

A It isn't only positions that they complain about. They complain about everything.

Q Did you ever have occasion to make inquiry to Mr. DeVincenzo concerning the status of Talent Bank candidates?

A On occasion, yes.

Q And what would you seek to find out on those occasions?

A Well, usually in conjunction with a request that someone, a public official, usually an elected official, would make of me as to what was happening with someone they had referred for consideration for a job and I would endeavor to find out what had happened.

Q Would you rephrase the question for information when you made it to Mr. DeVincenzo in terms of the name of the person who had referred the candidate or in terms of the candidate himself?

MR. SCHÄFFER: Could I ask a question about the question?

You are phrasing a question as "would you." Are you asking a hypothetical question, or are you
directing the witness' attention to a particular instance?

MR. MC GUIRE: I'll rephrase it.

Q Did you, from time to time, ask Mr. DeVincenzo about the status of candidates by asking, not about the names of particular candidates, but rather by asking about the candidates referred by a particular figure?

A I think both would be true; that sometimes I would just ask about the name and sometimes I undoubtedly, mention who asked me.

Q Was it your understanding that Mr. DeVincenzo had available information which would permit him to determine which candidates had been referred by which particular sources?

A Well, at least on one occasion that you called my attention to -- at least on one occasion he did give me a list of names that had been referred by an elected official.

Q Are you referring to a list of names from Howard Golden?

A Yes.

Q Maybe we should just identify that for the record. I think it's Exhibit 38. Would you take a look at that?

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MR. SCHAFFER: Mr. McGuire and Mr. Chairman, before the next question is asked, may I confer with Mr. Brezenoff?

THE CHAIRMAN: Yes, you may. Would you like to confer now?

MR. SCHAFFER: Yes.

(Pause.)

MR. SCHAFFER: Thank you.

Q Have you had a chance to look at the documents collected in Exhibit 38?

MR. SCHAFFER: This is 39.

THE WITNESS: I almost identified the wrong one.

A Yes.

Q Do the materials collected as Exhibit 38 appear to you to be the report you received from Mr. DeVincenzo?

MR. SCHAFFER: I don't think there has been testimony about a report received.

MR. MC GUIRE: I may have missed that. I thought Mr. Brezenoff said that he had. Let me make sure.

Q Did you receive a report from Mr. DeVincenzo concerning referrals from Mr. Golden?
To best answer the question, Mr. Golden, as I recall it, had asked me or had given me a list of some names. I don't remember the number; three, four, five names that he had referred for consideration for various positions. I had given that list, I believe, to Mr. Devincenzo in an inquiry as to the status. He responded with longer lists of names that had apparently, been submitted to the Talent Bank by Mr. Golden.

At that time did you think, or wonder, whether Mr. Devincenzo had records which would permit him to identify all the candidates referred by a particular source?

I didn't think about it at the time, but these were more names than I had given him.

Let me move to a different subject. Did you ever receive complaints from Commissioners to the effect that Mr. Devincenzo's office was delaying approval of Planned Action Reports?

Yes.

Was that something that happened regularly?

No. They were usually associated with particular kinds of issues, disputes about salaries, restructuring of the agencies; never in association with hires.
Q Did any Commissioner, either regularly or irregularly, inform you about the number of City Hall referrals that had been hired by his or her agency?

A No. Quite the contrary. They take pride in never taking referrals.

Q I'm sorry. I missed that. They take pride in never taking referrals.

Q Were you aware at any time that Mr. DeVincenzo was forwarding resumes that he had received from political figures to Mr. LoCicero?

A He had received resumes from Mr. LoCicero?

Q No.

Were you aware that a practice pursuant to which Mr. DeVincenzo would forward to Mr. LoCicero for Mr. LoCicero's review, resumes, which Mr. DeVincenzo received from political figures?

A Until recently I was not aware of that.

Q When you say "recently" are you talking about the last six months or so?

A Yes.

Q Did Mr. DeVincenzo ever advise you from time to time that laborer candidates referred by County Leaders had, in fact, obtained jobs?

A I can't recall at any time that Mr. DeVincenzo
reported to me on placements of referrals from County Leaders other than, as I said Mr. Golden is a County Leader. So, in that sense, --

Q Other than that one particular instance, you can't recall?

A No. It's the only one that comes to mind, but I wanted to stress that consistent with my some times asking for status of referrals from elected officials, that might have happened.

Q Did Mr. DeVincenzo, at any time around the Commission's January hearings, say anything to you with respect to allegations of Talent Bank documents that had been destroyed?

A Without pinpointing it exactly in time, he, on different occasions, sought to reassure me and others that in his mind it did not take place, and that if anything did take place, he had nothing to do with it.

Q I direct your attention to February 16th of this year and ask you whether you were present at a meeting on February 16th, at which Mr. Hein was discussed?

A Yes.

Q And who was present at the meeting?

A The Mayor, several lawyers, Mr. White, the
Mayor's counsel, the Corporation Counsel, who was --
Mr. White was the Mayor's counsel at the time. There
may have been a member of the press office there, and
myself.

Q Were you told during the course of this
meeting that Mr. White, the Mayor's then counsel, and
Mr. Schaffer had interviewed Mr. Hein the day before?
A Yes.

Q What were you told about that interview?
A Mr. White reported that there was, by
Mr. Hein, or his attorney, an acknowledgement or ad-
mission that he had -- he, Mr. Hein, had changed --
amended his testimony, whatever the right term, between
the private and public testimonies, that is the two
different occasions and he conceded the fact that
some materials were discarded or destroyed.

Q Was there any -- anything said to you at
this meeting about the nature of the differences in
testimony that Mr. Hein admitted to?
A What I recall was, that they were related
to the discarding or destruction of documents.

Q Did it also have anything to do with an
admission by Mr. Hein that he had spoken with Mr.
DeVincenzo on the day the documents were destroyed?
A I don't recall that specifically. I do recall that there was some conclusion on the part of people that he was unlikely to have done this on his own, something like that.

Q Was there any discussion of the likelihood that Mr. Hein was telling the truth when he had admitted that he had destroyed documents?

A Again, relative to the evaluation of Mr. Hein, the implication was that he wouldn't have done this on his own. That he would have been more likely to do it under direction and therefore under Mr. DeVincenzo's direction.

MR. SCHAEFFER: May I confer, Mr. Chairman?

THE CHAIRMAN: Yes, you can.

(Pause.)

Q Was there any discussion during the course of this meeting about obtaining Mr. Hein's private testimony?

A Yes, there was.

Q What was that discussion?

A It was a discussion as to whether or not it had yet been received. It had been requested several times in prior days. The report was that it had not been received.
Q Was there a discussion during this meeting concerning whether or not Mr. Hein should be disciplined in any fashion?

A At the conclusion of the meeting because the meeting dealt from that point on primarily with another subject which I assume you'll get to.

At the conclusion on the meeting the Mayor said, aloud, asked what should we do with Mr. Hein, what should be done about him? The Mayor had long advocated taking disciplinary action with Mr. Hein because of his failure to provide the testimony, the private testimony on our request. The Mayor was persuaded that we should not take those measures against Mr. Hein.

Q Did you, in fact, recommend to the Mayor that disciplinary actions not be taken against Mr. Hein?

A Yes, I did.

Q And can you tell us what reason, if any, you gave?

A Well, these are the reasons that I gave over the course of several days because the Mayor pushed for this step for some time, but in the aggregate first, I believe, that at that point any way that Mr. Hein and his attorney would, in fact, ultimately provide the
MR. SCHWARZ: Could we get the date? Are we talking still about the 16th?

MR. MC GUIRE: Yes.

A Two, that -- I believe that the fact that Mr. Hein had changed his testimony and was, in effect, cooperating with the Commission might lead to a misperception that he was being penalized for, in fact, changing his testimony.

Third, I saw no reason to rush to do anything at all that Mr. Hein could, in my view, in fact have remained in his position until the Commission or anyone else looking at this set of issues had reviewed and finalized their product and came to whatever conclusions they were coming to, and made whatever recommendations they would come to. At most, there would be a few thousand dollars of salary at issue and if the concern was that Mr. Hein was still involve in the Talent Bank, that he could be moved to other responsibilities.

Fourth, just for the record, I'm aware that Mr. Hein is ill and I just didn't see any need to do it. Those four reasons.

Q Now, let me just ask you about the misperception reason that you gave. Am I understanding you to be
saying that you were concerned that it might be perceived that Mr. Hein was being punished for having told the truth, publicly?

Q There was a risk of that misperception, yes.

Q Why did you believe that Mr. Hein would, in fact, provide the transcripts?

A I'm not a lawyer, but, common sense. I just couldn't see the reason why -- what was to be gained by not turning over the private testimony.

Q Did the Mayor reached a decision on February 16th with respect to Mr. Hein?

A No. I was successful.

Q In other words, the Mayor didn't decide one way or the other, he deferred the decision?

A He allowed me to go ahead and arrange to move Mr. Hein to other responsibilities.

Q Was Mr. DeVincenzo also discussed during this meeting?

A Yes, he was.

Q What was said about Mr. DeVincenzo?

A The discussion about Mr. DeVincenzo was that -- I'll go from the conclusion back -- the Mayor concluded that it was in the best interest of the government, in the operation of the government for him to resign.
conclusion was predicated on discussion which pointed to growing in effectiveness in his -- in the fulfillment of his duties and obligations, and that the questions that were unresolved relative to Mr. DeVincenzo's testimony and the operation of the Talent Bank, were likely to be unresolved for a considerable period of time, and that given the long period of non-resolution, that it would be better to have somebody else in that position.

Q What was said about the ways in which Mr. DeVincenzo was growing, I think was your term, or increasingly ineffective?

A What I remember is, Mr. White talking about the difficulties he was having in getting information and the fact that Mr. DeVincenzo was not around as much as he should have been, and my own concern about the difficult budget period that we were entering that required lots of action in the Office of the Mayor. The Office of the Mayor and the mayoralty have a budget of over $150,000,000, eight hundred to a thousand employees. Mr. DeVincenzo's position, in addition to his City-wide personnel responsibilities, is also Chief Administrative Office of the Mayor and the mayoralty, so those two things, together, I think, was talked about.
Q What kind of information was Mr. White having difficulties obtaining?

A Well, again, there was not detailed discussion at the time. I think the information focused on numbers and analyses of numbers all related to the Talent Bank.

Q Am I correct that it was your understanding that Mr. White was saying that he was having difficulty in obtaining this information from Mr. DeVincenzo?

A I don't know if it was word for word, but that was what I concluded.

THE CHAIRMAN: Can I interrupt for a second?

I would like to ask all the representatives of the electronic media if they could be quiet during this part of the witness' testimony. There will be plenty of opportunity to set up for purposes of the Mayor's testimony during the recess. Some of the Commissioners have complained to me that they are unable to hear the responses of the witness. That being the case, I have to request that you do the best you can to remain quiet, except for the witness.

THE WITNESS: I thought that was for me.

MR. MC GUIRE: Does that mean I can't ask a
resigning?

A Only in the sense that I've described, and he talked about it as a long-term thing. What I recall him saying is, "I wouldn't do it right away, it would be three, four months into the future, but I would announce it," and the inference I drew was, that by announcing that he was leaving, perhaps some of the pressure would be relieved.

Q Did Mr. DeVincenzo say anything about being concerned about how it might be perceived if he were to leave?

MR. SCHAFFER: Are you talking about this same meeting?

MR. MC GUIRE: Yes.

A I may have said something about that, but I'm not sure he did.

Q Did you pass on to the Mayor the substance of this conversation with Mr. DeVincenzo where he asked whether the Mayor wanted him to resign?

A Yes, I did.

Q Was that the same day, do you recall, or shortly thereafter?

A It couldn't have been the same day because it was -- I do remember that it was late evening when Joe
told me of -- talked to me about this. It couldn't have been the same day, but shortly thereafter.

Q Prior to February 16th, had you learned of allegations concerning Mr. DeVincenzo's misuse of City funds?

A What I had heard was that there were allegations that funds from the Office of the Mayor had been, allegedly, used for repair work at the Police Academy gymnasium, Police Headquarters gymnasium or pool and that some of the other funds were used for another City agency, the Department of Employment, but out of the Mayor's Office funds. I had heard that, and I knew that they were referred to the Department of Investigation.

Q Can you take a look, please, at Exhibit 10 -- 21, rather?

MR. MC GUIRE: Mr. Chairman, let me just briefly say that Exhibit 21 is a letter, and it is dated February 10th of 1989. It is addressed to Kevin B. Frawley, from H. F. White, and I want to note, also for the record, that the letter has been redacted to omit mention of the name of the individual who supplied the information reflecting this letter and that there is also a redaction of a particular person at the bottom of the document,
a person who was an alleged girl friend of Mr. DeVincenzo.

Q My question is: Have you seen this letter?
A No, I don't think I've ever seen it.
Q Have you had a chance to read it?
A Yes.

MR. SCHAFER: One second.

(Pause.)

THE CHAIRMAN: A question? The witness has had a chance to read it.

MR. SCHAFER: He hasn't read the second page.

THE WITNESS: I didn't realize there was a second page. I'm sorry, Mr. Chairman.

Q Does this letter, Exhibit 21, help you place in point of time when you learned about the allegations regarding misuse of City funds?
A Well, I would guess it was in that week.

Q "That week" is a reference to the week of --
A There are two dates. The letter is dated the 10th, but I note that Mr. White talks about the 8th somewhere here, so I assume that Mr. White told me at some point between the 8th and the 10th.

Q Were you aware that the allegations concerning
the alleged misuse of funds by Mr. DeVincenzo had been
made by a Mayor's Office employee?

A  I'm not sure. He may have mentioned it.

Q  "He" being Mr. White?

A  Mr. White.

Q  Were you aware that the person who supplied
the information concerning these allegations was fear-
ful of Mr. DeVincenzo?

A  No.

Q  Mr. White didn't tell you that?

A  I don't think so. I don't think so.

Q  Did these allegations play any role, to your
knowledge, in the Mayor's decision to ask for Mr.
DeVincenzo's resignation?

A  I don't believe they were discussed at that
meeting. I don't think so.

Q  Did concerns about the likelihood that Mr.
Hein had destroyed the Talent Bank documents at Mr.
DeVincenzo's direction play any role in the Mayor's
decision on February 16th?

MR. SCHAFFER: I would like to just object
to the form of the question. I don't know what
you mean by "likelihood," whether you're suggest-
ing that there is a probability, or are you
simply asking whether the possibility of that was a factor that was considered.

THE CHAIRMAN: I believe he's going to rephrase it.

Q Was there discussion on February 16th to the effect or in substance that it was likely that Mr. Hein had destroyed Talent Bank documents at Mr. DeVincenzo's request?

A I don't think that it was put in those terms. This is what I think was the case: that there were questions raised by the interview with Mr. Hein as to whether or not Mr. DeVincenzo had directed Jim Hein to discard or destroy the documents but that the conclusion was, whatever doubts there were, or, concerns about whether or not that was the case, whether or not Mr. Hein was accurate or Mr. DeVincenzo, could -- would not be resolved over any short time frame and that, therefore, a resolution simply wasn't possible.

Q Was the Mayor's decision on, I believe you said, February 16th, to ask that Mr. DeVincenzo resign?

A To resign, yes.

Q Was there any discussion concerning the point in time at which Mr. DeVincenzo should resign?

A There was discussion. What I remember, there
was discussion about the time frame of thirty days, no later than the end of March, which would have been about six weeks or so, forty-five days from then, and that was my instruction, to get a resignation within that time frame.

Q Did you meet with Mr. DeVincenzo?
A The following day.

Q How did that meeting come about, did you set it up?
A I set it up the night before.

Q Did you speak to Mr. DeVincenzo that night, on the 16th?
A Well, I had my office arrange the meeting. It was quite early in the morning, 7:30 in the morning it was schedule for and, unfortunately, I have a reputation for delivering bad news at those hours of the morning to people who come to meetings with me.

Mr. DeVincenzo hung around my office that night wanting to know what the meeting was about, asked me. I told him I would discuss it in the morning.

Q Did you, in fact, discuss it on the next morning?
A Yes, I did.

Q What did you say to Mr. DeVincenzo?
A I told him that the Mayor had concluded that it was time for him to resign and, as I continued, Mr. DeVincenzo broke in and said, "Let me make it easy on both of you --" -- I was with Diane Coffey, the Mayor's Chief of Staff -- "Let me make it easy on both of you. I have already put in my papers for retirement --"

Q Were you surprised?
A --"for ninety days." Stunned would be more like it.

Q What did you say?
A Sorry?
Q Did you say anything to Mr. DeVincenzo?
A I said, "How could you do this?" Words to this effect: How could you do this without telling us?"

He said it wasn't the same as a resignation, that it was possible for him to withdraw, that, after all, he had put it in for ninety days, and so on. I told him there's really no excuse for doing that, but in the back of my mind was that he was making it easier for me to extract his resignation.

Q Did he say when he put in his retirement notice?
A Only after I pressed him. He had to look through his papers. He didn't have the date. He hadn't --
he didn't know the date. He had to look it up in his papers, and he did.

Q What do you mean when you say you had to press him?
A I'm sorry?
Q I believe you just said you had to press him.
A I asked him, roughly, when did he do it, and he said, "Oh, a week or so ago." I said, "No exact date? When did you do it?", and he looked through his papers and he told me January 23rd.
Q Anything else that you recall being discussed?
A Well, Mr. DeVincenzo was, clearly, upset. He was especially upset, at least initially, at the prospect of leaving on a thirty day basis. He wanted to stay for the full ninety days. He worried about his reputation as a professional, how it would look. He said that there were lots of things in mid-stream that he didn't think he could, in good conscience, leave. He also, frankly, worried about income, not having a position to go to.

Toward the end of the discussion, however, he also worried aloud and asked for assurances that the Mayor would not fire him during this period.
Q During the period before his resignation became effective?

A Yes. Right. And I told him that it was not the Mayor's desire or intention to fire him -- and that's what we would have done -- though, in a sense, asking for someone's resignation is firing, but what he meant is, fire summarily from his position -- that it wasn't the Mayor's intention or desire, but that I couldn't give him, or anybody else, myself in- cluded, a one hundred percent guarantee that under no circumstances would it happen.

He repeated it a couple of times and we went onto discussion about his resignation.

Q Did Mr. DeVincenzo ask why the Mayor had decided to ask for his resignation?

A I don't recall that he did.

Q Do you recall saying anything to Mr. DeVincenzo about why the Mayor had asked?

A If I did, it would be general and along the lines of: this is going to go on for a long time and it's just better if you move on. I doubt that I was very pointed.

Q Were you aware on February 17th that the amount of Mr. DeVincenzo's pension would depend, in part,
on the salary on his last day of employment?

A I'm not sure if I knew, at the last day
of his employment. I knew if he were fired, it would
have an effect on his pension, a substantial affect.

Q By fired, you mean reduced to his Civil
Service rank?

A That's what it would turn out to be, but
fired from his position as Special Assistant to the
Mayor.

MR. SCHÄFFER: May I confer with Mr.
Brezenoff for a second?

THE CHAIRMAN: Yes.

(Pause.)

A Well, just to clarify. I'm sure that Mr.
DeVincenzo alluded to it in the course of my discussion
with him about resignation.

Q Alluded to the fact --

A To the effect on his pension. I just don't
remember word for word what he said, but I certainly
understood that it would have an effect on his pension.

Q A negative effect, reduce the amount?

A Substantially a negative effect.

Q Did you, after this meeting with Mr.
DeVincenzo, tell the Mayor what had happened?
Brezenoff

A Yes, I did.

Q Did you tell the Mayor that you had learned for the first time that Mr. DeVincenzo had already put in his retirement notice?

A Yes.

Q What was the Mayor's reaction?

A Well, more briefly, roughly similar to mine, surprise, but sort of glad that it facilitated asking a long-term employee for his resignation.

Q Did you consider notifying the Department of Investigation on this date, on February 17th, that Mr. DeVincenzo had put in his retirement notice without telling you?

A You mean going back to when he had done it in January?

Q Yes.

A No, I did not consider it.

Q Did you consider taking any action at all to prevent Mr. DeVincenzo from resigning and before the Department of Investigation had concluded its investigation?

A No. I had asked Mr. DeVincenzo to resign with thirty days notice.

Q But did you try to take any steps to make
sure that --

A    I don't know what that would be like.

Q    I don't, either. I'm asking you whether you considered whether there was anything you could do on that score.

A    No. I guess I'm saying my intention was the exact reverse. My intention was to get from Mr. DeVincenzo his resignation within thirty days, and that was a resignation within thirty days, and that was a resignation that we planned to make public when we got it.

MR. SCHAFFER: Mr. Chairman, may I confer with the witness for one moment?

THE CHAIRMAN: Yes.

(Pause.)

A    I'm reminded to add, that much of the discussion with Mr. DeVincenzo that day involved Diane and I dealing with his argument, his plea that he be given more time, not less. He wanted the full ninety days and the impression was, even more than that, before he left, at that point in time. Obviously, he changed his mind.

Q    When did you find out that he changed his mind?

A    Thursday, the 23rd, I believe it was.
Q Did Mr. DeVincenzo call you?
A Yes. I had tried to reach him in the
two days prior, but, especially, Wednesday, unsuccess-
fully. He did get back to me on Wednesday, but I wasn't
there, and when I got back to him, he was gone, and on
Thursday, he got to me and told me that he had, in fact,
changed the ninety day notice to thirty days a day or two
before and that, therefore, he was, effectively, off the
payroll.

Q Were you aware, around the time of February
16th and 17th, that Mr. DeVincenzo could change the
notice period from ninety days to thirty days?
A I don't think I was aware in any intelligent
way. If I had stopped to think about it, I would have
assumed that he did ninety, you want to withdraw it, you
then have to do thirty. I assumed you had to do your
minimum but I didn't really think about it.

Q When, in fact, was -- well, let me ask a
different question.

Was Mr. Hein eventually demoted?
A Yes, he was.

Q And when was that, do you recall?
A I think the decision to demote him was on
February 27th or February 28th.
Q Did you implement the decision --
A Yes, I did.
Q -- in a letter to Mr. Hein?
A Yes, I did.
Q And did the Mayor make that decision?
A Yes, he did.
Q At a meeting at which you were present?
A Yes.
Q Do you recall what the Mayor said in terms of the reasons why?
A Yes, I do recall. At this meeting -- it was at the end of the meeting, the Mayor raised, again, the question of what should be done in regard to Mr. Hein. I made the same arguments I made before, saying that I thought, in fact, we resolved this question and that we were not going to take any steps, and the Mayor said, "No. He still has not provided the transcripts. It is not acceptable that someone would admit to lying in testimony before a body like the Commission and concede that they had destroyed documents."

As I said, I made the same arguments, but the Mayor stood up and told me, "Go ahead and do it," so I stopped arguing.
Q Did there come a time when you learned the
existence of documents relating to the Talent Bank which had been in the possession of Joy Schwartz?

A The answer is yes.
Q Was that after Mr. DeVincenzo's resignation became effective?

A Yes. It surfaced initially through reporters' inquiries, just the general question of it, and, specifically, Mr. White showed them to us at a meeting in the Mayor's Office a few days after Mr. DeVincenzo's resignation.

Q That was the first time you learned of the existence of those documents?

A Well, the first time, if you use "learned" loosely, is when the reporters raised the question, but, really, understood what the issue was, would have been at that point.

MR. MC GUIRE: Thank you, Mr. Brezenoff.

Mr. Chairman, I have no further questions.

THE CHAIRMAN: Mr. Brezenoff, I would like to put a question to you.

There was a response to Bishop Moore's question yesterday that a number of the Commissioners found most unsatisfactory. It had to do with the reasons for the establishment of the Mayor's Talent Bank.

Would it be a fair characterization to say that a major consideration in the establishment of
the Talent Bank was the subject of affirmative action, hiring of women and minorities into City Government positions.

THE WITNESS: Certainly, as I understand the Talent Bank -- I wasn't there at the time of its creation, but I think the answer is, affirmative action was a major part of the reason for the establishment of the Talent Bank.

THE CHAIRMAN: Thank you.

I would also ask you for your reflection on the appropriateness of people in City Hall forwarding resumes of people for jobs, including with those referrals cover letters that indicate the source of referral. For example, political sponsors.

THE WITNESS: I've been on both sides of the aisle, as it were. I've been a Commissioner, it has been noted. I think it's a mistake and, generally, a bad policy to have the referral sources go along with the names.

THE CHAIRMAN: You think that maybe one recommendation we might consider would be that, in any future distribution of resumes from government offices, like City Hall, that care should be taken
with respect to including the source of the referral, particularly if it's a political source?

THE WITNESS: I do agree and, in fact, if I find out about it, I'll break their hands.

THE CHAIRMAN: Thank you.

Commissioner Magavern

COMMISSIONER MAGAVERN: Mr. Brezenoff, in the spirit of fairness questions, I would like to request your reflection on a few other aspects of the workings of patronage in a general way. Let me start by referring to the period in 1986 when you acted to improve the performance of the Talent Bank in minority and women hiring.

You became aware at that time, I take it, that, essentially, to be rather simple about it, patronage really had been subverting the affirmative action policy of the Talent Bank?

THE WITNESS: Is that --

COMMISSIONER MAGAVERN: Is that a fair statement?

THE WITNESS: Well, I'm not sure that I would subscribe -- I know you're putting it simply and trying to get to another point, but I don't know that I would subscribe exactly to the way that you put it.
I had no objection to referrals coming from elected and political officials. I was objecting to the outcome. If the outcome had been substantially better in regard to blacks, Hispanics and women, I doubt I would have been looking at the issue at all. Maybe I should have, but I doubt I would have.

COMMISSIONER MAGAVERN: Fair enough.

Looking back on it, can you see that there may be a tendency of patronage to get out of control? Albeit that there is a legitimate role for patronage, that there is a tendency for it to get beyond its acceptable limits and for it to subvert other ends of government?

THE WITNESS: Again, based on some of the testimony that the Commission has elicited, I guess I'd have to conclude that some things that went on were not acceptable, things we would not approve of. In that sense, yes.

COMMISSIONER MAGAVERN: Do you have any thoughts on what means can best be used to keep patronage within appropriate limits?

THE WITNESS: Well, I want to stress something. I know you're going to be talking to the Mayor, the Mayor later on.
My first experience in this administration was in running the Department of Employment, when we took the summer jobs program at the time I was running it, some 60,000 jobs that were dispensed through a variety of networks, and changed that into a lottery system.

The general thrust of this administration in judges and lawyers for the Lqw Department, in summer jobs, in City Marshals, has been counter to any sense of patronage.

I think that the way that we would define patronage, to use that term, really depends on the definition. Referrals from political and elected officials to be considered, and to be considered on the merits. That's an acceptable level of patronage if you use the term "patronage" to describe that.

COMMISSIONER MAGAVERN: Not to characterize the entire administration, but in the case of the Talent Bank, in the years '84 and '85, that referral mechanism did, apparently, get out of control that even some candidates were being pressed by Mr. DeVincenzo so hard that agencies were filling positions that hadn't even planned to fill?
THE WITNESS: Well, as I said, some of the things that have come out in testimony, if, in fact, true, are unacceptable, but even within the Talent Bank, I want to stress that there were a lot of other things going on, other than laborers, and that what appears to have been damaged and damaging in regard to affirmative action, appears to be, at least, based on what I've seen in the testimony and the reviews that I've done in the last months. very much focus on laborers and, I understand, a much smaller group called deckhands and ferry agents. Those are -- if you're focusing on those, I think there's much that was unsatisfactory about how that operated.

I don't know -- if you mean by out of control, would we have wished that it was done differently, now that we've heard about these particular excesses, we would not have wanted those excesses.

COMMISSIONER MAGAVERN: And you've got some of it under control. You were successful from '86 forward in improving the performance.

Doesn't it suggest there are people in government who may even have permanent civil service positions who know that certain political figures,
elected or party officials, are likely to be
influenced and, therefore, these people, middle
level people, are going to be likely to be amenable
to their suggestions?

Isn't that a natural tendency in things?

THE WITNESS: I suspect that that is a
possibility, yes.

COMMISSIONER MAGAVERN: That might even be
part of the explanation of what went on with the
talent Bank in the years '84 and '85?

THE WITNESS: Well, it's hard to go into the
motivation, but that sort of things works, in a
sense, as a force throughout government.

One of the reasons why I would extend the
courtesy of determining the status of referrals
from an elected official has to do with the fact
that the elected official votes.

COMMISSIONER MAGAVERN: Do you have any
other thoughts on what means might be suggested,
not just for New York City, but for local governments
through the State, maybe even for the State
Government, to assure that patronage is kept within
appropriate limits?

THE WITNESS: Well, I think that the best way
to control against patronage is -- of the kind that you're talking about, that is, that goes beyond referrals on the merits, that goes beyond consideration of referrals and the like is to, perhaps, rethink the structure of our Talent Bank, where it's situated, the role of the Personnel Department of the City, the personnel oversight function within City Hall.

The personnel oversight function within City Hall has, as far as I can tell, been around for decades, in one form or another, and we're asking Bob Lynn and Judy Levitt to take a look at these structures and the way that they interact, and to make recommendations to the Mayor as to what changes we should make in light of some of the things that we are learning through the Commission's work and whatever recommendations the Commission makes.

COMMISSIONER MAGAVERN: As you go forward then, you may have further thoughts that you may even pass on to us, I take it?

THE WITNESS: I think one of the thoughts will be to substantially, dramatically, alter the role the Office of the Mayor has in Personnel, generally. That will -- I can't tell you exactly how it will
change, but I suspect and I think we will probably
wait until the Commission completes its report,
because I suspect you will have recommendations.

We are asking our people to look at it in
the interim, but I find it difficult to imagine
there won't be substantial changes in how we
operate.

COMMISSIONER MAGAVERN: Thanks very much.

THE CHAIRMAN: We are encouraging you to do
what you think is appropriate, and not let our
work interfere.

THE WITNESS: Fine.

THE CHAIRMAN: Commissioner Hynes?

COMMISSIONER HYNES: I want to ask you some
questions about this February 16th meeting, where
there was discussion about Mr. Hein and Mr.
DeVincenzo.

You said that there was a discussion and
people -- I think I am stating it paraphrasing it,
correctly -- concluded that it wasn't likely that
Mr. Hein was doing the destruction on his own.

THE WITNESS: The people who interviewed,
I think, Mr. Hyland and Mr. Hein, came with that sort
of conclusion.
I don't want to -- I don't want to put words in their mouth, but I remember that as being their disposition after hearing --

COMMISSIONER HYNES: Did you accept that?

THE WITNESS: Well, I accepted that that was their view.

COMMISSIONER HYNES: Were you aware at that meeting that Mr. Hein had, specifically, testified before us in public session that he did it at the direction of Mr. DeVincenzo?

THE WITNESS: Only from press accounts. I did not review the testimony.

COMMISSIONER HYNES: But, I take it, you accepted the press accounts that he had so testified?

THE WITNESS: You know, it wasn't that, in fact -- well, I don't recall -- maybe I ought to hear your next question.

COMMISSIONER HYNES: Just let me tell you directly where I'm going.

Was there any -- there was a decision made that evening that Mr. DeVincenzo should resign. When you delivered the message that he should resign, he had this conversation where he's very concerned about his pension, he doesn't want to be fired
because it has a monetary impact.

At that same meeting, the evening before, there was discussion about demoting Mr. Hein, correct, or taking some steps that would have an adverse monetary impact; is that correct?

MR. SCHAFFER: I think you may be assuming something.

COMMISSIONER HYNES: Let me ask -- well, let me clarify.

Was there a discussion about taking any action against Mr. Hein on February 16th that would have a negative monetary impact on him?

THE WITNESS: Well, only at the conclusion of the meeting, when the Mayor talked about demoting him because of his failure to provide the transcript and, as I said, I argued against that. This was at the end, tail end, of the meeting.

COMMISSIONER HYNES: Was there any concern on your part that Mr. Devincenzo may have ordered the destruction of documents and, in asking him to resign, he was going to resign with full salary, and was not going to affect his pension -- I'm sorry, you know, his full pension rights?

THE WITNESS: Well, first, we must keep in
mind that I was asking for his resignation within a thirty-day period, or the end of March, which would have been a six-week period.

Secondly, there was discussion of whether or not a disciplinary action, something punitive, could be taken against Mr. DeVincenzo, and Mr. White, the Mayor's counsel said quite categorically that there were no grounds to do so.

COMMISSIONER HYNES: When was that discussion?

THE WITNESS: Also at the 16th.

COMMISSIONER HYNES: At the 16th?

THE WITNESS: Yes.

COMMISSIONER HYNES: When you learned that Mr. DeVincenzo -- as I think you testified, you were stunned that he had put in his retirement papers, and then were advised that he was off payroll by February 25th, did you make any inquiry as to whether there were any steps you could take to ascertain whether his pension rights might be reviewed in connection with activities that he had undertaken, for example, if he had directed the destruction of documents?

THE WITNESS: Well, the question was not at all posed that way. What the issue before us
on the 16th was, in fact, whether or not we would ask Mr. DeVincenzo to resign, what-- we asked him to resign, or we fired him, what grounds were there for firing him, were the issues or concerns associated with Mr. DeVincenzo's stewardship, particularly in regard to what -- the interview with Mr. Hein, could they be resolved in the short term or the foreseeable future, and Mr. White believed that they could not be resolved in the foreseeable future and that that continued uncertainty, coupled with what we concluded was Mr. DeVincenzo's ineffectiveness in operating and fulfilling his responsibilities, that we should ask for his resignation without taking punitive action.

COMMISSIONER HYNES: Can you tell me -- you also mentioned that Mr. White -- I believe it was Mr. White -- reported to you that he had difficulty obtaining information from Mr. DeVincenzo?

THE WITNESS: That came about in a meeting.

COMMISSIONER HYNES: Was that considered any basis for taking disciplinary action against Mr. DeVincenzo?

THE WITNESS: No. I think the conclusion was that it was evidence of distraction on Mr.
DeVincenzo's part, preoccupation with matters that diverted his attention from -- remember, as I said earlier, Mr. DeVincenzo's responsibilities include City-wide personnel, and the Mayor's Office, and the Office of the Mayor, and its budget and its work force. That's a lot of responsibility.

COMMISSIONER HYNES: Were you concerned that he wasn't cooperating to the fullest extent with the Mayor's counsel in giving --

THE WITNESS: Cooperation was not what Mr. White was talking about. He was talking about availability and performance, frankly.

COMMISSIONER HYNES: Well, we can now get to the point where Mr. Hein, on February 27th or 28th is demoted, and you gave us the reason, that he had testified about destruction of documents, and he had not provided the transcript. So --

MR. SCHAFFER: I think there was one other reason.

COMMISSIONER HYNES: What was the other reason?

MR. SCHAFFER: He admitted to having changed his testimony between the private and public sessions.

COMMISSIONER HYNES: And the change in the
Brezenoff

testimony was, at least in one respect, that there was destruction of documents, and it was directed by Mr. DeVincenzo.

What my problem is, if you used that basis for demoting Mr. Hein, who is a subordinate of Mr. DeVincenzo, is there nothing, no step that you then take to review the situation that Mr. DeVincenzo is in, where he is now out of City Government on full pension?

THE WITNESS: Well, let me say two things.

First, the Mayor's general predisposition, disposition toward Me. Hein and his failure to provide the transcript, was pretty consistent throughout. It was -- his feeling was compounded by the change between private and public testimony, and the acknowledgment of discarding or destruction.

Others had a different view, but the Mayor's view was pretty consistent, pretty strongly felt throughout, and, ultimately, in a cumulative way, believe me, that's how it happened, he just decided. I mean, I've been through this on occasion before, and that's how he decided on Mr. Hein.

I think that at the time we asked for Mr.
DeVincenzo's resignation, the conclusion, especially of the Mayor's counsel, was that there were no grounds to take punitive action against Mr. DeVincenzo, and that taking action against someone, especially when it's a long-term employee, and especially when it involves pension rights, shouldn't be taken -- shouldn't be done lightly.

And based on what the lawyers, particularly the Mayor's counsel, has said, concluded, recommended, the Mayor, in his mind -- and I agreed -- didn't have any case if he wanted Mr. DeVincenzo to go. He could only ask for his resignation.

COMMISSIONER HYNES: My concern is the public's perception that there was a different treatment here, and that an underling gets disciplined, and a person that he reports to doesn't, and he retires with full salary.

THE WITNESS: The Mayor has a long history of support of legislation that would allow for the reduction or forfeiture of pensions in the case of individuals who are, after retiring, are later found to have committed a substantial misfeasance or crime.

We have advocated that legislation. The
Mayor still advocates that legislation.

I believe I've heard somewhere that the Commission has put forth a proposal for some kind of legislation, but always with substantial due process and -- upon a conviction of a crime.

That's the Mayor's position about these sorts of things.

Short of that, it becomes a very sensitive proposition, in my view, to have a single individual or a group of individuals decide on a more or less ad hoc basis, who keeps their pension and who doesn't.

COMMISSIONER HYNES: I have no further questions.

COMMISSIONER EMERY: I want to follow up very quickly with Commissioner Hynes' questions.

Now, I believe it was your testimony -- let me ask you this, first of all: Did you consider -- did you have discussions about -- did you, yourself, consider taking disciplinary action against Mr. DeVincenzo?

THE WITNESS: What was discussed at the February 16th meeting was whether or not there were grounds for doing so, and the conclusion of the counsel was that there were not.
COMMISSIONER EMERY: Now, I take it, though, that that was a matter still in discussion? At that present time, there weren't grounds, from what you knew, but there was a continuing investigation into the matter which could in fact, in the future, produce grounds for discipline against Mr. De Vincezo?

THE WITNESS: The counsel concluded and recommended on the basis of that conclusion that, in fact, the issues or concerns that arose out of the interview with Mr. Hein and Mr. Hyland were not going to be resolved at any time soon.

COMMISSIONER EMERY: I take it, though, that at some point they were going to be resolved, and that could be a grounds for discipline?

THE WITNESS: Depending on when they were resolved, yes.

COMMISSIONER EMERY: Now, you testified, I believe, that the next day the discussion that you had with Mr. DeVincenzo included a statement by him that he could withdraw, that one of the options was that he could withdraw his retirement?

THE WITNESS: His earlier notice, he was referring to, yes.
COMMISSIONER EMERY: Yes, he could withdraw
that, and he could extend it, and there wasn't
any worry about -- after you were surprised, that
was one of the matters you discussed; is that right?

THE WITNESS: That's right. He was trying to
tell me this was not an inexorable move on his
part.

COMMISSIONER EMERY: As of that day -- I just
want to be clear -- as of that day, you knew that
there was a pending DOI investigation against
Mr. DeVincenzo for the furniture and the police
stuff?

MR. SCHAFFER: Can we take one at a time?

COMMISSIONER EMERY: Did you know that?

THE WITNESS: I knew that the matters had
been referred to DOI.

COMMISSIONER EMERY: And you knew that the
people at the meeting the day before had indicated
that they believed that Mr. Hein did not act on his
own, but would only act at the direction of the
superior?

THE WITNESS: That was the belief, that those
individuals took away from the interview with Mr.
Hein.
COMMISSIONER EMERY: With respect to the destruction?

THE WITNESS: Right.

COMMISSIONER EMERY: And you knew that there had been testimony here under oath that Mr. DeVincenzo had been responsible for directing or giving the direction that resulted in the destruction; is that correct?

THE WITNESS: No, I am not sure what testimony you're referring to.

COMMISSIONER EMERY: The testimony at the Feerick Commission in early January.

THE WITNESS: Well, again, I have not reviewed earlier testimony. If you would be more specific, I'll try to be responsive.

COMMISSIONER EMERY: And you also knew, did you not, at that point, that you were totally surprised that Mr. DeVincenzo had put in for his ninety-day pension?

THE WITNESS: Right.

COMMISSIONER EMERY: What I am asking you is: Is there any reason why you didn't consider at that point just simply saying to Mr. De Vincenzo, let's figure out a way to hold this in abeyance
until we can determine whether the current and pending investigations would come out in a way that would either exonerate you or constitute a basis for disciplining you?

THE WITNESS: The exact contrary conclusion had been reached the day before. I was acting on that conclusion, and the directive out of that conclusion, which was to ask Mr. Devincenzo for his resignation.

COMMISSIONER EMERY: I understand, but I am saying, at that point, you didn't already know je had put in for his retirement.

THE WITNESS: That was a change, but it was a ninety-day retirement, and far more time than I wanted to give him.

COMMISSIONER EMERY: Now, let me turn to one other thing, and, that is, it's a fact, is it not, that at some point you learned that there were political referrals taking place in the Talent Bank prior to '86?

THE WITNESS: Referrals from political officials, yes.

COMMISSIONER EMERY: That had something to do with the placement of Talent Bank applicants?
THE WITNESS: That there were referrals from political officials, yes.

COMMISSIONER EMERY: You also learned at that point in May of '89 that there was an allegation of destruction of records from the Talent Bank in early '86; is that correct?

THE WITNESS: In May of '88, was that when the press reports --

COMMISSIONER EMERY: Yes.

THE WITNESS: Yes, okay.

COMMISSIONER HYNES: The question I have is: Did you believe those two things? Did you have any reason to doubt those two things as of --

THE WITNESS: Tell me what the first thing was.

COMMISSIONER EMERY: The first thing was that there were political referrals coming out of the Talent Bank; it was earlier than '86.

THE WITNESS: Referrals that had political sources?

COMMISSIONER EMERY: Yes.

THE WITNESS: Yes.

COMMISSIONER EMERY: And the second --

THE WITNESS: The actual destruction of
COMMISSIONER EMERY: Yes. As of today, you believe those things?

MR. SCHAFFER: You're asking for his opinion on a question that's before the District Attorney of Manhattan, perhaps also before this Commission.

THE CHAIRMAN: I would like to ask Commissioner Emery to rephrase the question.

I think there were several questions there.

COMMISSIONER EMERY: I am asking for Mr. Brezenoff's conclusion as to whether or not Mr. DeVincenzo operated the Talent Bank system with the political referrals, and whether or not there was destruction of records in February of 1986 or thereabouts, early 1986.

MR. SCHAFFER: Let's take one question at a time.

He already testified he was aware of the fact that there were referrals coming from political figures, among others, earlier than 1986. So, we can put that one aside.

And the second question?

COMMISSIONER EMERY: Does he believe there was destruction of records in early '86.
MR. SCHAFFER: As he sits here today, based on whatever evidence and newspaper accounts he may have read, and you want his opinion?

COMMISSIONER EMERY: Exactly. Yes, I do.

MR. SCHAFFER: I would ask, Mr. Chairman, on that question, to permit the witness not to answer. I think that's -- given the current state of investigations, the fact that there's certain evidence, in fact, a great deal of evidence, Mr. Brezenoff has not, personally, seen, I don't know why it's a relevant question to this proceeding, particularly in a matter under investigation by a prosecutorial authority.

THE CHAIRMAN: You've shared that with Commissioner Emery, and I ask Commissioner Emery for his response.

COMMISSIONER EMERY: I just want him, in his official capacity as the Mayor's chief aide, First Deputy -- I want to understand what's in his state of mind right now with respect to this conclusion, so I can ask him the next question. Otherwise, I can't ask him the next question.

MR. SCHAFFER: I'm afraid I don't understand how it's in his official capacity to take on the
next question.

MR. SCHAFFER: I am afraid I don't understand how it's in his official capacity to take on the function of whether it's a Grand Jury or judge and jury on that matter.

COMMISSIONER EMERY: Mr. Schaffer, I am not asking him to take on any function other than his own function, which would include, as a person in the administration, what occurred in the past. He's had an awful lot of information.

I want to know what he thinks about it at this point.

THE CHAIRMAN: Maybe this bridges the gap. It may not. It may make it worse.

Put aside the issue of responsibility.

COMMISSIONER EMERY: I am not saying responsibility.

THE CHAIRMAN: Put aside the issue of responsibility in terms of who did what, who's responsible for whatever took place in early '86, with respect to the documents.

The Mayor did indicate last May or June, in his press conference, that he had, he was the recipient of information that there was a normal
resume clearing program in effect, and I did understand Mr. Brezenoff to testify earlier concern­ing discarding or destruction of documents.

So, it may be that he has a view that wouldn't implicate any individuals as such, as to whether or not inappropriate -- I am willing to change the word, if that causes any concern -- discarding -- let me put it a different way.

Does he have an opinion as to whether what took place in early '86 was a normal resume cleaning process, or something different from that, and, if something different from that, what?

MR. SCHAFFER: As long as it's clear that this is merely his opinion, and based on incomplete evidence, he can certainly answer.

THE CHAIRMAN: I think that meets -- and Commissioner Emery will tell me if it doesn't -- his concern.

COMMISSIONER EMERY: Exactly.

THE WITNESS: Let me begin by saying, my general view of these sorts of questions is to wait until all the returns are in, all of the information has been analyzed. I am not privy to a good deal of the testimony and the evidence.
THE CHAIRMAN: You don't have to, but --

THE WITNESS: I may have a predisposition, but I don't think it's even fair for me to indulge myself in a predisposition.

One of the reasons that I argued against demoting Mr. Hein was to wait until the Commission had concluded and see what, in fact, the conclusions were.

THE CHAIRMAN: It would be my recommendation to the Commission that we not press this subject further, in light of the current investigation.

COMMISSIONER EMERY: I understand. I won't ask anymore questions about that.

MR. SCHAFFER: May I consult with Mr. Brezenoff just one moment?

THE CHAIRMAN: Yes, sir.

(Off the record conference between Mr. Schaffer and the witness.)

MR. SCHAFFER: Thank you very much.

COMMISSIONER EMERY: I take it you were Mr. DeVincenzo's direct supervisor, Mr. Brezenoff?

THE WITNESS: That's true.

COMMISSIONER EMERY: I simply want to ask you how it could have occurred that there may have
a destruction and that there were, in fact, political referrals occurring under your supervision during this period?

THE WITNESS: Well, it's an interesting question. Do you have any idea of what my job is?

COMMISSIONER EMERY: I do have an idea.

THE WITNESS: Let me respond to the question, please.

Look, I supervise, I think, between forty and fifty agencies of City Government, some of the largest in the world. I supervise the implementation of the largest budget outside of the Federal Government, and the State of California and New York. I tend to do the oversight and supervision on a bottom line basis for something called the Mayor's Management Report. It has dozens of indicators.

I use indicators to supervise all of these things. That's how I supervised Mr. DeVincenzo.

The Talent Bank is a small part of what he does, of what he was responsible for. He handles, along with the Department of Personnel, all City personnel transactions -- all City personnel transactions.
Secondly, he's responsible as the Chief Administrative Officer for a budget that, this year, is in excess of $150 million, and has nearly 1,000 employees in it, many, many work sites and leases, a whole host of special commissions. This is not the only special commission formed. Many have been formed in the City, which have to be staffed and so on. That's what he did.

I, generally, supervised it, just as I supervise OMB and the Office of Operations and so on. I don't get into the day-to-day operations of those activities.

COMMISSIONER EMERY: Just one further question:

How often did you meet with Mr. DeVincenzo?

THE WITNESS: On a -- not very frequently, but not rarely. His office is in the building, and on an ad hoc basis, particularly relative to City Hall Staff and so on.

It could happen once or twice a week. On a scheduled basis, extremely rarely, and usually in conjunction with broader City personnel issues, and others were present.

COMMISSIONER EMERY: That's all I have.

THE CHAIRMAN: Before we go to the next
questioner, I would like to readjust the schedule, if that can be worked out, so that the Mayor's testimony will begin at 2:45 rather than 2:30.

Mr. Schwarz?

MR. SCHWARZ: I'll be very brief.

Given your statement that you share with us with respect to pension forfeiture, I am just trying to go back to that day again.

Given the DOI investigation that you knew was pending with respect to two other issues, given your conclusion with respect to Mr. Hein, that he probably would not have done it on his own, given the fact that you had learned that Mr. DeVincenzo had, in fact, operated a political referral agency through the Talent Bank, was any consideration given to demoting Mr. DeVincenzo to a civil service status while the investigation went on, on the theory that if he was ultimately cleared, he could be reinstituted, and then go on to retire. And then, if he wasn't, at least he would then be terminated from his civil service status?

MS. SCHAFFER: Would it be all right if the witness answered that without all the given?
MR. SCHWARZ: Yes. I told that to you as a hypothetical.

MR. SCHAFFER: I take it the question is whether any consideration was given to demotion?

MR. SCHWARZ: I'll take the risk that what I said is a hypothetical.

THE WITNESS: I would correct one part of the hypothetical. I'm sorry.

Just, it was not my conclusion about Mr. Hein, it was a conclusion reported by those who had interviewed Mr. Hein.

I'll take it as a hypothetical. As I said, at the meeting of the 16th, there was discussion about what was the appropriate action with regard to Joe DeVincenzo, and it was the conclusion of counsel that there were no grounds to take punitive action against Mr. De Vincenzo.

MR. SCHWARZ: He was a discretionary employee, wasn't he?

THE WITNESS: Yes. But a punitive action, as one that would cost him dollars -- if you're saying did one have the absolute right, maybe, maybe not. That would be up to the court to decide.
But in terms of whether it was right to do so, counsel concluded there were not grounds to remove him, certainly not on the basis of allegations.

MR. SCHWARZ: Well, my question was a different one, and that was:

Was there any discussion of demoting him to a civil service status?

THE WITNESS: I don't remember that, particularly. There was discussion of removing him from his responsibilities, and, thereby, penalizing him.

Counsel concluded that there were no grounds to do that, insufficient ground to do that.

MR. SCHWARZ: That's all.

THE CHAIRMAN: We're going to now break for lunch, and return at 2:45.

THE WITNESS: Thank you, Mr. Chairman.

THE CHAIRMAN: Thank you.

(Whereupon a luncheon recess was begun at 2:10 o'clock p.m.)
(Whereupon, at 2:45 o'clock p.m., the following proceedings were had:)

THE CHAIRMAN: This hearing is now in session.

The Commission calls Mayor Edward I. Koch.

EDWARD I. KOCH, called as a witness, having been first duly sworn by the Chairman, was examined and testified as follows:

THE CHAIRMAN: Be seated, please.

(Witness complies.)

THE CHAIRMAN: I'd like to ask counsel to identify themselves for purposes of the record.

MR. ZIMROTH: Good afternoon, Chairman Feerick. My name is Peter Zimroth. I'm Corporation Counsel.

MR. SCHAFFER: I'm Frederick Schaffer, counsel to the Mayor.

THE CHAIRMAN: Good afternoon, Mayor.

THE WITNESS: Good afternoon.

MR. ZIMROTH: Mr. Feerick, as you know, yesterday we provided the Commission with a lengthy statement of the Mayor, obviously too long to read.

The Mayor has a short summary of that statement, which we've also provided copies to the
Commission, and to the Commission the Mayor would like to make a short statement.

THE CHAIRMAN: We'd be happy to receive it.

THE WITNESS: Mr. Chairman and Members of the Commission, I am pleased to have the opportunity to appear before you this afternoon. I know that the Commission is still in its fact-finding stage, and has come to no formal conclusions. Nonetheless, the impression has been created by these hearings -- even if unintended by the Commission, that there is massive patronage in my administration, and that this massive patronage was hidden behind a "sham" affirmative action program. These charges are false.

First, let me talk about the so-called massive patronage. Some of the testimony before the Commission has described certain practices at the Talent Bank from 1983 through 1986, of which I would not have approved. Nevertheless, these practices involved only a part of the Talent Bank's job referral services -- the Laborers, Deckhands, and Ferry Agents at two agencies. And, the Talent Bank, itself, was and is a very small part of the City's hiring program.
During the period 1983 through 1986 --
the period during which the Commission's testi-
mony indicated some unfortunate practices -- there
were fewer than 400 Laborers, Deckhands and Ferry
Agents placed through the Talent Bank. That is
slightly more than one percent of the 30,204 jobs
that, by law, could have been filled at the
Mayor's discretion during those years. If I had
wanted to have a massive patronage program, I
could have, within the law, used 30,000 jobs to
create one.

But, I did not want to have, nor did I
have, a "patronage operation." Indeed, a fair
study of patronage in this administration would
not only put the laborer and ferry worker jobs
in the context of the 30,000 or so discretionary
jobs that were filled during those years, but
would also look at the practices of other govern-
ments throughout the State and of prior City
governments. No objective observer could doubt
that my administration would come out ahead, far
ahead. This is evident from the way in which I
had excluded political considerations from the
filling of summer jobs, which are done by a
lottery. The first thing I did when I came in in 1978 -- there were 60,000 Federal jobs, and 120,000 youngsters who wanted them. They had never counted the number, because the jobs were parcelled out to political people, to civic people, to members of the clergy. I said, "No more." They were all put on the lottery, and that was the first time we found out how many people wanted the jobs.

Or, the choice of City Marshals, which I sought first to end completely, couldn't get that through the State legislature, so, instead, we go through the State legislature legislation that created a Marshal's Committee, and from which I can appoint a Marshal, and it was at my request, and you have to go through that Committee with respect to your professionalism.

Or the hiring of lawyers at the Law Department, a common area of referral for political people. There's nothing wrong with those people, but, nevertheless, a common area of referral. Not a single lawyer is referred by me or anyone else in my administration to Corporation Counsel. Corporation Counsel has a separate hiring practice.
involving internal committees and securing, as they have, the best people out of the law schools.

Then, finally, what I think is probably unique in this country is the selection of judges, totally on the merits. I do not send judges or candidates to the Mayor's Judiciary Committee, created by me, not by law. Those members of the Committee -- and the Committee is not even a majority of my designation. I have, my recollection is, twelve members of the Committee, the presiding justices have twelve members on the Committee, and then three deans of law schools select three people, and they send me three candidates for each position, and from those three candidates, after I have interviewed them, I select the Criminal, Family Court and interim Civil Court Judges.

I don't think it's done anywhere in the land to that extent.

Let me talk about affirmative action. I am very proud of my administration's achievement in this area. Without specific hiring quotas -- I don't subscribe to hiring quotas -- but, nevertheless, we have made substantial progress in
making the City's work force more representative of its people. I have appointed the first Black or Hispanic heads of the following City agencies, who had never served in those positions before:


I have appointed the first Hispanic Deputy Mayor and the first Black Deputy Mayor for the position of Economic Development and Finance.

I have appointed more women and minority judges than all previous Mayors combined.

In addition, of 57,546 persons hired for discretionary positions from 1983 through 1988, approximately fifty-six percent were minority men and women, and another seventeen percent were white women, the protected categories. This
progress was due not to a single program, like
the Talent Bank, but to a series of inter-related
actions taken by many City agencies, including
the Mayor's Office of Minority and Ethnic
Affairs, the Mayor's Office of Hispanic Affairs,
the Mayor's Ethnic Advisory Council, the City-
wide EEO Committee, and the EEO offices in the
larger cities. The City Commission on Human
Rights, the Department of Personnel's City-wide
Recruitment Committee, and the Mayor's Office
for the Handicapped.

The Talent Bank contributed to this progress.
Unfortunately, its achievements have been demeaned
by the charge that improvements were made only in
response to stories about corruption in 1986.
This is not so. Even before 1986, more than
fifty percent of the candidates hired through
the Talent Bank were minorities or women. In
1986, I learned for the first time that a dis-
proportionate number of the laborers hired
through the Talent Bank were white males. This
was a problem that First Deputy Mayor Stanley
Brezenoff had been working on for more than a
year without having achieved a result that
satisfied him. We, therefore, changed the hiring system to address the under-representation of minorities and women. As a result, the percentages of minorities and women hired as laborers increased dramatically to the point that, even accounting for the earlier period, sixty-seven percent of the people hired through the Talent Bank from 1983 through 1988 were minorities and women.

Moreover, in every year from 1986 to the present, most of the Talent Bank hires for jobs paying more than $20,000 went to minorities and women.

So, let me conclude by saying that I am proud of my administration's record on the issue of patronage and the issue of affirmative action, and I await your questions.

(Continued on next page.)
THE CHAIRMAN: I'll turn it over to Staff Counsel.

I would just like to note that our Commission has not made and does not make any charges and there's nothing about the statement to suggest the contrary. I want the record to be clear that we have not made any charges.

As you correctly point out in your statement, we're engaged in a fact finding investigation pursuant to our mandate, and at the end of our work, we compile our conclusions and recommendations in a report to the Governor, which we'll make available to others, as well.

With respect to the specific subject of the Talent Bank, as you correctly note, that has been very much a part of the public hearings that we have had in January and also this week, but our fact finding work with respect to the City in this area extends to the entire operation of the office once occupied by Joseph DeVincenzo, an office that impacted personnel decisions beyond the Talent Bank area and, in fact, on agencies throughout the City.

So, our work and our investigation shouldn't be viewed as simply limited to the area of the
Koch

Talent Bank. I just simply wanted to say that at this point.

THE WITNESS: May I add to that and say that even beyond the Talent Bank is that agencies jurisdiction, the Talent Bank is a very small part of the jurisdiction.

THE CHAIRMAN: And as some of the testimony we have received indicates, resumes, at least for a period of time, were referred from that office to agencies throughout the City for numerous positions, not simply Talent Bank positions.

Now, I would like to acknowledge and turn the initial questioning over to our Executive Director, Mr. Bienstock.

MR. BIENSTOCK: Thank you, Mr. Chairman.

EXAMINATION

BY MR. BIENSTOCK:

Q Mr. Mayor, good afternoon.

Let's clear up something right away. Is it the case that affirmative action is and was a major component of the Talent Bank?

A The answer is very simply. I have heard various people say it was the only component of the Talent Bank and I objected to that. When you phrase it
Koch

as you have just phrased it, was it a major component,
the answer is absolutely yes.

Was it the exclusive?

No.

Q Now, when you set it up, you insisted that
agencies give reasons to Mr. DeVincenzo's office for
not hiring referrals from that office; is that correct?

A There was an executive personnel order that
said that if you rejected and you had the right to
reject, you had to give reasons why.

Q Did they have to be good reasons?

A The reasons have to be valid reasons. Good
is in the eye of the beholder.

Q Did you ask for or receive reports concerning
the racial composition of the referrals from the Talent
Bank at the end of its first year, 1983?

A So far as I can recall, I never made such
a request and any such request would be made by the
First Deputy Mayor at that time, who was Nat Leventhal,
and subsequently, Stan Brezenoff.

Q Did you receive any such reports at the end
of 1983?

A I don't recall seeing such a report.

Q How about at the end of the Talent Bank's
second year, 1984?

     A  I don't recall being aware of the Talent Bank's output until sometime late '85 - '86.

     Q  I'll get to that. My question was limited to December of late --

     A  I don't recall seeing any such report.

     Q  Now, after its third year as you have just mentioned, you did have a conversation or receive a report about the Talent Bank's record in terms of affirmative action; is that right?

     A  Yes.

     Q  And when was that?

     A  Well, it's hard to place it in exact time, but I think it was in '86.

     Q  And that was a conversation or a report by Stan Brezenoff?

     A  A conversation with Stan Brezenoff.

     Q  And did Stan Brezenoff tell you that the Talent Bank was referring laborers and that those laborers were predominantly white males?

     A  The conversation, as I recall it, went more like, we have a problem in several areas. One relates to comparable worth which was then an issue with the union. We have a problem that the people who are being
referred are a greater number of white males that you
or I would like, words to that effect, and we took
action.

Q Did he also tell you that they were predomin-
ently political referrals?

A I don't recall his identifying any group as
predominantly political referrals. I do recall the
reference to their being predominantly white.

Q I want to direct your attention to your
deposition transcript which, I believe, your counsel
has, and I want to ask you a question and answer from
that transcript, and I'll ask you if it refreshes your
recollection.

MR. ZIMROTH: The page and line number, please?

MR. BIENSTOCK: Page 74, line 7.

MR. ZIMROTH: Sorry. I didn't hear you.

MR. BIENSTOCK: Page 74, line 7.

Do you have that, Mr. Zimroth?

MR. ZIMROTH: I want the Mayor to look at it.

MR. BIENSTOCK: Give me the sign.

Q Do you have it?

A I do.

Q "Question: Did he also indicate --" he,
in context meaning Mr. Brezenoff -- "-- indicate to you
that there was any particular, any tendency in that population to be referred by political sources?

"Answer: Uh-huh, that these laborers jobs in large numbers, not exclusively, were filled by having calls made to political leaders to tell them that there were jobs available and they should send in people and that these people then would be sent on to the Commissioner and unless the Commissioner had reasons not to hire people, they could hire other people if they wanted to, but they would have to give reasons why."

Do you recall being asked that question and giving that answer?

A I do.

Q Does that refresh your recollection?

A Yes.

MR. SCHAFFER: Could we read just the last few lines of that quotation so it will be complete? It goes on to say that "they would have to give reasons why and in many cases, I'm told people were not hired and the Commissioners gave reasons and hired other people. We really didn't care so long as the mix included more blacks, Hispanics and women. That was the purpose of that."

End of quotation.
Q Did Mr. Brezenoff tell you during this conversation or around that time, that the unions had a particular concern?

A Yes, he did.

Q What did he say in that regard?

A The thrust of it was that civil servants were making less, in some cases than laborers and that they would like to be included, the union said, in this mix and they were right.

Q Why couldn't they have been included?

A What's that?

Q Why could they not have been included as it operating until then?

A I don't know why they were not included, but I know as a result of that conversation, that they had not been included.

Q Were you aware that in 1983 through 1986 laborers positions were not being posted at DOT and DEP?

A What period?


A I don't believe I was aware of that, no.

Q Were you aware that in 1983 to 1986 laborer candidates were being recruited from County Leaders and Borough Presidents from Mr. LoCicer and Mr. Skurnik?
A I believe I was aware of that, yes.
Q And when did you become aware of it?
A I believe as a result of conversations that I had with Stan Brezenoff in '86 when we decided to enlarge the mix. The mix, in order to include minorities in this laborer class, which was a total of something like 400 of the 1200 that were the subject of the Talent Bank's referrals in that three-year period, they would include -- this was Stan's suggestion and I readily accepted it -- that we would include TAP center referrals, that we would include women on welfare, AFDC women and there came a time when I said there should be a lottery. They should all be mixed up.
Q When was the lottery instituted?
A I believe in '87.
Q Were you aware in the '83 to '86 period that the Manhattan County Leader, Mr. Farrell was being excluded from the position of laborers positions?
A I wasn't specifically aware, but I would have been surprised if he had been called.
Q Were you aware that in 1983, '84 and '85, the Talent Bank computer had the capacity to, and regularly did produce lists of referrals by referral source?
A No.
Q Do you recall that last week we discussed the propriety or the keeping track of referral sources?
A I do recall our conversation.
Q Do you recall what you said to us?
A I said it would depend on the purpose, is my recollection, and if the purpose is to keep track of the results so that if people called, that would be an acceptable purpose.

If the purpose was to keep count in terms of how many referrals were successful for a particular referral source, that it would inappropriate.
Q The appropriate one would be in case a referral source called up and he said, hypothetically, how is my candidate doing?
A Did so and so get a job, not how is he doing.
Q That would be appropriate?
A Yes, I would think so.
Q Can you tell us why an alphabetical list would not be sufficient for that purpose?
A If an alphabetical list would serve that purpose, that's what they should have. They should have the least intrusive list permissible that would do the job.
Q Now, let me ask you whether you are now
Exhibit 46 in the exhibit book --

MR. SCHAFFER: I'm afraid someone has taken the exhibit books.

Q I'm sorry.

MR. MC GUIRE: We have another one.

(Handing.)

Q Exhibit 46 in the book, part of it is a 1989 calendar. If that would be helpful during your testimony, please refer to it.

My question was: When did you become aware of the admission?

A Well, I became aware of it in several ways. I believe he testified to that effect, and it appeared in the press. That's what I think. You have to understand that you're going over a period and that's my best recollection, but I became directly aware of it when the Counsel to the Mayor, Hank White and Rick Schaffer, then Assistant Corporation Counsel, reported to me that they had met, I think, on February 15th with Jim Hein and his lawyer and that meeting was in order to secure his private testimony.

I had asked Hank White to secure that from everybody that he could. He secured it from Joe D. I don't know who else.
He said he was having difficulty securing it from Jim Hein and on February 15th he met, along with Rich Schaffer -- Jim Hein and his lawyer and they reported to me subsequently that Hein, A, was not going to turn over his testimony, that his testimony contained, according to his lawyer and he -- inconsistencies, and reconfirmed the fact that he had destroyed Talent Bank documents.

Q I want to leave this subject for a moment, but I want to ask you one more question about it. Did your counsel tell you anything of the likelihood that Mr. Hein destroyed documents on his own initiative without orders from his superiors?

A On February 16th, I guess the next day, I brought up the subject of what we were going to do with Joe D. and ultimately, Jim Hein. We made a decision about Joe DeVincenzo that we ought not to take an action against Hein and in the course of that meeting, I believe that they expressed a feeling -- not a fact -- that they thought he was a very meek individual who was not likely to take an independent action.

Q I want to come back to that subject, and I want to move away just for a few moments. I want to direct your attention to May of last year. Do you
recall when there were news reports that the Commission was investigating Mr. DeVincenzo's operation and that the Commission had received allegations about the destruction of documents?

A I do.

Q Do you recall your public statement of that time? Let me refresh your recollection by referring you to Exhibit 25 in the book.

A Yes, sir. I have seen this.

Q Mr. Mayor, do you recall that you said publicly at that time, in substance, and we can go to your exact words if we have a disagreement about the substance, do you recall that you said, "I believe that Joe DeVincenzo when he said that he did not destroy documents, but, rather, that he discarded stale resumes," do you recall that?

A May I just read it so I can refresh my recollection?

Q Sure.

A Well, what I think I said, quoting myself, "Somebody may be committing perjury. I don't believe it's Joe DeVincenzo. Now, I cannot swear for that, but he'll be put under oath." That's what I said. That appears on page 3.
Q And on page 2, concerning the substance of what he told you, the beginning of the third paragraph:

"What does he do? I'm now repeating what he said he does and if you find that he does it, or if there's an agency that finds that he does it, then he violated his obligations, but I believe this is what he does."

Then you go on to discuss discarding old resumes.

Do you recall that?

A Well, I'm reading it here. It's in front of me.

Q Could you tell us the basis for that statement on that day, all of those statements on that day?

A Yes. To my recollection, Pat Mulhearn was then Counsel to the Mayor, and when the newspaper reports came out about shredding of documents -- I think that was the word they used -- I asked him to make an investigation and it was his conclusion in advance of my having issued my statement -- it was not a written statement, it was an oral statement which we have since transcribed.

He had advised me that having talked with Joe DeVincenzo, he, Pat Mulhearn, had concluded that
DeVincenzo had not shredded any documents.

Q Do you know if Mr. Mulhearn interviewed other City employees at that time?
A I don't know.
Q Do you know if Mr. Mulhearn did anything other than to talk to Mr. DeVincenzo?
A I don't know.
Q So, you relied on Mr. Mulhearn's judgment to make the statement --
A Pat Mulhearn was then the Counsel to the Mayor.
Q Fine. Let's move to 1989. Following the Commission's first two days of hearings, did you direct that an investigation be conducted into the issues raised by those hearings?
A I did.
Q And could you tell us the scope of that investigation?
A Well, I directed that two investigations be initiated; one was by Hank White with no limitation to find out what happened, if anything and what actions I should take that would appropriate. There were no limitations put on his investigation.
Q Do you know what he did?
A Say that again?
Q Do you know what he did?
A Well, every day he would come in and tell me
he was interviewing people at the Talent Bank and was
securing information.

The second investigation that I initiated
was one within the jurisdiction of Stan Grayson, Deputy
Mayor for Economic Development, to examine the Talent
Bank from the point of view of procedures and improving
them.

Q Now, shortly after the public hearings, did
Mr. Brezenoff relate a conversation to you which he had
had with Mr. DeVincenzo concerning the question of
Mr. DeVincenzo leaving City Government?
A Yes. I don't know what day, but the thrust
of it was that Joe DeVincenzo said, "If I'm ever an
embarrassment to the Mayor, ask me to go and I'll go."
That was the thrust of it.

Q Did Mr. Brezenoff also tell you that they
spoke of Mr. DeVincenzo's possible retirement?
A On that first occasion?
Q Yes.
A I don't recall that he did, and I don't
believe that he did.

Q Do you recall whether he related to you that
they had spoken of it not imminently, but in terms of months, or the beginning of the fall?

A I don't recall any discussion related to Joe DeVincenzo's offering to resign at any time that he became an embarrassment, coupled with that he was going to resign at some time in the future.

There was a subsequent conversation with Stan Brezenoff which took that subject up.

Q When was that?

A Well, on February 16th, to my recollection, the day after Hank White and Rick Schaffer met with the attorneys for Jim Hein --

Q Excuse me, Mr. Mayor. I don't mean to interrupt you, but I just want to add that between the conversation you described at around the time of the public hearing and February 16th, are there any other conversations on the Hein-DeVincenzo subject matter?

MR. SCHAEFFER: The question is a little vague. Are you referring to either --

MR. BIENSTOCK: Yes.

A Well, the only conversations -- I had lots of conversations with Hank White.

Q I'm sorry. I meant with Mr. Brezenoff.

A With Mr. Brezenoff?
MR. ZIMROTH: Could you start over?

MR. BIENSTOCK: Yes.

Q Between the conversation with Mr. Brezenoff that you just described, and February 16th, did you have any additional conversations with Mr. Brezenoff about Hein or Devincenzo?

A Undoubtedly. I would talk with Stan Brezenoff every single day, but I can't recall any special conversation relating to that particular matter, because we had larger conversations where a number of people were involved.

Q Now, let's go where you were going to, the February 16th conversation.

MR. ZIMROTH: Excuse me. Is there a question pending?

MR. BIENSTOCK: Yes.

Q Could you tell us who was there?

A On February 16th, in my office, were Stan Brezenoff, Hank White, Rick Schaffer, Peter Zimroth, I believe Doron Gopstein, who is First Deputy Corporation Counsel. There may have been others, but those are the names that come readily to mind.

Q Can you tell me the subject, first, as regards what was said about Mr. DeVincenzo?
Hank White said that -- in reporting to everybody that his examination gave him no factual or legal basis for recommending to me that I fire Joe DeVincenzo, but he said that he does not think he's functioning well and he turned to Stan Brezenoff and I recall it, and he said, "Don't you find that to be that way, too, functioning," and Stan Brezenoff, to my recollection, concurred.

I, in the course of that discussion, asked everybody there their opinions and my recollection is, that Stan Brezenoff said, "He said he would resign any time you wanted him to resign," harking back to the original statement that DeVincenzo had made much earlier on.

So, I asked, again, whether people believed that that was the appropriate -- I don't have the exact language -- whether that was the appropriate way to go to ask him to resign. He was in charge, not just of the Talent Bank. He was in charge of the entire Personnel office for the Mayoralty.

To my recollection, it's $70 million budget just for Mayorality, and even more City-wide operations. He passes on every single employee signing off as to whether or not they can be promoted and whether they
can go on to payroll. I mean, his is the last
signature, really, is what I think occurs, and whether
or not they have the bona fides to hold the position
technically, under the rules that apply for that particular
agency, and the conclusion that I reached, based on the
discussion was, that he could not carry out that job
any more and we're going into then and now, a very
top budget year, and I didn't think he could carry his
weight in these overall requirements.

So, I said, "Is there anyone who disagrees
with the proposal that he be asked to resign," which
had been suggested by Stan, and which I concurred in,
by asking the question, and nobody disagreed, nobody.

So I then designated Stan Brezenoff and
Diane Coffey to go down, maybe the next day, to ask him
to resign and my recollection is, that we -- this is
now February. We were talking about before the end of
March; that he put in his resignation to be effective
before the end of March.

They came back --

Q   Excuse me, sir. I want to stay on the 16th
for a moment, if I could.

You mentioned that there was discussion
about whether or not he should be fired. I wanted to
ask you whether you meant by that, demoted back to his Civil Service status --

A No. He was fired. I don't recall a conversation about demotion, as I recall.

Q Did you understand that he had some permanent Civil Service status?

A Yes.

Q And did you understand, therefore, that in order to fire him, that charges and procedures would have to be brought against him?

A Sure. Absolutely.

Q When Mr. White informed you that there was no basis to fire him, was he talking about a Civil Service discharge?

MR. SCHAFFER: Are you asking for what was in Mr. White's mind, or what was in the Mayor's mind?

MR. BIENSTOCK: No. I'm asking for what Mr. White said.

A The language employed by Hank White was, that there was no basis in law or, in fact -- those are the two words I recall him using -- for him to recommend that DeVincenzo be fired.

Q And your testimony is that there was no
discussion at that meeting of demoting him back to his permanent Civil Service --

A I don't believe, and I can't recall anyone raising the issue of demotion, because he had already offered, on an earlier occasion, to resign, but we wanted, at that point, to get him out of that office so we could get someone to function.

Q Did Mr. White inform you whether or not he had determined that Mr. DeVincenzo had given public testimony to this Commission which was not truthful?

A Which was not what?

Q Truthful.

A I have no recollection of Hank White ever saying that he concluded that the testimony of Joe DeVincenzo given to this Commission, was untruthful.

Q On the 16th, did he say anything concerning the veracity of Mr. DeVincenzo's testimony before this Commission?

A I don't think he expressed himself that way. I think that in saying that he had no legal or factual basis for recommending that DeVincenzo be fired, that he expressed some concern, some feelings, but not based on facts or evidentiary matter. That is what he was conveying.
Q Did he inform you whether or not he had interviewed former City employees?

A Yes. He said he had interviewed other employees, and that the testimony of different people was different.

Q I'm trying to focus on former City employees.

A Oh, I'm sorry. I spoke too quickly. I don't know whether they were former or current.

Q Did he inform you, at that time, that he had documents in his possession which emanated from the desk of Joy Schwartz?

A No.

Q Did Mr. White tell you that he had interviewed Mr. Devincenzo?

A Yes.

Q And did he inform you whether or not Mr. Devincenzo gave any explanation for the computer printouts or other documents which had been introduced at the public testimony in January?

A He didn't discuss any such details with me, that I can recall.

Q With respect to the decision to fire Mr. Devincenzo that you discussed, would it be fair to say that you relied on Mr. White's judgment?
A Well, I relied not only his judgment, but these two lawyers were sitting there, along with the Deputy Corporation Counsel, who had been very much involved in Civil Service matters, that is, Doron Gopstein.

Q Let's move to the 17th. Do you know whether Mr. Brezenoff and Ms. Coffey did meet with Mr. DeVincenzo on the next day?

A Yes, they did, I was told.

Q When were you told that, shortly after?

A The next day, the 17th.

Q Could you tell us what you were told?

A My recollection is that Stan Brezenoff said to me that he had gone to see DeVincenzo. I believe Diane Coffey was there and had said to him that we wanted him to resign and he said, "Well, I have already put my papers in and I have given ninety days notice."

Stan indicated surprise that that had happened, and he said, "Well, that too long. We would like you to leave before the end of March." I'm repeating what Brezenoff said to me. He said that, "Well, I'll have to respond to that and get back to you."

That was the conversation, as I recall it.

(Continued on next page.)
Q Did you and Mr. Brezenoff, on the 17th, have a discussion of what it would have meant if Mr. DeVincenzo resigned before the end of March, having put in a ninety day notice for his pension?

A I don't recall such a discussion.

Q Now, when Mr. Brezenoff told you what he told you, were you surprised?

A Yes.

Q Were you distressed?

A Well, distressed, yes. Yeah, I would have liked to have known that, without finding it out in the way we found it out.

Q So, you were distressed that he hadn't told you previously?

A Yes.

Q Were you suspicious?

A Well, that's hard to describe it that way. Distressed is more accurate, because we wanted him to resign shorter than ninety days. So, it isn't as though he's telling me something I don't want him to do. I want him to resign.

Q At that time, did you make a decision not to act so as to reduce Mr. DeVincenzo's pension?

A It never came up that I can recall, to reduce
his pension. He was doing exactly what we wanted him
to do, which is to resign, and, having accomplished
that, there was no further, that I can recall, dis-
cussion on changing that position.

Q I am not sure if you answered this question,
and, if you have, I apologize.

Did he relate to you that Mr. DeVincenzo had
asked him during that meeting for assurances that he
wouldn't be fired in the interim?

A Yes, he did. He said to Stan, along these
lines: "Is the Mayor going to fire me? Or, "Can you
assure me the Mayor won't fire me?", one or the other,
and I don't remember which. Stan reported to me that
he had said, "The Mayor, at this moment, has no inten-
tion of firing you. I cannot give you a guarantee for
the future."

Q Did you and Mr. Brezenoff on that day have
a conversation about the potential significance of that
request for assurance?

A Not that I can recall.

Q Did you have a conversation concerning
whether or not Mr. DeVincenzo was concerned about his
pension?

MR. SCHAFFER: On that day?
MR. BIENSTOCK: Yes.

A I cannot tell you whether it was that day, you know, the day before, the day after. That's hard to do. But, I believe that Stan said that he -- that DeVincenzo said that his pension is predicated on his last day of employment. That, I think, was mentioned to Stan and then mentioned to me.

Q Did you know at or about that time that the New York City Employees Retirement System has a practice of routinely notifying the Department of Investigation --

A No, I did not know at that time.

Q I'm sorry, Mr. Mayor, but we have the same problem we had before.

A I'm sorry.

Q Did you know that they had a practice of informing DOI of all those who put in applications for pension?

A I did not know at that time.

Q Now, you did know at that time, however, did you not, that as early as February 8th, that Hank White had received other allegations concerning Mr. DeVincenzo; is that true?

A Yes.

Q What were those allegations?
A Well, he came in to see me and said that there were allegations concerning his having authorized the Department of Employment, which had a new Commissioner, to get new furniture for the office, and that there was an allegation concerning his having authorized, as I recall it now, footlockers at the Police Academy.

I told him, "Send it over to DOI. That's not anything that you can get involved in."

Q Do you know that he did?
A Yes.

Q Do you know what became of DOI's investigation of those allegations?
A I was told subsequently by Kevin Frawley, if I recall it correctly, he was asked by Bob Morgenthau, the District Attorney, much later on to stop any investigation, because Morgenthau's office was going to pursue that matter.

Q I want to return now to the 16th, and pick up the conversation concerning Mr. Hein.

Could you tell us, focusing on the 16th, focusing on Jim Hein, what advice you received from Mr. Brezenoff?
A Yes. The matter of Jim Hein came up at the
end, after we had talked about DeVincenzo, and whether he raised it, Brezenoff, or I raised it, having raised it earlier with Hank White and Stan, to the effect that if he doesn't turn over his private testimony, to fire him. That's what I kept saying to Hank White. "He has to turn over that testimony. He can't refuse."

So, it came up at the end of this discussion, and I don't know whether it was on that day or subsequently that they talked about that he has a kidney condition, and he's a very sick man, and, in any event, we ought not to do anything now.

So, my recollection is that the -- as the meeting was breaking up, the conclusion was, we're going to defer discussion with respect to Jim Hein to a later date.

Q I want to return to a subject you raised before.

Did Mr. White also tell you about the meeting he and Mr. Schaffer had had the previous day with Mr. Hein and his lawyer? I take it he did, during the 16th meeting?

A Yes.

Q Did he tell you that Mr. Hein or his lawyer had admitted certain inconsistencies between the public
and private testimony?
   A  Yes.

   Q  Could you tell us what the inconsistencies were, as best you can recall?
   A  No. They just said there were inconsistencies. I don't recall his spelling them out.

   Q  Did he tell you whether or not he had been truthful at the public testimony or the private testimony?
   A  He did not describe that. He said there were inconsistencies, he wouldn't turn over the testimony, and that he acknowledged that he had destroyed documents. Those were the three things that were reported.

   Q  When you announced the demotion of Jim Hein on March 1st, you gave two reasons; is that correct?
   A  May I see? I issued a written statement.

   Q  I apologize. Turn to Exhibit 30 in the book.
   A  Yes.

   Q  You gave two reasons; is that right?
   A  Yes.

   Q  He admitted inconsistencies, and the destruction of documents?
   A  Yes.
Q In fact, there was at least one other reason?
A A third reason, right.
Q And, that was?
A That he refused to turn over his private testimony.
Q Is there a reason you didn't include that in your March 1st public statement?
A Well, I -- I adopted this material. I didn't write this. This was done in consultation by the press secretary with either Hank White or either of these two gentlemen, and I accepted it as my own. Why the third premise wasn't put in, I cannot tell you.
Q I think you indicated the answer to this before. Would the fact that he hadn't turned over --
MR. ZIMROTH: Excuse me, Mr. Beinstock.
Could you speak up? We are having a hard time hearing you.
MR. BIENSTOCK: I apologize.
Q Would the fact that he had not turned over his transcript, alone -- would that have been sufficient justification for your action, in your judgment?
A Well, it incensed me, and I kept heckering Hank White when -- Hank kept saying, "Well, I'm asking him, and he says he's going to do it, and he hasn't done
"it," and I would ask him almost every day. When I got really upset about this, I mean, you just can't refuse to turn over testimony, in my judgment, and work for the City. I prepared a directive either -- I don't remember -- removing him, sending him back to where he came from in terms of Civil Service, and I gave it to Stan Brezenoff, and then he and Peter Zimroth told me it was inopportune. That, for me to take an action of that kind vis-a-vis Jim Hein, before we had concluded what we would do vis-a-vis DeVincenzo, would be inappropriate, and putting it directly on the table, and the Feerick Commission wouldn't like it. That's what I think Peter Zimroth said.

Q Could you explain why the Feerick Commission wouldn't like it?

A I'm sorry, he tells me it was Stan who said that. I cannot tell you why. There was no discussion about it.

Q I see. In fact, Mr. Mayor, hadn't Hank White purported to demote him previously?

A Say it again.

Q The conversation you're talking about is February 16th?

A I heard your question. I did not know that. Subsequently, I learned that, as a result, I guess, of
my asking him every day, "Where's the testimony?" I did not see the letter. He sent out a letter to either Hein or his lawyer, I don't know which, telling him that he was terminated because he wasn't turning over the testimony. I saw that letter. I think you showed it to me, but I'm not sure.

Q I want to show you Exhibit 23-C in the book in front of you.

MR. SCHAFFER: We don't have a 23-C. We only have a 23, 23-A and 23-B.

Q I apologize. It's 23-B.

A Okay.

Q It's the third document in 23.

A Yes, sir.

MR. SCHAFFER: One second.

(Off the record conference between the Witness and Mr. Schaffer.)

A I have to make a correction. I thought it was you who showed me the letter. It was Rick Schaffer who showed me the letter in advance of my coming over to be interviewed by you.

Q Mr. Mayor, if Mr. White had demoted Mr. Hein on February 10th, why all the conversation on the 16th?

A Because he has no power to demote. This
letter is a nullity. Counsel to the Mayor can't demote anyone.

Q Did Mr. White tell you on the 16th that he had done this?
A I don't recall his saying that, no. The fact is, we talked about deferring on the 16th that matter to a later time, and I don't remember his mentioning that he sent out this letter.

Q By February 16th, you knew, did you not, that, according to Mr. White, Hein had admitted inconsistent testimony; is that right?
A Correct.
Q That, he had admitted destroying documents?
A Correct.
Q And that he had refused to turn over the transcript?
A Correct.
Q And those were all of the reasons why you ultimately, on March 1, demoted him?
A Correct.
Q Is there a reason why you waited until March 1?
A We waited until the matter of Joe DeVincenzo had been disposed of, and was disposed of, as I've
already laid out to you, and then this ultimate action flowed.

I want to, again, say to you that I did it against the advice of counsel. I don't know if they both said that, but I know he said it, and also against the advice of Stan Brezenoff. They didn't think I should do it. I said, "How can you let somebody stay on who has committed three breaches?"

THE CHAIRMAN: I would like the record to reflect that when the Mayor said, "He did it," he put his hand on Pete Zimroth's shoulder.

THE WITNESS: That's correct, sir.

MR. ZIMROTH: Thank you.

(Laughter.)

THE WITNESS: No, it's Rick Schaffer who thanks you.

Q In effect, Mr. Mayor, didn't you demote Mr. Hein, a person who had given truthful testimony before the Commission?

A I'm not -- I might have fired him if he hadn't been sick. The fact that he recants testimony doesn't mean that he's become angelic. He shouldn't have given false testimony, if that's what it was to begin with. So, the fact that you correct it doesn't
wipe out the original -- I don't want to call it perjury, because that's a very technical term, but testimony that was not accurate or true.

Q And you relied on Mr. White's conclusion that he couldn't decide whether Mr. DeVincenzo had given truthful testimony; correct?

A He didn't put it that way. He said he had no factual or legal basis for recommending to me the firing of DeVincenzo. That's what he said.

Q I have only one other subject matter, Mr. Mayor.

Did there come a time when Mr. White did show you what we call the Joy Schwartz documents?

A Yes.

Q When was that? When was the first time you saw Joy Schwartz documents?

A I believe it was in March, and I don't know whether it was -- it was the first few days of March, probably.

Q Did Mr. White show you or mention documents with Mr. DeVincenzo's handwriting, indicating that he had seen forms listing political source information?

A I'll tell you exactly what he showed me and what he said.
Q Fine.

A He showed me a stack of documents, the only way I can describe it, and he said that he had received them from the Feerick Commission, with a letter which directed him not to show it to any City employee. I don't know the exact words, but something like that. He had not shown it to me before this occasion.

Q Did he tell you that the letter -- that he interpreted the letter to prevent him from showing it to you?

A He didn't discuss why he didn't show it to me. He had not shown it to me, but he talked about this letter, and then he talked about the documents, and he said he had reviewed the documents and that there was nothing in the documents that he could conclude would warrant my taking disciplinary action or firing Joe DeVincenzo, and he went on to explain it. Shall I?

Q We're listening.

A What he said was that the allegations are that DeVincenzo had sent documents to the Talent Bank, and that the evidence appeared, at least from testimony, when he said that he had not sent such documents, that there was this inconsistency, and that he, Hank White, having reviewing the questions posed to DeVincenzo, that
the questions were so undirected in terms of time, that
because Joy -- Joy Schwartz -- I've never met her, I
don't think I ever met her, Joy Schwartz -- that she,
having been his assistant, as well as in point of some
other time in charge of the Talent Bank, that Hank White
could not conclude that DeVincenzo, when he said he had
not sent the resumes onto the Talent Bank, was relying
on the fact that he had sent them to Joy Schwartz in her
capacity as his assistant. That's what he said, and he
said it not just to me, he said it to all of the people
who were in the room at that time.

Q Well, let's place that conversation because
I'm not so sure we have so far.

A Some time in March.

Q Who was present?

A The same people always were there.

Q Did you question him about those documents?

A No.

Q Did you rely on the conclusion that he ex-
pressed that you have testified to?

A Yes.

Q Did he show you or mention documents indicat-
ing that political leaders were making referrals in prior-
ity order, did that subject come up?
A I don't recall seeing such a document.

Q Did he show you or mention documents which evidenced calls back and forth between political leaders, Mr. DeVincenzo trying to get the leaders referrals placed in jobs?

A The Joy Schwartz documents he showed me had notations on them. I saw maybe three or four. He had a lot. And it's hard to tell you that I remember what I'm telling you now as the result of what I saw on that day or as a result of what I saw in your office or read about, but that on those documents would be notes like, "see me," or "help this." I don't know. I don't know whether I noticed them at that time or subsequently.

MR. BIENSTOCK: Mr. Chairman, I have no further questins.

THE CHAIRMAN: Commissioner Hynes?

COMMISSIONER HYNES: Mr. Mayor --

THE WITNESS: May I take a few minutes?

THE CHAIRMAN: Do you want to take a recess?

THE WITNESS: Yes.

THE CHAIRMAN: We'll take a short recess.

THE WITNESS: Thank you.

(Whereupon a recess was taken.)

THE CHAIRMAN: This hearing is now resumed.
I would now like to turn to the Commissioners
for questions. I recognize Commissioner Moore.

COMMISSIONER MOORE: Good afternoon, Mr.
Mayor. I would like to thank you for your testi-
mony.

As you will note the Commission is still
in the process of our fact-finding stage and we
hope to eventually produce a report that will
make recommendations as to how to improve practices
and correct certain abuses and we certainly look
forward to your continuing cooperation to assist
us with this report.

I would like, though, to kind of philosophic-
ally ask you the same question basically that I
asked Mr. LoCicero this morning, and that is, to
kind of reflect in your own words on the vices and
virtues of your definition of the patronage system,
perhaps give your own definition of that system
and your reflection on how the system impacts upon
your desire for affirmative action, particularly
in the hiring and your own comments with respect
to your own commitment to fair practices with
respect to hiring practices with respect to women,
minorities and Viet Nam Veterans.
Somebody said yesterday that we had very confusing definitions of what the Talent Bank was all about or why it was set up.

THE WITNESS: Thank you, Your Excellency, and I'll try free flow.

You know, I have been in party or public office since 1963. I defeated Carmine DeSapio and I know a little bit about government, not just as Mayor, but also its political structure and I have served in political clubs as a young lawyer doing pro bono work in the community to enhance the stature of the club and then speaking out in the streets and carrying petitions and ultimately, desiring to go into government.

I became a Council member. I became a Congressman. I ultimately became the Mayor and thousands of people helped me to do that. I could not have done it by myself and they're political, nothing pejorative about that. They come to a club every Thursday night and then during an election season, they are out every night and carrying petitions without which you cannot get on the ballot, okay.

I came into government in 1978 with the
Koch

mayorality and I believe that we ought not to do things the way we used to do things. The first thing that I wanted to end was the patronage system as it related to judges. I wanted to make certain that the Criminal and Family Court Judges and ultimately, the Civil Court interim appointments were solely on merit. That did not exist before me. Before me Mayors sent names to committees which they controlled to ask simply, were those people qualified and if they were qualified, then the Mayor appointed them, and in some cases, were they were found to be unqualified by the City Bar Association, -- it happened in the last month of Mayor Beame's term. My recollection is that he appointed ten judges who were found unqualified by the City Bar Association.

I believe if you go back and you check John Lindsey, he did it at least once.

I have never done that and I have also pledged that if a sitting judge -- and I, on occasion, criticize judges as I think people probably know, that if a sitting judge goes through that committee as qualified, not against
other candidates, but just yes or no, should he be reappointed, whether I like him or her, I reappoint him and that's a fact. If the committee decides that he should not be reappointed and believe me, you get calls from everybody, particularly the friends in high places of those judges who have been found wanting and not to be reappointed, I have never reappointed someone who was found wanting by that committee and I'll tell you something else: That when my committee finds them okay and they go over to the City Bar and the City Bar finds them not okay, I don't appoint them, overruling my own committee.

I'm very proud of that. It exists nowhere else in the country and, as a result of what we're doing, I have the largest number of black and Hispanic and women appointed to the bench as I reported to you.

In the aggregate, more than all the Mayor's in New York City combined. I'm proud of that.

Now, secondly, I believe that people who are in politics -- that's not a dirty word. I have never thought of the word "politician" as pejorative.
They should not be shut out because they helped.

I read the testimony -- now I know I'm stepping on dangerous ground commenting on testimony. I read the testimony of your two professors and it's interesting what they have said. They said we accept patronage at the highest levels and everything else below has to be merit.

I have never heard of a single person in public office who said that he or she appointed someone who didn't meet all the professional qualifications. So, it's a bizarre kind of look that they had with respect to it, an academic look, if you will.

I believe that you should never appoint someone who is less than the best, who is before you for appointment, but when you make the appointment, you should not preclude someone simply because they have been helping you politically.

Now, I believe that government also runs as a result of accommodations. Not accommodations that are conspiratorial or immoral. You can't get your way on every occasion. Whenever
I have to submit names to the City Council for about nine agencies where they have to confirm -- in most cases they don't have to confirm, but in nine cases they do; Tax Commission, Taxi Commission and a couple of others; nine altogether, you have to negotiate with them because if you didn't negotiate with them, and didn't get their agreement, then the person who is there under the law stays there forever, and those were the people who were there before I got here, not that that meant that they were bad, but if I wanted to replace them, they probably were and you couldn't without the advice and consent. So, you had to negotiate with them and the negotiations, for example, with the Tax Commission, I said I'll take no one who is not found professionally qualified by the Corporation Counsel. That was Alan Schwartz, Fritz Schwartz and Peter Zimroth, and the Council accepted that, but they said we'll send you names that are qualified.

Well, it's an accommodation.

If I could pick the best, it probably might have been someone different, but that these were people who were qualified, absolutely.
Otherwise I wouldn't pick them, but that's an accommodation.

Now, you get to affirmative action. When I came into office, the Civil Service was thirty-one percent minority. Today it's over forty-five percent and all new hirings, my recollection -- I hope this is an accurate number -- I hope it is, over fifty percent all minorities of the new hirings. That wasn't a coincidence. We asked people to take Civil Service tests. When black applicants for cops for failing and my recollection is pre-Ben Ward about five percent black constituency on the police force, five percent Hispanic, something like that, and they weren't passing the test, I authorized an expenditure of a lot of money to have John Jay College provide courses free of charge.

Now, I'll tell you something else: The PBA didn't like it because we put our courses -- before John Jay, we had special courses in black and Hispanic neighborhoods and the PBA said that's not fair.

I said, they are open to everybody. If you want to go, then go to that neighborhood. That's
not discriminating, but we wanted to reach out.

Do you know what the situation is today?

Today, with respect to our cops, it's something like eleven percent, double for blacks and 11.6 percent for Hispanics, but that's not what I'm most proud of. The last police exam, twenty-two percent of all the applicants who took that exam were Hispanic and twenty-three percent passed the test. That didn't happen by accident. What I'm saying to you is that the Talent Bank, not exclusively to bring in Hispanics, blacks and women, but a major component. That's probably what wrangled me more than anything else when I read the newspapers, if you don't mind me sharing this with you, Your Excellency.

The papers never referred to my comments when I announced, by Executive Order, what the Talent Bank was all about. You know, the only one who has ever done it -- he's probably going to be embarrassed if I mention his name; Rick Lavine of THE NEW YORK TIMES, nobody else that I can ever recall.

They would always say the Talent Bank, which was for hiring blacks, hiring Hispanics, or
minorities was perverted and a sham. They never referred to the Executive Order, which specifically refers to civic and political organizations making recommendations and they still less refer to the press conference, where one of those reporters said to me, Mayor -- and I think it's one of our exhibits, because it was reported the next day -- Mayor, is this only for minorities? Will only blacks and Hispanics get these jobs, words to that effect and I said, no; many, but not most.

Now, that's in the record and every reporter knows it because I used to say it at every press conference. I get so angry that when I believed I was doing something terrific and -- I don't want to recount the numbers. If you want me to, I will -- that somehow or other I'm having the situation where I'm being denounced for doing something that I think is terrific.

Finally, one reporter put it in and I'm grateful to him. I hope it doesn't ruin his reputation. Okay.

With respect to soliciting resumes, there's nothing wrong -- I have to deal with elected
officials. You know I have tried since '86 to get the State Legislature to put County Leaders and District Leaders and District Leaders and -- Executive Order barred District Leaders from serving in discretionary positions in government unless they resigned as District Leaders. They couldn't be a District Leader and serve in government where I had the power of appointment -- to put County Leaders and District Leaders under the same sanctions as public officials not able to do business with the City. I can't get to first base. I cannot get the State Legislature to say a County Leader may not do business with the City of New York. We have tried desperately to do that. Cannot do it, but you got to deal with these people and I'm sure some are criminals. We know that because some are in jail, but there are lots of County Leaders who are not criminals. There are sixty-two County Leaders in the City and State of New York. I don't think it's fair to libel every one of them. I think they should be under that sanction, but you got to do business with them.

What does it mean? They oft times,
depending on their strength -- there used to be a time when no member of the City Council could get elected, get the nomination without the support of the organization as they refer to it. That isn't true any more, but it once was true and, therefore, often times they County Leaders spoke for the delegation whether it was City Council or Congress or the State Legislature.

What I'm trying to say, Your Excellency, is, that I have tried desperately because I know whatever you do is never enough. You have to have courage and you have to be able to have the sense that what you're doing is right and not to simply cave because you're attacked.

That's the order of the day in public life today. You want to bring someone to their knees who is a public official? Just attack them constantly editorially -- columnists, public figures and sooner or later they'll break. They say to themselves, why not.

You know, this is what I have learned and I'm going on too long, but I'm trying to give you my experience here. You got to make
independent judgments. If you feel that they're right, don't leave them because you're attacked by some editorial. An editorial is written by one person. When you see it in print, you think that an entire institution sat down and wrote that editorial. It's one person. Many times they're not.

THE CHAIRMAN: Commissioner Hynes?

COMMISSIONER HYNES: Mr. Mayor, I want to bring you back to Mr. DeVincenzo and his operation.

THE WITNESS: Sure.

COMMISSIONER HYNES: You mentioned that in connection with asking for his resignation, there was concern about his functioning and you were describing his many responsibilities and one of them, I think you described was that he was really the last signature in the City on personnel actions and there were thousands and tens of thousands, maybe, of personnel actions that he would have to sign off on.

We're in agreement on that; right?

THE WITNESS: Yes.
COMMISSIONER HYNES: Were you aware -- let's take the time period '83 to '86, the time that we're focusing on in terms of the Talent Bank -- that Mr. Devincenzo and his office were pressuring -- and I'm using that word intentionally -- various agencies to hire the candidates that they were referring.

THE WITNESS: No.

COMMISSIONER HYNES: We've heard testimony from representatives of different agencies that they did feel that pressure when they would receive a call from Mr. DeVincenzo's office, and that they would feel that Mr. DeVincenzo's office also passed upon personnel actions that were important to them, and it was important, therefore, to play ball.

My question to you is a general one: In hindsight, accepting the situation that the person who is signing off on personnel actions is also a person who is asking you to hire their job referral, do you think that that power should be placed in one City employee?

THE WITNESS: With hindsight, I think it's probably an error, and I would like to add to my answer. I have been in office for twelve
years. No Commissioner has ever complained to me that he's been pressured to take anybody. Commissioners have told me, and they've said it publicly, that, in fact, they were not pressured. I can give you the names of two Commissioners that come immediately to mind. One is Gordon Davis, because he said this publicly. May I relate that to you?

COMMISSIONER HYNES: If you'd like.

THE WITNESS: He said it publicly, so it appeared in print.

He said he once received a resume from John LoCicero, and he didn't want this person. So he just ignored it. But he said he, having served in the Lindsay administration, was waiting for the followup call. He said the call never came and the person was hired.

If I could also say to you, here is John LoCicero, who has been, you know, referred to as the "patronage dispenser" of my administration.

COMMISSIONER EMERY: My question is really directed to Mr. DeVincenzo.

COMMISSIONER HYNES: My question is really directed to Mr. DeVincenzo. The testimony that we've heard is that people feel that there's a
delay in personnel actions, and the clear feeling that they were getting in various levels of the agency was you had to play ball with that office, or you didn't get your personnel actions approved by Mr. DeVincenzo.

THE WITNESS: If he did that, he did it in violation of his responsibilities. No one ever told me he did it. He shouldn't have done it.

COMMISSIONER HYNES: In terms of our looking at improvement of procedures in order to prevent that situation from happening in the future, would you agree that the power of signoff on personnel actions should have no reference to someone referring job candidates to various City agencies?

THE WITNESS: Well, I say in my statement, the long version, which appears on Page 23 --

COMMISSIONER HYNES: Since we got that at about 11:30 last night, I haven't had a chance to read it.

THE WITNESS: That's when I first started to read it.

(Laughter.)

THE WITNESS: "Among the issues, I am sure he," meaning Stan Grayson -- will consider or
whether the Talent Bank should remain under the aegis of the Office of the Mayor, whether it should be combined with other offices that recruit for City jobs, whether new outreach strategies are needed," et cetera.

So, my personal point of view at this point is that's a very powerful argument that you make.

COMMISSIONER HYNES: My other area that I wanted to ask you about was Civil Service.

You talked about the number of provisions that were available, provisional jobs that were available for you to fill. We've heard testimony that Civil Service tests were not given for a long period of years in some job titles, and that there were -- the view of some people was that they would prefer to work off a Civil Service list, but the test hadn't been given in five, seven years. Were you involved in any discussions to make a determination whether jobs could stay as a provisional job as opposed to having Civil Service tests being given on a regular basis, so there's a list out there?

THE WITNESS: The answer is no. I was not involved in such a decision. That's a decision to
be made and has been made by the Personnel Director, who is not DeVincenzo. Currently, it's Judith Levitt. And the decision, if I may say -- I can give you some written material on this, as it relates to provisionals.

The reason that they have large numbers of provisionals dates back, in part, not totally, to the financial condition of the City with respect to the giving of tests. But there are other reasons as well, and if she has said, and I believe her -- she used to be a Corporation Counsel -- that she has not delayed provisional tests. That the number if provisionals is consonant with our current situation, without a political involvement.

COMMISSIONER HYNES: If you know, has the number of provisionals increased during the course of your administration?

THE WITNESS: Certainly. So has the total number of our work force.

COMMISSIONER HYNES: That is, have the percentages of provisionals increased, and the percentages of civil service decreased?

THE WITNESS: I think the number of provisionals has increased, but I don't know for a certainty.
But it's set forth in some articles which she has written, or which she has written and I have signed.

COMMISSIONER HYNES: So, your testimony would be that you are not aware of any conscious choice not to give a civil service exam in order to keep a position, or various positions, in the provisional line?

THE WITNESS: Correct.

MR. SCHAFFER: Before the next question, might we confer for a moment?

THE CHAIRMAN: Excuse me?

MR. SCHAFFER: Before the next question, might we confer for a moment?

THE CHAIRMAN: Yes.

(Off the record conference between Mr. Schaffer and the witness.)

MR. SCHAFFER: In reference to the last questions, Commissioner Hynes, I request that you didn't pose them to Stan Brezenoff, who has more personal knowledge of this matter of this matter, but we would be more than happy to provide materials and other information to the Commission on that subject and, in particular, on the subject of laborers, which has been the focus of so much of
the testimony, because there is a history.

COMMISSIONER HYNES: Some focus, but not the onky focus. It does concern me.

I would tell you it concerns me, as a point of information, and I would appreciate information on it, that civil service exams are intentionally not being given and lists aren't being generated year after year, whether it's labor or any other title, that, therefore, raises the question of--

THE WITNESS: It would concern me as much as it concerns you.

COMMISSIONER HYNES: I hear you.

MR. SCHAFFER: But you should know that the laborer classification, in particular, a professional determination was made by the Department of Personnel that those positions could not be tested for.

COMMISSIONER HYNES: We've had testimony on that, and we heard some testimony on that for various types of labor categories, and other types, but, as I say, my question is not simply limited to labor, and I do understand from the testimony that we heard yesterday that there was a reclassification away from Civil Service to non-civil service, for some laborer categories. I am aware
of that.

MR. SCHAFFER: It's not that it's non-civil services. It's just that it's non-competitive because of the inability to give a test, and that decision was upheld by the Civil Service Commission.

COMMISSIONER HYNES: But, you see my point?

THE WITNESS: I do.

COMMISSIONER HYNES: Thank you.

THE CHAIRMAN: Commissioner Magavern?

COMMISSIONER MAGAVERN: without criticizing your motives in creating the Talent Bank, I would like to run through some conditions that did, apparently, develop in the Talent Bank in about 1985, '84 and '83, and, recognizing, again, the improvements starting in 1986.

Were you aware that in the 1984-85 period, that Mr. Skurnik and Mr. De Vincenzo were making selections of candidates and placing priorities amongst them, according to personal and political considerations?

THE WITNESS: No.

COMMISSIONER MAGAVERN: You already answered that you were not aware that Mr. DeVincenzo was pressing agencies to hire particular candidates.
Let me note that there is evidence in the record that that went so far on some occasions as to inducing the agencies to either hire or retain people who the agencies really didn't want, did not consider them acceptably qualified, and even to the point of getting the agencies to hire, to fill positions they didn't even plan to fill.

In still another condition which was pointed out by Bishop Moore yesterday, and it's shown in Exhibit 77 -- I don't think it's necessary to go into detail on it, though your counsel may want to look at it -- but there's a demonstration there that in the year 1985, there was a disproportionate placement of white males in the position of assistant highway repairer, which required a Class 3 driver's license, but whose duties were otherwise equivalent to the duties of a debris remover, a lower paying job, and, in fact, the driver's license requirement was routinely waived.

So, we had a disproportionate placement of white males in the higher paying job, and of black males in the lower paying job, to do similar work with similar qualifications.
Finally, that at least until 1985, it was the conclusion of Mr. Brezenoff that the Talent Bank was not achieving satisfactory results in placing minorities and women in City jobs, and that this was a result, at least in part, of the referral process they were using, that is, soliciting names from County Leaders, elected officials and the like, among others.

But it appears that that system did give disproportionate weight to what we would call the political referrals, and the results were that, at least in the labor class, labor-type positions, you got disproportionate hiring of white males.

Given all of those considerations, it would appear that, in those years, patronage considerations interfered with the objectives and policies of your administration and with affirmative action, quality and personnel, autonomy, authority of your department head, morale of the City employees.

We've got evidence that it was demoralizing. I think we can infer that it even had an adverse impact on public perceptions of government and public citizens. We even had some suggestion by a witness yesterday that when you have a large
number of people who owe their jobs to a politically appointed department head, that you make it easier for a corrupt person to get away with it.

Given all of that, and acknowledging that there's an appropriate role for patronage in government, would you agree that means must be found to watch it carefully, to keep it within appropriate limits, in order that the objectives of good government, the objectives of your own administration, not be subverted?

THE WITNESS: Yes.

(Laughter.)

COMMISSIONER MAGAVERN: It sounds like an obvious question, but we didn't always get such ringing answers, I must tell you.

Let's review a couple of the means that have been taken in 1986. Mr. Brezenoff took the initiative in finding means to broaden the initial policy of applicants by going to the TAP program and others, and I think you referred to that in your testimony.

In 1987, I think it was at your instance, that a lottery was instituted.

Commissioner Hynes has discussed with you
the possibility of breaking up the functions of first, approval of agency actions, and trying to place people with those agencies.

Do you have any other ideas on what kinds of control and reforms might be adopted to help keep patronage within appropriate limits?

THE WITNESS: I believe, as the academics who came before you said, that a policy-making position should be filled using the criteria of the person who has to take the flack for the policies, and that's what they said. But, I also believe that below that, that people who want to come into government should be given an opportunity and not shut out because they are perceived as political, recommended by some sponsor who is political, or they, themselves, are political, so long as they are not preferred over someone else who is better. They should not be shut out.

COMMISSIONER MAGAVERN: Mr. Mayor, I think we would all agree with you on that.

I'm not aware of any record of evidence in this country that the problem has been that politically active people have been discriminated
against in discretionary hiring.

(Laughter.)

THE WITNESS: Let me take you on on that.

COMMISSIONER MAGAVERN: That may not characterize your own administration, but we have a small example of it in the Talent Bank, and it is suggested there's a tendency that has to be watched carefully.

THE WITNESS: I'll watch it very carefully.

Let me give you two comments on that.

One, I explained the judicial system.

If there was going to be patronage, that's the best place for any political organization to provide for patronage. If you're going to have patronage, put them in the Corporation Counsel's office. They make the settlements.

We don't have that in my administration, and I'm very proud of that. You know, we go to the Talent Bank --

COMMISSIONER MAGAVERN: Mr. Mayor, I want to remind you, I have not attempted to characterize your administration. I'm deliberately trying to avoid that.

THE WITNESS: I know you're not.
COMMISSIONER MAGAVERN: I've confined myself very carefully to the Talent Bank in the year 1985.

THE WITNESS: I know, and I want to talk about the Talent Bank. Here you have all sources in 1983 to 19 --

COMMISSIONER MAGAVERN: Mr. Mayor, forgive me. You've answered my question, and I'll defer to the other members of the Panel. Thank you.

COMMISSIONER MEYER: Sir, as you know the purpose behind this Commission is to recommend improvements in our system. One of the improvements which has been recommended or publicized, published some months ago is with respect to pension forfeiture which would make it possible to take care of the situation where there appeared to be a reason for forfeiting pension after a person had retired.

My question is very simple: Do you support such legislation?

THE WITNESS: Judge, we submitted to the State Legislature several years ago, I can't give you the date, legislation which would have pension forfeiture and that would be retroactive
and cover existing people on the payroll which
is very difficult to do because of the Constitu-
tional prohibition against effecting pensions,
but our Corporation Counsel, I'm not sure whether
it was Fritz Schwartz or Peter who came up with a
proposal that you could, if you directed it to
public officials who under the law loose their
office as of the day of conviction, that if you
could tie that -- and we have framed the legisla-
tion to do that -- that it would go back to the
day of the crime, that you could eliminate their
pension and the State Legislature will have
nothing to do with it.

Your proposal, which is a take off on
Ned Regan's proposal, but you have perfected it,
has now been endorsed today by the Governor, and
the Attorney General, and Ned Regan and I cer-
tainly support it.

I believe in the pension forfeiture
legislation which you have and you're very
careful, the Commission. You have two hearings.
You say one, before you take away a pension you
have to have conviction for a crime and then
you say there has to be a second hearing that
will go to the question of whether the crime was job related and, also, what is the impact on the family?

Did the family receive the proceeds of the crime? Are they in need of money?

And if you conclude that the family should be in some way or other protected, notwithstanding the criminal act of the spouse committing the crime, that a part of the pension can be in the second hearing reserved for the family. You're very careful about that. I support that legislation.

THE CHAIRMAN: Commissioner Emery?

COMMISSIONER EMERY: Mayor, you campaigned, if I remember correctly, in 1977 very much on the platform that you described here in response to the Bishop's question about not only rationalizing the system, but trying to rid it of its political influences and we have had a good deal of testimony at these hearings about two particular agencies that I would like to ask you about in light of those campaign principles, particularly the Department of Transportation and the Department of Environmental Protection.
Now, directing myself first to the Department of Transportation, isn't it true that after your campaign, after you won, you had to select the Commissioners for the various agencies of government, that you appointed merit panels to recommend choices to you in at least ten cases; is that true?

THE WITNESS: Yes.

COMMISSIONER EMERY: One of those merit panels was for the Department of Transportation and was comprised, at least in part, of Sally Goodgold and a number of good citizens who supported you and they made recommendations about who should be your Transportation Commissioner and they came up with at least two people; Mr. Stangle and Mr. Bruff, I believe, and they excluded Mr. Ameruso.

THE WITNESS: Yes.

COMMISSIONER EMERY: At some point along the line you disbanded that panel and chose, over their objection, notwithstanding their positions, you chose Mr. Ameruso?

THE WITNESS: Yes.

COMMISSIONER EMERY: Perhaps you can
explain that.

THE WITNESS: Oh, I would love to. Now, it happens that the choice that I made in three cases was different from the panel's proposal to me and nobody ever brings those names up.

Bob McGuire, one of the greatest Police Commissioners ever to serve this City, was not the choice of the panel. I selected him over their objections.

Frank McCardle for EPA -- I'm sorry, for the Department of Environmental Protection, McCardle over their objections.

Nat Leventhal perceived as one of the greatest administrators and ultimately a Deputy Mayor in my administration, I took him as my Buildings -- HPD, Housing & Preservation Development. The only one they hone in on is Ameruso.

Let me tell you about Ameruso. Ameruso was a Commissioner in the Beame administration of the Department of Highways, as I recall, and in the last year of the Beame administration, two people were selected as the best Commissioners -- it was sort of like management
by -- they looked --

COMMISSIONER EMERY: John Zuccotti's selection; right?

THE WITNESS: John Zuccotti selected Ameruso and O'Hagan, the Fire Commissioner, as the two best Commissioners in the Beame administration. Why would it be foreign, based on that and the fact that he served as a Commissioner in the Department of Transportation, but not at the top, to take him as the Commissioner?

COMMISSIONER EMERY: I guess what I want to ask you in that regard is that I take it, in his case, the merit panel had not included him even among the viable candidates. Correct me if I am wrong, but was it the case that in the other cases, at least the others had come up as qualified even though they weren't the top --

THE WITNESS: Well, my recollection, and it was a long time ago, in Nat Leventhal's case they thought he was terrible.

COMMISSIONER EMERY: I disagree with them.

I agree with you.
THE WITNESS: Right. Not only that he was
disappointed because I told him he wasn't quali­fied to be the Commissioner of Sanitation, which
is what he wanted.

COMMISSIONER EMERY: Now, in that regard,
during that period of time with respect to Mr.
Ameruso, did there come a time when you had
meetings prior -- well, at the point you were
selecting Commissioners when you had meetings
with Mr. Esposito, the County Leader of Brooklyn
at that time, and he recommended to you Mr. Ameruso?

THE WITNESS: There's no question that
Tony Ameruso was recommended by Meade Esposito,
as was Macchiarola. If I may say this to you,
Mr. Emery: The major club in Brooklyn was the
club of Meade Esposito and you know who came out
of that club? Tony Gliedman, Stanley Fink for
his position in Albany, he was recommended.
Frank Macchiarola was recommended and so was
Tony Ameruso.

COMMISSIONER EMERY: In addition, were they
not recommended to you, recommendations which you
obviously respected by looking at qualifications
as well as Mr. Esposito's recommendations there
was Lieberman, there was Vaccarello and there was Turoff. Were those among those?

THE WITNESS: I'll give you the answer to that: Vaccarello was there and I replaced him. I discontinued him until I found a Commissioner that I wanted. That was just a temporary matter.

COMMISSIONER EMERY: Did Mr. Esposito recommend Vaccarello?

THE WITNESS: I assume so. I continued him until I found someone else. He did not stay very long.

Lieberman, I didn't appoint to anyone. He was in one of the agencies appointed by a Commissioner. I didn't appoint him. He went to jail, ultimately, as he should have gone, but I didn't appoint him.

COMMISSIONER EMERY: Did you have anything to do with the appointment --

THE WITNESS: No. The answer is no. Appointed by a Commissioner.

COMMISSIONER EMERY: Turoff?

THE WITNESS: Now, that was interesting because, under the law, I'm restricted to
appointing one of the existing members and they all have tenure, who were on the Taxi Commission. There were no vacancies. So, all I could do is to take one of the seven, that's my recollection. Whatever information I had at that time I cannot tell you, and undoubtedly, Meade Esposito was supportive of him and others were, as well. We decided that the toughest guy, just by virtue of brutestrength and you need brute strength in that industry, or, at least, you did at that time, the toughest guy to stand up on a whole host of taxi issues would be Turoff.

Now, I'll bring this to a conclusion.

COMMISSIONER EMERY: Take your time.

THE WITNESS: His term ended and there's a lawyer whose name is Richard Smith and he used to be an SEC regulator and we brought him in, not in government. He's a member of a white shoe law firm. We brought him in to examine the Taxi Commission and to make recommendations and he recommended to me that Turoff be reappointed based on his analysis of Turoff's administration.

COMMISSIONER EMERY: Were the people that we have just discussed, were they also recommended
to you by Meade Esposito?

THE WITNESS: Well, surely Turoff was recommended and Ameruso was recommended.
Gliedman may have been also. Steve Berger was the person who, I think, first brought him to my attention and Macchiarola in the same way, because they had worked at the Financial Control Board.

COMMISSIONER EMERY: Now, at the time you announced the appointment of Mr. Ameruso, you gave some public explanations at that time, did you not, for making his choice -- for choosing him Department of Transportation Commissioner as opposed to whoever the Merit Commissioner is --

THE WITNESS: I don't remember making the statement, but I'll tell you what my recollection is of what I --

Do you have the statement I made?

COMMISSIONER EMERY: No.

THE WITNESS: What do you remember?

COMMISSIONER EMERY: The only thing I remember and that I have read about is the statement that, apparently, and correct me if I am wrong because I may well be wrong, that
you went and gave a speech at a club honoring
Meade Esposito and you said words to the effect:
What do you think of a Merit Selection Committee
that would not want me to appoint an Italian?

THE WITNESS: I don't think I said that,
but I may have. I don't recall that, but I'll
tell you this: There's no question that when I
put together my first group of Commissioners
and Deputy Mayors, I took into consideration
ethnics, borough, religion, race. I had seven
Deputy Mayors so I could have a black Deputy
Mayor, a Hispanic Deputy Mayor, a woman Deputy
Mayor, an Italian Deputy Mayor, a Jewish Deputy
Mayor who was me. I wanted to have an adminis-
tration that covered this City along with the
Commissioners. I don't do that in the same
way any more, but I still want -- in fact, I
reduced the seven Deputy Mayors to three.
It happens that one happens to be black and
one happens to be Hispanic, but I didn't
select them that way, and if you want further
information on that, I'm happy to give that to
you, but an administration must, if it is to
have credibility in five boroughs, it is to
have credibility with the racial, ethnic, religious population that we have reflect in some fair way those faces.

COMMISSIONER EMERY: Did you have meetings during this period of time when you were selecting your original set of Commissioners, were you acquainted personally at that point with Meade Esposito, personally discussing those selections?

THE WITNESS: No.

COMMISSIONER EMERY: Subsequently, I think it was some time in 1984, Mr. Brezenoff testified a little bit about it here this morning, there was another instance that we know of. That may have been part of the testimony in which you interceded in the selection of -- actually was a promotion of Mr. Carfora.

THE WITNESS: Yes.

COMMISSIONER EMERY: Can you tell us the events that led up to that?

THE WITNESS: Yes, I can. I don't know what year it was.

COMMISSIONER EMERY: I think it was '84.

THE WITNESS: Okay. Frank McArdle had just left. He had proposed in advance of leaving the
elevation to Deputy of Carfora. He went to see Nat Leventhal who was then the First Deputy Mayor. Nat Leventhal said to him no. No. No. You're leaving. You're not saddling the next Commissioner with your Deputy. You shouldn't have left before you appointed him, or given us notice. I think that's a responsible response.

The new Commissioner is McGough, a very able man, and he has to fill that vacancy and he has someone that he wants to fill it with. I don't even know the name of that person, and Stanley Friedman comes to see me and he says it's not fair. Carfora was the designee of McArdle and he's very able.

I said, Commissioners pick their Deputies. I'm not intervening.

He said the reason he's not getting it is that the agency -- and he may have said McGough, I don't know -- they are anti-Italian.

I said oh, stop it. I don't believe that for one minute.

He said to me, check it with the Italians in your administration.

My recollection of who I checked it with
may have been more than that was Joe DeVinzenzo, Pete Piscitelli, who is the Director of our Inter-governamental Relations in Albany. I don't know if he was there at that time, but he held that position, and others as well. I'm not sure whether I did it with John LoCicero or not. I'm not sure. And they said it's true. There's a perception there that Italians don't rise in that administra-tion.

I said I can't believe it.

They said take it from us, it's true.

I said McGough is not a person who would discriminate, but I relied on those three people because I had confidence in them if those were the three.

I called Bob Esnard in, who was then Deputy Mayor on Policy and Infra-structure and therefore that agency reported in part to him. I said I cannot tolerate the perception. I don't believe that McGough is anti-Italian, but I cannot tolerate the perception that that agency would be anti-Italian and I believe Pete Piscitelli. I like him. He's someone who I rely on a great deal. I said he'll take him. And I have the right
and I have exercised that right, particularly when you put together a new team. I have exercised the right to take Commissioners and Deputy Commissioners who have different strengths. I rarely do it, but I have the right and I said he'll take him.

He came back to me and he said, McGough asks, please, that he not be required to take him because he has his own guy, but he'll work it out with Carfora and elevate him in some form.

So I said to Bob Esnard, if that's satisfactory to Carfora, to McGough, to you, Bob Esnard, it's okay by me and that's the way it was worked out.

(Continued on next page.)
COMMISSIONER EMERY: Now --

THE WITNESS: By the way, I never had a conversation with Carfora, and I doubt that I would recognize him if he walked in, because I don't know what his face looks like. But that I can recall.

COMMISSIONER EMERY: You said you had a conversation with Mr. Friedman about the situation. Was that the -- was Mr. Carfora the only subject of jobs during that conversation?

THE WITNESS: Yeah, as far as I can recall.

COMMISSIONER EMERY: Now, did you ever discuss that, again, with Mr. Friedman?

THE WITNESS: I don't recall whether I, at some later date, told him what I just told you or not, but he certainly knew, because Carfora went over there.

COMMISSIONER EMERY: Now, Mr. DeVincenzo is, in fact, from, or associated with, came from the Beame administration previous to your administration; is that correct?

THE WITNESS: Yes. He's now served for twenty-one or twenty-three years, and I've been in office about twelve.
COMMISSIONER EMERY: He was originally, was he not, from the Brooklyn organization of political activists?

THE WITNESS: That I don't know. I always thought he came from Staten Island.

COMMISSIONER EMERY: Well, was he associated, nonetheless, with the Brooklyn --

THE WITNESS: If he was, I am not aware.

COMMISSIONER EMERY: Did Mr. Esposito, during your conversations with him during that period --

THE WITNESS: I have no recollection of Esposito ever mentioning DeVincenzo to me.

COMMISSIONER EMERY: He never recommended DeVincenzo to you?

THE WITNESS: I cannot recall his ever mentioning his name, and I never associated him with Brooklyn, to begin with.

COMMISSIONER EMERY: Now, did you ever have conversations with Mr. Friedman, other than in the case of Carfora, about job applicants in your administration?

THE WITNESS: Well, he was constantly asking that I consider his candidates for judges, and I
said, "Forget it."

COMMISSIONER EMERY: Aside from judges, to you, personally?

THE WITNESS: Yes. The appointments that have to go through the City Council, Tax Commission.

COMMISSIONER EMERY: TLC?

THE WITNESS: Several, which I cannot give you. If you had to negotiate with him, because if you didn't get his agreement, you couldn't get it through the City Council. But, as I told you here, I really don't recall the names or anything.

In those cases where the City Council had to approve, it's different today. And I think the City Council, under its new leadership, they accept the nominations, because I've established the Abrams Commission, which is not in the law, but I say to the City Council people, "You submit names to the Abrams Commission, other people will submit, and I'll submit. Whatever names come out, I'll pick the best."

And they have never hesitated to approve that person. But that was not the case before the Abrams Commission.

So, you had to negotiate, and we negotiated.
COMMISSIONER EMERY: Now, with respect to jobs, other than those you just described, that have to be approved by the City Council, were there any conversations with Stanley Friedman about any other positions in your administration that you recollect?

THE WITNESS: Not that I can recollect.

COMMISSIONER EMERY: How about with Howard Golden?

THE WITNESS: No. Howard Golden and I have not had a first-class relationship for about twenty-five years.

COMMISSIONER EMERY: So, you haven't had conversations with him about jobs in your administration?

THE WITNESS: I can't recall any.

COMMISSIONER EMERY: And how about with Mr. Esposito after the 1977 period into the early '80's?

THE WITNESS: I spoke with Esposito on the phone. I had dinner with him in restaurants. I can't recall his raising particular people, but it wouldn't shock me if he did. But, it wouldn't have an impact upon me.

COMMISSIONER EMERY: And your testimony is
that Mr. Esposito's recommendation of particular
people did not have an impact on your choice?

THE WITNESS: As the years went on, that's
absolutely true.

When I was first elected, and Ameruso fit
the Zucotti description as a very good Commissioner--
was Italian, came from Brooklyn, fit those criteria--
the fact that Meade Esposito was for him, was
helpful, sure. I wouldn't have appointed him, in
all probability, anyway, but it was helpful.

COMMISSIONER EMERY: Now, how about Stanley
Simon; did you ever have conversations with him
regarding job placements?

THE WITNESS: Stanley -- no. Stanley Simon
was only interested in if we could build a bathroom
for him. I mean, it was things like that that you
discussed with Stanley Simon.

When I say "build a bathroom," I mean in his
chambers, or something like that. That's what he
was interested in.

(Laughter.)

COMMISSIONER EMERY: Now, the evidence that
we have heard at these hearings has suggested that
the Talent Bank operation during the period of
time, at least, referred people for jobs based --
do you want to confer?

THE WITNESS: No.

MR. SCHAFFER: No. I'm sorry. I am watching
Corporation Counsel pouring water.

THE WITNESS: Sir?

COMMISSIONER EMERY: The evidence we have
heard has suggested --

THE WITNESS: I didn't hear that.

COMMISSIONER EMERY: The evidence we have
heard at these hearings has suggested that no only
were there documents destroyed in early '86, because
they contained political referral sources, but, also,
there was in operation prior to that in some spe-
cific respects, a system that referred job applicants
to particular agencies based on their political
referrals.

My question is: I take it, that at the point
that this was going on, at the point that the evidence
suggests it was going on, in '83, '84 and '85, at
its height -- do you have any explanation how Mr.
DeVincenzo could have gotten a message that you
would tolerate such a thing, that he was serving you
by doing this?
THE WITNESS: No.

COMMISSIONER EMERY: During that period of time, let me ask you, how often would you see Mr. DeVincenzo?

THE WITNESS: Very rarely, other than passing him in the hall, because he reported to the First Deputy Mayor. He did not report to me or have meetings with me on any regular basis. I rarely had a meeting with him, that I can even recall.

COMMISSIONER EMERY: He was not regularly in your office?

THE WITNESS: No.

COMMISSIONER EMERY: He was not regularly part of other meetings in your office?

THE WITNESS: No.

COMMISSIONER EMERY: So, you have no explanation as to how he could have gotten the message that this was the appropriate way to conduct the Talent Bank's operation?

THE WITNESS: No.

COMMISSIONER EMERY: Now, one final area:

With respect to the resignation of Mr. DeVincenzo -- I guess it was February 23rd that it became final -- February 22nd, one of those two
days -- I take it that after the February 16th meeting that you described, in response to Mr. Zimroth's questions --

MR. ZIMROTH: Mr. Bienstock's questions.

We're both Peter.

COMMISSIONER EMERY: -- I take it that you had made the decision that you wanted his resignation, and it was appropriate to get his resignation at that point?

THE WITNESS: I made the decision that it was appropriate to get his resignation on February 16th, when I directed Stan Brezenoff to request it.

COMMISSIONER EMERY: And at that same time, I take it, you had heard some statements to the effect, from Mr. White, your counsel, that it was -- he had no basis in fact or law to fire Mr. DeVincento?

THE WITNESS: To recommend that he be fired.

COMMISSIONER EMERY: Recommend that he be fired, right.

Now, was there ever any discussion at that time of taking some interim measure, given the fact that there were substantial allegations being made at that time against him?
THE WITNESS: The answer is no, because we wanted him to leave. We did not want him to stay. And, therefore, there was no discussion about some interim measure.

COMMISSIONER EMERY: And, at that time, to your knowledge, was there any discussion of the fact that if he were going to leave, he was going to probably leave with a pension, under circumstances where allegations would be outstanding against him?

THE WITNESS: Well, there -- I recall no such discussion.

COMMISSIONER EMERY: Did that enter your mind in the considerations of calling for his resignation?

THE WITNESS: It did not. And let me amplify. Notwithstanding my counsel here.

COMMISSIONER EMERY: Please.

(Laughter.)

THE WITNESS: Mr. Emery, you either have a right to take punitive action or you don't.

COMMISSIONER EMERY: Right.

THE WITNESS: And if you don't have the right to take punitive action, then you don't have the right to take half the punitive action. And, therefore, if we have the right to fire him, that
is to say, because the reasons were there to do it, then we would have done it. But, if we did not, and counsel, confirmed by other counsel in the room, concluded that I don't have the right to engage in half punitive actions.

But it never was discussed.

COMMISSIONER EMERY: Now, the next day Mr. Brezenoff came back to you after his discussions with Mr. DeVincenzo and said to you, "He's already put in for retirement." It shocked you, and I believe you testified you were distressed?

THE WITNESS: Surprised.

COMMISSIONER EMERY: And distressed?

THE WITNESS: And distressed.

COMMISSIONER EMERY: At that point, were there any new thoughts going through your mind as to any other measures that could be taken?

Now, what I mean, specifically, is, preserving the status quo or creating a situation where the status quo could be preserved, so as to allow him to not be punished, not trigger the kinds of due process rights which you're identifying, and which I sympathize with entirely, but to preserve the status quo until such time as the
allegations would be resolved?

THE WITNESS: The answer is no. But let me also follow up on this business of due process rights, which you're in accord with.

I believe that were you to demand that someone not resign so that you could then take an action against him, is violative of his due process and due rights and protection with respect to his pension, unless you have the basis for reducing him in grade or firing him, and we did not have it at that time.

I'm simply saying, you cannot do it halfway.

COMMISSIONER EMERY: What I'm suggesting is -- I realize this is hindsight and I don't mean -- the only reason I'm asking it is because I thought there were a lot of bells that were going off in everybody's minds at that time. I presume, and I presume because we know there were allegations about the structure, we know there were contradictions in testimony, and people at that meeting knew that he had surprised people with his resignation or with his putting in for retirement.

There was the other question that, I believe was brought up on the 16th meeting, that Mr. Hein
wouldn't have acted on his own, in all likelihood.

THE WITNESS: They didn't say that. They said they were uneasy about it. I mean, I gave the testimony as I recall it.

COMMISSIONER EMERY: In accordance with the testimony you gave before, that there was some question as to whether Mr. Hein would have acted on his own, that it's more likely he wouldn't have, you knew all these things, and then the next day you find out he had put in for his retirement without telling anyone, after twenty-one years of service?

THE WITNESS: Right.

COMMISSIONER EMERY: Is there some measure that can be taken, such as --

THE WITNESS: Such as?

COMMISSIONER EMERY: Such as going to him and saying, "Mr. DeVincenzo, you've served the administration for all these years. There are all these outstanding matters. We want to be sure they're resolved, so that your pension rights can be dealt with fairly and properly, and so that the outstanding Department of Investigation matters on the swimming pool, the Police Academy, and the
furniture can be resolved before you leave
government service. How best can we work that out
to your satisfaction?"

THE WITNESS: What we left out is the
pregnant half of that sentence, that if you don't
do it, I'm going to fire you.

COMMISSIONER EMERY: You don't have to say
that.

THE WITNESS: That didn't come up.

(Continued on next page.)
COMMISSIONER EMERY: It never came up?

THE WITNESS: It did not come up.

COMMISSIONER EMERY: Did you know at that point that someone could retire in thirty days after they have put in for retirement?

MR. ZIMROTH: At which point?

COMMISSIONER EMERY: On the 16th and 17th.

THE WITNESS: Well, I know the normal retirement -- you have to understand that pensions with all of the Tier 1, 2, 3 and subdivisions is archaic, but the general premise is that you put in thirty days notice.

So, that I knew, but it doesn't apply to everybody.

COMMISSIONER EMERY: Did Mr. Brezenoff report to you on the date he put for his retirement?

THE WITNESS: The 23rd or the 24th is when Joe DeVincenzo called Brezenoff, because you may remember the conversation that I got from Brezenoff on the 17th was, when we said -- he said, "I'm going to retire in ninety days," and Brezenoff said, "No. We want you to retire by the end of March," which would have meant something like forty-five days and he said, "Well, I'll let you know."
On the 23rd of the 24th, I don't know when he called Brezenoff and said -- as I recall it, he said, "I'm off the payroll as of yesterday." something like that.

COMMISSIONER EMERY: Right. What I'm asking is, prior to that time, the 16th, the 17th, you're talking to Mr. Brezenoff about this issue. Did Mr. Brezenoff -- he testified this morning that Mr. DeVincenzo had looked into his briefcase and pulled out the date that he put in for retirement, which was January 23d.

Did he tell you at any point --

THE WITNESS: No. I have no recollection of him describing the briefcase.

COMMISSIONER EMERY: That's all I have.

THE CHAIRMAN: Mr. Schwarz?

MR. SCHWARZ: I'll try to stick to today's hearings.

Did Mr. Hein have any hearing before he was demoted?

THE WITNESS: No.

MR. SCHWARZ: There was no evidence taken or any determination made?

THE WITNESS: No special evidence was taken
other than the inquiry made by the two lawyers, Hank White and Rick Schaffer when they met with his lawyer and he and they ascertained that he wouldn't turn over the material, his private testimony that he destroyed documents, that was already known and the third one, that he admitted inconsistencies between his private and public testimony.

MR. SCHWARZ: He was a discretionary employee in the position he held; correct?

THE WITNESS: That's correct.

MR. SCHWARZ: Therefore, he could have been removed or demoted back to his Civil Service status by you at any time --

THE WITNESS: He was.

MR. SCHWARTZ: -- for any reason?

THE WITNESS: I don't know for any a reason. There's a question from a legal point of view if you use demotion from a punitive point of view without the basis for that punitive aspect, there's a serious question as to whether you can do that.

MR. SCHWARZ: You mean once you take somebody's Civil Service status, and put him in your office, you're stuck with him for life unless you can find
some --

THE WITNESS: If you have bona fide reasons, you can do it, but if you're doing it for punitive reasons effecting his pension, which you do in this case, then a question arises as to whether or not that would be upheld by a court.

MR. SCHWARZ: Which would ultimately be determined by the court.

THE WITNESS: That's what I said.

MR. SCHWARTZ: In connection with the pension forfeiture, reportedly you said that that would be --

THE WITNESS: This whole thing would be resolved if the State Legislature would pass the legislation you proposed and which the Governor voted for today. I'm for it.

MR. SCHWARZ: I heard what you said to Commissioner Emery: Why was there no discussion of saying to Mr. DeVincenzo, "We're going to move you back to your Civil Service status, keep you there while all of this is going on, make the determinations that have to be made. If you're exonerated, you'll be moved back up to my office and then you can retire at the appropriate salary. If you choose to retire at an earlier time, you'll
do that on your own."

THE WITNESS: You'll have to ask everybody in the room what went on in their minds, but I can only tell you mine: We did not have the basis to punish him based on the recommendations made to me by Hank White, who had done the investigation and supported by the opinions of Corporation Counsel and the Assistant Corporation Counsel and the First Deputy Corporation Counsel and, therefore, I did not do it. Didn't even consider it.

MR. SCHWARZ: You would have viewed the temporary readjustment of him as a punishment?

THE WITNESS: Well, it certainly is a punishment because it seriously jeopardizes two things. It jeopardizes his pension, that number one, and the second is, there's the question of his reputation.

MR. SCHWARZ: Do you think it jeopardizes the morale of honest, hard working employees of the City when somebody escapes with their pension right before the determination is made?

THE WITNESS: The first thing, we wanted him to go. We asked him to go. He wanted to stay on. He wanted to stay for ninety days, and we wanted him to leave in three or four weeks.
So, in a sense, we were asking him to accommodate us. We did not have a basis according to counsel, for firing him or removing him or transferring him if he wanted to apply decency and not to stigmatize anybody. Hindsight is 20/20 if you're making a decision, you want to do it on the basis of --

MR. SCHWARZ: I assume you're spelling that h-i-n-d, and not h-e-i-n.

THE WITNESS: Yes, sir.

MR. SCHWARZ: There's a report of the judiciary system, I know how it works and it works very well and one thing you're very proud of is the check and balance you have built into that system where you have a committee and a Bar Association.

Can you tell me, given that how Mr. DeVincenzo was given the power without any apparent check and balance objective?

THE WITNESS: It's the kind of question that one cannot answer other than to say that he was given the authority to do what commissioners do. He had jurisdiction over a whole host of things. The Talent Bank was the very smallest part, as I
perceive it, of his jurisdiction, and I want to reemphasize that all together, it was something like 2,850 jobs, when I could have, in that same period of time, if I had wanted to, exercise my prerogatives, filled over 50,000. So, he was given the authority and with hindsight and with the suggestions of Commissioner Hynes, we should change it to that degree and I certainly will do that.

MR. SCHWARZ: Was there any determination when you set up that office, as to what check and balance there would be over Mr. DeVincenzo in that, and in other areas?

THE WITNESS: It's not checks and balances. That's not the way it works. It's do you meet the criteria? There's a management report put out, I think it's twice a year, and we set forth criteria. It was as a result of that management report with Stan Brezenoff, who was in charge of that, as the First Deputy Mayor in charge of Operations, that he detected that our goal with respect to affirmative action and the numbers were not being achieved and that's why in '85 - '86 you had these several different actions taken;
one, comparability; two, talking with the unions; three, bringing the TAP centers; four, bringing in women who were on welfare so as to get a better mix.

MR. SCHWARZ: My question is a different one and I think you may have answered it in passing and that is, that there was no check and balance at the time. In fact, the check is the after check through the management --

THE WITNESS: Exactly right.

MR. SCHWARZ: Thank you. Nothing further.

THE CHAIRMAN: Mr. Mayor, almost all the questions that have been asked have been answered.

What I would like to do is, ask you a concluding question, and I would like to lead up to it if I can by summarizing what I believe you testified in the context of different issues that came up in the hearings that started in January, and I ask as follows:

I take it that you were not aware that political source material was kept in the computers used in the Talent Bank --

THE WITNESS: Until when?

THE CHAIRMAN: I take it that you did not
know that took place until perhaps sometime in 1988 or '89?

THE WITNESS: When I learned about it as a result of the investigation, yes.

THE CHAIRMAN: As a result of our investigation.

THE WITNESS: Yes.

THE CHAIRMAN: I also understand from your testimony that until recently, recently perhaps goes back to last spring, you were not aware that any documents were discarded or destroyed in the Talent Bank area in 1986; is that correct?

THE WITNESS: Not until the public report in '88, the newspaper reports.

THE CHAIRMAN: That's what I had in mind.

I also take it from your testimony today that you were not aware that job postings were waived with respect to certain positions in order to facilitate the hiring of publicly sponsored candidates.

THE WITNESS: Not only was I not aware of it, but it's in direct violation of my Executive Order.

THE CHAIRMAN: I take it from your testimony
today that you were not aware that employees with hiring responsibilities in different agencies felt pressure to give special treatment to candidates referred from City Hall; is that so?

THE WITNESS: Not aware of it and believe just the contrary based on the Commissioners -- I gave you the names of two Commissioners who told me that.

THE CHAIRMAN: I take it that you were not aware that persons were hired more on the basis of political sponsorship than qualifications in some instances?

THE WITNESS: I was aware that we were soliciting and taking resumes from political sources. That was in my Executive Order that that be done.

THE CHAIRMAN: I understand that, but I'm talking about the actual hiring of people based on their political sponsorship.

THE WITNESS: I was not aware that someone was favored because of that if that is your question.

THE CHAIRMAN: That's my question.

If we were to find that all of the issues
to which I have just summarized your responses did, in fact, occur, how would you assess your responsibility?

THE WITNESS: Well, I would say to you that when you have a twenty-five billion dollar budget and you have forty-two major agencies, and you give responsibilities to the Commissioners and the way you check those Commissioners is the outcome of the day-to-day operation, because it's not possible to check the day-to-day operation -- what is the outcome? And the outcome is determined by reporting for the management report and it was as a result of outcomes that were unacceptable to us that in '84 and '85, we took measures to change this, and if you would just look at the numbers with respect to the Talent Bank in '83 and '84, they're peanuts.

I don't have the exact numbers, but there were a very small number of people hired in '83 and '84, and it was in '85, notwithstanding the smallness of the numbers, the total number for three and a half years was 1,200 oddhirings in a city that has over 200,000 employees.

So, if you're asking me did I fail in my obligation not to know what was happening with
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respect to the Talent Bank or did someone in my administration fail, the answer is, I don't believe that they did fail. Hindsight, we go back, but in terms of picking it up through the management report, we did.

THE CHAIRMAN: I have no further questions, and thank you for your participation.

This hearing is ended.

THE WITNESS: Thank you.

(Time noted: 5:20 o'clock p.m.)