

MAINE STATE LEGISLATURE

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STATE OF MAINE

DEPARTMENT
of the
ATTORNEY GENERAL



REPORT

on

Special Investigations

March 17, 1953 to July 27, 1953

PREPARED BY DIRECTION OF THE
GOVERNOR OF THE STATE AND
THE EXECUTIVE COUNCIL

AUGUST 1953

Hon. Alexander A. LaFleur, Attorney General

James P. Archibald, Esq., Special Assistant Attorney General

Harold J. Rubin, Esq., Special Assistant Attorney General

Hon. Ernest L. McLean, Special Advisory Counsel

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Office of the Attorney General
State House
Augusta, Maine

August 1, 1953

To His Excellency Burton M. Cross
Governor of the State of Maine
Augusta, Maine

To the Honorable Members of the Governor's Council
State House
Augusta, Maine

As Attorney General I am herewith transmitting to you a detailed report of the investigation carried on by this office with respect to the 'Liquor Probe' and 'Scarboro Downs,' so called, as prepared by Assistant Attorneys General James P. Archibald and Harold J. Rubin, and Special Legal Consultant the Hon. Ernest L. McLean.

A careful reading of the transmitted report indicates that the legal staff was painstaking and fair, intelligent, constructive and factually correct and legally sound.

Staff and Organization

In order to carry out these 'probes' the Attorney General, after receiving assurances from the Governor and Council, that funds would be made available, appointed James P. Archibald, Esq., of Houlton, and Harold J. Rubin, Esq., of Bath, special Assistant Attorneys General, and thru' the efforts of the Governor, secured the services of the Honorable Ernest L. McLean, Esq., of Augusta, as Special Legal Consultant.

Selection of the legal staff for the investigations was not easy for the standards were exacting and several extremely talented and well qualified lawyers were under consideration.

The State was fortunate in the designation of James P. Archibald, Esq., and Harold J. Rubin, Esq., as Special Assistant Attorneys General and the Honorable Ernest L. McLean, Esq., as Special Legal Consultant.

1. James P. Archibald, Esq., Assistant Attorney General

Mr. Archibald is a graduate of Bowdoin College, received his legal training at Boston University and, in 1937 entered the practice of law with his father, the late Bernard Archibald, in Houlton, where he has practiced ever since.

He served Aroostook County as County Attorney for six years, during which time he investigated and tried many homicides of all types. It is estimated that approximately two thousand criminal cases received his attention during his term of office, of which several were tried on appeal in the Law Court. He also appeared for several respondents in homicide cases, and on several occasions has been appointed by the Court as **Special Prosecutor** to represent the **State** in the trial of criminal cases. Mr. Archibald was recommended to the Attorney General by many members of the Bar and of the **Bench of the State** as a lawyer of superior ability, of the highest integrity and well qualified to undertake the assignment, and could approach the investigation with an open and unbiased mind.

Mr. Archibald cut himself loose from a successful and profitable law practice in Houlton for six months to devote himself to this investigation.

There was no solicitation by Mr. Archibald for the assignment.

2. **Harold J. Rubin, Esq., Assistant Attorney General**

Mr. Rubin attended the University of Alabama and received his legal education at Boston University, graduating in 1936, and entered the practice of law in Bath, Maine, where he has a very successful and profitable law practice.

He served Sagadahoc County as County Attorney for three years, during which time he tried all types of cases, both criminal and civil. Mr. Rubin was recommended by members of the Bar, as an excellent trial lawyer, of high integrity and qualified in every respect to assist Mr. Archibald in the investigation.

There was no solicitation by Mr. Rubin for the assignment.

3. **Honorable Ernest L. McLean, Esq., Special Legal Consultant**

Mr. McLean, Special Legal Consultant, was a high honor graduate of Bates College in 1902, receiving his legal education at Boston University, graduating in 1905, and entered the practice of law in the City of Augusta, Maine.

He was formerly Mayor of the City of Augusta, a candidate of the Democratic Party for Governor of Maine, and the head of one of the most successful and profitable law firms in the State, McLean, Southard and Hunt of Augusta, Maine.

In fact, Mr. McLean may well be considered as the Dean of Democrats in Maine.

Without fear of contradiction there is no question as to the legal qualification of Mr. McLean. He is one of the most outstanding and successful lawyers in the State of Maine, a lawyer **universally** recognized throughout the State of Maine for his legal ability and forthright integrity.

Mr. McLean accepted the assignment with great reluctance and only after a personal appeal from the Governor to render a public service.

4. **Lt. Donald M. Herron**, Maine State Police, Special Investigator

Lt. Herron has been a member of the Maine State Police since 1938, and Lieutenant thereof since 1948.

He is a graduate of Ricker College, receiving specialized training in police and investigative techniques in the Harvard Associates, Harvard College, in Police Science, of which he is not only a graduate but also honored by being elected a Director. He has also received instruction and training from the Federal Bureau of Criminal Investigation, and instructed in police techniques at the Maine State Police School.

5. **Walter Ripley**, Investigator, Attorney General's Department

Investigator Ripley has been engaged in the criminal and civil investigation field for eight (8) years, is a graduate of Kents Hill, and of the Harvard Associates of Police Science, where he received much of his criminal investigation training.

Mr. Ripley has investigated many criminal cases, including homicides, for the Department of the Attorney General, and is a competent, intelligent and conscientious investigator.

As the months of investigation went by I increasingly appreciated and admired the legal staff for their tenaciousness and courageous investigation.

CRITICISMS

Despite repeated episodes of public criticism by a segment of the Press, I have chosen, since my re-election as Attorney General, to remain silent as to the matters of the subject of this report.

Allegations of unwillingness to act for political reasons as well as a suggestion of stupidity to hold this office have been printed.

To the end that some degree of dignity may be restored and that the Governor, Council and the Public may see that there are two sides to the question, I reluctantly have decided to make a formal statement, in transmitting the report of these investigations.

My reluctance is based on my personal belief **That Matters Involving Criminal Prosecutions Are Best Resolved in Courts of Law**, and not in newspapers or on street corners, where false impressions are created and innocent reputations may suffer.

FINANCIAL ASPECTS OF ATTORNEY GENERAL'S OFFICE

In the first instance, a brief review of the financial aspects of the Attorney General's office is proper.

The Department of the Attorney General is financed by an **Appropriation from the Legislature**, and when the funds so provided are exhausted, no further service can be contracted for or procured unless **By Order of the Governor and Council**.

For the Fiscal Year ending June 30, 1952, the Department of the Attorney General had unexpended funds of approximately \$25,000 — Governor and Council furnished funds as follows:

	Amount	Expended	Lapsed
Gambling Probe	\$25,000	\$19,000	\$6,000
Littlefield Homicides	20,000	195	19,805
			<hr/>
Total lapsed (approximately)			\$25,805

NOTE 'A' The approximate cost of the investigation of the Littlefield Homicides was approximately \$11,000.— and with the exception of the \$195. service referred to, such cost came from the normal appropriation of the office.

NOTE 'B' With reference to the Gambling Probe the following statistics are interesting —

Total number of respondents	154
Total number of indictments	386
Total fines paid	\$44,950.00
Total costs paid	1,254.65
Total fines and costs	\$46,204.65
Total disbursements	19,000.00
	<hr/>
Net	\$25,204.65

The fines and costs all accrued to the several counties involved, the State receiving no share of said sum of \$46,204.65.

Socially, gambling presents a problem difficult of control, it being, in major part, a personal vice such as alcoholism, drug addiction and certain sexual crimes, and fraught with similar difficulties when endeavoring to regulate such crimes.

As in the instance of alcoholism and drug addiction, gambling may either follow or precede other criminal behaviour — and criminal behaviour is usually predatory, aggressive and destructive. **The criminal is the killer, the assaulter, the robber, the burglar. He is a threat to safety and security.**

It can readily be seen by a casual examination of the report (already filed) that the indictments were in such numbers as will now substantiate

the general belief held by this office and others before the investigation was started that such activities had reached a point where organized crime existed in the State of Maine.

Here was not the problem of isolated instances of occasional and spasmodic gambling, but rather an organized, closely-knit, cooperative attempt on the part of some people to make a living from such activity. We had, in Maine, professional gamblers. The names of certain individuals contained in the records already submitted to you will be familiar to those who have studied this problem — agents of well known operators, one of them, situated in New Jersey, being nationally known.

Earlier in my administration I expressed concern over the terrible power and ruthlessness of this enemy we are fighting not only in Maine but in the nation as a whole.

THIS CONCERN DOES NOT SPELL DEFEATISM.

To the contrary, the more I learned about the nature of the evil thing with which we were confronted, the more determined I became that the people of my state, sufficiently aroused, can and must strangle the crime and put the leaders where they belong.

Many have asked me, "Is there any way we can help?" There is a way. **ELECT HONEST AND UPRIGHT PUBLIC OFFICIALS.**

In your local communities and your State Legislature, there is much to be done in the way of beneficial legislation, in arousing public opinion against the local hoodlums, and in strengthening the hands of your honest local and state officials.

GET BEHIND US. There is going to be powerful opposition, not only from the crime syndicates, whose influence is strong and whose financial and political resources are powerful.

There will be passive opposition, too, from the natural inertia that operates against any far-reaching program of social reform.

I repeat, get behind us, be always on the alert, for the price of freedom is **Eternal Vigilance.**

NORMAL OPERATING EXPENSES

Normal operating expenses for the fiscal year that ended June 30, 1953, after a careful survey by the Comptroller, indicated that a balance of approximately \$300. would be likewise lapsed.

Obviously, as of June 30, 1952, it was clear that no funds were available to pursue the so called 'Liquor Probe' and 'Scarborough Downs.'

Realizing this situation, subsequent to June 30, 1952, Governor Payne and the Council were requested to provide funds to supplement the Budget.

This request was denied and no funds were provided. The Legislative Research Committee was informed of the situation.

However, by reason of certain economies in the operation of the office, I was able to provide about \$8,500., which was expended prior to January 1, 1953, to augment the funds of the Legislative Research Committee, as follows:

DEPARTMENT OF THE ATTORNEY GENERAL

LIQUOR PROBE 1110—30

STANLEY BIRD ACCOUNT	8/19/52 to 11/3/52	
Parker Hennessey		\$ 989.37
Lt. Lloyd Hoxie		301.55
Trooper Sterling Harmon		14.45
Milton M. Allen		113.26
Management Consultants		2,551.83
Donald W. Parks		31.86
Attorney Benjamin Butler		516.00
W. Maxfield Forbes, Dep. Trust Co.		13.81
Eastland Hotel		172.59
National Shawmut Bank		48.79
Pilgrim Trust Co.		23.60
City Clerk, Auburn		17.00
M. Cordes, Witness travel		103.00
		<hr/>
		\$4,897.11
	4/08/53	
James Good Attorney, S. C.		100.00
Telephone expense		24.85
Telephone Bill, Charles Allen		116.38
		<hr/>
Management Consultants		241.23
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	Total to Mr. Bird	\$5,138.34
		<hr/>
Clerk of Courts	2/9/53	19.50
		<hr/>
		19.50
		<hr/>
	SUB TOTAL	\$5,157.84

WILLIAM NIEHOFF ACCOUNT

8/5/52 to 12/23/52

Salary	\$2,307.60
Meals and Travel	423.84
Telephone expense	34.36

\$4,765.80
2

Paid to:

Parker Hennessey	259.45
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259.45

Lloyd Hoxie	248.70
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248.70

Stenographic Service	35.00
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35.00

Clerk of Courts	39.75
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39.75

SUB TOTAL	\$3,348.70
	5,157.84

GRAND TOTAL	\$8,506.54
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I then appeared before the Appropriations Committee of the 1953 Legislature, at the request of a member thereof (**Representative Waldo Burgess**) in the company of the Speaker of the House, **Honorable Roswell Bates**, to explain a proposed Resolve then pending, requesting the availability of \$35,000. to continue the several probes.

This Resolve had been introduced following assurances of the Republican members of the Legislature (Caucus) of not only their moral support but also their financial backing.

This Resolve went from the House to the Senate, lay upon the table for 20 days, and then was defeated.

The Governor, **Burton M. Cross**, then assured me that he and his Council would provide funds. **THIS WAS DONE.**

Now let me dwell on certain other matters that have drawn criticism.

FIRST

THE ALLEGED \$40,000 'BRIBE' TO A PUBLIC OFFICIAL AND ALLEGEDLY INVOLVING SCARBOROUGH DOWNS, INC.

This episode was given impetus as a result of a speech by Stanley L. Bird, Esq., formerly Counsel for the Legislative Research Committee, before a Service Club in Waterville, Maine.

Let me say that this incident was fully explored, largely through the efforts of William H. Niehoff, Esq., then an Assistant Attorney General, and

FULLY PRESENTED TO A GRAND JURY IN KENNEBEC COUNTY IN 1952 AND NO INDICTMENT OR INDICTMENTS WAS OR WERE FORTHCOMING.

While proceedings before a Grand Jury cannot be disclosed it is proper to point out that Mr. Stanley L. Bird did testify before that Grand Jury.

Furthermore, Mr. Bird appeared before two (2) subsequent Grand Juries in Kennebec County, and one (1) Grand Jury in Cumberland County, a total of four (4) Grand Juries.

I would like and do make the very positive assertion that

THERE NEVER HAS BEEN, NOR DID THE PRESENT STAFF OF ASSISTANT ATTORNEYS GENERAL ARCHIBALD AND RUBIN FIND, ANY COMPETENT, LEGAL AND ADMISSIBLE EVIDENCE TO INDICATE ANY BRIBE TO ANY PERSON INVOLVING SCARBOROUGH DOWNS, BE THAT PERSON A PUBLIC OFFICIAL OR A PRIVATE CITIZEN UP TO THIS MOMENT.

Available evidence does indicate that \$40,000 was paid by one (1) individual and a corporation to Attorney Jacob Agger of Portland, Maine, and that this attorney did disburse the funds, after retaining his fee, to five (5) individuals, two of whom were non-residents of the State, and three (3) residents of the State, one of whom then and now is a current employee of the Gannett Publishing Company, although not for the benefit of the Gannett Publishing Company. (A detailed statement of this phase of the investigation is included in the report.)

SECOND

With regard to the **ALLEGED HIGH PUBLIC OFFICIAL** referred to by Mr. Bird in his Waterville speech, let me point out that the individual referred to was then a **COUNTY ATTORNEY.**

Whether that position could be classified as “**A HIGH PUBLIC OFFICIAL**” is a debatable point.

Certainly the position of County Attorney IS NOT THE SUBJECT OF IMPEACHMENT, IF THAT BE THE TEST.

In any event, the alleged episode was investigated through my office. Consultations thereon were had with two Assistant Attorneys General, two members of the Grievance Committee of his Bar Association, Governor Payne and the late Chief Justice of the Supreme Judicial Court.

This matter, now in the hands of the Maine Supreme Judicial Court and all papers in the case having been impounded by present Chief Justice, I deem it improper to comment further on this matter, suffice to point out that the subject County Attorney submitted his resignation, as such, and the same accepted by the Governor.

May I again state categorically that this individual (County Attorney) HAS NO AND NEVER DID HAVE ANY CONNECTIONS BY ANY STANDARD OF EVIDENCE, WITH THE “ALLEGED \$40,000. BRIBE AT SCARBOROUGH DOWNS” referred to by Mr. Bird in the Waterville speech.

POLICY BEHIND LIQUOR PROBE

A few words would seem to be pertinent with reference to the policy behind the ‘Liquor Probe.’

The office of the Attorney General furnished and paid for the services of investigators detailed to Mr. Bird, and an Assistant Attorney General, William H. Niehoff, and I worked without reservation with the Legislative Research Committee and its Counsel.

EVERY BIT OF EVIDENCE WE POSSESSED WAS PRESENTED TO THE GRAND JURIES CONCERNED, AND NOTHING WAS RESERVED.

In order to check the legal procedures, the matter was discussed with the Deputy Attorney General, James Glynn Frost, and the Staff of the Attorney General’s office, prominent members of the Maine Bar, and on at least six (6) occasions with members of the Bench.

We proceeded with what we considered to be, and still believe are, the

METHODS PRESCRIBED BY OUR COURTS, STAYING WITHIN THE TIME TESTED RULES OF CRIMINAL PROCEDURE.

I WILL NOT PRESENT, NOR WILL I PERMIT ANY OF MY ASSOCIATES TO PRESENT OR REQUEST ANY GRAND JURY TO INDICT ANY PERSON ON HEAR-

SAY, SUSPICION, RUMOR, OR AS THE RESULT OF PRESSURE FROM ANY SOURCE BUT ONLY ON COMPETENT, LEGAL AND ADMISSIBLE EVIDENCE. THIS HAS BEEN MY APPROACH TO THE 'LIQUOR PROBE.'

IF THERE HAVE BEEN ERRORS OR MISTAKES IN PROCEDURE, I ACCEPT FULL RESPONSIBILITY AND CONSEQUENCE, AND IF THERE BE ANY CREDIT, MY ASSOCIATES ARE ENTITLED TO SUCH CREDIT. I WILL STILL GO FORWARD, IF AND WHEN COMPETENT, LEGAL AND ADMISSIBLE EVIDENCE IS FORTHCOMING, BUT ONLY WITHIN THE FRAMEWORK OF OUR LAWS, SO THAT NOT ONLY WILL THE GUILTY BE PROSECUTED, BUT THE INNOCENT MAY ALSO BE PROTECTED.

DEPARTMENT OF THE ATTORNEY GENERAL
 INVESTIGATIONAL SURVEY 1110 — 60 MARCH 16 to JULY 29, 1953

Salaries

James P. Archibald	\$4,750.00	
Harold J. Rubin	4,700.00	
		9,450.00

Expense Accounts

James P. Archibald	584.31	
Harold J. Rubin	776.59	
Donald M. Herron	692.05	
Walter C. Ripley	627.10	
		2,680.05

Gas & Oil — Mr. Herron's car	241.84	
		241.84

Telephone Expense	96.49	
		96.49

Stenographic Services

Catherine Pert	129.25	
Roselle Somerville	129.50	
		258.75

Paid to:

Joseph Poulin (Witness Fee)	11.92
Stanley Bird (Consultation etc.)	162.00
William Niehoff (Hotel & Travel)	42.32
Margaret Coffin Payne (Record)	21.75
Fred Hayden (Record)	120.00
Pilgrim Trust Co. (Photostats)	101.55
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	459.54
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SUB TOTAL	13,186.67
Estimated legal fees to Hon. Ernest L. McLean	2,000.00
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TOTAL	15,186.67

LIQUOR INVESTIGATION SUMMARY

Stanley Bird Account	\$5,138.34
William Niehoff Account	3,348.70
Clerk of Courts	19.50
Investigational Survey 1110 — 60	15,186.67
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TOTAL	\$23,693.21

I express to the Honorable BURTON M. CROSS, Governor of Maine, thanks for his understanding, co-operation and assistance during these several probes, for which I am indeed grateful, and commend him highly for his tremendous courage and unselfish interest in the public welfare which he has so admirably demonstrated in a matter now pending in our Courts. **THE STATE IS INDEED INDEBTED TO GOVERNOR CROSS.**

I express my appreciation to the Council for their many courtesies and financial assistance.

There is no civil honor more generally esteemed and respected among lawyers **unless it be the Bench**, than of being Attorney General of the State of Maine.

It is not confined to the great or rich. One who in his humble and circumscribed sphere of activity is known to his fellow citizens to serve to the best of his ability and with achievements in his field of activity can aspire to become Attorney General of Maine.

There is no standard for one to aspire to be Attorney General. In each case, there must be an equation of worthy accomplishments with a plus value and of unfavorable incidents with a minus.

I am and shall always be grateful to the citizens of Maine for permitting me to perform the duties and exercise the prerogatives and responsibilities of the office of Attorney General.

I endeavored with integrity, forthrightness and fidelity to duty to administer the affairs of the Attorney General's office during the last two and one-half years.

May I never in act or word bring discredit upon the office of the Attorney General, and this I pledge to the Citizens of Maine.

As indicated in the first paragraph, this is a transmittal of the report of our investigators to date in the so-called Liquor and Scarborough Downs Probes, signed by Assistant Attorneys General James P. Archibald and Harold J. Rubin, and Special Legal Consultant Honorable Ernest L. McLean.

I express to them not only my personal commendation and thanks for a 'task' well done, but also the appreciation of the State.

I **approve and concur** in the report herewith submitted and the **conclusions therein contained**.

Respectfully,

Alexander A. La Fleur
Attorney General

REPORT TO THE ATTORNEY GENERAL

Following the disclosures incident to hearings conducted by the Legislative Research Committee, which culminated in the widely publicized Report of Stanley L. Bird, Esq., counsel for that Committee, it is understood by the writers that the Attorney General, Alexander A. LaFleur, Esq., deemed it his duty, both moral and legal, to carry on with indicated investigation until some answer, either in the negative sense or in the positive sense, could be fairly and honestly given to the public. There was never any intent to aim this continued probe at any particular person or persons, but its primary purpose was to seek out the truth, convict the guilty if such there be, exonerate the innocent if false insinuations or accusations had been made, and to give the public such a report as could honestly be made.

PERSONNEL

To carry out these objectives, the Attorney General appointed the writers, **James P. Archibald, Esq.**, of Houlton, and **Harold J. Rubin, Esq.**, of Bath, as Special Assistants. Their respective salaries were agreed upon as \$250.00 per week, plus their actual expenses incurred. He also assigned Mr. Walter C. Ripley, an investigator in his office, specifically to this probe. He procured the assignment of **Lt. Donald M. Herron**, of the Maine State

Police, and Lt. Herron was temporarily relieved of his command of Troop F in order to devote his full time to this endeavor. **The Attorney General** personally has given practically his full time to the matter.

In addition to these men, he was particularly fortunate in procuring the invaluable aid of the **Honorable Ernest L. McLean**, of Augusta, one of the ablest and most respected members of the Maine Bar. Mr. McLean's position can best be described as that of a senior counsellor, one who reviewed the findings of those doing the active work, gave them advice from time to time and, in general, lent his wisdom and maturity of judgment to the endeavor.

FINANCIAL POSITION

While the writers can not give exact figures of the cost of the investigation as of this writing due to the continuing cost, it is safe to state that the total cost will not exceed \$15,000.00. Every effort has been made to keep costs within reason. Mr. LaFleur donated office space in Portland to the State; each of the writers made his private office available for all the many clerical tasks necessary, which included the transcription of all recorded interviews, the copying of countless documents, etc., so that clerical cost was kept at a minimum.

SOURCES OF INFORMATION

A. The so-called **Bird Report**, of course, has been studied and analyzed by all.

B. **Mr. Bird**, also, made available **his files**. They were moved physically to the Portland Office and a receipt therefor given Mr. Bird. It is difficult to describe in limited space the extent of these files. Their extent can perhaps be illustrated by stating that it required more than two days to prepare a receipt for them. In any event, they have been carefully studied and critically examined.

C. **All records of Legislative Hearings and the Court Testimony** in the various trials have been procured, read and evaluated.

D. **New investigative matters**. These will be considered hereinafter and need not be enlarged upon at this point.

LEGAL BASIS OF THIS REPORT

It is only natural and proper that the writers should approach the problem thus presented them from a legalistic point of view. It is our belief **that the time tested rules of evidence should be applied to the facts** as we found them and that conclusions thus reached would have a firm legal foundation. **We have followed that theory which is the only approach of**

which we are aware that can lead to any finality. To arrive at that point we have studied all sources of information, and have traced everything thus to be evaluated to its source, so that a final answer may be determined.

However, we are aware that this report will be read by many more laymen than lawyers. Therefore, we shall endeavor to so phrase this report that it may be readily understood by layman and be as free from legal phraseology as possible.

CURRENT STATUS OF PERSONS INVOLVED IN BIRD REPORT

A. Frederick W. Papolos.

It will be recalled that Mr. Papolos was indicted, tried and found guilty by a traverse jury for the crime of conspiracy. His case is now pending before the Supreme Judicial Court, on appeal. Since the case is thus still before the Court and there being no final adjudication, we do not consider it proper, as lawyers, to engage in public discussion of the merits. Suffice it to say that the State proceeded on the theory that Papolos, Bernard T. Zahn and Mr. Herman D. Sahagian entered into a conspiracy which involved the sale of wine to the State of Maine, with resultant profits to the alleged conspirators.

Sahagian was not indicted along with Papolos and Zahn because the State proposed to use, and did use, him as a prosecution witness. It would not have been legally proper to present Sahagian to a grand jury as a witness and indict him. Had Sahagian been thus indicted, he could not be used at the traverse jury trial of Papolos and Zahn as a State's Witness. **We can find no legal basis of criticism of this trial theory.**

Following Papolos' conviction, his Attorneys have brought two motions for a new trial on the theory of newly discovered evidence. Hearings have been had thereon and the record thereof is now in process of preparation for argument in the Law Court, which Court has, by law, the power to grant or dismiss these motions. Again, we do not feel it proper to discuss the merits of these motions herein except to say that the Attorney General's Office will present its full argument in proper course to the Law Court.

B. Helena Rogers.

Mrs. Rogers, then a member of the Maine State Liquor Commission, was indicted for the crime of perjury. She was tried, convicted and her conviction has been set aside by the Law Court on the general ground that the State failed to produce sufficient corroborative evidence to justify her conviction. In lay language, a perjury conviction must be based on, 1. Two witnesses; or 2. One witness plus corroboration. This is well settled law.

What is the explanation? It will be recalled that Stanley L. Bird, Esq., was in charge of the investigation while William H. Niehoff, Esq., a special Assistant Attorney General, was in charge of the prosecution.

Mr. Bird takes this position:

1. His investigation had produced three witnesses, a Kaplan, Sulkin and Setriakian, who could testify to substantiate the allegation of perjury.

2. Sulkin and Setriakian had agreed with Mr. Bird to be present at the trial, and he so informed Mr. Niehoff.

3. Only Mr. Kaplan appeared as a witness.

4. On the morning of the trial Mr. Bird discovered that neither Sulkin or Setriakian was present and so informed Mr. Niehoff although trial was in progress.

5. Mr. Bird has stated to the writers that he did not understand the necessity of more than one witness and his theory was that Kaplan's testimony plus cross-examination of Mrs. Rogers would justify a conviction.

(Mrs. Rogers did not testify).

Mr. Niehoff takes this position: (See Exhibit A)

1. Mr. Bird was in charge of the investigative work and he, Niehoff, presented the case in Court, which was his responsibility.

2. Mr. Niehoff was assured by Bird that all witnesses would be present and, in fact were then in Augusta, and, based on information thus received, proceeded to open the case before the jury

3. While the State's only witness was under cross-examination, Niehoff learned for the first time from Mr. Bird that no other witnesses had appeared; therefore, he had no choice but to rest the State's case.

4. Mrs. Rogers' Attorney then requested the Court to direct a verdict of "not guilty", **which the Court refused to do.**

Therefore, Mr. Niehoff had no alternative but to proceed, which he did.

The foregoing seem to be the undisputed facts. Is anyone to blame for the result? We, as lawyers, appreciate the thinking incident to the trial of a case and recognize that any one of the persons may make a trial error, not only the State's Counsel but also counsel for the defense, or even the Court itself. In the Rogers case it is apparent that Mr. Bird was in error on his legal approach to the case, possibly Mr. Niehoff was in error in not insisting on a "Nol Prose", and, since the Supreme Judicial Court has said so, the trial Judge was in error in not granting the Defendant's motion. **However, these comments should not be construed as indicating any culpability on the part of any of these individuals, since we can not justify such a conclusion from the facts.** The end result is that, regardless of the merits of the perjury charge against Mrs. Rogers, she can not legally be convicted thereof and the case is legally dead.

C. Bernard T. Zahn.

Mr. Zahn, former member and Chairman of the Maine Liquor Commission, was indicted along with Papolos for conspiracy. Prior to this indictment, Zahn had resigned from the Liquor Commission while another criminal charge was under investigation (to which he pled guilty at the May 1952 Term of the Cumberland Superior Court). At the conspiracy trial, Zahn, as was his right, did not testify in his own defense. **He was acquitted by the jury; therefore, regardless of private opinion or conjecture, he is legally immune from any further prosecution incident to that particular charge of conspiracy.**

We have carefully reviewed the record and trial procedure incident to the Zahn case. The issue was fairly presented to the jury. We can find nothing improper, illegal or worthy of criticism in the case, and **can only conclude that the case has reached a final legal conclusion.**

It perhaps should also be stated that Mr. Zahn's conviction at the May 1952 Term in addition to the fine of \$500.00 (which he paid), **precludes him from holding any public office for the ten years following that conviction, a fact which is not generally known.**

D. Herman D. Sahagian.

A consideration of all of the facts surrounding Mr. Sahagian is a most confusing and complex problem. The writers, like any persons charged with the responsibility of separating truth from falsehood, have sought to determine when Sahagian told the truth. **It will be recalled that Mr. Bird, in his report, made the following statement: "Investigations made by the writer to the date of this report have not disclosed that Sahagian has told other than the truth in reporting the events contained in his disclosures."**

Events have transpired since the publication of Mr. Bird's report that have raised interesting questions relative to this matter. The writers wish to be candid. They wish to be fair and they wish, above everything else, to give the people of Maine a true picture of this situation. And, being thus candid, it must be admitted that the key figure, the central actor, of the so-called liquor probe was Herman D. Sahagian. Without Sahagian where would the State have been in the Papolos-Zahn case? **He is the one person brought to light by the extensive Bird investigation who actually claimed to have paid graft. There were many alleged recipients but only one payor, Sahagian. It was Sahagian who, by his statements, recordings and testimony brought Ex-Governor Payne, Chief McCabe, Robert Faulkner and Edward Talberth, among others, into the picture. Without him, their presence as important factors in the Liquor Probe would not have been possible.**

Therefore, it became unceasingly important to scrutinize Mr. Sahagian with great care and in every detail. What facts have developed since Mr. Bird's report?

1. **Francis W. Tully, Jr.** Sahagian allegedly repudiated part of this testimony in the Papolos trial in a conference with Mr. Tully preparatory to a radio broadcast. Mr. Tully was a newspaper reporter who was widely read in many weekly papers in Maine. In addition to this he had a radio program on which he stressed political news. He is currently employed on the Staff of Governor Herter of Massachusetts. Mr. Tully has testified as follows:

“***** he (Sahagian) was advised that he should testify that he had committed a crime on the basis that there would have to be more than one person in a conspiracy and ***** he was advised to state that he had committed a crime.”

Mr. Tully quoted Sahagian as stating that this advice was given by Mr. Niehoff.

2. **John J. Lindsay.** Mr. Lindsay, a reporter of experience and chief political writer for the Bangor Evening Commercial, has testified relative to Sahagian's testimony in the Papolos case, as follows:

“I said (to Sahagian) ‘Did Mr. Niehoff at any time urge you?’, and he said, ‘Yes, Mr. Niehoff had.’***** and he testified to the fact that he was guilty of a crime because he had been urged to do so, first by the Attorney General's Department and then by Mr. Niehoff *****”.

3. Mr. Sahagian has testified before an Examiner for the Government in Boston relative to the Federal License of Fairview Wine Corporation that his testimony at the Papolos-Zahn trial was erroneous in connection with his testimony on criminal intent at the Papolos-Zahn trial.

Sahagian had also testified before the Legislative Research Committee relative to the transaction with Edward Talberth. At the Boston hearing, he repudiated this testimony. **On all three occasions, at the Papolos-Zahn case, at the Legislative Research Committee hearings, and before the Government Examiner, he testified under oath.**

He there took the general position that the payments first to Talberth and then to Papolos were made in an attempt to trap these individuals and thus gain evidence of graft. The Talberth payments were made in 1950, Papolos in 1951 and the disclosures to Bird in 1952.

4. Finally, Sahagian has only recently again testified in the Papolos Motions. He said there, **again under oath**, that he had no criminal intent in the Papolos conspiracy and that he had paid Talberth money as a campaign contribution, not as graft.

5. Following the statements made to Mr. Tully and Mr. Lindsay, Sahagian wrote a letter to Stanley L. Bird, Esq., dated 26 November 1952 in which he stated: **“In fairness to Mr. Niehoff, however, I do not hesitate to state that Mr. Niehoff has not, at any time, attempted to influence any testimony which I have given in any proceeding or concerning any individual connected with the liquor investigation.”** It will be recalled that there was then pending a slander suit brought by Mr. Niehoff against Sahagian. **A copy of the letter is attached and marked Exhibit B.**

6. Mr. Stanley L. Bird has had a conversation with Sahagian following the testimony in the Papolos-Zahn case, and after Sahagian had been delisted by the Liquor Commission and refused a license by the Federal Government. **He reports Sahagian as stating that it did not pay to be decent, that he would never again give any information which might hurt him, that it did not pay to be honest.** This preceded the testimony in Boston and in Portland on the Papolos Motions.

The writers feel that there can be no compromise with the truth. Mr. Sahagian can not take one position today and another position tomorrow, and then insist that he told the truth on both occasions, because it suited his convenience to adopt different versions on different occasions. He seems to us to have taken the foregoing position. **When he told the whole, complete unbiased truth, is not known to the writers.** Did he tell the whole truth before the Legislative Research Committee? — before the Jury in the Papolos-Zahn case? — before the Federal Examiner in Boston? — or before the Court recently in the Papolos Motions? Did he tell the whole truth when he spoke to Mr. Tully? Or when he spoke to Mr. Lindsay? or when he wrote the letter to Mr. Bird? Only Mr. Sahagian can answer those questions, and he says that he has told the truth completely and without reservation on all occasions. The writers submit that when such serious and important matters as are now under consideration are based, fundamentally, on the premise of Sahagian’s truthfulness, conclusions should be guarded. It is an old principle of logic that no conclusion can be any stronger than the premise on which it is based, and, if the premise fails, the conclusion likewise can not be justified. As the result of disclosures since the publication of the Bird Report, can we now say, or could Mr. Bird now say, that in no respect is there any reasonable doubt of Sahagian’s truthfulness?

The law is so well settled that it needs to be stated only for precision in argument. **A person is presumed to be innocent until the State has proven his guilt beyond a reasonable doubt.** The writers are compelled, both by training and personal belief, to view these matters in the light of that ancient law. Can the State now, in good conscience, ask any Court or Jury to believe the allegations of Sahagian **beyond a reasonable doubt?** To re-

solve the issue of when Sahagian told the truth is a factual matter, and should not be resolved in any other manner than that provided by law, which is by a jury under proper instructions from the Court.

1. Edward Talberth.

While the situation relative to Sahagian is under consideration it may be well to consider the facts surrounding Edward D. Talberth, former political writer for the Gannett Publishing Company, and, until his resignation as such, generally considered one of the leading political writers in the State. The original allegation was that Sahagian paid money to Talberth as graft, a portion of the money being intended for transmittal to Governor Payne. There was no dispute about the fact that money (approximately \$2700.00) was paid by Sahagian to Talberth. Is there any evidence that any of it went to Governor Payne? Talberth denies it. Governor Payne not only denies receipt of any of this money, but also denies any knowledge of the transaction. Sahagian can produce no evidence that Payne received any of this money, beyond his own word.

It will be recalled that much public comment was made about a statement of Mr. Nichoff before the jury in the Papolos-Zahn case that Sahagian, while not then on trial, would be dealt with criminally before another tribunal. In fact, Sahagian was indicted before the Kennebec Grand Jury for conspiracy arising out of the payments to Talberth, **and Talberth testified before that Grand Jury.** Subsequent to the indictment, **and over the strenuous objections of the State,** the Presiding Justice ruled that Sahagian was immune from prosecution. The matter was not submitted to the Supreme Court for ultimate decision because, in criminal cases, the State is bound by the ruling of the Court, has no right of exception and can not legally press its case before the Supreme Court. Therefore, the conspiracy case against Sahagian ended without trial. Talberth was not indicted in this case for the same reason that Sahagian was not indicted in Cumberland County in the Papolos-Zahn case, **which we feel was proper legal procedure.**

What, then, is the position as we find it today? It will be recalled that Talberth and Sahagian, in recordings made, described this payment as graft. **The Attorney General** himself was prepared to testify that Sahagian, in conversation with him had described the payments to Talberth as graft. If Sahagian is immune from prosecution, it still leaves the door open to indict Talberth **now before another Grand Jury.** However, this indictment must, necessarily, be based on testimony of Sahagian. **Sahagian's statements to the Attorney General would not be legally admissible under the rules of evidence in a trial in which Talberth is the respondent.**

Could the State, having thus lost Sahagian, legally proceed in good conscience against Talberth? Waiving the moot question of the legality of

an indictment against Talberth where Talberth has previously testified before a Grand Jury on the same matter, the State is faced with this proposition:

A. Sahagian has testified before the Examiner in Boston:
“**** I agreed (with Talberth) to make a contribution for his campaign in 1950, of \$3000.00.

Q. Whose campaign?

A. Fred Payne’s campaign which he was running at that time for his nomination under a Republican ticket for a second term.

Q. What do you think would have happened if you didn’t make it? — A. I don’t think anything would have happened.”

B. Sahagian has testified before the Court in the Papolos Motions that he made payments to Talberth as campaign contributions to Governor Payne, not as graft. It is basic that a criminal intent must be found if the State is to convict anyone of conspiracy. The writers are not aware that it is illegal to make a campaign contribution to a political candidate, if no ulterior purpose is attached to it. Sahagian now says, in spite of the so-called Talberth recordings, that such was the case. **In our opinion, the State in good conscience has no basis for proceeding against Talberth in light of the facts as they now exist, bearing in mind that the State would be bound by the testimony of its own witness, who, of necessity, would have to be Sahagian. In light of the record as it now exists we do not feel, assuming an indictment and conviction of Talberth, that such a conviction could withstand the scrutiny of our Supreme Court.**

2. Frederick W. Papolos — Sahagian Relationship.

While we can not discuss the merits of the Papolos conviction because of pendency in the Supreme Court, the connection between Papolos and Sahagian makes a very important part of the picture painted by the Bird Report. At the time of the Bird Report one of the most important unfinished matters involved a **Cashier’s check for \$8500.00 dated May 2, 1952 purchased by Frederick W. Papolos from the National Shawmut Bank.** This check had never been cashed and its distribution was unknown to Mr. Bird. Since it may well have represented money received from Sahagian, the writers deemed it necessary to attempt a further check on this sum. A study of the Bird files will reveal that, other than this check, there is a good accounting of the banking activities of Papolos. This proceeding, of course, presented certain investigative problems which in routine fashion have been dealt with, and the writers are now able to report on the handling of this sum by Papolos. The events, in order of their sequence, are these:

1. May 2, 1952, Papolos purchased a Cashier's check for \$8500.00 from the National Shawmut Bank.

2. On January 22, 1953, this check was credited to the account of Frederick W. Papolos in the brokerage firm of Townsend, Dabney and Tyson, with whom Papolos had had an account since at least December 31, 1940.

3. This check was next routinely cleared and paid by the National Shawmut Bank.

4. The then balance of Papolos' account with Townsend, Dabney and Tyson was \$17,430.16.

5. On April 13, 1953, Papolos drew a check on his brokerage account for \$12,000.00, leaving a balance therein of \$5,430.16.

6. On April 22, 1953, this check was deposited in a bank in Natick, Massachusetts, The Natick Federal Savings Bank, in the following manner:

A. A savings account for the benefit of Papolos's son in the sum of \$2,000.00.

B. A savings account in the name of Frederick W. Papolos in the sum of \$10,000.00.

7. As of this writing the balance in all accounts described in sub-sections 5 and 6 hereof remain intact.

The obvious purpose behind this endeavor was an attempt to trace the funds into hands other than Papolos, having in mind the alleged purpose behind the Sahagian payments. **We must conclude that, from these undisputed records, there is no evidence that any of this money went beyond the control of Papolos.** It might be well, also, to recall that Papolos received approximately \$12,000.00 in gross from Sahagian, and that is all that is contended he received, and is evidenced by checks from Fairview Wine Corporation to Papolos.

The writers hope that this very factual part of the investigation will cast some light heretofore unshed on the situation.

E. Frederick G. Payne.

In all candor, we must state that allegations concerning Ex-Governor Payne have received our most careful attention. The Bird Report left many matters in abeyance. It certainly suggested the truthfulness of Sahagian and cast doubt on the part played by Mr. Payne. Within the limits of our resources, we have done our best to seek out a truthful answer to these questions. The people of Maine deserved to know whether or not their Governor was personally involved in the sordid allegations of graft and corruption within the State Government.

It, perhaps, should be stated that categorical answers to non-scientific matters are often an impossibility. We recognize the impossibility of a

categorical answer to the questions that have been raised in connection with this probe. However, we wish to make it irrevocably clear that none of the personnel involved in this endeavor have shown the slightest inclination for any reason whatever to turn away from any facts that might shed the slightest ray of light on any possible connection between Frederick G. Payne and wrong doing in the State Government. **However, it is equally true that we have sought legal evidence, competent evidence, evidence that is material and relevant to our endeavor. We do not subscribe to the theory that any person, be he important or otherwise, should have to answer to unfounded rumor, innuendo or hearsay.** Facts thus produced have traditionally been discarded by the law as unworthy of belief. We have done likewise; but, it should also be observed, we have left no rumor unchecked, or no innuendo unheeded that has come to our attention.

We propose, therefore, to discuss the matters concerning Mr. Payne with frankness.

A. Was there **evidence** produced by the Legislative Research Committee that would justify any criminal action against Mr. Payne? It is obvious that the result of the committee hearings did not produce that evidence. No elaboration of that statement is necessary.

The files of Mr. Bird have been reviewed, as previously stated, with the greatest of care. The various records of phone calls, of bank records, trips, etc., have again been scrutinized for unfinished investigative opportunity. The results have been negative.

It might be well to observe, in passing, that the situations brought out by Mr. Bird's investigation have gone before at least three grand juries. Mr. Bird himself has had the opportunity to appear before these juries. What transpired before these bodies is, of course, a matter about which we have no knowledge, nor can that knowledge legally be acquired. The results, as far as any indictments are concerned, have been entirely negative.

What was the investigative opportunity afforded in this connection? Mr. Bird, an acknowledged investigator of stature with F. B. I. background, was given a free hand. He had two members of the Maine State Police, Lt. Lloyd Hoxie and Trooper Parker Hennessey, permanently assigned to him, and both men are competent and experienced. He employed the services of two former F. B. I. agents, and their staff, doing business as Management Consultants, of Boston, who did a great deal of work for him. This was a concern of excellent reputation and great experience. The Attorney General's Department cooperated fully and, in fact, spent about \$8000.00 to assist Mr. Bird, and furnished not only its legal staff but made available investigative assistance. This combined investigative endeavor began with Mr. Bird's employment by the Legislative Research Committee on April 17,

1952 and lasted until he terminated his services on December 16, 1952. It is doubtful if there ever was a more intensive investigative effort made concerning public officials within the history of the State of Maine; at least, the writers are not aware of any such. **However, in spite of this great concentration of effort, no competent legal evidence was produced on which any criminal charge against Mr. Payne could be based.** There was innuendo and there was rumor, but within all of these records and files, **we have found no credible evidence on which legal action could be maintained.**

B. Going beyond these records and files, in the twenty weeks in which we have been thus employed, have we been able to produce any relevant facts involving Mr. Payne?

1. The matters involving **Scarborough Downs**, so-called, are being considered at length herein, and need not here be discussed, but the extent of our inquiry into that situation is illustrated by the space we propose to devote to it.

2. By innuendo, Mr. Bird, in a speech delivered before a service club, implied that some **"high public official"** was guilty of wrong doing. Since this speech also referred to an alleged sum of \$40,000.00 paid by Scarborough Downs, the general public connected the two and it was a popular inference in some quarters that Mr. Payne received \$40,000.00 from this source. The item of \$40,000.00 is dealt with at length herein and will not here be further discussed except to say that the **"high public official"** was not Mr. Payne, and there was no connection between the \$40,000.00 reference and this official. Suffice it to say that Mr. Bird himself has so stated to the writers.

This brings us to a consideration of the identity of the **"high public official"** and it was readily discovered that he was **Ralph W. Farris, Jr.**, County Attorney of Kennebec County. We proceeded to investigate the allegations of wrong doing in this connection.

It will be recalled that proceedings were ultimately started in the Supreme Judicial Court which dealt with disbarment. **The Chief Justice has ordered the files impounded; therefore, we can not disclose in this report the factual background.** However, it may be stated herein (since, in substance, such a statement was made in open Court before the Chief Justice) that Mr. Farris had nothing whatever to do with Scarborough Downs, **he had no connection with Governor Payne**, he had done nothing which came to our attention that involved wrong doing in public office. The essence of the complaint against him was purely of a personal nature having to do only with his personal habits in his private life.

Any inferences connecting Mr. Farris with Governor Payne with resultant suggestion of official wrong doing is an entirely erroneous infer-

ence, without the slightest foundation in fact and purely the result of an unfortunate association of terms taken from the Bird speech.

3. **Maine School Building Authority, Insurance Account.**

This matter received our attention since the allegation has been made that Governor Payne had used his influence to produce insurance business for the firm of John C. Paige Co. Obviously, the Maine School Building Authority was responsible for the purchasing of large amounts of insurance, which resulted in premiums of considerable size. This was a new investigative matter and it has been concluded. What are the facts?

There were only two firms in Maine which attempted to get this business, the John C. Paige Co., which has an office in Portland, and the firm of Campbell, Payson and Noyes, of Portland. Both firms presented their insurance program to the Authority and the business did go to the John C. Paige Co.

The John C. Paige Co. is a large insurance brokerage firm. It deals in insurance on a nation-wide basis and has been operating in Maine for many years. It had the insurance capacity to meet the needs of the Authority. This is admitted by its lone competitor, which also admits the absolute propriety of the ultimate insurance contract with the Paige Co. Campbell, Payson and Noyes likewise admits fairness on the part of the Authority in its handling of the matter. **We deem this an excellent test.**

It is also interesting to note the handling of the insurance accounts on the local level. For example, Agent A had been selling Town X its school insurance prior to the application of Town X to the Authority for financial assistance in its school building needs. Agent A still receives, through the John C. Paige Co., such commissions as Agent A would have received from Town X had he sold the insurance on that particular building. In other words, the local agents are not deprived of local business through the intervention of the Authority and its purchase of insurance from the Paige Company.

There is no evidence that Governor Payne had the slightest influence over anybody in the purchase of this insurance. The purchase was open and competitive. We find no evidence whatever of wrong doing in connection therewith.

3. The writers attempted to trace further bank account activity on the part of Governor Payne. This went beyond the records in the Bird files. There were rumors of large unexplained checks. We traced these to their source. It would add nothing probative to this report to indicate the identity of the persons or bank involved. Suffice it to say that the result was negative.

4. Earl Grant. The writers spent a considerable amount of time with Mr. Grant, having in mind his public statements relative to Governor Payne, Bernard T. Zahn and a campaign contribution of \$3000.00 Mr. Grant had solicited a campaign contribution from Zahn. He did see Zahn pass Mr. Payne a sealed envelope, which was accepted. He did not see the envelope opened and does not know its contents, and did not then know the amount, although he **assumed** it was \$3000.00. (Zahn has admitted and Payne acknowledged \$500.00).

If the basis of Mr. Grant's statement is not founded on fact (his accurate knowledge) how can his conclusion have any merit? Mr. Grant now admits as much to the writers and, in substance, says that the heat of a campaign combined with some political bitterness, may produce some unguarded charges which would not be made otherwise. **We could find nothing factual within Mr. Grant's knowledge that indicated further investigation.**

5. Highway Purchases of Salt.

The allegation was made to the writers that there was wrong doing in the purchase of the State of its requirements of salt for highway purposes. There was an allegation of "kick-backs", graft, etc., and that Governor Payne obtained employment for "Nick" Papolos in this connection so that Papolos could get commissions on all salt sold the State.

Salt has been furnished the State by the W. H. Shurtleff Co. of Portland during the Payne administration. The records of the Purchasing Department indicate and prove **that all salt thus furnished was by competitive bid.**

Mr. Parker Poole, owner of the Shurtleff Co. states, and his records prove, that **Nicholas Papolos has never been on his payroll and that he has never paid Papolos any commissions for anything.** In fact, Mr. Poole does not even know Papolos. Our investigation discloses that this company is well established and of excellent reputation.

We can find absolutely no evidence to even remotely connect these allegations with fact and can only conclude **that they are without foundation.**

6. In addition to the specific matters previously discussed herein allegedly involving Governor Payne, we have made "spot checks" from various other sources, interviewed many individuals on a variety of subjects, all in a search for something concrete on which to proceed. **The universal result has been negative.**

The Attorney General has, on several occasions, made a public appeal to any person having information to come forth and declare it. **Not one single person has offered anything to this investigation on which further proceedings can be based.**

We think it should be stated for the record that our conclusions as herein expressed are the result of honest endeavor with no thought of distorting a single item of evidence for the benefit of Mr. Payne. **We can not, and will not, manufacture evidence where none exists.**

F. The Maurice Simon Case.

Necessarily, the writers have devoted a very considerable amount of time to both the law and the facts surrounding this case. The essence of the charge is that Simon, a Boston lawyer, offered a bribe to Governor Burton M. Cross in connection with the purchase by the State of a highway substance known as "Rode-Rite." The matter is pending in the Kennebec Superior Court and the background and merits of the case can not properly be discussed herein, out of respect for the Court.

The writers, however, feel that it is proper to state their feeling of respect for Governor Cross in the position which he has taken to date. It required courage and a deep sense of public responsibility. It also required honesty of purpose, without thought of political gain.

More may be written or discovered as a result of the Simon case at some time hereafter, but no other comment is proper herein; and we deem it best not to comment on our study of the Highway Commission's policy with reference to "Rode-Rite" since it may be material to the Simon case.

G. Francis J. McCabe, Chief, Maine State Police.

We have deemed it advisable to comment on Chief McCabe's association with Sahagian. He, of course, was personally acquainted with Sahagian and there had been some small amount of fraternization between them. Prior to the Papolos payments, Sahagian did have a conference with Col. McCabe, did make some general comments relative to the payment of graft. He did not disclose to McCabe the identity of the person or persons involved, or the proposed amounts to be paid. **This conference was subsequent to the Talberth payments, and no disclosures were made concerning those.** The conference with McCabe was "confidential" — at Sahagian's request.

Chief McCabe did keep the conference confidential. He did not report it to any other person and, with the exception of a recorded telephone conversation and a casual conversation in Waterville, both with Sahagian, he did not hear of it again until the disclosures before the Research Committee.

We can not find that Col. McCabe has had any more connection than that we have recited with the Sahagian disclosures. There is no evidence to indicate anything further. While it might have been judicious for the Chief to have taken some form of positive action rather than remain entirely silent and inactive, such a criticism would be speculative. We are aware that had

the Chief adopted a different approach many of the events that transpired subsequently might now be tangible facts rather than confused speculation. At the worst, Chief McCabe's handling of the matter might be classed as an error in judgment, and that only.

H. SCARBOROUGH DOWNS

One of the most persistent allegations of graft and corruption that has circulated throughout the State for the past few years has been the contention that there was the payment of graft in the amount of Forty Thousand (\$40,000.00) Dollars in connection with the running horse race legislation, and the organization and operation of Scarborough Downs. This allegation has been repeated in various forms, but the basic proposition was that there was a payment of Forty Thousand (\$40,000.00) Dollars by Scarborough Downs to former Governor Payne, or to parties representing Frederick Payne, in order to secure the license for Scarborough Downs, and to enable them to continue operation. It will be recalled that this allegation figured prominently in the speech made by Mr. Stanley Bird in Waterville in February, 1953, when he indicated that there had been a payment of graft at Scarborough Downs in the sum of Forty Thousand (\$40,000.00) Dollars, and that a "high public official" should be impeached. Associated with this allegation was the companion claim that there were three thousand shares of stock of Maine State Raceways, Inc. allegedly given to former Governor Payne, or transferred in his name in return for his influence in promoting the legislation which culminated in the Running Race Track Law, and the granting of the sole license to operate a running track.

We have investigated, as completely as possible, the facts surrounding the promotion of the legislation resulting in the law authorizing the running races, as well as the organization of Maine State Raceways, Inc., and the license granted to the same by the Racing Commission for the State of Maine. In order to understand fully and evaluate the allegations of graft in this instance, it was necessary to review generally the involved financing surrounding Maine State Raceways, Inc., and the parties involved in the same.

HISTORY OF RUNNING RACE LEGISLATION IN MAINE

It is important to keep in mind the fact that the law legalizing running races in the State of Maine was enacted by the Legislature in 1949, and became effective in August, 1949. Prior to that session of the Legislature, the Legislature in 1947 enacted a Running Race Law which was passed by both the House and Senate, and sent to former Governor Hildreth who vetoed the same, which killed the Bill for that session. During the primary campaign of 1948 the question of running race legislation was a matter of some dis-

cussion, and it is a matter of record that during the primary campaign of 1948 Frederick Payne, who was then a candidate for Governor, stated, prior to his nomination, that if the Maine Legislature enacted a law legalizing flat racing, he would sign such a Bill.

ORGANIZING AND FINANCING OF MAINE STATE RACEWAYS, INC.

Maine State Raceways, Inc. came into being in 1949. One of the original organizers was Robert A. Verrier of Portland, Maine, who at that time was engaged in the general construction field. Mr. Verrier had acquired a large tract of land in Scarborough, Maine, which was originally intended as a source of gravel to be used in his construction business. About the same time, in 1949, that Mr. Verrier formed the idea of organizing a race track, Mr. Fred Snow of Pine Point, Maine, also became interested in such a venture, and surveyed the possibilities of erecting a track at the site of the "Kite Track" at Old Orchard Beach, as well as the Old Orchard Beach Golf Club. Both these locations were inadequate and unsuited, and in the course of getting information as to these sites, Mr. Verrier and Mr. Snow came in contact, and it was eventually agreed that the parties should pool their efforts and use Mr. Verrier's land at Scarborough as a site for the track. At this point, Maine State Raceways, Inc. was organized, and Mr. Verrier caused the land at Scarborough, which was held at that time by another corporation, to be transferred to Maine State Raceways, Inc. A considerable amount of financing was necessary, and numerous parties were brought into the corporation for the purpose of providing the necessary finances. Mr. John Bourisk of Lewiston, who operated the Lewiston Fair and the Bangor Fair was brought into the picture, and he transferred his holdings in Lewiston and Bangor to the corporation in return for a stock issue. Mr. Fred Snow, who was associated with a Theodore Rauscher and a Mr. McGee, transferred his lease of the Old Orchard track to the corporation in return for shares of the stock. In addition to these parties, there were friends of Mr. Snow who took some stock for which they paid cash at the rate of Ten (\$10.00) Dollars per share, which was the stated par value, and there were various amounts of cash put into the operation by the interested parties in order to finance the construction of the track. At the time the construction of the track began, which was in the fall of 1949, Maine State Raceways, Inc. held no license from the Racing Commission for the State of Maine, and neither had they been promised or assured that they would receive any such license. The construction of the track proceeded through the fall and winter of 1949, and the promoters were constantly running out of funds. They apparently could get no legitimate bank

financing, and as a result they were obliged to borrow large sums of money from private sources. At one state of the proceedings when they were in need of funds, they borrowed the sum of One Hundred Thousand (\$100,000.00) Dollars from one George I. Lewis of Portland, Maine; and at a later date were obliged to borrow the sum of Three Hundred Thousand (\$300,000.00) Dollars from one Morris Goldfine of Boston, Massachusetts. The cost of negotiating these loans represented a considerable expenditure on the part of the corporation, and indicates its poor financial status, as the operators indicated that they were unable to finance the operation through legitimate banking channels. Even these large sums of borrowed capital were not sufficient to complete the track, and the promoters were constantly seeking new parties to interest in their venture, and were successful in bringing in other persons outside of the State who invested money in return for stock.

GRANTING OF LICENSE BY MAINE RUNNING RACE COMMISSION

This situation continued until the late winter or early spring of 1950, and the parties then interested began their efforts to secure a license from the Maine State Racing Commission, permitting them to hold a meet at their proposed track. It was then that they found, if they had not anticipated it before, that they would have opposition for such a license from Mr. Joseph R. Cianchette of Pittsfield, Maine. Mr. Cianchette, who owned the Gorham Race Track at Gorham, Maine, was interested in obtaining for his track at Gorham, a license to conduct running races. He had applied for such a license, and had deposited with the Racing Commission his check in the sum of Five Thousand (\$5,000.00) dollars, which was required by law. Mr. Cianchette's interest in a running race license pre-dated that of any of the organizers of Maine State Raceways, Inc. Mr. Cianchette, during the operation of the Gorham Race Track as a harness race track, had occasion to employ the services of Attorney Jacob Agger of Portland, Maine in connection with some difficulty he had with the United States Trotting Association over the assignment of racing dates for his Gorham Track. Attorney Agger and Attorney Frank Coffin, then of Lewiston, Maine, who was associated with Mr. Agger in this matter, successfully enjoined the United States Trotting Association from interfering with the Gorham dates so that the harness meet in question took place as scheduled. Mr. Agger attempted to interest Mr. Cianchette, prior to the enactment of the Running Race Law, in financing a lobby to support such legislation, but Mr. Cianchette was not interested. Mr. Agger also, at about the same time, tried to interest Mr. Fred Snow in putting up some money to finance such a lobby, but Mr. Snow was also not interested in such a proposition. Mr. Agger also attempted to obtain

a purchaser for Mr. Cianchette's track at Gorham, and in connection with these attempted sales, contacted the operators of Suffolk Downs in Boston, and Mr. Lou Smith of Rockingham Park in New Hampshire, in an effort to sell them Mr. Cianchette's track, but in all instances his efforts failed as Mr. Cianchette's asking price was considered excessive.

JACOB AGGER

In order to correlate matters in the sequence of events, we must now go into the activities of Mr. Jacob Agger as they pertain to his association with these race track matters. As has been noted, Mr. Agger was very much interested in the promotion of a Running Race Law in the State of Maine. We have been unable to determine whether or not he was involved in any way in the vetoed legislation of 1947, and Mr. Agger denies any connection with the matter at that session of the Legislature, but there is some evidence available that he did have some interest in the promotion of such legislation during the 1947 session. However, none of the charges of graft pre-date the primary campaign of 1948. He does very readily admit to his participation in the legislation which was enacted in 1949. After his attempts to interest Mr. Cianchette and Mr. Snow in putting up funds to lobby for such legislation, as well as his other racing contacts failed, he finally contacted a party named Maxwell Baker of Haverhill, Massachusetts. Mr. Baker operates a fruit and vegetable business in the City of Haverhill, and he and Mr. Agger had been friends for a long period of time. Mr. Agger was aware of the fact that Mr. Baker frequently invested money in speculative ventures, and with this in mind, after all his other efforts to promote funds had failed, he talked with Mr. Baker suggesting that if Mr. Baker would furnish the necessary funds to take care of his expenses in promoting a lobby for the race track bill, he would split equally any financial gain which he acquired from the enactment of such a law. Mr. Agger's theory was that if he was known to be the sponsor of such a Bill, he would be in a good position to tie up the racing interests in the State of Maine, on the basis of his known association with the legislation. Although reluctant at first, Mr. Baker finally consented to enter into such an agreement with Mr. Agger, which they did, orally, and Mr. Baker states that he paid to Mr. Agger a total of approximately Six Hundred (\$600.00) Dollars. These payments to Mr. Agger were in cash, and were in varying amounts at various times. If Mr. Agger requested One Hundred (\$100) Dollars or Two Hundred (\$200.00) Dollars during the winter and spring of 1949, Mr. Baker would turn over to him such amounts. At the time of this agreement between Mr. Baker and Mr. Agger, both Mr. Agger and Mr. Baker state that they represented no one other than themselves, and that the entire proposition

was upon the speculation that some financial benefit would come to their enterprise, should such a law be enacted. It is a matter of record that Mr. Agger employed one George Weeks of South Portland, Maine as a lobbyist during the Legislative session of 1949, who worked for the passage of such a Bill, and Mr. Agger has also indicated that Mr. S. Arthur Paul of Portland was also employed by him as a lobbyist in this connection. It is a matter of record that such a Bill was enacted by the Legislature in 1949 and signed into law by former Governor Frederick Payne.

CONTRACT BETWEEN AGGER AND CIANCHETTE

After the agreement was consummated between Mr. Baker and Mr. Agger, and subsequent to the enactment of the running race legislation, Mr. Agger entered into an agreement with Mr. Cianchette, by the terms of which, Mr. Agger agreed that he would obtain for Mr. Cianchette a running race license at the Gorham Track, and predicated upon this fact. Mr. Cianchette agreed that if such a license were obtained by Mr. Agger for the Gorham Track, enabling them to hold a flat racing meet, Mr. Agger would be named as General Manager of the Gorham Race Track, and would receive as compensation a percentage of the mutuel handled at the rate of one-half of 1% of the total handled for a period of ten years. It is alleged that this agreement was in writing and signed by the parties. Your investigators have never seen the original agreement. We have examined, and have in our files a copy of the first draft of such an agreement, which was prepared for Mr. Agger by Attorney Frank Coffin, then of Lewiston. Such first draft, which we have examined, contains provisions with respect to payment to Mr. Agger similar to what it is alleged the final draft contained.

MAINE STATE RUNNING RACE COMMISSION

Subsequent to the negotiation of this agreement, Mr. Agger attempted to obtain for Mr. Cianchette a license for the Gorham track. Such efforts consisted of attempting to convince the Racing Commission that it was for the best interests of Maine to grant the license to Gorham. In no instance have we found any attempt to deal improperly with the Racing Commission, or that any influence was brought to bear upon the members of that Commission. None of the opposing parties for the license have indicated any criticism of the Racing Commission at any time. Everyone who dealt with the Commissioners before the license was issued, made no suggestion that any group was being favored. Mr. Cianchette did not agree with the Commission's thought that the licensee's plant should have a mile track, but even he gave no indication but that the motive of the Commissioners in

requiring this was in the best interests of racing in the State of Maine. When the question of the issuance of a license for running races was being considered by the Commission, during a conference between Governor Payne and Mr. Frank Totman, Chairman of the Commission, the question was discussed, and it is represented that Governor Payne stated that if only one license was to be issued, he thought it should be issued to **an existing track**. Mr. Totman, who has had considerable experience with running horse races, and the other members of the Commission, had come to the conclusion that it was in the best interests of racing in the State of Maine, to issue a license to an applicant who could show a suitable plant containing a mile track. When Governor Payne stated his opinion to Mr. Totman, Mr. Totman told him that he did not agree with him, for the existing tracks had only half-mile tracks. Mr. Totman then indicated to the Governor that if that was the Governor's position, then they had come to the "Parting of the ways." Mr. Totman indicates that the Governor did not press the matter further, and made no attempt to influence the decision of the Commission in any way.

At this stage of the proceedings both Maine State Raceways, Inc. and Gorham Race Track were in active competition for a license. The Racing Commission had made it known to both applicants that only one license would be issued for a running meet. The Racing Commission attempted to get both sides together on some compromise, and urged both contenders that it would be best for racing, best for themselves, and best for the State of Maine, if they could get together and settle their differences between themselves, so that all parties would be satisfied with the ultimate decision of the Commission in issuing its license. There were numerous conferences between Mr. Verrier, Mr. Snow, Mr. Bourisk and Mr. Cianchette, but nothing material developed in the preliminary stages, as those connected with Maine State Raceways, Inc. considered Mr. Cianchette's price for his track too high.

MERGER OF MAINE STATE RACEWAYS, INC. AND JOSEPH CIANCHETTE

During all this time (the late winter and early spring of 1950) work was progressing on the plant at Scarborough Downs, large sums of moneys were being borrowed to pay for construction expenses and they held no license enabling them to hold a race meeting. No decision was forthcoming from the Racing Commission, and it was not known to whom the license was to be issued. Mr. Cianchette had indicated that if the Commission insisted upon a mile track, then he would change his plans to conform with what the Commission required. In March of 1950 there was another meeting of the parties. This was held in the office of Mayo Levenson, Attorney for

Maine State Raceways, Inc., at his office on Exchange Street, Portland, Maine. The purpose of this meeting was to attempt to get the two opposing interests together, so that there would be only one applicant for a running race license. This conference continued for two or three evenings and nights, until, finally, it appeared that the parties had agreed. It was proposed that Mr. Cianchette would sell his plant at Gorham to Maine State Raceways, Inc. for the sum of Six Hundred Thousand (\$600,000.00) Dollars, and that Mr. Cianchette would become a Director and Officer of the Maine State Raceways, Inc. Just when it appeared that everything was settled, Mr. Cianchette informed the others that he had a contract with Attorney Jacob Agger, and that if the merger was to take place, Maine State Raceways, Inc. would have to take over the contract which he had with Mr. Agger. None of the parties present representing Maine State Raceways, Inc. were willing to accept this additional requirement of Mr. Cianchette, and this disrupted the negotiations. Mr. Agger was contacted, and he indicated to Mr. Cianchette that if he (Cianchette) merged with Maine State Raceways, Inc., and thereby withdrew as an applicant for a running race license, he would consider that Mr. Cianchette had broken his contract and he would hold Mr. Cianchette liable. Further negotiations took place in Mr. Levenson's office during those evenings, and finally, Mr. Agger agreed to accept Forty Thousand (\$40,000.) Dollars in settlement of his contract with Mr. Cianchette. It was proposed by Mr. Cianchette that Maine State Raceways, Inc. pay the Forty Thousand (\$40,000) dollars to Mr. Agger as Cianchette's condition for approving the merger, but this proposition was refused. None of the Maine State Raceways, Inc. people were sure of what the Forty Thousand (\$40,000.00) Dollars represented, for they were not shown the contract, but the contract was discussed and it was alleged that it was in payment of services Mr. Agger had rendered, and his potential profit, if Gorham received a license, and he had shared in the mutual handle. After prolonged negotiations, it was finally agreed that Maine State Raceways, Inc. would pay Mr. Agger Twenty-five Thousand (\$25,000.00) Dollars, and Mr. Cianchette would pay Mr. Agger Fifteen Thousand (\$15,000.00) Dollars, and that the contract between Mr. Cianchette and Mr. Agger would be cancelled.

PAYMENT OF THE \$40,000.00

The financial transaction with Mr. Agger was completed then and there. Maine State Raceways, Inc. paid Mr. Agger Five Thousand (\$5,000.00) Dollars, although in fact this was paid by Mr. Snow's check on behalf of Maine State Raceways, Inc., for which Mr. Snow was never reimbursed, as far as we can determine. In addition, Maine State Raceways, Inc. then and

there executed its note in the sum of Twenty Thousand (\$20,000.00) Dollars payable to Jacob Agger, which by its terms, was due ninety (90) days from date, falling due in June, 1950. Mr. Cianchette gave Mr. Agger his check for Twenty-five Hundred (\$2500.00) Dollars and his note for Twelve Thousand Five Hundred (\$12,500.00) Dollars which likewise was due at the expiration of ninety (90) days.

With this feature of the merger adjusted, the parties proceeded to complete their agreement with Mr. Cianchette, and his track at Gorham was purchased for Six Hundred Thousand (\$600,000.00) Dollars. Mr. Cianchette was issued Three Hundred Thousand (\$300,000.00) Dollars worth of stock in Maine State Raceways, Inc., and given cash and a note for the remaining Three Hundred Thousand (\$300,000.00) Dollars. The day following the completion of the merger, the parties went to Augusta, met with the Racing Commission, Mr. Cianchette withdrew his application for a running race license, leaving Maine State Raceways, Inc. the sole applicant, and a license was issued to Maine State Raceways, Inc. for a running race meeting for the summer of 1950. Mr. Cianchette thereafterwards joined the Scarborough Downs group and worked with the others to complete the track and begin operations. It was not very long afterwards that disputes arose between the original Scarborough Downs group and Mr. Cianchette, partly caused by Mr. Cianchette's sale of some of his own stock for less than par value. The breach eventually grew to such proportions that there was a break in the association of these men, resulting in the bankruptcy proceedings in the Federal Court.

DISTRIBUTION OF THE \$40,000.00

At this point Mr. Agger had Seventy-five Hundred (\$7500.00) Dollars in cash, and notes totaling Thirty-two Thousand Five Hundred (\$32,500.00) Dollars due in June, 1950. Mr. Agger contends that he was not in a position to handle the discount of notes totaling Thirty-two Thousand Five Hundred (\$32,500.00) Dollars in the Portland banks, but whatever the reason, Agger took the notes to Maxwell Baker in Haverhill, Massachusetts, and delivered the notes to Mr. Baker. Mr. Baker then took the notes to the Merrimack National Bank of Haverhill, where he personally discounted the notes, the proceeds of which were deposited to his account. Because Mr. Baker was not certain that the notes would be met at maturity, he agreed with the bank that the money would be left in his account, and not withdrawn until the notes had been paid. This was done, and on the due date, both Maine State Raceways, Inc. and Joseph Cianchette paid the Merrimack National Bank of Haverhill the face amount of the notes in the amount of Thirty-two Thousand Five Hundred (\$32,500.00) Dollars. Mr. Baker was then in

control of Thirty-two Thousand Five Hundred (\$32,500.00) Dollars. Mr. Agger had retained the Seventy-five Hundred (\$7500.00) Dollars which he received in March in Mr. Levenson's office. When the notes were paid in June, Mr. Baker, on July 11, 1950 prepared a check in the amount of Twelve Thousand One Hundred Fifty (\$12,150.00) Dollars drawn upon the Merrimack National Bank of Haverhill, payable to Jacob Agger, and delivered the same to Mr. Agger in Portland. Mr. Agger attempted to argue the division of the money claiming that Mr. Baker was not entitled to 50% of the proceeds, plus his expense, but Mr. Baker was adamant, and since he had control of the funds, there was not much that Mr. Agger could do.

This division of the \$40,000.00 Dollars resulted in the following distribution: Jacob Agger received Nineteen Thousand Six Hundred Fifty (\$19,650.00) Dollars, and Maxwell Baker received Twenty Thousand Three Hundred Fifty (\$20,350.00) Dollars.

ACCOUNTING PROCEDURES AT SCARBOROUGH DOWNS

Before reaching any conclusion as to the ultimate distribution of the money, and prior to setting forth any verification of the foregoing statement of facts, the writers feel that there is one important feature in the operation of the race track that should be discussed at this time, as bearing upon the probability or possibility of any other moneys being paid from any race track revenue.

We have related the poor financial condition of Maine State Raceways, Inc. In its conception, the promoters underestimated the cost of construction, and overestimated the anticipated mutuel receipts. All of the parties concerned with the track, after making surveys of other tracks in New England, were positive that the daily mutuel receipts would not drop below Two Hundred Fifty Thousand (\$250,000.00) Dollars, and their overhead was geared to that minimum figure. When the track did open, the mutuel handle for the opening day was One Hundred Seventy-one Thousand Two Hundred Twenty-three (\$171,223.00) Dollars, and the highest figure that it reached during the racing season was One Hundred Eighty-four Thousand Two Hundred Sixty (\$184,260.00) Dollars on September 2, 1950. For most of the season, the daily figure, except for Saturdays, varied from approximately Sixty Thousand (\$60,000.00) Dollars to approximately Ninety Thousand (\$90,000.00) Dollars, and on this basis, the track was losing money each day. Because of this fact, all of the principal parties were constantly being called upon to advance new money in order to keep it going. Indicative of the situation was the fact that on the opening day, July 1, 1950, just as everything was in readiness for the opening, Attorney John D. Leddy of Portland, Maine, appeared at the track representing the

N. T. Fox Lumber Co., and threatened to attach the monies being wagered, to secure a claim due the N. T. Fox Lumber Co. in an amount of approximately Ninety-Thousand (\$90,000.00) Dollars. Such action was averted only by the giving of a personal note of Mr. Verrier, Mr. Snow, Mr. Bourisk and others, which eventually they were obliged to pay from their own funds.

The writers made a detailed survey of the accounting procedures used by Maine State Raceways, Inc. We found that early in the spring of 1950, the track employed the firm of Baker & Adams, Certified Public Accountants, of Portland, Maine, to handle and supervise their bookkeeping system. Baker & Adams is one of the most reputable accounting firms in the State of Maine, and their reputation is beyond reproach. This firm assigned one of their accountants, Leslie O. Andrews of Portland, Maine, to do the work. Mr. Andrews is a Certified Public Accountant, and a man of excellent reputation in the profession. His honesty and integrity is vouched for by his employers. His reputation in the City of Portland is unquestioned. Mr. Andrews was assigned full time to Scarborough Downs. He went there in the spring of 1950, and although he was unable to fix the exact date, he states that it was considerably before the construction of the track was completed. From the time he began, he had full charge of all bookkeeping items. He approved all invoices submitted for payment, prepared all checks issued from the corporate funds, made all records of deposits and withdrawals, and generally handled all financial matters. After the track opened on July 1, 1950, Mr. Andrews was in attendance each day. He checked all monies received from admissions, by verifying the turnstile clocks on the admission gates with the cash, and made up that cash deposit each day. At the conclusion of each race, he checked the total money wagered, computed the track's share, and at the end of each day's racing, knew exactly how much the track had taken in as their share of the mutuel handle. This was done by Mr. Andrews personally, to the extent that he checked the total money registered on the mutuel machines, and verified that figure with the cash, as well as the State of Maine's percentage of the day's wagering. Mr. Andrews made up the daily deposit of these funds. Mr. Andrews also verified the revenue from the sale of programs. His procedure was to see that each seller of programs was charged with a definite number of programs each day, and when the selling period was over, each vendor had to account to Mr. Andrews, either with unsold programs, or the required cash in substitution thereof. This income was also segregated by Mr. Andrews, and made up for deposit. The track also received a percentage of the sales of food, liquors and other items sold at the track. Each day Mr. Andrews would check the cash register totals on the various cash registers at the

track, and determine the percentage due the track on these sales, and that money would be taken by Mr. Andrews and prepared for deposit. These items constituted all of the sources of income for the track, and when each day's racing was completed, and the various deposits prepared, the funds would be delivered to Brink's express for delivery to a Portland bank, where the funds were deposited to the credit of Maine State Raceways, Inc. These items of revenue constituted all the income of the track for all practical purposes, and the accounting procedures were such that Mr. Andrews had a complete check on all such amounts. Mr. Andrews also controlled all expenditures out of track revenues. He approved all invoices and vouchers presented for payment, and all checks were prepared under his direction and supervision, and no funds could be drawn upon money belonging to Maine State Raceways, Inc. without his knowledge and approval. Under such procedure, there could be no "leaks" of any monies out of the track, without Mr. Andrews knowing about it. Mr. Andrews positively states that from the time he took over at the race track in the spring of 1950, until the time he was interviewed by the writers on April 8, 1953, no money in any amount was ever paid from the funds of Scarborough Downs for any purpose not connected with a legitimate and proper expenditure of the race track. At no time, he states, was any money, large or small, paid to any person for graft, bribery or for influence peddling. Mr. Andrews has continued in the same capacity as related above, during all the seasons that the race track has operated at Scarborough Downs, through all its changes of ownership and management.

VERIFICATION OF FACTS OF CONTRACT AND \$40,000.00

Returning to the matter of the payment of the Forty Thousand (\$40,000.00) Dollars to Jacob Agger, if the circumstances under which the same was paid, as have been related, are true, we must factually and legally come to the irresistible conclusion that such payment did not constitute graft or other illegal payment, unless the monies received by Jacob Agger and Maxwell Baker passed into the hands of those persons occupying some official capacity in the State, or particularly into the hands of Frederick Payne.

What verification have your writers found to substantiate the version as recited herein? With reference to the organization of Maine State Raceways, Inc. we have checked the records in the possession of the United States Federal Court, and find that they substantiate the facts herein. We have also talked with all the available original promoters, who advance the same history, as well as Attorney Richard Chapman of Portland, Maine, who was Clerk of the corporation in its early stages, and Attorney Mayo Levenson of

Portland, Maine, who has represented Mr. Verrier, and later was counsel for Maine State Raceways, Inc., and also Attorney Wilfred Hay of Portland, Maine, who was associated with Mr. Levenson in legal matters for Maine State Raceways, Inc.

As to the financial affairs of Maine State Raceways, Inc., again we have verified these facts from the books and records of the corporation which have been impounded in the Federal Court, and in addition to the information gained from that source, we have statements from Mr. Verrier, Mr. Snow, Mr. Cianchette, Mr. Andrews of Baker & Adams, Attorney John D. Leddy, Attorney Mayo Levenson and other interested persons. Although for the purposes of this investigation, the financial status of Maine State Raceways, Inc. may seem to be unimportant and immaterial, we feel that it does throw some light on the question of "ability to pay-off", and the practical advantage of paying graft.

Was there a contract in writing between Joseph Cianchette and Jacob Agger? Your writers have never actually seen such a contract for the reason that it is alleged that the same had been destroyed when the contract was cancelled by the payment of the Forty Thousand (\$40,000.00) Dollars. Mr. Joseph Cianchette states that there was such a contract signed by him and Mr. Agger, and he admits that by the terms of that contract, if Mr. Agger obtained a license for his track at Gorham, he was obligated to employ Mr. Agger as General Manager, and pay him one-half of 1% of the mutuel handle for a period of ten (10) years. Attorney Frank Coffin has stated to the writers that he was asked by Mr. Agger to help him draft a contract between himself (Agger) and Cianchette, and that Mr. Coffin did prepare such a draft of a contract, which embodied the provisions of payment to Mr. Agger in those terms. After a conference between Agger and Coffin, certain changes were made in the structure of the agreement, and Mr. Coffin did not draft the final contract. Mr. Coffin exhibited his file to the writers and permitted us to make a copy of that first draft, which we have in our files.

Mr. Michael Pilot of Bangor, Maine, who was counsel for Mr. Cianchette at that time, took part in the preparing of the final contract which was signed. Attorney Pilot was interviewed, and he has stated that the contract signed by Mr. Agger and Mr. Cianchette contained these same provisions for the payment to Mr. Agger. Mr. Pilot had no copy of the final contract, but does state that he had personal knowledge of the existence of the contract and of its contents.

Mr. Jacob Agger has stated his own personal knowledge of the existence of such a contract, but in attempting to evaluate evidence as to the existence

of the contract, we would stress the knowledge of others, rather than the statement of the parties to the contract.

Roy Sinclair of Pittsfield, Maine, has stated that he knew of the existence of such a contract, and had seen and examined the same. Mr. Sinclair states that he was acquainted with the contents of the contract and that he was aware that it had been torn up after the final meeting with the Racing Commission. He states that the contract called for a percentage of the mutuel handle at Gorham to be paid to Mr. Agger.

No other parties whom we have been able to contact have ever related that they saw the contract. There was considerable talk about the contract at the meeting which resulted in the settlement with Agger in the amount of Forty Thousand (\$40,000.00) Dollars, but no one present at that meeting saw the contract at that time, or on any other occasion.

Although the best evidence in proof of the existence of a written document is the document itself, nevertheless, our Courts have recognized that in cases where the document is not available for proof of its existence, other or secondary evidence is admissible and has probative force in proof of that issue. Although we lack the contract itself, or a copy of the same, it is our considered opinion that upon the secondary evidence which we have developed, there is sufficient proof that such a contract did exist, and that its terms were the same as have been set forth herein.

WAS THE SUM OF \$40,000.00 PAID TO MR. AGGER?

The simplest answer to this question, as proof of the same, is the admission of the party charged with its receipt, acknowledging the same. This Mr. Agger readily admits. However, your investigators, in an effort to leave no stone unturned, went beyond the bare admission of Mr. Agger in search of the truth. Every individual present at the meeting in Attorney Levenson's office on the night the settlement was arrived at, states that the final agreement called for a payment by Maine State Raceways, Inc. to Mr. Agger of Twenty-five Thousand (\$25,000.00) Dollars, and the payment of Fifteen Thousand (\$15,000.00) Dollars to him by Mr. Cianchette. They all related that Agger received Seventy-five Hundred (\$7500.00) Dollars by check at that time, Five Thousand (\$5,000.00) Dollars by check from Fred Snow on behalf of Maine State Raceways, Inc., and Twenty-five Hundred (\$2500.00) Dollars by check from Mr. Cianchette. Everyone present, including their attorneys, states that two (2) notes were given to Mr. Agger, both maturing in ninety (90) days, the note of Maine State Raceways, Inc. being in the amount of Twenty Thousand (\$20,000.00) Dollars, and the note of Joseph R. Cianchette in the sum of Twelve Thousand Five Hundred (\$12,500.00) Dollars. Mr. Maxwell Baker was interviewed and stated that

the two notes were turned over to him by Jacob Agger, endorsed by Jacob Agger, and that he (Baker) discounted them with the Merrimack National Bank of Haverhill, Massachusetts. The records of the Merrimack National Bank of Haverhill were checked, and those records showed that these two notes in the amounts indicated were discounted by them for Maxwell Baker. Their records further indicated that both notes were paid direct to the Merrimack National Bank of Haverhill on the due date, Twenty Thousand (\$20,000.00) Dollars by check of Maine State Raceways, Inc., and Twelve Thousand Five Hundred (\$12,500.00) Dollars by check of Joseph R. Cianchette. The writers have examined the cancelled check of Maine State Raceways, Inc. payable to Merrimack National Bank of Haverhill in the amount of Twenty Thousand (\$20,000.00) Dollars which is now in the possession of the Federal Court, where all the corporate records have been impounded. There can be no doubt but that a total of Forty Thousand (\$40,000.00) Dollars was paid to Jacob Agger, Twenty-five Thousand (\$25,000.00) Dollars by Maine State Raceways, Inc., and Fifteen Thousand (\$15,000.00) Dollars by Joseph R. Cianchette.

We feel that the factual background of the payment of the Forty Thousand (\$40,000.00) Dollars has been established by clear and convincing evidence, and the sole remaining question is the distribution of the monies after the funds came into the hands of Mr. Agger and Mr. Baker.

DISPOSITION OF THE FUNDS BY JACOB AGGER AND MAXWELL BAKER

As has been noted, after the notes had been paid and the check given by Mr. Baker to Mr. Agger, Mr. Agger had in his possession Nineteen Thousand Six Hundred Fifty (\$19,650.00) Dollars, and Mr. Baker had Twenty Thousand Three Hundred Fifty (\$20,350.00) Dollars. We have been able to establish the exact amounts as we have examined the original check from Maxwell Baker to Jacob Agger in the amount of Twelve Thousand One Hundred Fifty (\$12,150.00) Dollars dated July 11, 1950, which distributed the funds between them, and have in our files a photostatic copy of that check bearing Mr. Agger's endorsement showing that it was deposited to the account of Agger and Goffin in the Casco Bank & Trust Company at Portland, Maine.

JACOB AGGER'S DISTRIBUTION

The writers have established that Jacob Agger paid the following amounts out of the Nineteen Thousand Six Hundred Fifty (\$19,650.00) Dollars received by him from this transaction.

Philip Erlick, Portland Maine	\$6,300.00
Attorney George Weeks, So. Portland, Maine	1,000.00
Attorney Frank Coffin, Lewiston, Attorney S. Arthur Paul and Counsel in Philadelphia	2,000.00
	<hr/>
	\$9,300.00

Philip Erlick is, and has been for over twenty (20) years, an employee of the Gannett Newspapers. He is a sports writer, and for a number of years has covered the Agricultural Fairs writing the harness racing news, as well as all other Maine horse racing material for the Gannett Newspapers. He is well informed on the subject of horse racing, having been interested in running horse races and harness horse racing most of his adult life. He was a close associate and friend of Jacob Agger, and he became interested in the promotion of running horse races in Maine long before Mr. Agger began promoting the idea. He assisted Mr. Agger in providing him with the factual situation as to what was necessary to operate a running track, obtained information as to the laws governing running races in other states, and did whatever possible to help Mr. Agger in the promotion of a running race law. He appeared before the legislative committee at the hearing on the bill, and spoke in its favor as an individual, and not as a representative of the Gannett Press. It was agreed between these men that if Mr. Agger was successful in getting a running race license for Gorham, and thereby became General Manager of the track, Mr. Agger would appoint Phil Erlick racing secretary, which was what Mr. Erlick desired. This would be beneficial to Mr. Agger and the Gorham Track, as Mr. Erlick knew the mechanics of conducting a racing meet, and could handle all the details surrounding the actual operation of the horse races.

When Mr. Agger took himself out of the picture at Gorham, by settling his contract for Forty Thousand (\$40,000.00) Dollars, he eliminated the possibility of Mr. Erlick becoming Race Secretary of that track. Although there was no written contract between these men, and Mr. Erlick frankly states that he expected nothing out of the settlement made by Agger, being his close friend, Agger felt that he should pay Mr. Erlick for the work he had performed, and also for the loss of the anticipated employment. Mr. Agger felt that Erlick should have Five Thousand (\$5,000.00) Dollars after taxes, and so he allocated to Erlick Six Thousand Three Hundred (\$6,300.00) Dollars, which after taxes, would net Mr. Erlick Five Thousand (\$5,000.00) Dollars. Shortly after the receipt by Mr. Agger of the original payment of Seventy-five Hundred (\$7500) Dollars, he gave Mr. Erlick Five Hundred (\$500.00) Dollars, as Mr. Erlick wished to take a vacation trip to the south, and this money was used for that purpose. On June 1, 1950, Erlick

received a check for Three Hundred Fifty (\$350.00) Dollars; on August 5, 1950 he received a check for One Hundred Fifty (\$150.00) Dollars, and on August 16, 1950 Agger paid Erlick, by check, the sum of Four Thousand (\$4,000.00) Dollars, making in all a total of Five Thousand (\$5,000.00) Dollars. We have been able to trace the expenditure of Three Thousand (\$3,000.00) Dollars of Mr. Erlick's money into the purchase of a home for his brother and his family in Anson, Maine, and the Registry of Deeds for that County was checked, and shows this purchase, with title to the premises being held in the name of Philip Erlick. Mr. Erlick still has One Thousand (\$1,000.00) Dollars of the money he received in the bank. This accounts for Forty-five Hundred (\$4500.00) Dollars of the money received by Erlick, if we accept the proposition that he spent Five Hundred (\$500.00) Dollars on a vacation trip, which is not unreasonable. Mr. Erlick reported the receipt of this money for Federal Income Tax purposes, and Mr. Agger held the balance of Thirteen Hundred (\$1300.00) Dollars, and when the tax became due, Mr. Agger paid over the sum of Thirteen Hundred (\$1300.00) Dollars to cover the income tax on the total money received by Mr. Erlick.

Attorney George Weeks of South Portland, Maine was employed by Mr. Agger as a lobbyist in the 1949 Legislature in support of the running race bill. Mr. Weeks readily admits to the receipt of the sum of One Thousand (\$1,000.00) Dollars in payment of his services, and we readily accept this as proof of this item.

Mr. Frank Coffin, then practicing law in Lewiston, Maine, was employed by Mr. Agger to assist in the drafting of the contract here under discussion. Attorney S. Arthur Paul, according to Mr. Agger, was also employed as a lobbyist for the racing bill in 1949. At one stage in the proceedings when Mr. Agger, representing the Cianchette interests, and Maine State Raceways, Inc. were in competition for a license, learned that the opposition planned a stock or bond issue, he employed the services of counsel in Philadelphia, for advice on the "Blue Sky Laws" relating to the issuance of Stock or Bonds. For all these latter services, Mr. Agger paid out approximately Two Thousand (\$2,000.00) Dollars.

This left Mr. Agger the sum of Ten Thousand Three Hundred Fifty (\$10,350.00) Dollars. Mr. Agger contends that he retained all of these funds for himself and made no further distribution. An effort was made to verify the receipt of these funds by Mr. Agger through the Bureau of Internal Revenue, with reference to Mr. Agger's income tax return for that year. The Internal Revenue Bureau is not permitted to divulge this information, but this much we have been able to establish. Mr. Agger claims that he reported the amount received in his tax return and set the sum up as "Capital Gains" and paid the resulting tax on his net receipt of Ten

Thousand Three Hundred Fifty (\$10,350.00) Dollars. His return was checked by the Internal Revenue Fraud Division, and after reviewing the entire transaction, they dis-allowed this income as "Capital Gains" and declared it to be ordinary income. The dispute was finally compromised with the Bureau by treating part of the money as "Capital Gains" and the balance as straight income, and Mr. Agger paid the additional tax assessed. This much was verified by the Internal Revenue Department, and after the file was thoroughly reviewed from all aspects, it was closed, and the Bureau of Internal Revenue is satisfied that the full amount of tax has been paid on the entire transaction.

We have no evidence, and have not been able to find any, that would warrant any belief that any of the Ten Thousand Three Hundred Fifty (\$10,350.00) Dollars was distributed or paid to any other person. We know of no way that this money can be followed further. Based upon all the evidence we have been able to produce, we must come to the conclusion that Mr. Agger retained the entire sum of Ten Thousand Three Hundred Fifty (\$10,350.00) Dollars for himself, less the amount paid for income tax.

MAXWELL BAKER'S DISTRIBUTION

Mr. Maxwell Baker received Twenty Thousand Three Hundred Fifty (\$20,350.00) Dollars as a result of this transaction. Mr. Baker advised the writers that he retained the entire amount as his share in financing the proposed legislation that resulted in the enactment of the Running Race Law. He also advised that he reported his entire share for income tax purposes, and he, also, attempted to set it up as "Capital Gains" and paid the resulting tax. His tax return for that year was also reviewed by Internal Revenue, and the inclusion of these funds as "Capital Gains" was likewise dis-allowed. Again a compromise was effected whereby part of the money was treated as "Capital Gains", and the remainder as ordinary income, and Mr. Baker paid the additional tax. The tax file was thoroughly reviewed by the agents supervising the investigation and finally closed as fully tax paid. In view of the position taken by the Bureau of Internal Revenue, we must be satisfied that Mr. Baker paid the tax on the full amount which he received, and retained the balance to his own use. We were able to find no connection or association between Maxwell Baker of Haverhill, Massachusetts and any official of the State of Maine, and there is no available evidence that any of the monies left in the hands of Mr. Baker, after taxes, was paid to any third party.

CONCLUSIONS

Based upon the standards of evidence recognized by our Courts, and applying those standards to the evidence we have accumulated and here presented, no reasonable person could come to any other conclusion, but that no sound basis exists for claiming that, on an evaluation of the facts which are before us, the payment of the sum of Forty Thousand (\$40,000.00) Dollars constituted graft, or that any of it went to Frederick Payne. We feel that it is our duty to accept the facts as we find them, and draw the proper conclusions from those facts, and speculation, suspicion and inference have no place in this report. We may question the wisdom of paying Mr. Agger such a large amount of money, but as lawyers we can recognize that a possible liability existed as far as Mr. Cianchette was concerned, and if he insisted upon those terms as his price for joining forces with Maine State Raceways, Inc., and those responsible for Maine State Raceways, Inc. chose to meet those terms, we must consider that it was their money they were dealing with, and not ours.

3000 SHARES OF STOCK OF MAINE STATE RACEWAYS, INC.

The companion allegation to the graft payment of Forty Thousand (\$40,000.00) Dollars by Scarborough Downs, has been the allegation that three thousand (3,000) shares of stock of the corporation were set aside for Frederick Payne in return for his action and influence as Governor in promoting the race track legislation, and procuring a license for Maine State Raceways, Inc.

We have examined the books and records of Maine State Raceways, Inc. with particular reference to the stock issue, and among the numerous certificates of stock issued, we found that Mr. John Bourisk of Lewiston, Maine had been issued three thousand (3,000) shares over and above the number issued to all other primary promoters. All the original subscribers were issued equal amounts of stock in return for what was invested in the newly formed corporation by each of them. We have established that Mr. John Bourisk, in addition to the responsibilities undertaken by all the other Directors, spent a considerable amount of time and his own money in traveling over the east coast, investigating existing race tracks, examining their methods of operation, inspecting their physical plants, and generally acquiring information for use in constructing and operating Scarborough Downs. When Mr. Bourisk sought to be reimbursed for his time and expense, the financial condition of the Company being so bad, it was voted by the Directors to issue these additional shares of stock to Mr. Bourisk in payment of his expenses and services to the corporation. The three

thousand (3,000) shares were so issued in the name of John Bourisk, **and still remain in the name of John Bourisk**, never having been transferred or changed from the date of original issue. It is immaterial for our purposes at this time, but the fact remains that these, as all other shares of Maine State Raceways, Inc. are now worthless.

The conclusion we have drawn from these facts is readily apparent. No evidence exists that these shares were intended for Frederick Payne. If they were intended for him, they were never transferred. There is no evidence, other than conjecture or inference, that they were intended for him. Rather, the facts indicate a valid and reasonable basis for their being issued in the manner that they were, and there remains the incontrovertible fact that **these shares of stock still remain upon the books of the corporation in the name of John Bourisk.**

EDWARD TALBERTH AND SCARBOROUGH DOWNS

We have considered the allegation that after Scarborough Downs began operation, certain sums of money were paid to Edward Talberth each week for Frederick Payne, in order that Scarborough Downs might continue to operate. The basis for this claim was the fact that Ed Talberth hired an over-night camp at Scarborough or Old Orchard and that the "pay-off" was made at such camp.

It has been established that Edward Talberth did occupy an over-night camp at Snow Farm Camp on Route #1 at Scarborough on one occasion during the summer of 1950, and on another occasion that summer, the registration number of his automobile appeared at another camp. It has not been established that this was a regular affair each week-end, but it is possible that he might have registered under some other name. Mr. Talberth admits staying in over-night camps in that area on occasion during the summer of 1950, and it is known that during that time he was not living at home with his wife. He was living in his car during the week traveling between Augusta and Portland, and on various times he would spend week-ends in Boston with relatives, or stay in an over-night camp near Scarborough and Old Orchard. Other than this fact, there is no evidence to connect Edward Talberth with Scarborough Downs. His name was never found on the hotel register at Scarborough Downs as being registered there.

Attorney John Willey of Portland, Maine stated to the writers that sometime during the summer of 1950 he met Attorney Mayo Levenson on the Street in Portland, Maine, and asked him, (Levenson) how things were going at Scarborough Downs. Mr. Willey states that Mr. Levenson replied as follows:

“ Things wouldn't be so bad if we didn't have to pay that Talberth every week ”.

Mr. Levenson was contacted with reference to such a statement, and Mr. Levenson flatly denies that he ever had such a conversation with John Willey, or that he made such a reply to Mr. Willey.

In considering this allegation, it is well to keep in mind the accounting procedures in effect at Scarborough Downs. In what manner could monies be taken out of Scarborough Downs to pay Edward Talberth, without the knowledge of Leslie Andrews, the accountant?

Here, again, the allegation is founded not on any facts which have come to our attention, but upon conjecture unsupported by a scintilla of evidence. We have investigated all available avenues in this respect, but have not uncovered one fact to support such an accusation.

PROBABILITIES OF GRAFT PAYMENTS TO FREDERICK PAYNE

The writers have attempted to adhere to facts in preparing this report, as too much in the past has been said and written without factual support. However, in attempting to arrive at the truth in any circumstance, either in the trial of a case in Court, or in the conduct of one's daily affairs, we always consider the probabilities of one course of action or another, in the light of what has actually happened. Human individuals act in a general pattern under a given set of facts, and ordinarily do not act when all human reasoning is against so doing. We do not contend that the following observations prove anything, but hope that they will provide some cause for analysis and evaluation of the matter at hand.

In the first instance, what reason would there have been for Maine State Raceways, Inc. to pay Frederick Payne any money as graft? Running race legislation had been an issue in the State of Maine before Frederick Payne became a candidate for Governor in 1948. There was no question but that after its being passed by both houses of the Legislature in 1947, such legislation would be brought forward again in succeeding sessions. During the campaign for the primary nomination for Governor in 1948, Mr. Payne stated on numerous occasions that if such a bill were passed by the Legislature, he would sign it. When the bill was passed by the Legislature in 1949, Maine State Raceways, Inc. was not in existence. **Would any reasonable person pay Governor Payne money to sign a bill into law, when he had publicly gone on record signifying his intention to do so?**

If the allegation is that the money was paid to Governor Payne to use his influence to grant Maine State Raceways, Inc. the license for a running meet, then let us examine the probabilities in this respect. If we assume that any money was paid to the then Governor for this purpose, what reason

would the operators of Maine State Raceways, Inc. have had to pay Joseph R. Cianchette Six Hundred Twenty-five Thousand (\$625,000.00) Dollars for his Gorham track. There can be no dispute but that the only reason Mr. Cianchette was brought into the corporation was to eliminate any competition for the single license, and thereby assure a license for Scarborough Downs. If there had been graft paid to the Governor in return for his promise to see that the license was issued to Scarborough Downs, what concern would they have had for Joseph Cianchette? It would not have bothered them that Mr. Cianchette was also an applicant, for the license would have been "fixed". Is it probable and reasonable that they would have paid all this money to Mr. Cianchette in addition to the "graft" paid to the Governor? If such were the case, then any money paid as graft was wasted, and these were all successful businessmen, too experienced for that. The probabilities all point to a course of conduct that would eliminate the probability of any payment to the Governor, in view of the established payment of Six Hundred Twenty-five Thousand (\$625,000.00) Dollars to accomplish the merger with the Gorham race track.

We have generally reviewed the financial condition of Maine State Raceways, Inc. After the racing meet began, they were losing money to the extent of thousands of dollars each day. Did they have any money to use in paying graft? What gain could inure to the track at that time by the payment of graft? What could Governor Payne do for them? The only thing that would have done them any good would have been a great many new bettors at the track increasing the mutuel handle to Two Hundred Fifty Thousand (\$250,000.00) Dollars each day. If they were paying graft, how could the money be taken out of the track without the knowledge of Leslie Andrews, the accountant in charge?

We can anticipate the question, why did Maine State Raceways, Inc. agree to pay Jacob Agger Twenty-five Thousand (\$25,000.00) Dollars, when his contract was with Joseph R. Cianchette and obviously no concern or liability of theirs? The probabilities in this respect are not unreasonable. As we have indicated, Maine State Raceways, Inc. needed a license from the Commission in order to operate their race track. These men had invested hundreds of thousands of dollars in a venture that wasn't worth a nickel without a license. They were in doubt about getting that license. It was clear that the only way to eliminate that doubt, was to merge with Cianchette and take the opposition out of the picture. They could not afford to gamble with such high stakes. They negotiated with Cianchette and agreed upon a figure of Six Hundred Thousand (\$600,000.00) Dollars for his track. Cianchette then brought up the question of Jacob Agger's contract. He refused to go ahead with the merger unless Maine State Raceways, Inc. assumed

the obligation of Jacob Agger, finally adjusted to Twenty-five Thousand (\$25,000.00) Dollars. We must remember that at this stage of the proceedings these men were operating on theory of a minimum mutuel handle of Two Hundred Fifty Thousand (\$250,000.00) Dollars per day. Their share, as track owners, of that handle would be Twenty-five Thousand (\$25,000.00) Dollars per day. It was not unreasonable for them to agree to pay this additional amount in order to accomplish the merger, when we consider what they had at stake, and their optimism as to their future profits.

There is one further probability that can be argued. If Frederick Payne had been paid graft by Maine State Raceways, Inc., what help was he to them in their difficulties over night racing? In 1950, when the track shifted from day racing to night racing, did not the Attorney General oppose such action in the Courts, only to have a Justice of the Superior Court issue a decree enjoining the State of Maine from obstructing the track in any way from continuing night racing? If Frederick Payne had been paid graft, is it not reasonable to assume that he would have used some influence to have removed any opposition by the State of Maine? When the legislation banning night racing was enacted in 1951, if Frederick Payne had been paid graft by Maine State Raceways, Inc., would he have signed the legislation which put them out of business at night, their most profitable period of operation?

We realize that these are only arguments, and not proof, but the answers to these propositions cannot be ignored, if they throw any light upon the truth.

HIGH PUBLIC OFFICIAL WHO SHOULD BE IMPEACHED

This matter has been treated in another part of this report, but we make mention of it here only because the inference in the original statement was that such public official was involved in the Forty Thousand (\$40,000.00) Dollars graft payment by Scarborough Downs. As has been reported earlier, the high public official referred to was Ralph W. Farris, Jr., former County Attorney for the County of Kennebec, and in no sense had he any official connection with Scarborough Downs, or Forty Thousand (\$40,000.00) Dollars.

EVIDENCE CONSIDERED BY GRAND JURY

The matters which we have here under consideration have been presented to a Grand Jury, which took no action and indicted no one. At the June Term, 1952, of the Kennebec County Superior Court, this entire matter was presented to the Grand Jury by the Attorney General's Department of

the State of Maine. The jury heard all of the witnesses available including Mr. Verrier, Mr. Snow, Mr. Levenson, Mr. Agger, Edward Talberth and others, and although the testimony given before that jury is secret, and has not been divulged to the writers, we can properly assume that the entire matter was completely reviewed by that Grand Jury, and they had the opportunity to indict any and all persons involved, in any crime. No such indictments were found.

We feel that we have studied this matter exhaustively, and, as has been noted, a considerable portion of the time involved in the over-all investigation was devoted to this subject. It has been our purpose to arrive at a truthful and honest conclusion, predicated upon fact.

CONCLUSION

The writers have spent approximately twenty-one weeks in this endeavor. We were sworn in as Special Assistants on March 17, 1953, and immediately proceeded on our task. Within the time thus allotted us, and within the limits of our investigative capacity we have attempted to make as factually complete an analysis of the problems as possible. Much more time could be devoted to it but, in our considered opinion, the prospective of the production of any different conclusions than we have reached is entirely out of proportion with the cost involved. Frankly, we do not believe that we could honestly justify a continuation of the probe at its present level.

We feel that we owe a real debt to Mr. McLean, and we would like to acknowledge it publicly. He was reluctant to accept this assignment but he did so because of a sense of public responsibility. His advice has only been given after serious thought and study. At no time has there ever been any disagreement between us as to policy or method of approach. No decisions have been made arbitrarily, but only as the result of careful discussion and analysis.

From time to time we have conferred with Governor Cross. On no occasion has he attempted to influence our judgment or action. He has always been entirely objective and thoroughly cooperative. He has impressed us with his sincerity and his desire to get at the true facts **regardless of personalities or political consideration**. We think the people of Maine should know this.

Finally, the writers think it entirely proper to comment on their association with the Attorney General, to whom we are addressing this report. Frankly, we would have felt it our duty to be critical of him if the facts justified it, and to so state herein. Our first instructions from him, and many times repeated during the course of the probe, were that our conclusions must be our own, independently of his and independently of

consideration for him. We have followed those instructions literally. He immediately made Mr. Niehoff available to cooperate with Mr. Bird, and assumed a large amount of the investigative expense of the probe. In all, the original probe cost the Department approximately \$8000.00. From its earliest stage down to its conclusion, the Attorney General has given his close personal attention to the probe. Mr. Bird has had only praise for the manner in which the General has cooperated. Senator Frederick N. Allen, Chairman of the Research Committee, has also failed to make any criticisms to the writers. (See Exhibit C). **In no respect, can we find that the Attorney General has been remiss in his duty. In no respect can we find that he has influenced adversely any of the decisions of either Mr. Bird or Mr. Niehoff, or anyone else. In no instance can we find that he has even remotely suggested the suppression of any fact or intimated any desire to suppress the prosecution of any person.** We find only a man of courage desperately eager to give the people of Maine an honest conclusion in which they can have confidence. We believe that, as long as he holds his present position he will press to a conclusion any new facts that may hereafter be brought to light in connection with the matters we have discussed herein.

In conclusion, may we make a final observation? During these weeks we have had a peculiar opportunity to view and analyze the governmental structure of our State very objectively, an opportunity that presents itself to few men. We have had occasion to consider the personnel responsible for the administration of State Government. We have recognized that, as a result of the innuendos and suggestions following the liquor probe, the general public may look down on service in State Government. We can count on the fingers of one hand those public officials in places of high trust about whom honest doubt of official integrity can be entertained. As a result of our endeavor we have found, and unhesitatingly state, that the vast majority of employees of the State are honest, conscientious and sincere.

If our endeavor in writing this report has done nothing else, we earnestly hope that it may give the people of Maine some degree of renewed confidence in the basic integrity of our State government as a whole.

Respectfully submitted,

JAMES P. ARCHIBALD

HAROLD J. RUBIN

Special Assistant Attorneys General

CONSULTANT'S REPORT TO THE ATTORNEY GENERAL

The duties of the Special Legal Consultant were such that a report from him is not necessary. However, you and the public are entitled to a statement over my signature that I concur in the conclusion reached by the investigators. This is my reason for this report.

As you know, I accepted reluctantly the position of consultant. I certainly would not have done so had I not had personal knowledge of the legal ability and intellectual honesty of the investigators. At the time of acceptance, it was clearly understood that I would not conduct the actual investigations contemplated, but that I would study the reports of the investigators, both written and oral, and such other pertinent material as was available as a result of previous investigations and trials. My duty was to confer with the investigators when called upon to do so, to advise as to procedure, to evaluate their legal conclusions, and to satisfy myself that all probable sources of information had been explored. This understanding was with reference to the "Liquor Probe" and "Scarborough Downs" investigations. With the exception of the Simon Case, my work has been confined to those two matters.

I have read with care a great volume of material contained in the reports, recordings, and testimony produced as a result of previous investigation and court trials. I have received frequent reports of the investigators as to the progress and results of their investigations. I have also conferred with them often and given them my opinion as a lawyer as to the probable legal effect of the facts brought to light by their efforts. While these interviews have resulted in mutual agreement, my opinions have been given and my conclusions reached independently.

The investigation of Messrs. Archibald and Rubin has been thorough, impartial, and, in my judgment, competent. I feel that the State is to be congratulated on their selection.

Based on my study and review of the case, I concur with and endorse the conclusion reached by the investigators.

Respectfully submitted

ERNEST L. McLEAN

Special Legal Consultant

EXHIBIT A

Niehoff and Niehoff
Attorneys at Law
148 Main Street
Waterville, Maine

William H. Niehoff
William P. Niehoff

June 20, 1953

Hon. Alexander A. LaFleur
Attorney General
443 Congress Street
Portland, Maine

Dear Alex:

In compliance with your request of June 18, herewith follows statement of events relating to the trial of Helena Rogers at the October Term 1952 of the Kennebec County Superior Court.

Sometime in the latter part of April 1952, you requested me to remain in your department and continue as an Assistant Attorney General. You informed me at that time that you had agreed to present for prosecution all evidence that was presented by Mr. Stanley Bird, then Counsel for the Legislative Research Committee. You instructed me that Mr. Bird was to do all the investigating and that I was to represent the State in all prosecutions that might arise as a result of the investigation. In compliance with these instructions, I took no part in any of the investigations and relied solely upon the representations and reports of Mr. Bird.

Sometime prior to October 1952, Mr. Bird advised me that he had had a conference with Helena Rogers, then a member of the State Liquor Commission, and that during his questioning her, she denied acquaintance with one Joe Lindsey who Mr. Bird said he had been investigating. Mr. Bird told me he had evidence that the statement of Helena Rogers was false. He requested that she be subpoenaed as a witness before the Grand Jury in October. In compliance with his request, she was subpoenaed and did appear before the Grand Jury at the October Term in Augusta. I hesitate to disclose what testimony was given before the Grand Jury but in this case it was made public during the trial, at the direction of the Presiding Justice, so the proceedings were divested of their secrecy by judicial decree. Before the Grand Jury, Helena Rogers denied under oath that she knew or was acquainted with a Joe Lindsey. I then asked Mr. Bird to furnish me with the names of the witnesses that were to be called before

the Grand Jury as he had requested. He gave me the names of Hyman Kaplan and A. Setrakian and their addresses in or near Boston. I gave Mr. Bird subpoenas for these two witnesses and he agreed to have one of his investigators serve them. Mr. Kaplan appeared and gave testimony before the Grand Jury. Mr. Bird told me that Setrakian had not yet been located but that he would be in Augusta next day. This information was given the Grand Jury and they decided to wait for Setrakian to appear. Mr. Bird requested me to permit him to appear before the Grand Jury and tell them the substance of what Setrakian would testify as he had interviewed him and knew his story. I told Mr. Bird that such testimony would be hearsay and that an additional witness to Mr. Kaplan would be necessary to prove perjury. Mr. Bird then said it was too bad to let Helena Rogers get away with it and that if she would be indicted it might be a break in the investigation. The next morning at the opening session of the Grand Jury and in the presence of the Grand Jury the foreman requested that the prosecutor from the Grand Jury Room and that the Grand Jury desired to confer with Mr. Bird alone. In compliance with this instruction the prosecutors did retire and Mr. Bird was in conference with the Grand Jury for about 2½ hours. The Grand Jury officer then told me the Grand Jury wanted the prosecutors to return before the Grand Jury. At that time the foreman informed me that the Grand Jury had decided to indict Helena Rogers for perjury and requested that I prepare and present an indictment. I asked them whether they did not want to wait for the other witness and was informed by the foreman that Mr. Bird had told what the witness would testify to and assured the Grand Jury he would have that witness in court in case the matter went to trial. An indictment was prepared and presented and the Grand Jury returned a true bill against Helena Rogers for perjury.

Helena Rogers entered a plea of not guilty and the case was set for trial.

I gave Mr. Bird subpoenas for the appearance of Kaplan and Setrakian for the trial. The evening before the trial, I called Mr. Bird on the telephone at his home and asked him about these two witnesses. He informed me that Parker Hennessey, a State Police officer and one of his investigators, was driving them from Boston the next morning and that they would be in Augusta about ten o'clock. I was disturbed about this and told Mr. Bird that court convened at 9:30 and that I had told him I wanted the witnesses there a little early so I could speak to them especially Setrakian whom I never had met. Mr. Bird said that enough time would be consumed in selecting a jury and opening the case and by that time the witnesses would be in court.

The next morning, the day of the trial, Mr. Bird informed me about 9:15 in the Lawyers' Room in the Court House at Augusta that Mr. Kaplan was downstairs and ready to testify. I asked Mr. Bird about Setrakian and said that I wanted to talk to him before the trial. Mr. Bird said that he was "over at the Augusta House with Parker and will be right over." He stated that Setrakian did not want to be seen by Eddie Lavin before he testified. Upon these representations of Mr. Bird the trial was started. After Kaplan had testified for the State and while he was under cross-examination, I approached Mr. Bird who was sitting in the court room and asked him about the other witness, Setrakian. Mr. Bird said that he had bad news, that "they" must have gotten to him because he had left for California and he was unable to have the subpoena served upon him. I was considerably shocked by this information and immediately conveyed it to the Attorney General and Mr. Ralph Farris, County Attorney, who was sitting and assisting in the trial. At the conclusion of Kaplan's testimony, the State rested its case. Frank Coffin, Attorney for Helena Rogers, then informed the Court that he had a motion to make and the Court ordered a recess and requested a conference in his chambers. In the chambers of the Presiding Justice, Mr. Coffin made a motion to direct a verdict of not guilty and gave as his reason that the State had failed to offer either two witnesses to the fact in issue or other corroboratory evidence and cited a number of cases to support his contention. During Mr. Coffin's argument in support of his motion, the Presiding Justice said he was going to let the case go to the jury. Just before we left the chambers, I told the Presiding Justice that I had been disappointed at some of his previous rulings but in this instance I thought Coffin was right. The Presiding Justice replied that he was going to let the jury decide and that if she would be convicted he would not hurt her.

I later told Mr. Coffin that he was right and that if he did not win his case in the Law Court he should take in his shingle and get a job as a brick-layer.

The above facts were made known to you and members of your department when the incidents related arose. I carried out fully your instructions to cooperate with Mr. Bird in presenting such matters before the Grand Jury as he had requested. I am ready to verify the above statement with an affidavit if necessary.

Sincerely yours,

(Sgd) William H. Nichoff

William H. Nichoff

EXHIBIT B
(copy)

26 November 1952

Mr. Stanley L. Bird, Esq.
Attorney at Law
152 Main Street
Waterville, Maine

Dear Mr. Bird:

Recently I was interviewed by Mr. Pete Tully, a radio commentator, regarding the Legislative Probe.

Since the interview, I have had called to my attention that this commentator has broadcast certain remarks, which were attributed as originating from me. These remarks, I understand reflected upon the conduct of you and Mr. Niehoff during the trial at Portland in September.

I want to take this opportunity to correct any distortions, mis-interpretations or incorrect inferences or quotations which may have resulted from the radio broadcast by the commentator.

You know, I have always had the highest regard for your honesty and personal professional integrity. I have no cause to feel otherwise. Your conduct towards me at all times was just. Your efforts in the cause of good clean government are an example for all to emulate.

Although Mr. Niehoff and I have had our personal differences before the probe, my feelings concerning Mr. Niehoff's conduct during the investigation are covered in the testimony which I gave at the hearing on the motion for immunity at the October term of the Kennebec Superior Court.

In fairness to Mr. Niehoff, however, I do not hesitate to state that Mr. Niehoff has not, at any time, attempted to influence any testimony which I have given in any proceeding or concerning any individual connected with the liquor investigation.

You have my permission to use this letter in any way you see fit.

Sincerely yours,

FAIRVIEW WINE CORPORATION
Herman D. Sahagian
President

HDS:m

EXHIBIT C

Senate

Frederick N. Allen, Cumberland, Chairman
Albert C. Brewer, Aroostook
Foster F. Tabb, Kennebec

Samuel H. Slosberg, Director

State of Maine
Legislative Research Committee
Augusta

December 15th, 1952

Honorable Alexander LaFleur
Attorney General
State House
Augusta, Maine

Dear Mr. LaFleur:

Mr. Stanley L. Bird, Counsel for the Committee, has advised us of the excellent investigative assistance which your department gave him during the period from August 4, 1952, to November 14, 1952 while he was directing the Liquor Probe.

The Committee wishes to express its appreciation for this cooperation which has resulted in many matters being brought to the attention of your Department and this Committee.

Very truly yours,

s/ Frederick N. Allen

Frederick N. Allen, Chairman
Legislative Research Committee