

STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION

PUBLIC HEARING

IN THE MATTER OF:

NEW-HOME CONSTRUCTION
ISSUES FR#9-4

State House Annex
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Trenton, New Jersey 08608
November 19, 2003

B E F O R E:

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1 COMMISSIONER MARINIELLO: Good
2 morning. The Commission's investigation of abuses
3 in new home construction and inspections is not
4 only statewide in scope, but we have taken pains
5 to ensure that it is fair and comprehensive from a
6 socio-economic standpoint, as well. In other
7 words, we were not limited to the suburbs.

8 As testimony this morning will show,
9 we took this inquiry into New Jersey's largest
10 city, Newark, to examine the sorry history of an
11 affordable-housing development known as Society
12 Hill. Thanks to builder negligence and the abject
13 failure of responsible authorities at all levels
14 of government, code and construction deficiencies
15 have transformed this urban community into a
16 costly millstone for many of its residents. You
17 will also hear how Essex County arson
18 investigators have revealed widespread disregard
19 of fire code enforcement in Newark as it relates
20 to multi-family dwellings.

21 As to the broader issue of what has
22 occurred to so thoroughly undermine the integrity
23 and credibility of home construction inspections
24 in many areas of our state, testimony will reveal
25 a system rife with graft, favors and quid pro

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1 quos. Witnesses will describe the close
2 relationships between municipal officials and
3 housing industry representatives; the receipt of
4 gifts, meals, outings and other freebies by
5 inspectors; and the peddling of influence by
6 builders and developers.

7 We will also examine a particularly
8 cruel twist in the victimization of unsuspecting
9 home-buyers, those left high and dry when builders
10 go bankrupt. In some instances, as you will hear,
11 it is not at all unusual for these types of
12 problem builders to simply reorganize under a
13 different name and to continue to spread their
14 abuse throughout New Jersey.

15 With that said, Deputy Director
16 Gaal, would you please call the first witness.

17 MS. GAAL: We are going to go
18 slightly out of turn. We are going to take James
19 Conroy first.

20 EXAMINATION

21 BY MS. GAAL:

22 Q. Would you state your name, please.

23 A. James P. Conroy.

24 Q. And by whom are you employed?

25 A. I'm employed by the State Commission

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1 of Investigation.

2 Q. What position do you hold?

3 A. I'm a special agent.

4 Q. And how long have you been with the
5 SCI?

6 A. I've been with the SCI for three
7 years. Since October, 2000.

8 Q. Where did you work before you joined
9 the Commission?

10 A. Prior to joining the Commission I
11 was a senior investigator in the State Internal
12 Affairs Unit of the State Inspector General's
13 office in New York.

14 Q. Among your assignments, were you
15 assigned a task to investigate several complaints
16 and deficiencies in a development called Society
17 Hill at University Heights in Newark?

18 A. Yes, I was.

19 Q. And we hope to hear from one of the
20 homeowners today, but, did you have occasion, as
21 well as other Commission members, to speak with
22 Society Hill homeowners concerning construction
23 deficiencies in their properties?

24 A. Yes, several homeowners.

25 Q. Do you recall how far back the

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1 problems date?

2 A. The problems dated back to 1989.

3 Q. Can you give us maybe one example of
4 one of the problems that one of the homeowners
5 told us about?

6 A. Yes. A homeowner by the name of
7 Beatrice Black experienced several problems with
8 her home: Water infiltration problems caused by
9 poor grading, mold issues, et cetera. Ms. Black
10 communicated her concerns to various officials and
11 had a very, very vast amount of problems, mainly
12 concerning water infiltration and structural
13 problems.

14 Q. She had such things happening as the
15 ceiling sagging?

16 A. She had problems with her ceiling
17 and she had other problems that concerned mold
18 problems, mushrooms that were growing in her house
19 due to the water infiltration in the ceiling and
20 through the walls.

21 Q. She actually had mushrooms growing
22 in the house?

23 A. Yes, that's correct.

24 Q. As far as you know, does she still
25 have those kind of problems?

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1 A. Ms. Black has communicated that she
2 still experiences several problems concerning
3 these mold defects.

4 Q. Did she have any fire safety -- or
5 fire safety issues?

6 A. Yes, she did.

7 Q. What was it?

8 A. Ms. Black has a problem with her
9 home associated with the lack of a second means of
10 egress.

11 Q. She only has one means of egress?

12 A. That's correct.

13 Q. And what problems does she
14 experience that she's concerned about in the event
15 of a fire?

16 A. One of the problems and life safety
17 issues that she experiences is when the ice that
18 forms outside her front door in the winter --
19 she's an elderly woman -- she's not able to be
20 able to open the door herself. She actually had
21 to have neighbors come and assist her. In the
22 event of a fire, that could be a very
23 life-threatening safety issue.

24 Q. So, what you are saying is ice
25 blocks her door and she has to get people from the

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1 outside to push it open?

2 A. That's correct.

3 Q. And that's in the winter months?

4 A. Yes.

5 Q. Now, did the Commission find
6 anything out about whether Society Hill was
7 registered with the Bureau of Housing?

8 A. Yes. Ms. Black communicated her
9 concerns to the DCA and, when she learned from DCA
10 that her home was not registered with the Bureau
11 of Housing Inspection -- when she learned that she
12 spoke to an investigator by the name of Michael J.
13 Moticha of the BHI, who informed her that her home
14 and other Society Hill homes were not registered.

15 Q. Now, who was supposed to register
16 these developments?

17 A. The Newark construction office is
18 supposed to register developments. If they don't
19 register them, they are, at the minimum, supposed
20 to require -- file for an extension -- exception,
21 excuse me.

22 Q. Have they since been registered?

23 A. Moticha informed the Commission that
24 his office began an investigation and is reviewing
25 the development for fire, maintenance and security

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1 compliance, per the regulations for maintenance of
2 hotels and multiple dwellings. An inspector from
3 the DCA did visit her upon her inquiry.

4 Q. How long ago was the complex built,
5 do you recall?

6 A. The complex was constructed in 1986
7 and completed construction in 1996.

8 Q. Do you recall learning about an
9 incident in July of 2000 when the ceiling
10 collapsed on one of the homeowners?

11 A. Yes. A Mr. John Smith, who is a
12 homeowner in Society Hill, was in his bedroom on
13 his bed and the ceiling literally collapsed on top
14 of him. He escaped serious injury, but he did
15 receive medical injuries and had to go to the
16 hospital.

17 Q. Did anyone look into what had
18 happened there?

19 A. The property management company at
20 that time was called Amherst Management Realty
21 Company. They attempted to persuade the builder,
22 who was K. Hovnanian, to fix the problems. The
23 builder refused, saying it was outside of
24 warranty. They then contacted the DCA. They
25 received no assistance there. They were forced to

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1 pay for the -- to remedy the problems through
2 their insurance company. Investigation revealed
3 that the Sheetrock was not properly attached to
4 the beams, which caused the ceiling to fall.

5 Q. Did the company also learn about
6 some other problems in some of the homes at that
7 point?

8 A. Yes, the company also learned of
9 sewage backup in several of the units.

10 Q. Now, did there reach a point when
11 electrical contractors actually refused to work in
12 the development because there were so many
13 flagrant electrical code violations?

14 A. Yes. Inspector -- CEO, actually, of
15 Sheffield Electrical, Mr. Malik Akhar, he refused
16 to work on a certain location since there were
17 Notices of Violations pending. However,
18 Certificates of Occupancies were issued. He was
19 one of the individuals who refused to work on
20 these homes.

21 Q. Now, what have the homeowners done
22 over these years to try to get their problems
23 addressed?

24 A. The homeowners have contacted
25 several officials. First at the local level

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1 between the construction office and several
2 officials in the City of Newark, such as the
3 mayor's office. They also contacted DCA and have
4 written letters to various other officials.

5 Q. At one point did the city withhold a
6 significant amount of money in federal funds owed
7 to the builder?

8 A. Unfortunately, the Commission is not
9 in possession of that knowledge at this time, due
10 to the fact that the City of Newark was unable to
11 provide us with records pertaining to these funds.

12 Q. But how much money was involved, do
13 you recall?

14 A. I recall it was over \$316,000 in
15 federal funds withheld.

16 Q. So you believe the Commission has
17 asked the City of Newark to give us some follow-up
18 on that?

19 A. Yes, we have.

20 Q. And they can't provide it?

21 A. That's correct.

22 Q. Now, did this Commission subpoena
23 records from the Newark construction office
24 regarding that specific development?

25 A. Yes, we have. We subpoenaed several

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1 records and documents from the Newark construction
2 office, as well as the corporation counsel, and we
3 received minimum records that we have asked for.
4 We asked for certifications of same and we were
5 not provided with those as of this time, either.

6 Q. Slow down your speaking.

7 With respect to our contact at the
8 Newark construction code office, would you agree
9 with me that we've had multiple requests made to
10 them over the months?

11 A. Yes.

12 Q. And you probably personally have
13 made several requests and as have other Commission
14 staff?

15 A. Yes, we have.

16 Q. And, just so we are clear, we
17 haven't gotten any records from them, is that
18 right?

19 A. That's correct, minimal records
20 after repeated requests.

21 Q. Is it your understanding from the
22 Newark office that they don't have records to give
23 us?

24 A. That is correct.

25 Q. Okay, and we've asked for a

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1 certification of that?

2 A. That's also correct.

3 Q. And we haven't gotten that, either?

4 A. As of this date we have not, despite
5 numerous requests.

6 Q. Did you give them a deadline around
7 the beginning of this hearing when we wanted that
8 certification?

9 A. Yes, I did.

10 Q. What was the date that you asked
11 for?

12 A. After several attempts, I personally
13 requested the records and was told that they'd be
14 here by this time last week and, as of this date,
15 they still have not come, nor have any phone calls
16 been returned.

17 Q. Now, with respect to the Newark
18 construction office, were they at one time cited
19 for deficiencies?

20 A. Yes, back in 1993. They were cited.

21 Q. And who cited them, do you recall?

22 A. The Department of Community Affairs.

23 Q. Can you tell us a little bit about
24 what the problem was at that point?

25 A. Yes. In 1993 it was learned by DCA

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1 that the Newark office was deficient with respect
2 to inspection records concerning the Newark
3 co-generation bay project. At that time they
4 noticed that there was only a final inspection
5 report for this project. There were no inspection
6 reports throughout the whole project that were
7 able to be provided.

8 Q. So did they shut down that office?

9 A. They shut down the office in 1996.

10 Q. And it was subsequently re-opened?

11 A. Yes, it was re-opened following a
12 two-day shutdown. It was closed in 1996 for
13 failure to appoint a permanent construction
14 official.

15 Q. Did the DCA ever conduct a staffing
16 analysis of the Newark construction office?

17 A. Yes, they did, in October of 2001.

18 Q. And what did they conclude, do you
19 know?

20 A. I spoke to an individual by the name
21 of Mr. Henry Riccobene who conducted the analysis
22 for the year, as it was requested by the Newark
23 office, and I learned that there were several
24 positions that still needed to be filled. Two
25 building inspector positions and another inspector

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1 position.

2 Q. And one of the issues that's of
3 interest with respect to that particular
4 development is a life safety issue that has to do
5 with firewalls, is that right?

6 A. That's correct.

7 Q. And did you speak with the current
8 construction official in Newark concerning
9 firewall deficiencies in Society Hill?

10 A. Yes, I did.

11 Q. Who did you speak with?

12 A. I spoke to the current construction
13 official, John Anstiss.

14 Q. And what did he tell you?

15 A. Mr. Anstiss told me that he was
16 aware of the firewall issue/problem throughout
17 Society Hill. I asked him what he knew of the
18 problem and he informed me that he became aware
19 that there are several problems with the
20 firewalls, either not properly constructed or
21 installed or missing altogether.

22 Q. And did he indicate anything to you
23 about whether he thinks those homes were
24 inspected, whether the firewalls were inspected or
25 not inspected, or what happened?

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1 A. Unfortunately, he was unable to
2 provide any inspection records due to the problem
3 with the record maintenance in there -- in Newark.
4 However, he did tell me that he would like to
5 believe that they were done correctly, which would
6 have meant a physical inspection of the firewalls.

7 Q. Now, when you say, "Unfortunately,
8 he wasn't able to provide records," was that
9 because he doesn't have any to provide?

10 A. That is correct. He said they
11 probably don't exist or they probably never
12 existed to begin with.

13 Q. So he's suggesting that he hopes the
14 homes were inspected?

15 A. That's correct.

16 Q. What would the alternative have
17 been? Just looking at the blueprints?

18 A. That's correct.

19 Q. I would assume that looking at the
20 blueprint is not the preferred method of
21 inspecting a firewall?

22 A. That's correct. According to Mr.
23 Anstiss, looking at blueprints should not be done
24 in lieu of physically examining the firewalls.
25 Blueprints merely show that there is an intention

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1 or acknowledgment by the builder to install a
2 firewall, but it doesn't show if it was corrected
3 and installed properly.

4 Q. Do you recall approximately when you
5 talked to Mr. Anstiss?

6 A. I spoke to Mr. Anstiss approximately
7 a month ago.

8 Q. Now, he's indicated to you, as I
9 understand it, that they are aware of deficiencies
10 in the firewalls, is that right?

11 A. That's correct.

12 Q. Has anything been done about it in
13 his capacity as the construction official?

14 A. Mr. Anstiss told me there was
15 nothing he could do at this time because the
16 Society Hill has already been constructed.

17 Q. And in our examination were we able
18 to find any records of inspections relating to
19 those firewalls?

20 A. No.

21 Q. Have you gotten any explanation from
22 anyone in Newark as to whether there ever were
23 records of inspections with respect to Society
24 Hill?

25 A. I spoke with people in Newark in the

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1 construction official office, and I also spoke
2 with corporation counsel, and unfortunately at
3 that time there were no records to be provided and
4 as of today there are none.

5 Q. They don't know whether there ever
6 were records or they haven't been able to address
7 that?

8 A. They said that they weren't able to
9 provide them because they probably never existed.

10 MS. GAAL: Okay, that's what I have
11 that I wanted to cover with the witness.

12 COMMISSIONER FLICKER: Agent Conroy,
13 I realize we took you out of turn, but maybe a
14 little bit of background would be helpful. Where
15 is Society Hill located in Newark?

16 THE WITNESS: Society Hill is
17 located at University Heights, the center of
18 Newark.

19 COMMISSIONER FLICKER: And how big
20 is it?

21 THE WITNESS: It's comprised of
22 approximately 801 units. It's developed into
23 three separate phases.

24 COMMISSIONER FLICKER: So
25 approximately how many people live in Society

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1 Hill?

2 THE WITNESS: I would say at least
3 2,000 or more.

4 COMMISSIONER FLICKER: What type of
5 construction is it? What do these buildings look
6 like?

7 THE WITNESS: They are condominium
8 units.

9 COMMISSIONER FLICKER: One story,
10 two story, three story?

11 THE WITNESS: Two stories. They are
12 small -- some are small units, some are larger.
13 It spans a great portion of the area of University
14 Heights.

15 COMMISSIONER FLICKER: And can you
16 give us an idea of the approximate cost of a unit
17 in Society Hill?

18 THE WITNESS: Some of the units were
19 not as expensive as in other areas, but I believe
20 they were costing somewhere around 200,000 or so,
21 but I don't have exact numbers on that.

22 COMMISSIONER FLICKER: And who was
23 the builder?

24 THE WITNESS: K. Hovnanian.

25 COMMISSIONER FLICKER: And you told

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1 us that it was built between '86 and '96?

2 THE WITNESS: That's correct.

3 COMMISSIONER FLICKER: Why did we
4 choose Society Hill?

5 THE WITNESS: A lot of the residents
6 in Society Hill feel that their problems are
7 downplayed because of the fact that Society Hill
8 represents a rejuvenation in that area in the
9 center of Newark. We also looked at it for
10 several reasons, including the firewall, which is
11 a real safety issue, and the fact that it affects
12 many -- a large amount of people up in that area.

13 COMMISSIONER FLICKER: Thank you
14 very much.

15 THE WITNESS: You're welcome.

16 COMMISSIONER SCHILLER: The
17 management -- you said there was a homeowners
18 management corporation there or who was the one
19 who notified Hovnanian to correct these things?

20 THE WITNESS: The homeowners --
21 Phase 1, 2 and 3 of the condominium associations.
22 We spoke with Phase 3, an individual by the name
23 of Ricardo Cardona, who is the treasurer.

24 COMMISSIONER SCHILLER: And they had
25 gotten in touch with the contractor or the

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1 developer and --

2 THE WITNESS: They attempted to
3 contact K. Hovnanian and they received little or
4 no assistance. They were forced to go to
5 their own funds -- to their treasury --
6 association.

7 COMMISSIONER SCHILLER: You
8 mentioned that the construction official
9 recognized that there were certainly the
10 possibility, if not the probability, of not having
11 firewalls. Is that correct?

12 THE WITNESS: That's correct, sir.

13 COMMISSIONER SCHILLER: And what did
14 he offer as a remedy for that, if anything?

15 THE WITNESS: Mr. Anstiss informed
16 me, when I asked him that question, that there is
17 nothing he can do in his capacity as construction
18 official because the homes were already built.

19 COMMISSIONER SCHILLER: And was
20 there any notice to the fire department or fire
21 code officials?

22 THE WITNESS: No, sir, we have no
23 records of anyone being notified.

24 COMMISSIONER SCHILLER: So,
25 basically, you would have to have a disaster here

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1 before anybody pays attention?

2 THE WITNESS: That's correct,
3 unfortunately.

4 COMMISSIONER SCHILLER: I have no
5 further questions.

6 Thank you very much, agent.

7 THE WITNESS: Thank you.

8 MS. GAAL: The next witness is
9 Ricardo Cardona.

10 Could we just have a minute? We
11 have a little technical problem.

12 COMMISSIONER SCHILLER: Sure. Just
13 take a couple minutes to set up.

14 MS. GAAL: The next witness, as I
15 said, is Ricardo Cardona.

16 Mr. Cardona, would you please stand
17 and be sworn by the reporter.

18 RICARDO CARDONA, after having been first duly
19 sworn, was examined and testified as follows:

20 MS. GAAL: Thank you. You may be seated.

21 Counsel, would you please enter your appearance or
22 indicate whom you are with for the record.

23 MR. BYRNE: Sure. My name is Dave
24 Byrne. I'm an attorney, and I represent the
25 Society Hill University Heights III Condominium,

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1 with respect to which Mr. Cardona is here today.

2 MS. GAAL: Are you with a firm?

3 MR. BYRNE: Yes. The firm is Stark
4 & Stark in Lawrenceville. Thank you.

5 EXAMINATION

6 BY MS. GAAL:

7 Q. Okay. Mr. Cardona, may we have your
8 name and address, please, for the record.

9 A. My name is Ricardo Cardona. I
10 reside at 101 Perez Drive, Newark, New Jersey.

11 Q. Let me just ask a technical
12 question. Can you hear him, because we are
13 having -- can you hear him back there? Okay.
14 Just bring the mic a little closer.

15 Do you live in Society Hill at
16 University Heights in Newark?

17 A. Yes, I do.

18 Q. And are you a homeowner there?

19 A. Yes, I am.

20 Q. How long have you lived there?

21 A. Approximately five years.

22 Q. And did you purchase the home new?

23 A. No. I purchased it from a previous
24 owner.

25 Q. Is it a condominium complex?

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- 1 A. Yes, it is.
- 2 Q. And who built it?
- 3 A. K. Hovnanian.
- 4 Q. Are there -- or were there several
5 phases to that development?
- 6 A. Yes, there are. There are three
7 phases to the development.
- 8 Q. Can you tell us the approximate or
9 the range of the age of the homes?
- 10 A. They range between 13 and seven
11 years.
- 12 Q. So, seven to 13 years old?
- 13 A. Yes.
- 14 Q. Approximately. And in which phase
15 do you reside?
- 16 A. I reside in Phase 3.
- 17 Q. Can you tell us anything about
18 the -- if you know -- the price range of the
19 homes?
- 20 A. Currently or when they were
21 first built?
- 22 Q. When they were first built.
- 23 A. They ranged between 80 and 135.
- 24 Q. And can you describe, in general
25 terms, the make-up of the residents?

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1 A. The community is comprised of, I'd
2 say, 35 percent retired, 35 percent just younger
3 professionals, and the balance are either --
4 students who are attending the local universities.

5 Q. Now, are you self-employed?

6 A. Yes, I am.

7 Q. And what is the nature of your
8 business?

9 A. Prototype engineering.

10 Q. So you are -- what does a prototype
11 engineer do, just so we all know?

12 A. Builds research instrumentation.

13 Q. Do you work out of your home?

14 A. Yes.

15 Q. So that enables you to be in the
16 area of the development a substantial part of the
17 time?

18 A. Yes.

19 Q. And in Society Hill does the
20 homeowners association have a responsibility to
21 take over certain aspects of the development from
22 the builder?

23 A. Yes. The homeowners association
24 takes over responsibility for the complex once, I
25 believe, two-thirds of the homes -- or, actually,

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1 transitions in phases, but usually when two-thirds
2 of the homes are sold, then the bulk -- or the
3 governing body is actually transferred to the
4 homeowners.

5 Q. And what responsibilities -- just
6 generally, what responsibilities would the
7 homeowners association then take over?

8 A. General maintenance, supervision of
9 the property.

10 Q. Such as?

11 A. Snow removal, garbage removal.

12 Q. How about, anything with the
13 roadways or the storm drains?

14 A. Yes.

15 Q. Landscape?

16 A. Landscaping.

17 Q. Okay. Has that transfer taken place
18 as of today?

19 A. Yes, it has.

20 Q. So the homeowners have taken over
21 the responsibility for the complex?

22 A. Yes.

23 Q. Now, has the development experienced
24 any drainage problems?

25 A. Yes, it has. Substantial.

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1 Q. Substantial?

2 A. Um-hum.

3 Q. Does it continue to experience
4 drainage problems?

5 A. Yes, it does.

6 Q. Can you tell the Commission what
7 type of drainage problems you are experiencing
8 there? If you could just describe it for us.

9 A. Well, the storm drainage system has
10 proven to be inadequate, poorly designed, or it's
11 just, in some cases, not built as provided in the
12 specification or in the blueprint.

13 Q. And, so, what happens?

14 A. When the storm system fails, water
15 backs up. Many of the units are below grade. In
16 other words, you have to step down to get into
17 them, and they have flooded. Over the years we've
18 had several units flood. Floods to such an extent
19 that the refrigerators actually float inside the
20 units.

21 Q. And have there been problems with a
22 collapsing of manholes or anything along that
23 line?

24 A. Yes. The water back-up causes the
25 soil to erode around structural members, such as

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1 manholes, stairways and things of the sort, and
2 causing them to shift and eventually to collapse.

3 Q. Are people experiencing or have
4 people experienced damage in their homes from this
5 water?

6 A. Yes, substantial damage. Some are
7 total losses.

8 Q. Some are total losses?

9 A. Yes.

10 Q. And this is a continuing problem?

11 A. It is a continuing problem and an
12 ongoing problem.

13 Q. Now, are there serious life safety
14 issues in Society Hill regarding firewalls?

15 A. Yes.

16 Q. And is that something that really
17 plagues the community?

18 A. Yes.

19 Q. Can you describe that to us?

20 A. In investigating roof leaks, we've
21 gone into crawl spaces, attic crawl spaces, and in
22 our inspection we found severe deficiencies in the
23 firewalls. Some firewalls are deficient, some
24 nonexistent.

25 Q. So you started out looking at roof

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1 leaks and you discovered firewall problems?

2 A. Correct, amongst other things.

3 Q. And I know it may sound basic, but
4 what is the purpose of a firewall, particularly
5 when you have an interconnected or connected
6 family dwelling?

7 A. The purpose of a firewall, in
8 maintenance terms, is to retard the spread of
9 flames, smoke and heat from one area to the next.
10 In a situation where you have multi-family
11 dwellings where all the units are interconnected,
12 its purpose is to keep the fire that occurs in one
13 unit from spreading into the other.

14 Without them you can have one fire
15 in one unit take out an entire building, which has
16 approximately 24 units in it.

17 Q. Now, I assume you've been in some of
18 the attics in the course of your, you know, sort
19 of working as a volunteer for the homeowners
20 association. Have you been in a number of
21 different attics?

22 A. I've been in many, many attics.

23 Q. Can you give us an idea of what
24 percentage of -- or in what percentage of the
25 spaces that you've been in or the homes you've

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1 been in you think there are firewall deficiencies
2 or missing firewalls?

3 A. Approximately 85 percent of the
4 units that I visited have deficiencies between
5 their firewalls, and I want you to understand
6 that, if you find a deficiency on one side of the
7 firewall, well, the other side of the firewall is
8 also deficient, so the other unit is
9 also compromised, as well as the adjacent units.
10 So finding one deficiency means you have four
11 units that are compromised.

12 Q. Now, when you say "deficiencies,"
13 give us an idea of the range of the kinds of
14 deficiencies you've seen in the firewalls.

15 A. Everything from a hole being punched
16 through a firewall in order to allow for a vent to
17 be installed, to firewall rated material not
18 extending the full length of the area where it's
19 supposed to protect, to sections that just don't
20 have firewalls, to other sections where the roof
21 of the adjacent building actually comes up over
22 the firewall and into the attic space of the next
23 unit.

24 Q. I'm going to ask you to take a look
25 at four previously marked photographs that you, in

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1 fact, have provided to us, to the Commission,
2 beginning with Number 194, and it should be up on
3 the screen, too. Give you both a hard copy of it
4 and it should be up on the screen to your left.

5 Do you see that, 194?

6 A. Yes.

7 Q. And what is it?

8 A. That is a firewall in Building 1.
9 Society Hill Building 1 is on Wickliffe and West
10 Market. That is the northeast corner of the
11 firewall.

12 Q. And what are you trying -- what does
13 the picture depict for us?

14 A. This section here in green, that is
15 the firewall material, itself. It's about one
16 inch thick -- actually, two pieces of one inch
17 thick -- would almost say it's plasterboard, but
18 it's not. It's like a plasterboard material. The
19 item to the right, here, that is the structural
20 member for the truss.

21 Q. Right.

22 A. In between is a gap. The light
23 there is just a flashlight that we were shining on
24 it. The black area there is just a piece of
25 tarpaper and behind that is the exterior facade.

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1 After questioning I'll show you the videotape that
2 was taken --

3 Q. Okay.

4 A. -- of that particular unit.

5 Q. I'd like to then just take a look at
6 Picture 195. And what does that depict?

7 A. This is, again, in that space. The
8 green section is the firewall, the cross members
9 are temporary structures that are put there to
10 hold the truss members during construction and, as
11 you can see, one of those members penetrates the
12 firewall and goes to the other side.

13 Also on the top you can notice that
14 there is -- there was a gap in which they put a
15 piece of 2x4 and they stuffed it with some
16 insulation. I'm told that this may or may not be
17 fire rated insulation, but, if you put it to a
18 lighter, it will burn.

19 Q. So the structural member that
20 appears in the firewall is, in fact -- it destroys
21 the integrity of the wall?

22 A. Yes, it does. You also might notice
23 a gap in the sheathing on the side of the house.

24 Q. Right. And, if you take a look at
25 Picture 196 --

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1 A. Okay.

2 Q. -- what's that?

3 A. This is an example of the firewall
4 where -- or an attic space where the roof to the
5 adjacent building comes up over the firewall and
6 into the attic space of the other. This section
7 here, this piece of sheathing there, that is the
8 actual roof of the other unit.

9 The shiny metal you see there is the
10 flashing that's supposed to keep the -- seal the
11 roof -- the edge of the roof. This part here is
12 actually the siding of this unit.

13 Q. And finally Picture Number 197.

14 A. This is, again, in an attic space,
15 again where one unit meets the other. You can see
16 where the firewall comes up to a certain point and
17 it's kind of cut short. You also notice where the
18 roof of the other unit actually penetrates the
19 attic space of the one next to it, and there is
20 actually a bit of a gap there where there is no
21 roof material on the adjacent unit. It's just
22 shingles on top of nothing.

23 Q. So, are these examples of some of
24 the firewall problems you've seen?

25 A. These are typical.

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1 Q. These are typical.

2 A. You'll find these throughout the
3 entire community.

4 Q. Now, turning to another subject --
5 we are going to try to touch on some of the things
6 you found there -- did some of the homes have
7 what, for lack of a better term, I'm going to call
8 bowed windows?

9 A. Yes, they do.

10 Q. And what are they due to? What can
11 you attribute them to?

12 A. Statistically you would expect that,
13 in a large development, some of the windows would
14 fail. However, when you have a large number of
15 windows failing and the problem is persistent and
16 prevalent throughout the entire community, and it
17 is the same type of defect, one must come to the
18 conclusion that the window itself was defective to
19 begin with.

20 Q. And are there a lot of bowed
21 windows?

22 A. Yes, ma'am.

23 Q. Do you have any in your home?

24 A. I have one.

25 Q. I'd like you to take a look at

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1 Picture Number 215. Is this a picture of one of
2 the bowed windows?

3 A. Yes, it is. This is a unit on
4 Matthews Drive. If you notice on the bottom, the
5 window itself is actually -- the windowpane
6 itself, the section that comes up and down, is
7 actually square. The window frame itself, the
8 bottom portion of the window, has bowed.

9 What happens is that the window
10 can't close completely, so, when it rains, water
11 will come in underneath the window, and on the
12 edge of the windowsill there is a little bit of a
13 gap, so water will come from the outside, down the
14 windowsill and into the walls and usually cause a
15 leak on the floor below it.

16 Q. Now, are part of the facades of
17 these homes brick?

18 A. Yes. Approximately a quarter.

19 Q. A quarter. And are some of the
20 homes showing the separation of the exterior brick
21 walls?

22 A. Yes, they are.

23 Q. And what's happening there? Is it
24 coming apart, coming off the framing or what? Do
25 you know what's going on? Have you been able to

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1 figure that out?

2 A. I guess one could say it's coming
3 off, but to say that would imply that they were
4 on to begin with, which they weren't. Usually,
5 the side is tied into the structure via brick
6 ties, approximately every two to four feet, more
7 or less. Galvanized brick ties.

8 We discovered, in just addressing
9 water leaks, that these ties are nonexistent, so,
10 in some cases the sheathing behind the facade, as
11 you saw in the other picture, is nonexistent
12 there, either.

13 Q. Let me ask you to take a look at
14 what's been marked Photograph Number 216, and does
15 this show an exterior brick facade which is
16 separated from the building?

17 A. Yes, it does.

18 Q. And what are these pieces of wood we
19 see there? Something to hold it up?

20 A. Yes, the bracing was put in place by
21 our management company for fear that the facade
22 would come off and hurt someone. Whenever
23 vehicles would drive in front of the unit,
24 homeowners would complain that they feel the wall
25 kind of wobble or shake and, when it was looked

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1 into, they noticed the gap between the windows and
2 the facade and, after further investigation,
3 through use of inspections, they found that it
4 wasn't tied in properly.

5 Q. Let me ask you to take a look at
6 Picture 215, also on the same subject. Is that
7 another picture of the same thing?

8 A. Yes.

9 Q. Now, did you and/or other members or
10 homeowners of Society Hill at University Heights
11 take these issues and other issues besides what we
12 just talked about to the City of Newark?

13 A. Yes, we did.

14 Q. And what happened?

15 A. I would say over the span of ten
16 years, from the very beginning, homeowners tell
17 stories of when they first bought their unit they
18 had problems with X, Y and Z and plumbing and this
19 and that. Some of it could get fixed, most of it
20 couldn't. They would complain to the city, but
21 the city really had no role in that, in terms of
22 correcting the problem. The homeowners were
23 turned away.

24 Q. Approximately how many homes are
25 there total? Do you know the total number of

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1 homes?

2 A. There is a total of 802, I believe.

3 Q. Do you have any idea -- I'm sorry.

4 A. 471 in Phase 3, 163 in Phase 2, and
5 164 in Phase 1.

6 Q. Do you have any idea, even
7 approximately, how many homeowners have
8 significant issues in their homes?

9 A. It's hard to say because many
10 homeowners, once they discover that there is a
11 major problem, they quickly move out. Of course,
12 whether or not they disclose that to the new
13 homeowner is kind of difficult to comment on, but
14 I would say you could knock on any door and you
15 would find that maybe two out of three, three out
16 of four have a major complaint with their unit.

17 Q. What major problems do you have in
18 your home?

19 A. I'm fortunate in that my unit is one
20 of the last to be built and one of the newer
21 units, and it's also a very, very different design
22 than all of the other models, but I've had
23 problems with, of course, the bowed window, I've
24 had water infiltration problems, I've had
25 questions about my own firewall, whether it's

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1 adequate. Of course, I've had plumbing that
2 doesn't seem to behave properly.

3 Q. Now, did you talk to anyone in the
4 local construction office, either you or the other
5 homeowners, as to what their position was on this
6 or whether they can do anything for the homeowners
7 or whether they are able to come out and do any
8 re-inspections, anything along that line over the
9 years?

10 A. Yes. Over the past three years I've
11 had extensive communication and meetings with the
12 City of Newark, Department of Engineering. More
13 recently, in the last six to eight months, I've
14 had extensive communications with the mayor's
15 office through Senator Ron Rice's office, who is
16 also deputy mayor of the City of Newark. I've had
17 meetings with all of the city commissioners, legal
18 counsel, office of economic development, director
19 of water and sewer, director of engineering, of
20 course, Mr. Anstiss, which is the building
21 official.

22 Q. If you can, summarize for us the
23 gist of what you have learned from him -- from all
24 the people you've talked to.

25 A. I've learned that they -- one, they

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1 are genuine about the concern about wanting to
2 bring this to a resolution, but, two, I've also
3 learned that there is very little that they can
4 do, from what I've been told, with regards to this
5 problem, other than to increase the level of
6 awareness.

7 They cannot, by just a function of
8 their office, go out and re-inspect the units
9 because they don't have a directive. It was
10 suggested to me by the building official, Mr.
11 Adams, that I approach the office of economic
12 development to see if I can get the attention of
13 the mayor's office to bring somebody to bear on
14 the situation, see what can be done, because he
15 has his hands tied at this point.

16 Q. Have you or someone on behalf of the
17 homeowners association tried to get the builder to
18 get involved or to maybe execute some sort of a
19 tolling agreement or something?

20 A. Yes. On many occasions, ourselves,
21 local representatives, there have been various
22 attempts, all with various outcomes, but none of
23 them satisfactory.

24 Q. What has the builder asked you to do
25 or asked the homeowners association to do?

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1 A. At one point they didn't mind fixing
2 some problems and actually met with -- I believe
3 his name is Lawrence Murphy from K. Hovnanian. We
4 discussed the list of complaints. Many of the
5 repairs were either cosmetic or inadequate. After
6 that they kind of faded away.

7 Q. Have they asked you to do any
8 inspections or to point out to them exactly where
9 the problems are?

10 A. In some cases, especially with
11 regards to our firewall issue, which is an item in
12 contention, we are basically told, "We'll fix it
13 if you find it. You show us where it's at."

14 Q. Do you hold a position with the
15 homeowners association?

16 A. Yes, I do. I am the treasurer for
17 the homeowners association.

18 Q. And is the homeowners association in
19 a position to do that kind of inspection?

20 A. No, we are not, nor is our
21 management company, and also there is an issue of
22 practicality. If we had to go and show -- go
23 through the process of showing every single unit,
24 it's cost prohibitive. It's cheaper, in a sense,
25 to fix it than the sense of wanting to put

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1 together an inspection report to submit to K.
2 Hovnanian only to have to go back and revisit the
3 same site. Logically it's almost impossible
4 because of the number of units and the
5 coordination with homeowners.

6 And also in our Section 3, which is
7 the section that I'm the treasurer for, we are in
8 the process of going through a transition. We
9 have gone -- or entered into an agreement on
10 behalf of the development, which makes about 199
11 units out of 471, so right now we really don't
12 have much of an option. We either go to
13 litigation, which, according to the agreement that
14 we entered into, is through arbitration, which is
15 what we are in now, or just bite the bullet.

16 Q. Now, did you attempt to find out
17 what had occurred concerning the initial
18 inspections of that development, either
19 construction code inspections or engineering
20 inspections? Did you or some of the other
21 homeowners try to find out what had happened?

22 A. Yes. There was a group of
23 homeowners, who have since moved out, who had gone
24 to City Hall and requested the actual records --
25 the inspection records for the units. It's my

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1 understanding that they went through a lot of red
2 tape to get what they got, and what they came up
3 with were the actual inspection records, which in
4 some cases showed that not all the inspections
5 were signed off on.

6 For instance, there will be an
7 inspection record for Unit 123 where plumbing and
8 electrical is not signed off on and framing was,
9 but that's -- you would have to go through each
10 and every record for each and every building,
11 which doesn't exist.

12 Q. Did you try to get the file on your
13 home?

14 A. Yes, I did.

15 Q. What did you find out?

16 A. Actually, it was very interesting.
17 This is when I first met Mr. Anstiss,
18 approximately three years ago, and I was looking
19 for the blueprints for my home because I was
20 curious as to why the attic space was so tall and
21 it almost seemed as if it was meant to be another
22 room. So when I visited the city, of course there
23 were no records, no as-built plans for my unit.
24 After many, many, many visits, actually the city
25 allowed me to go in and search the records room

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1 myself and I did find one roll, it was a blueprint
2 for my section, which showed the building where I
3 live in, except that the wood for the building --
4 the building right now that I live in has 11
5 units. The blueprint showed ten, which I found
6 somewhat curious.

7 When I looked at it I also noticed
8 that the attic space was actually meant to be
9 another room and I said at some point someone
10 changed their mind and they added another unit and
11 made it a little bit narrower. Originally it was
12 designed to be 18 feet wide, but was actually
13 built to be 15 feet wide.

14 The thing that kind of caught my eye
15 was the stamp on the drawing. The stamp on the
16 drawing from when it received its approval to the
17 point which my unit, which actually was not built
18 according to that blueprint, received a C of O was
19 about ten weeks, so it was very curious to me that
20 an original drawing which was abandoned was
21 approved and then ten weeks later something else
22 was built. Similar but not the same.

23 Q. So ten weeks after the stamp of
24 approval the C of O was issued?

25 A. Approximately, yes.

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1 Q. Approximately, okay.

2 To your knowledge, is there any
3 separate inspection done for firewalls in the UCC
4 form or New Jersey?

5 A. To my knowledge, it is not. I
6 inquired about that and was told that essentially
7 the firewalls are reviewed in the initial approval
8 of the blueprint itself and, if anything, it's
9 checked over during the framing inspection.

10 Q. Now, did the homeowners seek
11 assistance from the Department of Community
12 Affairs in Trenton?

13 A. Yes, over the years, many, many
14 homeowners have written many letters.

15 Q. And can you tell us whether they've
16 gotten any help there?

17 A. Not to my knowledge. Not directly.

18 Q. Did DCA come down and do some type
19 of inspection -- or come up, excuse me? You are
20 north.

21 A. Not to my knowledge. The only DCA
22 inspection that I know of is when the state sent
23 over an inspector to check for carbon monoxide
24 detectors and -- supposedly every five years condo
25 associations have to go through an inspection, and

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1 that was done this past year. They were, in some
2 cases, over ten years old, but that was the first
3 time it was ever inspected. The only other
4 official that I've ever seen at Society Hill will
5 be Senator Ron Rice.

6 Q. Has he been supportive of the
7 homeowners?

8 A. Actually -- he's been very
9 supportive. Actually, the way that I first met
10 him was in another homeowner's living room. She
11 called me up and she said, "Ricardo, come on over,
12 I have Senator Rice in my living room looking at
13 my mushrooms growing on the wall.

14 Q. Now, as a result of that DCA
15 inspection, by the way, did the homeowners have to
16 spend some money to put in the carbon monoxide
17 detectors after all those years?

18 A. Yes.

19 Q. What about the firewall? Did
20 anybody come from DCA to look at the firewall?

21 A. No, not to my knowledge.

22 Q. Did you try or did anyone try to get
23 the builder to address the firewall issue
24 specifically during the transition or after the
25 transition?

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1 A. Yes. Actually, I came on to the
2 board toward the tail end of the negotiation for
3 the transition and I made the point that they
4 include the firewall issue in the agreement, and
5 that was kind of vetted on as a, I guess you can
6 call it, a final line item.

7 Q. But has it been corrected?

8 A. No. It's an issue of contention.
9 As I said before, it's kind of like "Show us and
10 we'll fix it."

11 Q. Did you speak to anyone in the
12 Newark department of engineering concerning the
13 firewall?

14 A. Yes. Had extensive conversations
15 with them on that. We even tried to have a
16 sit-down with K. Hovnanian representatives where
17 the city would mediate a discussion. We attempted
18 to do that through the deputy mayor's office, Ron
19 Rice. That didn't get anywhere. Our counsel
20 suggested to us that we get a touring agreement.
21 That is to keep the -- I guess the clock from
22 ticking.

23 Q. A tolling agreement.

24 A. A tolling agreement to protect our
25 interest in the event that nothing came out of the

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1 discussion. K. Hovnanian constantly refused to
2 give us a tolling agreement.

3 Q. Now, you mentioned earlier that
4 there have been some repairs, so I gather that in
5 some instances the builder has come in and done
6 some repairs?

7 A. Yes.

8 Q. And how have you found that to work
9 out? How does that work out when they come in and
10 do repairs?

11 A. It doesn't work out.

12 Q. Why?

13 A. It's usually one contractor. I
14 believe the name of the contractor that I've seen
15 around the most is Dunbar Construction. They'll
16 come out and do mostly cosmetic, kind of putting
17 oil on a squeaky wheel type of work.

18 There is one instance, Mrs. Moore up
19 on Vaughan Drive would complain about water
20 infiltration in her unit and she complained to K.
21 Hovnanian and they sent out Dunbar Construction on
22 many, many occasions, but the leak still
23 continued. She came to one of our board meetings
24 and just broke out in tears and she said she
25 couldn't take it anymore, that every time it rains

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1 there was water coming into her unit. She said
2 she's gone through all of the channels. She's
3 spoken to K. Hovnanian and nothing became of it.

4 I went to visit her unit, went into
5 the attic space and I found some pretty amazing
6 things that I think any layperson could have
7 caught immediately. Things such as -- actually, I
8 have a photo, if you care to see. You can enter
9 it into evidence, if you like.

10 What's interesting about her case is
11 that she actually has photos of Dunbar on her roof
12 looking at the unit.

13 MS. GAAL: Why don't you hand that
14 up to the Commissioners. Why don't we have Sean
15 mark that the next one.

16 (Exhibits NCI-223 through 226 are
17 marked for identification.)

18 BY MS. GAAL:

19 Q. All right. What did you find when
20 you went up and looked at her attic?

21 THE WITNESS: We found vent pipes
22 that were cracked, we found vent pipes that were
23 laid over HVAC vents. In other words, ventilation
24 ducts that are flexible, the pipe was laid over
25 them and basically crushes them so that it

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1 obstructs the flow of heat, which was one of her
2 complaints, was that one room wasn't getting heat.

3 We found truss members that were
4 warped. It's pretty evident from looking at the
5 truss member that it was installed warped. We
6 found roof sheathing that wasn't screwed on to the
7 trusses. We found vents that didn't reach all the
8 way up to the exhaust vents from the hot water
9 heater and furnace that vent out -- directly
10 outdoors. All sorts of very serious things.

11 And at that moment I came to realize
12 that, even though they are sending out these
13 contractors, that the contractors don't know what
14 they are doing, they don't know what to look for.

15 Q. I'm going to ask you to take a look
16 at Exhibit 198. Is 198 up?

17 Now what is that?

18 A. This is a column to a dumpster area
19 and this column was to be repaired according to
20 our transition agreement that we entered into with
21 K. Hovnanian. This is a dumpster area and the
22 side wall has kind of collapsed and it needed to
23 be repaired, but -- this is one column, a picture
24 of it when it was being repaired, and essentially
25 they built the brick around the column and then

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1 the debris that was left over they kind of threw
2 in there to fill it in.

3 Q. So, is this an example of the kind
4 of repair work you are getting up there?

5 A. Yes.

6 Q. You've gotten over the years?

7 A. Um-hum.

8 Q. Let's take a look at 199.

9 A. That's the same column.

10 Q. And 200.

11 A. That is what's left over when they
12 do their work. As a matter of fact, about a third
13 of that we had to remove ourselves because it was
14 left -- when they finished the work they basically
15 left all these chunks of concrete that occupied
16 three visitors parking spaces and we had gotten
17 several complaints from homeowners that children
18 were climbing over these big, giant pieces of
19 concrete.

20 We called K. Hovnanian several times
21 on the issue, our management company did, but it
22 was never resolved. It got to a point where we
23 took it upon ourselves to remove the concrete, so
24 we had to pay to have it removed. Approximately
25 three tons.

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1 Q. Have you had problems -- and I don't
2 mean you personally, but the homeowners there --
3 with sidewalks?

4 A. Yes.

5 Q. What type of problems, generally,
6 are you having with the sidewalks?

7 A. There is a lot of settling going on.
8 Sidewalks will settle, there is sidewalks that
9 don't have expansion joints, so, when it's hot,
10 the sidewalk will expand and it has no place to
11 move so it cracks and, of course, cracks start to
12 heave up, which has resulted in dozens and dozens
13 of trip hazards throughout the entire property.

14 Q. And I guess you did have youngsters
15 as well as seniors walking around?

16 A. Yes.

17 Q. Could be a danger, particularly for
18 them, I assume?

19 A. It is dangerous. We have homeowners
20 who have fallen. We do have a loss that is
21 phenomenal. Our insurance is up through the roof.
22 We had some stairways, some sidewalks that were to
23 be repaired, according to our transition agreement
24 and, when they were repaired, it was the same
25 shoddy work. There was stone underneath the

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1 sidewalks, so approximately four months after the
2 sidewalks were poured -- the concrete was poured,
3 they all cracked again.

4 Q. Let me ask you to take a look at
5 Picture 201. What is that?

6 A. That's the debris that was left over
7 there from when they did the repair.

8 Q. Of the sidewalks?

9 A. Sidewalks, dumpster areas. That's
10 one of the parking spaces that was --

11 Q. Just dumped in the parking space?

12 A. Yes.

13 Q. And Picture Number 202?

14 A. That's the sidewalk that was
15 repaired approximately four to five months before
16 that picture was taken.

17 Q. So, on the slab of concrete on the
18 extreme left you can see a crack right almost
19 diagonal to the middle?

20 A. Yes.

21 Q. You are saying that four months
22 after it's repaired you've got cracks again?

23 A. Correct.

24 Q. I think you touched on it a moment
25 ago, but, have you been able to determine why you

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1 are having this problem with the -- with the
2 sidewalks? Is it because the base material isn't
3 appropriate?

4 A. That's correct. We observed the --
5 when they were pouring the cement and taking out
6 the old cement and there wasn't enough base
7 material there. We also brought out a consultant,
8 Dr. Shypula.

9 Q. Can you spell it?

10 A. S-h-y-p-u-l-a.

11 And we did a walk-through with
12 herself, myself, the vice-president of operations
13 for our management company, and she pointed out
14 many, many deficiencies, lack of expansion gap
15 material. We also had other construction
16 companies come in -- Tony Gold's construction
17 company came in and pointed out a lot of
18 deficiencies in the concrete, in the way it was
19 poured originally.

20 Q. Let me ask you to take a look at
21 Picture 218.

22 A. This is a picture of Mrs. Moore's
23 unit. That is the woman that came to our board
24 meeting and kind of broke down in tears. She is a
25 retired elder. And they are pictures of the truss

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1 that is warped that was installed. That is in the
2 northeast corner of her attic space. And, if you
3 look here, you can see where their roof sheathing
4 doesn't meet up with the other. It just kind of
5 lifts off.

6 Q. Was there any actual repairs done on
7 this?

8 A. Actually we -- the association fixed
9 the problem. K. Hovnanian has sent out Dunbar
10 Construction, one of their contractors, to repair
11 this. The actual truss itself was not repaired.
12 It is still warped. Just too expensive for us to
13 take on ourselves to rip off a truss member, which
14 is a structural member, and to replace it. Our
15 main focus was to stop the water infiltration.

16 Q. And Photo 219, would you take a look
17 at that.

18 A. That is an example of a vent -- an
19 exhaust vent that is supposed to vent outside, but
20 it actually just draws up to the hole, the roof
21 vent. It pretty much comes up to the vent and
22 ends there.

23 Q. And Number 220?

24 A. That's an example of Mrs. Moore's
25 unit where there was a -- what they call a riser

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1 vent, and that riser vent is actually pinching one
2 of the air conditioning/heating ducts. That's the
3 room where she didn't get any heat.

4 Q. Now, this is the lady that you just
5 talked about, right, that didn't have any heat in
6 her room and was having other problems?

7 A. Yes.

8 Q. And, as I understood what you said,
9 she came to one of your meetings, she was in
10 tears, she called the builder and they sent people
11 out more than once?

12 A. Yes.

13 Q. And you went out yourself to the
14 attic to take a look at it?

15 A. Yes.

16 Q. Am I right?

17 A. Yes. I personally went up into her
18 attic space and observed the water defects.

19 Q. And this is one of the things that
20 you found up there?

21 A. Yes, that's one of the many.

22 Q. Were there problems, in general,
23 with cracked and broken steps? We talked about
24 sidewalks. I just want to touch on the steps.

25 A. Yes. We have -- it's hard to really

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1 believe it until you actually see it. Some things
2 just defy reason. Some steps are cracked. That
3 happens, but the sheer number of steps that have
4 cracked are phenomenal.

5 When we looked into it we discovered
6 that the problem really wasn't the step itself, it
7 was the actual structure that held the steps. The
8 structure is crumbling from within, and in some
9 cases you can actually stick your finger and dig
10 out the mortar material that basically holds up
11 the structure.

12 Q. Put up 214.

13 What's depicted in that picture?

14 A. That's actually 203.

15 Q. 203.

16 A. 203 actually depicts a section of
17 the roof --

18 Q. We'll get to that one, too. You
19 don't have 214, then. You have a hard copy in
20 front of you?

21 A. Yes, I do.

22 Q. And what does it show?

23 A. It shows a step.

24 Q. It's up there now, I think.

25 A. Um-hum. That's the natural step.

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1 It doesn't have the limestone risers on it, it's a
2 different kind of step, but what you see is
3 typical, in that the inside of the step is
4 actually pouring out like sand. What is actually
5 holding the step together, in many cases, is the
6 paint. If you chip away the paint, the inside
7 starts to pour out. That's why, in many cases,
8 you have to look at it and say, wow, this is
9 incredible. How can they lead us to think -- you
10 know, a person's weight. But it is what it is.

11 Q. Now, on any remedial work that's
12 being done or has been done in Society Hill in
13 Newark, are they taking out permits?

14 A. No.

15 Q. No permits?

16 A. No.

17 Q. So, if there is no permits, then
18 there would be no inspections by the local code
19 office, in terms of any of the remedial work?

20 A. Correct. I spoke with the building
21 official, Mr. Anstiss, and asked him -- inquired,
22 "Hey, why did you guys allow this to happen?" And
23 their response is, "Allow what to happen?"

24 When I showed him those pictures,
25 they said, "We don't have any records of any work

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1 being done up there," so he was kind of at a loss.
2 He said, "I can't help you -- I can't inspect
3 something that doesn't have a permit pulled for
4 it. I can only issue a violation, but, after it's
5 done there is nothing they can do."

6 Q. You mentioned a moment ago, or a
7 couple of times now, roofs, and you can put up
8 Picture 203, if you'd like.

9 There are, I understand, significant
10 problems with the roofs at Society Hill?

11 A. Yes.

12 Q. And do those problems include roofs
13 that are not connected, roofs that have gaps and
14 so forth?

15 A. Some roofs are -- have significant
16 gaps, and I would consider a significant gap to be
17 anything over a quarter inch. Some roofs are not
18 attached to the trusses. They basically are just
19 sitting there by the weight of the shingles and
20 their own weight. In some cases we've had
21 homeowners complain that they hear a thumping
22 noise coming from their attic, and it's a very
23 difficult thing to identify, but, once you go up
24 there on a windy day, you'll notice that the roof
25 actually lifts up and it drops, and that's where

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1 the thumping noise is coming from.

2 This is an example of a building on
3 Richmond Street.

4 Q. You are looking at 203?

5 A. Yes, 203. That is the south corner
6 of the -- the southern edge of the attic space
7 where the roof is actually lifted up. You can see
8 the daylight coming in through it.

9 Q. Let's take a look at 204.

10 A. That is the roof that was being
11 repaired. This is -- when it was being repaired I
12 climbed up on the roof as the roofer was removing
13 the shingles, and that's what they found when they
14 removed the shingles.

15 What we see here is actually a
16 couple different elements. This is one unit here,
17 this is the other unit behind it, this is the
18 firewall here. This is a gap in the firewall
19 here. This is where the roof basically ends on
20 one unit and ends up there and above this there is
21 a crown shingle.

22 Now, this, I'm told, would be
23 somewhat okay, if that crown shingle were actually
24 a mold -- what they call a ridge mold -- a ridge
25 vent, but it's not. There is just nothing

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1 underneath the shingle.

2 Q. So, when you say "somewhat okay,"
3 you mean meeting code?

4 A. No. If there is a ridge vent, there
5 has to be a gap in the sheathing material to allow
6 the air to go out, but, in this case, there isn't.
7 There is just a hole.

8 Q. Number 205.

9 A. This is the -- on the same roof.
10 These are the -- the step flashing that was
11 removed. One thing you notice, right in the
12 center of the photo where I'm pointing -- I'm not
13 sure if you can see that, but there is about a two
14 and a half inch gap between the roof of this
15 roof -- of this unit and the next. That's where
16 all of the water was coming in infiltrating that
17 unit, pouring down, causing water leaks in three
18 of the units.

19 The other interesting thing about
20 this is that this roof actually extends into the
21 attic space of the next roof. The firewall is
22 actually right where -- approximately where that
23 ruler is underneath that.

24 Q. So there is a gap or a break in the
25 firewall?

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1 A. Yes.

2 Q. Next photo, Number 206.

3 A. That is the -- once the shingles
4 were removed and the step flashing was removed,
5 that's what was discovered. What you see there is
6 the tarpaper. The tarpaper never reached the edge
7 of the roof. You also notice on the edge, certain
8 sections, which is here, gaps along the roofline
9 and the next unit. That gap actually leads into
10 the attic space of the adjacent unit.

11 Q. And Picture Number 207.

12 A. That, again, is the peak of the
13 roof. That's the -- I believe it was 203. That's
14 another angle of Picture 204. That shows a little
15 closer up where the firewall actually is and where
16 the other unit ends and where the hole is.

17 Q. And Number 208?

18 A. That is a -- the torn up piece of
19 timber that you see there, that is how it was
20 built.

21 Q. It was built that way?

22 A. Yes. When they pulled back the
23 shingles, that's what they found. It wasn't a
24 clean cut. It was just basically ripped off
25 somehow. There is also a gap over here where this

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1 sheathing -- it just kind of goes up to about
2 right here. It looks like an attempt was made to
3 make up for the gap with some step flashing, but
4 it just never made it.

5 Q. Now, these photographs were taken by
6 you, sir?

7 A. Yes.

8 Q. And, so, am I right that -- in
9 understanding that, when work was being done, you
10 were up there crawling around on roofs --

11 A. Yes.

12 Q. -- trying to get pictures?

13 A. Two stories up on the roof on a
14 windy day in cold Newark. Very interesting
15 experience.

16 Q. Now, I notice -- or I note that
17 you've indicated that there weren't a lot of
18 problems in your home, but it's clear that you've
19 spent a lot of time trying to help others. Am I
20 right?

21 A. Yes. A lot of the homeowners in our
22 community -- or they speak to each other quite
23 frequently and, once you help one, you know, the
24 other gets word of it and they'll call me and I
25 just can't say no. I can't say no to someone who

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1 bought into the idea that this was part of a
2 renaissance, a new beginning for Newark. These
3 are residents who have been life-long residents of
4 the City of Newark and seen it through its worst
5 times and bought into the idea that things were
6 getting better and, when they come up to you and
7 they say, you know, "I've put basically my
8 retirement plan, my savings, into this place, and
9 it's falling apart," you just can't turn your back
10 on them.

11 Q. Now, do you remember telling us,
12 when we spoke with you last, about a homeowner who
13 complained about some very foul-smelling water
14 coming down on him when he went out of his door?

15 A. Um-hum. One Vaughan Drive, Mr. and
16 Mrs. Hughes. Mr. and Mrs. Hughes are -- they are
17 kind of -- we give them special attention only
18 because they've been through so much. This is the
19 unit which had flooded. Talking about two, two
20 and a half feet of water in their unit. This is
21 the unit in which the refrigerator was floating
22 inside. Every time it rained their unit would get
23 flooded.

24 One of his complaints was that
25 whenever he came out and it was raining, that the

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1 water -- there was a foul smell in front of his
2 unit and he couldn't understand why. But, of
3 course, no one really knows how to address that
4 sort of complaint. And then recently, in the past
5 six months or so, I had made a visit and said,
6 "Where is the smell coming from?" He said, "From
7 the front." I said, "When does this happen?" He
8 said, "It happens whenever it rains." I said,
9 "That's curious. Maybe it's the water that smells
10 bad." So he says, "Yes, the water comes up over
11 the gutter and falls on my head."

12 So we went up there to look at the
13 gutter and we discovered a couple of things. One
14 thing we discovered first off was that the gutter
15 was filled with soot, filled with this -- I called
16 it the Society Hill blob and, as we started to
17 inspect the other units, we found the same thing
18 on many of the other gutters.

19 What happens is that the gutter is
20 not pitched properly, so over the years you have a
21 lot of sludge building up. This is what we found
22 in there.

23 Q. You call it the Society Hill blob?

24 A. Yes. It's a very foul-smelling
25 substance that accumulates in the gutters. It's

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1 approximately -- in his gutter -- we weighed it --
2 about 25 pounds of it. In it we found mosquito
3 larvae, little swimming things, we weren't quite
4 sure what they were. Put some bleach in there and
5 hit it with the power washer.

6 We actually -- the weight of the
7 sludge itself was so great that it was actually
8 causing the gutter to deflect in the middle, so
9 when it rained the water would go to the middle
10 and flow over and right in front of his unit -- or
11 right in front of the entrance to his unit.
12 That's where the smell was coming from. It was
13 the sludge water that was just coming down over.

14 Something that could have been
15 prevented, had the gutter been pitched properly.
16 It's actually pitched in the opposite direction.
17 It should have been pitched in the other direction
18 so it could flow down. You would get that sort of
19 build-up in any gutter over ten years.

20 Q. Can we put up Picture Number 209 and
21 can you tell us what is depicted here?

22 A. I can attempt to tell you. That's
23 the -- underneath someone's sink. That is an
24 electrical outlet that's supposed to be, I guess,
25 servicing a garbage compactor -- I'm sorry, a

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1 garbage disposal unit. The garbage disposal unit
2 was never really installed, but the outlet was
3 there and the actual electrical wiring kind of
4 wraps around the pipe, the water pipe.

5 Q. Now, we talked a little bit about
6 a -- prior to your testifying -- with Special
7 Agent Conroy that some of the residents in Society
8 Hill experienced ice damming in the winter. Can
9 you tell us about that.

10 A. Yes. In the wintertime we have
11 icicles that are approximately 24 inches in
12 diameter, about six feet tall, hanging off the
13 side of the buildings right over the entrances of
14 the units. Usually when we tell people this, they
15 don't quite believe it because they can't imagine
16 a piece of ice that large forming or hanging over
17 a unit and people tolerating it, but it's true.

18 A lot of it is caused by -- it's a
19 natural phenomenon called ice damming, but that's
20 what we were being told it was. Them saying,
21 "Well, it's just snow on the roof that has to be
22 cleared." When we actually went up there and
23 looked at the unit that actually has this problem,
24 we discovered that the gutters were faulty, to one
25 extent or another, so water would enter or ice and

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1 snow would melt into the gutter and then enter the
2 outside of the gutter and freeze and, over a
3 period of hours or a period of a days, the water
4 drips down and makes the icicle.

5 Q. Are there problems on the grounds
6 with respect to the grass, the trees and whether
7 you can plant anything there and so forth?

8 A. Yes. We actually -- we were working
9 alongside with the Greater Newark Conservancy, and
10 one of the issues that we had were a lot of shrubs
11 and plants and flowers that we planted were dying
12 and we couldn't understand why. We thought it was
13 just an issue of fertilization.

14 When they came out and did some soil
15 samples, they basically classified the soil as
16 being urban rubble. There is very little
17 percentage of organic matter in the soil. It's
18 more construction debris than anything else. They
19 were finding bricks, tiles, nails, pieces of
20 siding. Just dig one inch under it and you'll
21 find it.

22 Q. Let me have, please, Number 210 up
23 on the screen.

24 A. Yes. This is an area along Warren
25 Street. As you can see, protruding from the

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1 ground you can see slabs of concrete. Three
2 different sections. It would be interesting to
3 note that this is a walkway that many children
4 walk to the school right on that corner. Warren
5 Street School. We have approximately 300 children
6 that walk through there. I mean, a piece of
7 concrete sticking out of the ground is not too
8 much of a concern, but in certain sections we
9 actually have rebar -- steel reinforcement bar
10 that comes out by two feet.

11 Q. Let's have 211 up.

12 A. That section there is a -- that's a
13 piece of rebar. If you drive up Warren Street to
14 Cornerstone Lane and look at the nearest tree,
15 it's there. We actually tried to pull it out, but
16 it's too deep in the ground. It's actually kind
17 of embedded itself in the roots and we kind of
18 bent it down and put a plastic cap on the end.
19 That's all we can really do other than to cut it
20 off. We've notified K. Hovnanian that we were
21 going to repair this and we've given them an
22 opportunity to come by and inspect it and we
23 haven't heard anything from them, so we went ahead
24 and corrected it because it is a life safety
25 issue. Many children running through there and,

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1 if one falls on that piece of rebar, it could be
2 disastrous.

3 Q. Let me ask you to take a look at
4 212. What is that?

5 A. That is the corner marquee piece on
6 the corner of Wickliffe and Market -- West Market
7 Street. In addressing the water problem on
8 Vaughan Drive, we had to install some extra drains
9 to reroute the water, and one of the things that
10 we were looking for was a manhole that was shown
11 on the site plan, but we couldn't find on the
12 site. That is the final manhole that leads into
13 the city's storm sewer system.

14 The contractor came back to us and
15 he said the manhole doesn't exist. We said, "No,
16 it has to exist, it's in the site plan." And just
17 out of a hunch -- you have to understand, when the
18 contractors come out they look for the normal.
19 They don't expect anything that's abnormal. When
20 I hear about it, I expect something abnormal, I
21 look for the abnormal.

22 The conclusion I made was that the
23 manhole was underneath that wall that says
24 "Society Hill at University Heights, A K.
25 Hovnanian Development." It's kind of a little

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1 marquee piece, a little plaque here in front and
2 there is a brick wall around it. I said, "I bet
3 you that, if you dug this up, they'd find the
4 manhole underneath that wall." Of course no one
5 believed me at first, but --

6 Q. Can you put up 213.

7 A. There it is. That is the manhole
8 that was actually discovered once we excavated
9 the -- under the marquee. The other interesting
10 thing about it is that that manhole cover doesn't
11 lead straight down as a normal manhole would. It
12 actually -- if you remove the manhole and go down
13 the ladder, the rungs run at a 45-degree angle
14 because the actual manhole, the structure, itself,
15 is directly underneath that wall.

16 So, when they built this, at some
17 point they must have realized, "Oh, well, we have
18 to put a wall here, what are we going to do?"
19 Some guy said, "Well, we'll put the manhole over
20 here and put the wall on top of it and we'll just
21 cover it."

22 I can't see anyone else -- this
23 isn't just a mistake. This was -- at some point
24 someone said, "Hey, let's just get this thing
25 done, this works, nobody is ever going to know."

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1 Q. Is it fair to say that this is just
2 one example, along with a lot of other things
3 which you talked about today, which really has to
4 raise questions about the inspections that were
5 done during the construction?

6 A. Yes.

7 Q. Now, as the treasurer of the
8 homeowners association, can you tell us anything
9 about the financial situation for the homeowners,
10 being that they are faced with these serious
11 deficiencies in the development?

12 A. When the developer turns over the
13 development to us, they turn it over with a
14 budget. It's in the Public Offering Statement.
15 It's essentially a statement that tells the
16 homeowners, hey, this is what it's going to cost
17 to maintain this property. Part of that budget
18 are two funds. One is the deferred maintenance
19 and capital reserve. These are funds that are set
20 aside -- the money is set aside for the eventual
21 repair of the property due to wear and tear,
22 that's what the deferred maintenance fund is for,
23 and then there is the capital reserve, which is
24 there to replace items, roofs, at the end of their
25 life-span.

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1 These funds are funded according to
2 a reserve study and that reserve study makes the
3 assumption that these components have a certain
4 life-span. We know for a fact that our roofs do
5 not have a 20-year life-span. Many of them are
6 failing now or have failed already before the
7 ten-year mark.

8 Essentially what that translates
9 into is that our funds are -- they are
10 underfunded. We were never set up with enough
11 money in those funds to address these issues. Not
12 only that, but during our -- just our operating
13 budget, our operating expenses, every time there
14 is a roof leak and we have to send a roofer up
15 there, we are paying three, four, \$5,000 in some
16 cases, \$8,000. That comes out of our operating
17 budget and right now we are in the hole.

18 Q. Now, today you brought, I
19 understand, some short videos with you that you
20 wanted to show?

21 A. Yes, um-hum.

22 Q. We'll do that right now. My
23 understanding is they are only a couple minutes,
24 right?

25 A. Yes.

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1 Q. How recently?

2 A. In the last six months. Where it
3 came down -- that's the pan right there on the
4 left that was underneath the water heater, and
5 it's supposed to drain out to a separate drain
6 and, when they moved the water heater, they found
7 that the drain wasn't connected and the water came
8 down and ruined her floor and the furniture,
9 clothes in the closet and what have you.

10 Let's move on to the next one.

11 Q. Yes.

12 A. This next clip is of a young woman
13 on Vaughan Drive near her furnace. She has issues
14 with her furnace in her unit where she kind of
15 gets dizzy. We kind of suggested that perhaps
16 it's carbon monoxide. When we looked at her
17 furnace this is what we discovered.

18 Q. I think you are going to have to
19 narrate it.

20 A. That is the exhaust gas vent that's
21 shown there. It's supposed to go straight up into
22 the ceiling. It's a natural draft system, but, if
23 you look at the way it was built, it kind of goes
24 up, goes to the left, and goes back and goes
25 around and it kind of goes this way and then makes

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1 a left-hand turn into the wall and then one has to
2 assume that it goes straight up, but that should
3 never have passed any inspection whatsoever.

4 Perhaps in an induced draft system or power vented
5 system perhaps, but not in a natural draft system.

6 Q. Okay. If you could go to the next
7 one.

8 A. This is Mrs. Medino, who lives on
9 Wickliffe. This is the one that has the issues
10 with her firewall. Very interesting for a couple
11 of reasons. She always complained about hearing
12 kind of a whistling noise coming from her attic.
13 When we went up we discovered that there was no
14 sheathing on the side of her unit. That is the
15 unit where we had a compromised firewall and saw a
16 picture of it earlier.

17 Not only is there no sheathing in a
18 section, but, I mean, the gap is so wide, you can
19 actually stick your arm into it and into the next
20 unit. That is that -- in that corner right there
21 of her attic. Kind of right there. You see the
22 brick coming in through the gap. We see photos of
23 this on the next one.

24 Q. Okay.

25 A. The reason I say that her unit is

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1 somewhat interesting is because her unit was in
2 Building 1, which was originally the sales office,
3 so the units there have their own little quirks.
4 The one that's unique about her is over here. One
5 of her -- when she first moved in she was
6 surprised that her electric bill was so high. She
7 couldn't quite figure out why. She just assumed
8 that that's just the way it was.

9 We did an inspection on the unit, I
10 had to pull up -- as treasurer, looking through
11 the archives, and pulling up one of the original
12 bills that we had paid off on for electrical, and
13 one of the comments on the invoice was that they
14 couldn't find the switch or circuit breaker for an
15 exterior flagpole light. They believed that it
16 was inside the unit. So, when I looked out the
17 window I saw the flagpole and it kind of just
18 jarred my head -- I said, well, let's try this.
19 Let's try turning off all the circuit breakers to
20 see if, indeed, that exterior light was connected
21 to her unit. She's kind of giving a narrative of
22 when it was discovered, but soon the camera will
23 pan outside and you can see the outside
24 streetlight.

25 Q. So you are saying the streetlight is

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1 connected to the electricity in her house?

2 A. Yes. It's actually -- to make
3 matters worse, it's connected to her HVAC circuit.
4 Her electricity bill was pretty astronomical, but
5 what's peculiar about this, as you'll see in a
6 moment, she's going to yell to her mother, "Mom,
7 shut off the heat."

8 Q. Let me guess, when she shuts the
9 heat off, the streetlight goes out?

10 A. Yes. So she can't remedy it by
11 shutting off a certain circuit because that's her
12 heat and air conditioning that runs off that
13 circuit, so she's kind of in a hole -- a little
14 bit of a pickle on that one.

15 Q. And is it still that way today?

16 A. Yes.

17 Q. Does the local construction office
18 know about it?

19 A. I don't know if they do or not.

20 Q. But nothing has been done about it,
21 nothing she can do about it?

22 A. Right. She'd have to pay an
23 electrician to come in and rewire that particular
24 circuit.

25 There is one more I'll be glad to

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1 show you. This is a utility closet outside one of
2 the units. What you see there are the gas
3 heaters, approximately eight. What you see above
4 are the actual balconies of the unit above it, you
5 can see the planks. The problem here is that the
6 water comes in right through those planks and
7 right over those meters and the rear backing,
8 which is just basic plywood.

9 Right next to that are the
10 electrical panels. And the electrical panel that
11 services approximately 60 units weighs, I'm
12 told -- they just switched it to the infrared mode
13 so we can see in the dark. You can see the light
14 coming in through the roof of this utility closet
15 and here are the meters.

16 Now this panel, itself, must weigh
17 easily over a thousand pounds, but, believe it or
18 not, it is being held up by the power cables.
19 Those cables that you see there are supporting
20 this entire panel, and you see how I'm shaking it,
21 shows you it's not connected, but in a moment you
22 are going to see me take two of my fingers, and
23 it's very kind of like magical, and I will stick
24 it right through the wall -- through this plywood
25 wall that's supporting this electrical panel.

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1 You'll also notice that there is
2 lots of mold that's forming on the interior walls
3 of the utility closet. There we are. That's the
4 other side of the panel there and that's sheathing
5 or the plywood that's supposed to hold up that
6 panel. And here we go. Watch how I take my
7 fingers, they go right through. That black and
8 white substance you see on that is mold.

9 Whenever it rains, many of the
10 homeowners in that building lose their power
11 because the breakers trip. What it is is the
12 panel trips. PSE&G has come out and said there is
13 nothing we can do about this because it's going to
14 keep happening. We can't rebuild it for you. You
15 are responsible for everything past the meter.

16 We've had to pay electricians to
17 come out and try to remedy it, but the only remedy
18 is to rip everything out and build it up again.

19 There are others, but --

20 Q. I think that's sufficient for our
21 purposes today. I would ask that we can either --
22 if you can leave them or get them to us --

23 A. Sure.

24 Q. -- so the Commission can have them
25 and, if we have additional questions, we will get

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1 back to you on them.

2 Mr. Chairman, that's all I have, I
3 believe.

4 COMMISSIONER EDWARDS: Mr. Cardona,
5 I've got a couple of factual questions or things
6 that hit me while you were going through some of
7 this. You indicated that there was ice damming in
8 a lot of the gutters and they were improperly
9 constructed. How were they -- were their pitches
10 wrong, like the one you described with the sludge
11 collecting in it?

12 THE WITNESS: In some cases the
13 pitch was wrong and in other cases, where one
14 gutter leads into the other or it leads into a
15 downspout, it wasn't connected properly. Once we
16 cleaned them out we actually found evidence of
17 gutter material being used to wrap around the
18 joints to conceal the fact that they were not
19 joined together properly.

20 COMMISSIONER EDWARDS: You made a
21 lot of references to a transition agreement with
22 the Hovnanian company. Can you describe that
23 transition agreement, how it was arrived at, what
24 it was supposed to cover --

25 THE WITNESS: I actually have it

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1 here.

2 COMMISSIONER EDWARDS: -- who was
3 involved in it.

4 The transition agreement is a
5 transition from their ownership to yours as a
6 homeowners association? Is that what you mean by
7 a transition agreement?

8 THE WITNESS: Correct, yes.

9 COMMISSIONER EDWARDS: And the
10 people that are a party to that or involved in
11 that transition are the existing homeowners
12 association and the developer who was the prior
13 association, is that -- transferring the
14 responsibility over to?

15 THE WITNESS: It's my understanding
16 that the -- it's transferring the responsibility
17 from the developer --

18 COMMISSIONER EDWARDS: Right.

19 THE WITNESS: -- which is also known
20 as the sponsor, to the homeowners or the
21 homeowners association, to be more exact.

22 COMMISSIONER EDWARDS: Is that a
23 negotiated agreement?

24 THE WITNESS: Yes, it is.

25 COMMISSIONER EDWARDS: And that

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1 agreement is required to be negotiated between the
2 parties based on the DCA approved association
3 document at the time that the project was
4 approved? Is that generally accurate?

5 THE WITNESS: It's my understanding
6 that there is no set requirement, per se, that it
7 has to be done. It's something that is generally
8 done.

9 COMMISSIONER EDWARDS: It was my
10 understanding that before anything -- a
11 condominium association can be put together, DCA
12 has to approve an association agreement that has
13 both terms and conditions in it, including things
14 like a transition agreement has to be prepared,
15 and, therefore, the terms of the transition
16 agreement are not in it, but the fact that there
17 had to be one exists or does not exist.

18 Do you know?

19 THE WITNESS: No.

20 COMMISSIONER EDWARDS: If you don't
21 know, that's okay. I'm not requiring you to know.
22 I'm just curious. I can find that out.

23 THE WITNESS: It's my understanding
24 that it is not a requirement, but I can't really
25 speak on that.

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1 COMMISSIONER EDWARDS: The purpose
2 is -- the point I'm getting to is is that the --
3 in our attempts -- we need to make some
4 recommendations, I think, in reference to
5 associations and transitions, and what's in the
6 original agreements and what kind of protections
7 you get and are they adequate or not adequate,
8 something to prevent these from happening in the
9 future.

10 It doesn't solve your problem, but
11 we've now been faced over the last two days with
12 maybe three different association issues in which
13 there was an -- had to have been an original
14 agreement and something is not happening properly
15 here and there are people that maybe should be
16 parties that aren't. Example. Was the building
17 department in the -- in Newark in this case
18 involved in the negotiation of the transition
19 agreement or have any knowledge of what's in it?

20 THE WITNESS: No, they do not.

21 COMMISSIONER EDWARDS: I would
22 assume they didn't. Maybe they should be, is what
23 I'm getting at. So that the transition agreement,
24 also, I think, probably provides for various
25 inspections, repairs, and various other things to

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1 be done. If the town is not involved and doesn't
2 know about it, they can't inspect it.

3 THE WITNESS: Correct.

4 COMMISSIONER EDWARDS: So it's one
5 of those missing links that I think we are trying
6 to get at. So that was the purpose of my
7 question.

8 There was a number of examples of
9 roof problems here in which roofs were not
10 properly constructed. It's obvious to me -- I
11 know -- I know what you mean by a -- a ridge cap
12 and how you leave that open so you can vent, in
13 certain instances, air from coming out without
14 letting water come in and this -- so I understand
15 that.

16 Was that a typical problem that
17 exists on roofs all over the project or --

18 THE WITNESS: Yes, it is, but
19 usually we don't discover these things until there
20 is a failure. You don't typically tear up the
21 roofs just to see if there is something wrong
22 underneath them, but, when something does go
23 wrong, we do try to document it as best we can,
24 and usually, if something goes wrong, nine times
25 out of ten there is more to it than just water

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1 coming in.

2 COMMISSIONER EDWARDS: There have
3 obviously been discussions between the existing
4 association and Hovnanian. What is Hovnanian's
5 response to all these things when they were
6 pointed out? Do they say it's your problem? Do
7 they deny it? Do they fix some items? Do they --

8 THE WITNESS: I think they probably
9 say as little as they have to say. They do only
10 what they have to do. It's curious, through
11 observation, to note that they will come out
12 whenever problems hit the press or politicians
13 start to yell and scream, but all of that is just
14 momentary -- that comes and goes. The homeowners,
15 they stay there, they live there day to day.

16 I read recently in the newspaper, it
17 may have been yesterday, that Hovnanian said
18 something along the lines of they really focus on
19 efficiency, not just doing a quick and dirty job.
20 I mean, it's really a nice little sound bite
21 saying we are being efficient and that's why it's
22 going by so quickly, but this isn't efficiency.
23 They say, we don't want to go back and have to fix
24 this thing because it's going to cost more money,
25 but the truth is that they know they don't have to

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1 go back and fix it unless they find it. Who is
2 going to find it?

3 COMMISSIONER EDWARDS: So, as you
4 pointed out, although speed is important, both
5 economically -- to build an economic unit you can
6 afford to buy, on the one hand, but quality
7 shouldn't be sacrificed while speed is going
8 forward, and in his area they are not going to
9 show up for a period of time, there is no
10 incentive on behalf of a developer or builder to
11 be sure that those items are, in fact, taken care
12 of, I guess.

13 THE WITNESS: Philosophically, it's
14 hard to --

15 COMMISSIONER EDWARDS: And there is
16 no penalty if they don't, there is no consequences
17 one way or the other.

18 THE WITNESS: Right.

19 COMMISSIONER EDWARDS: Not only an
20 incentive or a disincentive, as the case may be.

21 You mentioned before the sidewalks
22 had significant upheavals and they are being
23 replaced and you made a comment about insurance.

24 THE WITNESS: Yes.

25 COMMISSIONER EDWARDS: Is that the

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1 homeowners insurance policy?

2 THE WITNESS: Yes.

3 COMMISSIONER EDWARDS: Claims you
4 are getting from falls as a result of the
5 sidewalks, is that what that is?

6 THE WITNESS: Correct. That's just
7 the nature of the beast, as they say. Whenever
8 there is a fall, you get hit on your loss run and
9 the next year your premium goes up.

10 COMMISSIONER EDWARDS: Do you have
11 records of how many times you've been sued as a
12 result of that?

13 THE WITNESS: I'm sure the company
14 provides us with a loss run history. We do have
15 records of that. It's hard to say if we really --
16 when someone falls, of course they don't call you
17 and say "Give me money." They'll call your
18 insurance company.

19 COMMISSIONER EDWARDS: Can we get a
20 copy of that loss run or is it available to us?

21 THE WITNESS: Yes, we can make that
22 available.

23 COMMISSIONER EDWARDS: Thank you. I
24 have nothing further.

25 COMMISSIONER MARINIELLO: Mr.

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1 Cardona, I want to first thank you for the
2 excellent presentation that you gave this morning.

3 THE WITNESS: Thank you.

4 COMMISSIONER MARINIELLO: It
5 obviously has taken a tremendous amount of time on
6 your part, as a volunteer, essentially, for your
7 association, to collect this data and present it
8 to us as you have, so I thank you for that.

9 Also, it's fairly clear, at least to
10 me, that much of what you've shown us today is
11 both atrocious and deplorable, to be completely
12 honest with you. Also what you've shown us today
13 is how many of the different systems that we
14 expect to work to protect the home buyer have
15 failed, but, from what I can see from your, you
16 know, testimony this morning, there are issues
17 with the builder not complying with what they were
18 supposed to, the inspection departments not
19 keeping adequate records, maybe even not doing the
20 inspections and, at least upon reserving further
21 inspection of this, DCA not coming in and helping,
22 despite the numerous requests that have been made
23 from the homeowners in that development.

24 I just want to touch back on the
25 firewall issue that you touched on in the very

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1 beginning. If I remember correctly, you said some
2 85 percent of the homes that you looked into had
3 at least some -- the integrity of the firewall
4 system was called into question?

5 THE WITNESS: Yes.

6 COMMISSIONER MARINIELLO: And there
7 are approximately 480 units at this location?

8 THE WITNESS: Yes.

9 COMMISSIONER MARINIELLO: So that
10 means, using simple math, somewhere around 400 of
11 those units, those people go to bed every single
12 night not knowing whether or not a fire in the
13 next unit could impact them during the night, is
14 that correct?

15 THE WITNESS: That's correct. This
16 is what happened approximately eight months ago.
17 North Plainfield, a Traditions development. Not a
18 K. Hovnanian project, but a development in which
19 there was a fire in the kitchen and it spread from
20 one unit to the other to the other, and the
21 amazing thing about that is that it propagated,
22 from what I'm told by the residents there, within
23 27 minutes. An entire building was taken out in
24 27 minutes because they didn't have firewalls.

25 (Exhibit 227 is marked for

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1 identification.)

2 COMMISSIONER MARINIELLO: The
3 integrity of the system, from what you've been
4 able to tell, is only from the area that you've
5 been able to view --

6 THE WITNESS: Correct.

7 COMMISSIONER MARINIELLO: -- and,
8 because of the lack of inspections and the lack of
9 recordkeeping, you have no way of knowing, nor do
10 any of the other people who live there, that the
11 area between the walls, between these units, even
12 has the correct firewall in place?

13 THE WITNESS: Correct. One has to
14 make that assumption. When we see these sort of
15 deficiencies in spaces that you can reach, one has
16 to ask themselves, "What's behind the wall that I
17 can't reach?" I remind you that the attic space
18 only represents approximately one-eighth of the
19 surface area you can actually inspect of your
20 firewall. In the one photo we saw there in the
21 kitchen where the roof or the ceiling collapsed,
22 once we got up there with the video camera we
23 noticed that there were three holes in the
24 firewall going into the next unit. These were
25 holes that were drilled to allow cables to go

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1 through, and it's obvious -- you can see that they
2 tried to -- they drilled one hole, they found they
3 couldn't put the cable through there, they drilled
4 another and found they couldn't put it through
5 there, three drilled a third and that's where they
6 finally put the cable, but they have two-inch --
7 three two-inch holes in their firewall.

8 I would have never known about that
9 had the water heater not failed, had the pan not
10 failed, had the water not gone into the kitchen,
11 had the Sheetrock not collapsed because it wasn't
12 attached, had they not complained, had I not gone
13 there with the video camera.

14 COMMISSIONER MARINIELLO: How many
15 of these problems were disclosed to you at the
16 time that you purchased your home?

17 THE WITNESS: None.

18 COMMISSIONER MARINIELLO: Were you
19 able to make any inspection yourself prior to
20 buying the home or did you talk with any of the
21 neighbors which would have given you -- maybe have
22 given you some inclination as to the problem
23 there?

24 THE WITNESS: Most people are not
25 aware. Most of my neighbors are not aware of the

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1 firewall issue. It's not that we hide it from
2 them, but it's something that we don't want --
3 it's a double-edged sword. We don't want to put
4 that out there unless we have a remedy for that.
5 If they ask, we tell them, of course, but, for the
6 most part, you know, most people don't know.

7 COMMISSIONER MARINIELLO: Are any of
8 the problems that you've experienced there covered
9 by the new home warranty program?

10 THE WITNESS: No. The warranty is a
11 joke.

12 COMMISSIONER MARINIELLO: Sounds
13 like you've been through that experience. Can you
14 tell me a little bit about it?

15 THE WITNESS: Many homeowners have.
16 The homeowners warranty covers structural items
17 and I think that's up to five or ten years, but,
18 for the most part -- I mean, a whole truss would
19 have to collapse before you could collect on that
20 policy. Cosmetic issues, water pipes, that
21 expires a few years from when you purchase your
22 home, but the major stuff, anything that really
23 causes a problem like an attic or a roof, that's
24 not really covered. It doesn't cover the water
25 damage or the damage to your unit, which is all

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1 you really care about.

2 COMMISSIONER MARINIELLO: The
3 particular photo that made me think of the
4 warranty program was the one that you showed with
5 the wood platform outside of the unit seeking to
6 keep the front of the condominium from falling
7 down.

8 THE WITNESS: Um-hum.

9 COMMISSIONER MARINIELLO: It would
10 seem to me that part of those issues -- actually
11 all of that goes directly to the structural
12 integrity of the home that people are living in.

13 THE WITNESS: Correct. That
14 particular unit is over ten years old. It would
15 go out of warranty. And, when we speak of
16 warranty, the warranty is a good faith effort to
17 say that, okay, if you purchase my product, I will
18 give you certain guarantees that it will not fail
19 within a certain amount of time.

20 Now, that's really based on the
21 assumption that the product was installed properly
22 to begin with, that the product was adequately
23 designed to begin with. It's based on a lot of
24 assumptions. You take out any of those
25 assumptions and the warranty is useless. It's

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1 useless to the consumer and it's also useless to
2 whoever is trying to sell you the product.

3 COMMISSIONER MARINIELLO: Has any
4 effort been made on behalf of the builder to
5 rectify the problem on that unit or that building?

6 THE WITNESS: I'm sorry.

7 COMMISSIONER MARINIELLO: That
8 building that we saw the planks holding up the
9 front of the building, has the builder been put on
10 notice of that issue and have they done anything
11 to correct the problem?

12 THE WITNESS: Yes, they have. Not
13 quite sure what's become of it.

14 COMMISSIONER MARINIELLO: So they
15 are on notice, but, to your knowledge, nothing --

16 THE WITNESS: To my knowledge, they
17 are on notice, but I'm not sure. That's actually
18 part of Phase 2 of our development and my
19 development block does not supervise that section
20 of the development, but also another interesting
21 note on warranties is that, once the homeowners
22 association or a homeowner files a claim with
23 their warranty, they can no longer go after the
24 developer, so the warranty company says, "Okay,
25 we'll give you \$500 to cover a \$5,000 job."

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1 That's it. You take the 500 and you have no other
2 recourse. You can't go after the developer.

3 COMMISSIONER MARINIELLO: I don't
4 have anything further at this time, Mr. Chairman.

5 COMMISSIONER FLICKER: Mr. Cardona,
6 I, too, would like to thank you for your
7 presentation and for all of the work you've done
8 on behalf of your neighbors at Society Hill.

9 Let me ask you, it sounds like an
10 obvious question, but, if you had any idea about
11 the problems, would you have moved into the home?

12 THE WITNESS: I would have not moved
13 in and I will never, ever buy into any condominium
14 ever again, let alone any condominium or any
15 building or structure built by K. Hovnanian.

16 COMMISSIONER FLICKER: Have you had
17 occasion to talk to other transition chairmen or
18 treasurers from other Hovnanian organizations?

19 THE WITNESS: Yes. We've actually
20 been -- they've reached out to us and we've
21 reached out to them, but, again, we are all
22 volunteers, we all have lives other than this
23 issue.

24 We have been approached by Tracy
25 Kelley, we shared information with her. A

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1 gentleman over in Wall Township, problems that
2 they are having over there. Of course there is
3 Society Hill in Jersey City, we have
4 communications with them. We shared issues, they
5 told us their horror stories, we shared our horror
6 stories.

7 It's kind of like a fraternity of
8 veterans and we all come to the same conclusion.
9 That conclusion is that we are the little guy and
10 the strategy that is used against us is one of
11 attrition. They know that we cannot endure,
12 either financially or through just personal
13 resources of devoting time to fight this battle,
14 so it's kind of like a lion injuring its prey and
15 just standing back and let it bleed to death.

16 COMMISSIONER FLICKER: You were
17 explaining that you were in some ways between a
18 rock and a hard place and had to choose
19 arbitration instead of going to suit. Could you
20 explain that to us?

21 THE WITNESS: Our transition
22 agreement, that process, the process took about
23 six years to come to, a lot of that has to do with
24 the fact that you have a company with a
25 professional negotiator that enters into a debate

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1 with a board of seven -- seven individual
2 homeowners who are -- usually don't get along, and
3 that's common in every condo association. So they
4 take advantage of that. That's just the nature of
5 the situation.

6 So these agreements can take on --
7 go on for many, many years and, even though
8 associations do rely on management companies and
9 professional engineering firms, those management
10 companies and engineering firms are under the
11 directive of a board of seven, seven individual
12 homeowners, who may or may not have, usually don't
13 have, any experience in what it is to negotiate,
14 so they are at kind of a disadvantage.

15 That's just the way -- that is one
16 way in which the playing field is unlevel. There
17 is no professional negotiator on behalf of the
18 homeowners.

19 COMMISSIONER FLICKER: In your
20 transition phase did your homeowners association
21 hire their own engineering firm?

22 THE WITNESS: Yes.

23 COMMISSIONER FLICKER: Are you aware
24 that, in subsequent developments put up by
25 Hovnanian, they are now mandating that the

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1 homeowners association utilize a -- an engineering
2 firm that Hovnanian picks and the homeowners pay
3 for?

4 THE WITNESS: Yes, I've heard it
5 from -- I've heard this flavor of it. There is an
6 engineering firm out there that they hired, and
7 kind of on the surface it seems like a good idea.
8 Say, we'll hire this engineering firm and this
9 engineering firm is going to inspect the
10 construction of this while it's being constructed
11 and you can have the engineering report and base
12 your transition on it.

13 On the surface it seems like a good
14 idea, if that engineering firm were truly
15 independent, but, once you look into whether that
16 firm -- what its affiliation is with the
17 developer, are they owned by the developer, they
18 have -- what percentage of their annual income
19 comes from contracts with that developer, a lot of
20 questions that come into play.

21 On the surface it seems like a good
22 idea, but I think it falls short.

23 COMMISSIONER FLICKER: Let me get
24 back to one other area you talked about, where you
25 talked about going back to the City of Newark and

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1 saying -- and asking about the remediation work
2 and they said, "Well, no permits were issued,
3 therefore, we didn't know there was any going on
4 and there is nothing we can do," or words to that
5 effect.

6 THE WITNESS: Correct.

7 COMMISSIONER FLICKER: Did you then
8 say to them, "Well, I'm telling you that they are
9 doing some remediation work without permits?"

10 THE WITNESS: Usually I tell them
11 after the work is done. We usually don't know
12 they come on the property. A homeowner will call
13 in and say, "Hey, my sidewalk is missing." I'll
14 say, "What do you mean?" We walk over there and
15 discover that the sidewalk is truly missing and
16 then we discover that they are on the property
17 doing work.

18 By the time we report that to our
19 management company and they, in turn, call
20 Hovnanian, what have you, the work has already
21 been done and completed. We'll go to the city and
22 complain, but the turn-around is just not quick
23 enough to come out and do anything about it.

24 COMMISSIONER FLICKER: To your
25 knowledge, has the city attempted to take any

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1 action against Hovnanian for this sort of hit and
2 miss repair work that they are doing?

3 THE WITNESS: The last time I sat
4 down with Mr. Anstiss --

5 COMMISSIONER FLICKER: Who is Mr.
6 Anstiss?

7 THE WITNESS: He's the building
8 official.

9 COMMISSIONER FLICKER: In Newark?

10 THE WITNESS: In Newark. He gave me
11 a copy -- he kind of -- he said, "You have to see
12 this," and he gave me a copy of an article in
13 which I believe the state court ruled that the
14 municipalities cannot go after developers. He
15 says, "Even if I had the mandate, even if I could
16 help you, there is nothing we can do because we
17 can't do anything other than to perhaps prod them
18 to come to the table and sit down with you, which
19 they have tried, but, beyond that, there is
20 nothing they can do.

21 COMMISSIONER FLICKER: Mr. Cardona,
22 thank you very much.

23 THE WITNESS: You're welcome.

24 COMMISSIONER SCHILLER: Just to
25 follow up on one comment you made, do you know who

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1 owns Dunbar -- is it Dunbar Construction that does
2 the remediation?

3 THE WITNESS: Dunbar Construction is
4 one of the construction firms that has been sent
5 out to do remediation work.

6 COMMISSIONER SCHILLER: Up in
7 Society Hill in Newark?

8 THE WITNESS: Yes.

9 COMMISSIONER SCHILLER: Do you know
10 who owns that company?

11 THE WITNESS: No, I do not.

12 COMMISSIONER SCHILLER: Do you know
13 how much work they do with Hovnanian?

14 THE WITNESS: No, I do not.

15 COMMISSIONER SCHILLER: The question
16 about the -- your particular section of the
17 condominium, you said that you saw the sealed
18 plans that were approved by the planning board?

19 THE WITNESS: Yes.

20 COMMISSIONER SCHILLER: And they
21 were for -- I believe you said they were for ten
22 units?

23 THE WITNESS: Correct.

24 COMMISSIONER SCHILLER: And that
25 there was actually 11 units built?

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1 THE WITNESS: Correct.

2 COMMISSIONER SCHILLER: And that was
3 within ten weeks of the signature of the planning
4 board chairman that they were issued a CO?

5 THE WITNESS: The model unit, which
6 was in that building, the CO for that unit was
7 approximately ten weeks. That is an approximation
8 from the time that I --

9 COMMISSIONER SCHILLER: The
10 agreement that you are trying to work out now with
11 K. Hovnanian, and you mentioned that they would
12 not agree to the tolling agreement, that they
13 would not call for tolling, what was that in
14 regard to? Repairs?

15 THE WITNESS: No. We actually -- we
16 were at a point where our attorney told us, "Well,
17 you are going to have quite a litigation, unless
18 you can find some other way to get them to the
19 table and talk to them about getting repairs done.
20 We really didn't have any proper muscle, so we
21 approached the mayor's office and said, "Can you
22 help us, can you reach out to them and ask them to
23 come and sit down at the table with us?" They
24 said, "Sure," and I think they didn't have a
25 problem doing that, but they wanted some

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1 assurances before we sat down to meet with them.

2 Our attorney recommended that we
3 have the assurance of a tolling agreement just to
4 keep that time from being used against us in going
5 after them in litigation, and K. Hovnanian wanted
6 a specific list of defects that we wanted to
7 discuss, and we couldn't really provide it because
8 we were going beyond that. We wanted to sit down
9 at the table with them and tell them, look,
10 something went wrong, something went really,
11 really wrong, and we know you are not going to
12 come in here and bulldoze every building down and
13 rebuild them, and we know that you are not going
14 to get away without doing something about this, so
15 let's sit down and talk about a solution,
16 something where we can -- that we can both, you
17 know, live with. But they wanted specifics and
18 the specifics we have, but it goes beyond
19 specifics.

20 There are things we don't know
21 about, such as this. This is a water main pipe
22 that fed one of the buildings. This pipe failed
23 because of the seal, which is an improper seal to
24 use in that particular condition. It had a rubber
25 seal on the inside that prevented the electrical

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1 current from flowing out through it and caused it
2 to corrode the pipe here.

3 The interesting thing about this
4 failure, just like any other failure that happens
5 in Society Hill, it's usually water related.
6 Water trickles down and you kind of find that it
7 trickles into other things. That water was coming
8 out of the base of a PSE&G transformer, so we
9 called PSEG and said, "We have water coming out of
10 your transformer," and they said, "There is no
11 water in that transformer. The water is coming
12 from someplace else." So we called the city, the
13 city came out on nine separate occasions and dug
14 nine separate holes looking for a water leak.
15 They couldn't find it.

16 They said, "Well, water is coming
17 from in there, but we don't have anything in our
18 plans to show that there is a water leak there."
19 So the engineer, this is his original note, put a
20 sketch together about what he thought might be the
21 location of the water main. We had to hire an
22 engineering firm to come out, sight the water
23 main, find it, another firm to come out, a
24 construction firm, to dig it up just to find this.

25 Now, I took this to the head of

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1 water and sewer and I showed it to him. I said,
2 "How is that?" He said, "Where is it from?" I
3 said, "In the ground." He said, "That couldn't
4 be, that's not allowed." I said, "Well, not only
5 is it not allowed and not only was it there, but
6 they tapped into a water main and the city has no
7 record of their ever tapping into that water
8 main." They said, "Well, that's an illegal tap,
9 then." I said, "Well, it is what it is, whatever
10 it is, but that's what we found."

11 This is what we are talking about.
12 You can't put this on paper in specific, because
13 we don't know where it exists until something
14 fails. So, there is approximately 39 buildings,
15 each building has approximately two water feeds,
16 and do the math. There is a lot of these out
17 there waiting to fail. This repair took, to my
18 estimate, about \$35,000 over, what, a \$5 seal.

19 COMMISSIONER SCHILLER: Plus they
20 tapped directly into the line without a meter?

21 THE WITNESS: Right.

22 COMMISSIONER SCHILLER: Mr. Cardona,
23 we have received a copy of an invitation. I was
24 wondering whether you were invited to the Kevork
25 S. Hovnanian and Ara K. Hovnanian cordially invite

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1 you to join the members of the staff of K.
2 Hovnanian Companies at a cocktail reception on
3 Wednesday evening --

4 THE WITNESS: When?

5 COMMISSIONER SCHILLER: -- Wednesday
6 evening, November 19, 2003, from 5:30 to 8:30 at
7 Bally's Park Place Casino Hotel, Ocean Ballroom,
8 Sixth Floor, Atlantic City. I was wondering if
9 you received one of those.

10 THE WITNESS: No.

11 COMMISSIONER SCHILLER: Wait.
12 Counsel will show it to you.

13 THE WITNESS: I usually know when
14 his convention is taking place because that's
15 usually when I can't find anyone in any
16 municipality. Not just Newark, but Elizabeth,
17 Roselle, everyone is going there.

18 I actually did receive an
19 invitation, but it wasn't by a developer, it was
20 by Senator Ron Rice. It was a congratulatory
21 event on his behalf, but I did not receive one of
22 these, although I would like to attend.

23 COMMISSIONER SCHILLER: Well, I
24 don't know whether I can invite you, but that's
25 the invitation that's out there. Apparently a lot

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1 of other people got it.

2 Do you know whether Mrs. Moore got
3 one?

4 THE WITNESS: Mrs. Moore?

5 COMMISSIONER SCHILLER: Yes.

6 THE WITNESS: Probably not.

7 COMMISSIONER SCHILLER: Mr. Cardona,
8 I know that everybody here on the committee has
9 said that, and we all deeply appreciate your real
10 sense of community, caring for others, and
11 basically outrage, as justifiable as it is at an
12 unbelievable situation where government systems,
13 private systems and everything has failed to
14 provide you and protect the other owners in
15 Society Hill of Newark and other places, so,
16 bringing that to our light and, hopefully, to the
17 light of our elected officials will help to change
18 some of that and give the tools to people who can,
19 quote, remedy what's already been done and prevent
20 whatever is going to be happening in the future
21 from ever happening again, and I'm personally very
22 grateful to your coming in and spending so much
23 time with our staff and with us here at the
24 Commission and I'm deeply appreciative and so are
25 all the Commissioners.

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1 THE WITNESS: Thank you.

2 COMMISSIONER SCHILLER: We'll take a
3 five-minute break, if that's okay.

4 (Discussion is held off the record.)

5 MR. GLASSEN: The Commission calls
6 the next witness. Jeffrey Cartwright.

7 Could you stand, please, and be
8 sworn.

9 JEFFREY R. CARTWRIGHT, after having been first
10 duly sworn, was examined and testified as follows:

11 EXAMINATION

12 BY MR. GLASSEN:

13 Q. Mr. Cartwright, would you give your
14 name and your background to the Commission,
15 please.

16 A. My name is Jeffrey Cartwright, I'm
17 an assistant prosecutor in Essex County. I'm the
18 director of the Essex County Prosecutors Arson
19 Task Force. I was with the prosecutor's office
20 from 1982 until 1990, three years in private
21 practice, returned to the prosecutor's office in
22 1993. I have a total of 18 years as an assistant
23 prosecutor. I've been director of the arson unit
24 for five years.

25 Q. Do you have any training in arson

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1 investigations?

2 A. Yes, I do. I have attended a
3 week-long course offered by the United States
4 Department of Justice down in Glencoe, Georgia on
5 arson investigation for prosecutors. I have
6 completed the 90-hour course from the Division of
7 Criminal Justice in arson investigation. I have
8 also attended several seminars and programs
9 involving arson and other fire-related
10 investigations, and I have attended National
11 College of District Attorneys arson for
12 prosecutors course down in South Carolina.

13 Q. Mr. Cartwright, could you describe
14 for the Commission your responsibilities as
15 director of the arson task force?

16 A. The Essex County Arson Task Force is
17 a multi-jurisdictional group of fire
18 investigators. We have county investigators, we
19 have members from the sheriff's department, local
20 fire departments, local police departments working
21 together. We work with the local municipalities
22 in responding to certain fire events, which is set
23 out in the protocol. Generally, large-scale
24 fires, fires in which people are killed or
25 seriously injured, in which there is a large loss,

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1 county property, places of worship, and any time a
2 local fire official feels the need for assistance,
3 we go to assist them in the investigation of a
4 fire.

5 Q. Does your position require you to be
6 familiar with enforcement of the Uniform Fire Code
7 in the County of Essex in the City of Newark?

8 A. It has become that way, yes.

9 Q. Do you have an opinion as to the
10 Uniform Fire Code inspection enforcement in the
11 County of Essex?

12 A. My opinion is that it is not
13 uniform, that it is deficient in many respects,
14 especially within the urban areas of the county.

15 Q. And could you explain that to the
16 Commission.

17 A. Yes. First of all, it's generally
18 not the prosecutor's office's responsibility to
19 oversee regulatory responsibilities.

20 The only reason that I got into it
21 and my unit got into it was we had several fires
22 in which it was quite apparent during our scene
23 investigation that either the causes of the fires
24 or results of the fires were things that could
25 have been or should have been prevented by

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1 adherence to the Uniform Fire Code. Many cases of
2 deaths and serious bodily injury. And there is a
3 statute that was enacted by the legislature in
4 1997, 2C:40-18, entitled "Violation of Laws
5 Intended to Protect the Public Health and Safety,
6 and what that statute says is that if someone
7 knowingly violates a law intended to protect the
8 public health or safety or knowingly fails to
9 perform a duty required under such a law, and
10 someone is recklessly either killed, seriously or
11 significantly injured as a result of that failure,
12 then that's a criminal offense. Second degree in
13 the case of death, third in serious bodily injury,
14 fourth in significant bodily injury.

15 So we started to look at these fires
16 to figure out, well, if there was a violation, how
17 do we prove the knowing violation, and to do that
18 we take a look at the regulatory history of the
19 building, try to see who inspected it, was it
20 inspected, was it registered as required under the
21 laws and, if so, let's get the inspection and see
22 if we can find service of the violation notices
23 upon the owners or the agents and work that way in
24 order to prove this element of the offense.

25 We met with a fairly frustrating

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1 result in our initial forays to do that. We
2 thought it would be fairly simple, just go into
3 fire officials' files or code enforcement files
4 and retrieving the inspection results and the
5 violation notices and whatever occurred after
6 that, and that's when we discovered that there was
7 a real problem in the coordination of the
8 inspections, the Notices of Violations going
9 between the different jurisdictions to the owners,
10 and having those conditions abated, and we looked
11 into it and we found deficiencies both on the
12 local level and on the state level that
13 contributed to the problem.

14 Q. Where did most of your
15 investigations originate?

16 A. Most of them originate in older
17 housing in the City of Newark and Irvington, East
18 Orange, those environs.

19 Q. Did you find evidence that there is
20 a failure to enforce the Uniform Fire Code in
21 residential dwellings in Newark?

22 A. Yes, we did. You know, just -- by
23 residential dwelling, the code only applies to --
24 it doesn't apply to owner-occupied one and
25 two-family dwellings. So we are talking about

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1 those buildings, you know, three-family and above,
2 basically, that fall under the Uniform Fire Code,
3 but aren't considered life hazard uses under the
4 code.

5 Q. During the years 2001 and 2002 were
6 there a series of fires in the City of Newark?

7 A. Well, yes, particularly that
8 involved this aspect of what we were looking at.
9 There are always fires. It -- one of the fires
10 took place at the address -- it's now a closed
11 case, I can speak about it -- 301 Roosevelt Avenue
12 in the City of Newark. It's a large, three-story
13 frame building, balloon frame construction built
14 in the early 20th century. Had been used as a
15 funeral home for years and a residential living
16 quarters on the second and third floors, and
17 that's how it was carried on the tax books of the
18 City of Newark up until 2001 when the fire
19 occurred.

20 This was in July, and what happened
21 was the fellow who was living on the third floor
22 of the building had to jump out a window because
23 of fire coming up from the second floor and he
24 seriously injured his back and is permanently
25 injured as a result of that. And we looked into

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1 it and one of the things we discovered was this
2 building, besides being on the tax rolls
3 incorrectly in the City of Newark, Newark didn't
4 seem to know it was a multi-family dwelling,
5 according to their official records.

6 So we went into the fire
7 department's records. Turned out in 1994 there
8 had been a fire there and a fire captain on the
9 responding engine filed a report saying it appears
10 to be an illegal six-family house, and sent out
11 different notices to places in Newark that are
12 supposed to take care of such things, and
13 apparently nobody took care of anything and, when
14 we went to those other agencies, we couldn't find
15 any record of that referral in any files, and then
16 over the years it appeared that Newark's code
17 enforcement had been there on a few occasions on
18 different complaints on conditions in the
19 building. None of them seemed to pick up the fact
20 that it was an illegal six-family house that was
21 supposed to be a funeral parlor.

22 And turned out in November of 2000
23 the state inspected it, DCA inspected it, Bureau
24 of Housing Inspection, to be particular, came and
25 inspected the building, and we don't know why,

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1 they couldn't explain to us why they went there,
2 because it wasn't registered as it should have
3 been, as a multi-family dwelling.

4 In November they go in there and the
5 inspector does a report and, according to the
6 bureaucratic procedures of the Bureau of Housing
7 Inspections, the Notice of Violations don't go out
8 for two months. And included in their inspection
9 reports are fire code violations, and it turns out
10 that, from this case, we learned that the Bureau
11 of Housing Inspection does not tell the fire
12 official in the City of Newark when they discover
13 fire code violations in their inspections, and
14 they also don't order a reinspection of the
15 property until they've gotten payment on the
16 registration.

17 So I don't know what the rationale
18 of that is, but they won't go back and inspect a
19 property to protect the tenants until they receive
20 a payment from the owner of the building for the
21 registration.

22 Q. Could you explain that a little bit
23 further to the Commission, why a registration is
24 important and how that works for multi-family
25 dwellings?

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1 A. Yes. There is a state law, the
2 Hotel and Multiple Dwelling Act, and regulations
3 promulgated under that, that require the owners of
4 these multi-dwellings, which is defined as
5 three-family and above, to register, and they pay
6 a registration fee which is supposed to cover the
7 cost of the inspection and then they deal directly
8 with the state in getting it reinspected and
9 paying any penalties that are for things that are
10 discovered during the course of the inspection.

11 Those records are kept by the State
12 of New Jersey. They are kept in Trenton. They
13 are not kept in the local municipalities and, as
14 far as I know, the local municipalities were not
15 given any access to those records, really. So the
16 fines that got paid got paid to Trenton. They
17 didn't go to Newark, they went to Trenton.

18 Q. What is the significance of the
19 fines being paid to Trenton as opposed to Newark?

20 A. Well, in the case of the fire code
21 violations, it could be significant because, under
22 the enforcement procedures that are set out in the
23 Uniform Fire Code, it's the responsibility of the
24 local fire official to enforce the fire code in
25 the city, not the state. It's the responsibility

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1 of the fire official, and the fire official, in
2 issuing a violation, is supposed to keep the owner
3 on a fairly short leash.

4 And then, if there is a request for
5 an extension, the fire official has to make sure
6 the request is in writing and can only grant it if
7 it's shown that there is no danger to people
8 living in the building.

9 Well, it just seems that the way the
10 state did it or does it, there is incredibly long
11 periods of time and, from what we've seen, years
12 to go from the time of the original inspection to
13 potential abatement.

14 Q. When you say a request for an
15 extension, you mean an extension of the hazard
16 that could be threatening the inhabitants?

17 A. Yes, a request to put off the time
18 for abatement. Now, the state's times for
19 abatement is generally five months from the time
20 of the original inspection, so it's much longer
21 than the 15 to 30 days granted by the fire
22 officials.

23 Q. With respect to the example that you
24 were explaining to the Commission, would
25 enforcement of the Uniform Fire Code have

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1 prevented the tragedy in --

2 A. Yes, it would have, in several
3 respects.

4 Q. How would it have done that?

5 A. Well, because it was an illegal
6 occupancy, there had been substandard electrical
7 work done in the building. The problem -- if you
8 have an illegal occupancy, you can't go downtown
9 and get a permit to have the work done because we
10 are going to find out on the inspection that you
11 have an illegal building. So what we found in a
12 lot of cases is, instead of getting permitted work
13 done, you get unlicensed people to do the work and
14 it's substandard work, and especially with
15 electrical work you just have fires waiting to
16 happen.

17 In this particular building, not
18 only was there substandard electrical work, but
19 there were no self-closing fire-rated doors on the
20 hallway door in the second floor apartment, as
21 required by the fire code. The fire broke out on
22 the second floor, burned through the door on the
23 second floor -- it was left open. Actually, the
24 wall burned out, the door was left open, it didn't
25 self close. That's -- the heat and smoke that

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1 went up the central stairwell to the third floor
2 where the guy is living in an illegal apartment
3 that had been discovered in 1994 without a fire
4 escape. So he's only got one way out of the
5 building and that's down the central stairwell.
6 The central stairwell is filled with fire and
7 smoke so he takes a header out the window.

8 Q. What happened to the owner of the
9 building as a result of your investigation?

10 A. He pled guilty to a third degree
11 violation of the law intended to protect the
12 public health and safety. To my knowledge, it's
13 the first conviction in the State of New Jersey.

14 Q. Did there come a time when you were
15 concerned enough about the number of
16 investigations and what you were finding that you
17 contacted the Department of Community Affairs?

18 A. Yes. I had brought this to the
19 attention of my bosses and to then acting Essex
20 County Prosecutor, Donald Campolo, and we
21 discussed it and I drafted a letter for his
22 signature to go to the commissioner of the
23 Department of Community Affairs just outlining
24 some of our concerns of what we had found to bring
25 it to their attention, because it seemed, from

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1 what we had seen, that there wasn't only a problem
2 on Newark's level, which we weren't that surprised
3 about, but at the state level two agencies within
4 the department seemed to be -- have competing
5 interests. Those being Bureau of Housing
6 Inspection and the Division of Fire Safety.

7 Because it was under the Uniform
8 Fire Safety Act, it was the Division of Fire
9 Safety that had responsibility for fire safety in
10 the State of New Jersey, not Housing Inspection.

11 So I wrote the letter for acting
12 prosecutor Campolo's signature and it got sent
13 out.

14 Q. Did the Department of Community
15 Affairs inspect the Newark fire official's office
16 and audit them following your letter?

17 A. Just one moment. Let me make sure I
18 get my dates right here. Actually, the audit had
19 been done before I sent the letter. The audit had
20 been done in April of 2001, and this is under a
21 random audit program required under the Uniform
22 Fire Code.

23 What I did was, after we met with
24 people from DCA, I had asked for a copy of the
25 audit and the responses of the Newark fire

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1 official because, under the Uniform Fire Code
2 again, they have 15 days in which to file
3 exceptions and to provide explanations as to why
4 they don't think the audit is correct. So I did
5 write a letter to -- or I made a request, rather,
6 to assistant prosecutor Charles Richmond for the
7 monitoring report. This was in August of 2002,
8 and he did send me a copy of the monitoring
9 report, which had been written in June of 2001.
10 Then I wrote back and I said, "Well, can I have
11 Newark's response to the auditing report required
12 under the law?"

13 And I eventually got one that's
14 dated September 16 of 2002, so it wasn't until I
15 made the inquiry down to the Division of Fire
16 Safety that Newark even bothered to respond to the
17 report of June, 2001.

18 Q. At some point did the City of Newark
19 take over responsibility for the five-year
20 inspections of registered buildings in the state?

21 A. Yes. This is what I've been told, I
22 can't find any record of it, however, that, under
23 the Bureau of Housing Inspection's regulations,
24 there is a provision that the local municipality
25 can designate an LEA, a local enforcement agent,

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1 to take care of this stuff. Some of it is called
2 the SHLIP program. I don't even know the exact
3 letters of the acronym and I can't tell you what
4 it means, but basically it's that they became
5 BHI's agents, in terms of doing these five-year
6 cyclical inspections on multiple dwellings, as
7 required in the Multiple Dwelling Act, and I had
8 interviews with the -- Mr. Curtis Watts, who is
9 the director of inspections from BCI, and Adrianna
10 Holme, who is the supervisor of inspections for
11 the Newark area for BCI, and they informed myself
12 and my investigators that, yes, there was a time
13 when Newark took it over, they maintained the
14 files and they were in charge of the inspections,
15 which means that they do the inspections, send the
16 notices down to Trenton to be issued and then
17 Trenton still took care of the enforcement of
18 violations.

19 But at some point that ended and,
20 when I tried to find out how and when that ended,
21 the explanation I received is that, basically, it
22 was a phone call. Newark called up and said, "We
23 are not doing it anymore," and that was it and
24 there was no formal transfer of the files, as
25 required by the regulations. It's supposed to be

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1 a six-month period, you know, let's get the files,
2 let's look at them, see what's open, what the
3 inspection status is, and apparently that didn't
4 happen and, according to the people I talked to at
5 BHI, they had to start from scratch.

6 So they really didn't even have the
7 inventory of the multiple dwellings in Newark when
8 they started their reinspection process sometime
9 in the mid to late '90s.

10 Q. Do you recall a case in 2002
11 involving a multi-family residence where
12 substandard electrical work had been done without
13 required permits or inspections and a fire started
14 in the basement and spread up through the walls,
15 trapping two young girls on the third floor?

16 A. I remember it very well. I was
17 there.

18 Q. What was the result of that fire and
19 your investigation?

20 A. Well, the result of the fire was two
21 dead children. It was a six-family, three-story
22 wood frame tenement. Wood frame construction.
23 The fire started in the basement. It was not an
24 arson fire. The exact cause I'll leave for
25 investigators to describe, but it was related to

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1 the electrical system in the house. The furnace
2 was not operable in the house. Residents of the
3 house were using electric heaters throughout the
4 apartments.

5 It was one of the colder nights of
6 the year, I think it was February 4, 2002, one of
7 the only real cold nights we had that year, and
8 one of the conduits -- electrical conduits in the
9 basement became overheated and set a wood hewn
10 beam on fire in the basement, and that appears to
11 have been the point of origin of the fire and
12 spread upward through the outside of the building
13 and trapped the children on the third floor.

14 The inspection of the basement was
15 kind of difficult because the building collapsed
16 on top of it. It was just a pile of rubble by the
17 time the fire was suppressed. It did spread to
18 two adjacent structures, as well, destroying them.
19 There weren't any further injuries.

20 We got a search warrant and got a
21 crane, lifted the remains of the building off the
22 basement and took -- we removed the electrical
23 panels from the basement. And I saw the pictures
24 of the panel earlier from Society Hill. The
25 panels in this basement showed that the service

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1 came in to six different meters and everything
2 beyond the meter had been altered, and that
3 originally there had been BX cable, which is an
4 armor-clad electrical cable serving the building.

5 All of the BX -- and I'm not an
6 electrician, but the simple explanation is that
7 the metal sheathing serves as the ground of the
8 system. That had all been cut away and with what
9 we call air splices, that's just wires connected
10 in midair with tape, instead of in a box as they
11 are supposed to be, the BX was replaced with
12 Romex, which is a three-wire flexible cable, but
13 you can't -- unless you have exactly the right
14 boxes and the right connectors, you are not
15 connecting the grounds, so all of the service in
16 the building above the basement, or past the
17 panels, was ungrounded, so we had an entirely
18 ungrounded building and the furnace was out and
19 everybody was using electric heaters. It was kind
20 of just an invitation for disaster.

21 And what we found is that the fire
22 department had been there a couple weeks before
23 the fire and discovered that the furnace was out
24 and had notified the city, tried to notify the
25 owner, but nothing had been done, so people

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1 remained in the building without a functioning
2 furnace, and nobody did anything either to get
3 them out of there or to remediate the situation.

4 So we went to get the records from
5 BHI, because it was a registered building, it was
6 properly registered with the state, to find out
7 what's with this electrical system. Why do we
8 have an ungrounded system in this building? And
9 we did find that it had been inspected I think
10 four years previously. There was no notice or no
11 notation on that inspection report of this new
12 wiring and we couldn't tell when the wiring had
13 been put in, it was just generic Romex, there is
14 no way to tell.

15 All we found, in terms of on the
16 original inspection report, was the violation for
17 the meter room was that the electrical fixture
18 didn't work; that is, the light didn't work in the
19 meter room. So we wanted to get the reinspection
20 reports and, when we requested them from BHI, we
21 were told that, "Well, the building is destroyed,
22 so we destroyed the reports." There was no record
23 whatsoever of what happened at that building after
24 the original inspection four years before, so we
25 didn't have any way to prove a knowing violation

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1 in that building.

2 What we do have some evidence of is
3 a failure to perform the duty, as required under
4 the code, but, again, it's knowing. Without the
5 records it's pretty much impossible, so we were
6 kind of met with a situation where it was somewhat
7 of a dead end.

8 Q. Can you share with the Commission
9 your opinion as to how serious this problem is?

10 A. It's a very serious problem. This
11 is my opinion based upon having responded to fires
12 in Essex County for the past five years and
13 witnessed many too many fatalities and serious
14 injuries and destruction of property.

15 We have a lot of very old housing in
16 some of our urban areas in Essex County. It's
17 very vulnerable. It's built before the statewide
18 Uniform Construction Code came into effect, for
19 whatever good that does, apparently, but the
20 buildings are wood frame predominately, a lot of
21 them are balloon frame. That means there is
22 nothing stopping the fire from going from the
23 basement to the cockloft. There is no barriers in
24 the construction.

25 They are generally occupied by some

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1 of our most vulnerable population, recent
2 immigrants. This is some of our lowest cost
3 housing in the county and these are folks who, not
4 having grown up in the environment of regulated
5 protected housing, don't realize what's supposed
6 to be in place in these buildings, so they don't
7 know enough to complain or bring it to the
8 attention of the proper officials, and just like
9 just about anything else that's a failure of a
10 fire protection system, you find out too late, so
11 that's -- when we've been finding out, it's too
12 late.

13 And, from our examination of, you
14 know, had the fire code been in force, it just
15 seems that, in large part, it's taken on a
16 bureaucracy of its own and serves the bureaucrats
17 a whole lot more than it serves the people who
18 live in this housing, and that basically my
19 opinion is that, if you are a poor person living
20 in this housing in the City of Newark, you don't
21 have any reason to go to bed feeling safe.

22 Q. From your perspective as an
23 investigator that -- perhaps not a regulator, but
24 as an investigator having surveyed the regulators
25 and the regulations, would you have any

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1 recommendations to the Commission in this area?

2 A. Yes. One is to get BHI out of the
3 business of fire inspection. Put it with the
4 people who have the duty and responsibility under
5 the law. That's the fire officials and local
6 enforcement agents. If there isn't a fire
7 official in the town, then it falls on the state,
8 but it falls within the Division of Fire Safety,
9 not the BHI. Just get them out of the business.

10 One way to do this is simply to make
11 multi-family dwellings life hazard uses under the
12 code because, if they are life hazard uses, that
13 would require periodic inspections by the fire
14 officials within the municipalities to ensure that
15 trained fire inspectors go out and look at these
16 buildings. The housing inspectors are not trained
17 fire inspectors. They are not certified, they are
18 not trained. Get the right people at the right
19 place to do the job with the right enforcement
20 capabilities and the right time frame to protect
21 the people in the buildings.

22 MR. GLASSEN: Mr. Chairman, I have
23 no further questions.

24 COMMISSIONER MARINIELLO: I have a
25 question on the six-family that was formerly a

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1 funeral home. You said that the owner pled guilty
2 to a charge in that case?

3 THE WITNESS: Yes, he did.

4 COMMISSIONER MARINIELLO: Was that
5 under the statute that you previously cited?

6 THE WITNESS: Yes, it was.

7 COMMISSIONER MARINIELLO: Does that
8 statute -- I'm not familiar with it as I sit here
9 today. Does that statute allow you to -- as the
10 prosecutor, to prosecute municipal and/or state
11 officials, as well, under that provision?

12 THE WITNESS: There is no exclusion
13 of municipal or state officials, certainly. It
14 would be for anybody who knowingly fails to
15 perform a duty under a law intended to protect the
16 public health and safety.

17 Just to expand that a bit, when that
18 statute was passed there was another statute
19 passed at the same time which came under Chapter 2
20 of 2C which defined that little part about a duty
21 required, and it specifies the Uniform Fire Safety
22 Act, the state Uniform Construction Code Act, as
23 well as any regulations or codes enacted
24 thereunder. So it does specifically broaden
25 things to failure to enforce the regulations, not

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1 just statutes themselves.

2 COMMISSIONER MARINIELLO: Has your
3 office or do you know of other offices that have
4 attempted to prosecute government officials under
5 that particular provision?

6 THE WITNESS: To my knowledge, no
7 charges have been brought. In terms of other
8 offices, I can't speak, other than I have taught a
9 class on this to the arson investigation
10 recertification, and there was a lot of interest
11 in bringing that back to the various counties that
12 it came from to make them aware of the statute.
13 The statute is not really well known. It did not
14 arise from a fire situation. It was passed in
15 response to a stampede in a nightclub in Newark
16 back in 1994, I think it was -- in Elizabeth, I'm
17 sorry. But the statute certainly applies in a lot
18 of different situations involving laws intended to
19 protect the public health and safety.

20 COMMISSIONER MARINIELLO: It sounds
21 to me like some of the problems, particularly with
22 the Newark examples you cited, go directly to the
23 lack of communication between the authorities that
24 are involved, and your recommendation seems to
25 suggest, by cutting out BHI, you are almost

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1 streamlining the process of informing the local
2 officials of the fire inspections when they occur
3 and what the violations are. Does that sum that
4 up?

5 THE WITNESS: It does. It also
6 makes the local officials more responsible. I
7 would note that, when the Newark fire official
8 finally issued a response to the audit that was
9 done a year and some months earlier, he cited in
10 his letter the fact that BHI was primarily
11 responsible for the inspection of multi-family
12 dwellings. So he was kind of passing the buck.

13 COMMISSIONER MARINIELLO: Thank you,
14 Mr. Cartwright. Mr. Chairman.

15 COMMISSIONER EDWARDS: Thank you
16 very much, and your efforts in this area, I think,
17 should be duly noted by everyone here. The
18 statute in question that someone was asking you
19 about, in order to prosecute somebody requires a
20 physical injury or personal injury to somebody in
21 order to do that prosecution, am I correct?

22 THE WITNESS: Yes. Anything from
23 significant bodily injury to death, as defined in
24 the law, yes.

25 COMMISSIONER EDWARDS: Should we --

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1 just getting to recommendations, because we are
2 coming at this to try to correct and fix things
3 that are broken in this inspection -- all fire,
4 all of the code inspections that might exit.

5 Should we be providing for some kind
6 of criminal prosecution for people who just fail
7 to do their job in a grossly negligent way at any
8 level, whether it be a builder, and putting people
9 at risk for physical and bodily harm?

10 We just heard an explanation before
11 your testimony of firewalls and potential fire
12 violations across an entire development. We saw
13 photographs of a multi-family development in
14 another municipality in which it looks like the
15 fire codes were not, in fact, followed, putting up
16 fire safety walls and things of that nature.

17 Should we be modifying our criminal
18 code to provide some kind of criminal sanctions
19 for people who, at some measurable level -- I'm
20 not talking about making a mistake. I'm talking
21 about something significant. Should we have -- we
22 have enough evidence of that level of gross
23 negligence in some of our communities around the
24 state that it might be enough to do that.

25 THE WITNESS: I certainly would

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1 recommend that the panel seriously consider that.
2 There are certain provisions, also, of 2C:17-2
3 which is causing a risk of widespread injury and
4 damage and there is language in there that it be
5 at least explained or expanded. That may be
6 useful to prosecutors investigating this.
7 Certainly 40-18 is useful, but somebody has got to
8 get hurt, so, unless somebody is hurt, we can't
9 investigate under that statute. We have no basis
10 for getting a search warrant or anything like
11 that.

12 It would be helpful -- certainly
13 other parts of the criminal code that deal very
14 strictly with fire, explosives and other very
15 dangerous situations in which the kind of
16 culpability required goes down to a negligent
17 level.

18 Certainly the first line of
19 protection for citizens of the state are the
20 people who are intended to enforce the code to
21 make sure that people are educated about it and
22 that these conditions are, in fact, met, so I
23 would recommend it, yes.

24 COMMISSIONER EDWARDS: We also want
25 to be careful not to have witch hunts for people

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1 who make innocent mistakes. It really should be
2 more than just an error or oversight. It should
3 be something a little more than that, I would
4 think. Do you?

5 THE WITNESS: Oh, absolutely. For
6 one thing, I come from a county where we are not
7 hurting for business, so we don't need 10,000 more
8 cases a year, but I never would recommend that
9 people would be prosecuted merely for negligent
10 behavior, but, when you undertake a dangerous
11 enterprise, you have to expect to be held to a
12 higher level of responsibility than people who do
13 not.

14 As people know that going in, they
15 have to know what their responsibilities are and
16 they have to know about the potential fallout,
17 what happens if they don't do it properly, but
18 the -- like the wording in 40-18 is "Knowingly."
19 There has to be knowing failure. I think that
20 adequately protects people from just simple
21 negligence.

22 COMMISSIONER EDWARDS: Thank you
23 very much. I have nothing further.

24 THE WITNESS: You're welcome.

25 COMMISSIONER FLICKER: Mr.

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1 Cartwright, you were in the audience and saw some
2 of the pictures we all saw of the conditions at
3 Society Hill in Newark, and I'm sure you also
4 heard the residents' attempts to get it rectified,
5 obviously putting the owners and the city on
6 notice of what the conditions are in that complex.

7 If, God forbid, there were a fire
8 there and someone were significantly hurt, what
9 would your opinion be of some kind of criminal
10 prosecution emanating out of that complex?

11 THE WITNESS: There would be an
12 investigation and, having learned what I learned
13 today, it would be a very interesting historical
14 evaluation of what happened at that complex.

15 COMMISSIONER FLICKER: So that the
16 knowing aspect that is required for criminal
17 prosecution then can be provided by later
18 behavior, say, example, by the homeowners who
19 bring to the builders' attention the existing
20 conditions and document that so that it might make
21 it easier for a prosecution if, God forbid, one
22 has to take place, for you to prove that something
23 is knowing.

24 THE WITNESS: I think that would be
25 very good evidence, Commissioner, you're right.

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1 COMMISSIONER FLICKER: I think so,
2 too. I hope that it doesn't come to that, but I
3 think it's important for everyone to understand
4 that it doesn't just have to be knowing conduct at
5 the time the building is built, but that evidence
6 of knowing can come later by action by the
7 homeowners or subsequent inspections or whatever
8 that may be, and I think that remedies like
9 criminal prosecution aren't even in builders' or
10 code officials' vocabulary.

11 THE WITNESS: I would agree with
12 that. A lot of times I find people have a
13 business plan that will incorporate paying fines
14 and penalties. It's very hard to have a plan that
15 incorporates being arrested. Good hammer to have.

16 COMMISSIONER FLICKER: Thank you.

17 THE WITNESS: Thank you,
18 Commissioner.

19 COMMISSIONER FLICKER: Thank you for
20 all your work on behalf of the citizens of Newark.
21 As a former prosecutor, it is always nice to see a
22 fellow prosecutor and one that's obviously very
23 well taxed by the conditions in Essex County, so
24 thank you on all of our behalf.

25 THE WITNESS: Thank you for inviting

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1 me. It's been a pleasure. It's been very
2 educational.

3 COMMISSIONER EDWARDS: I have one
4 more. Any prosecutor is always taxed, I think.

5 I gathered from -- not just from
6 your testimony, from all the testimony I've heard
7 so far over the last day and a half, some of the
8 other records that I've been reading, and I'll use
9 an example. It was described earlier that one of
10 the residents in the Newark development had a plan
11 filed by K. Hovnanian of a ten-unit building that
12 was being built and the stamp indicating a certain
13 date. Ten weeks later 11 units were built and
14 there were no records between -- there are no
15 records between the CO, which is a document, and
16 the document of the original plan that was filed.

17 This seems to be replete in many
18 circumstances where the mandated recordkeeping of
19 government, in its inspection process, and the
20 details of records that we require versus ones
21 that some municipalities keep, because I know some
22 municipalities keep very effective records on
23 every piece of construction, they get signed and
24 sealed and certified plans in advance, depending
25 on the quality of the people in the positions

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1 sometimes, but shouldn't we be requiring better
2 records? Wouldn't that make your job a little bit
3 better?

4 THE WITNESS: It would seem that you
5 wouldn't need to even make that recommendation,
6 that it should be done by the people who have
7 responsibility to do it, but certainly a reminder
8 to everybody that it needs to be done would
9 enhance everybody's ability to enforce the laws
10 that are on the books as they are now, and in some
11 cases I think it would help the municipal leaders
12 wake up to the fact that they have to invest the
13 resources to make sure that that does get done
14 properly.

15 COMMISSIONER EDWARDS: I am appalled
16 at the lack of records that are available that we
17 can trace back and say this was supposed to be
18 done this way and we have no record of what
19 happened, or what, in fact, was done, and -- but,
20 thank you very much.

21 THE WITNESS: My pleasure.

22 COMMISSIONER SCHILLER: Mr. Cardona,
23 just speaking a little bit about records, what has
24 your experience been with the Division of Fire and
25 Safety in Newark in terms of recordkeeping?

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1 THE WITNESS: The Division of Fire
2 Safety has been very forthcoming with the records
3 that they have. Understand that the fire
4 departments operate autonomously from the Division
5 of Fire Safety. It is not even a law in the State
6 of New Jersey that fire incident reports get
7 filed, unlike police reports. There is some
8 voluntary compliance with that, but one of the
9 problems we have is trying to find out even the
10 fire history of a building. We can't go to a
11 repository of the records.

12 The Division of Fire Safety has, I
13 think -- I don't want to speak for them, but, from
14 what we've observed in the Department of Community
15 Affairs, there seems to be a slight tension
16 between the Division of Fire Safety and the older
17 Bureau of Housing Inspection as to who has the
18 responsibility for making sure that these
19 conditions and these regulations are enforced, so
20 I think the Division of Fire Safety has a lot on
21 its plate and Director Petrillo has done a lot, I
22 think, to advance that position and how they've
23 been working, but it's still -- they have the
24 responsibility to make sure the local officials do
25 their job and that....

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1 COMMISSIONER SCHILLER: Is it your
2 impression that that is not being done at DCA or
3 is not being done as fully as it should be?

4 THE WITNESS: Well, as Commissioner
5 Edwards just mentioned, some towns are very, very
6 good at keeping their records. I know -- and this
7 is anecdotal only -- that some towns have been
8 audited several times during the course of the
9 past several years and the Division of Fire Safety
10 auditors have been very thorough and very precise
11 as to requiring a certain way that records be
12 maintained, and I compare that with what I have
13 seen of the audit conducted of Newark, the
14 response and the follow-up, and I have to just
15 note the disparity, that there seems to be a very
16 wide difference between what's expected of the
17 suburban municipalities and what's expected of the
18 City of Newark, in terms of complying.

19 COMMISSIONER SCHILLER: What has
20 been your experience with DCA, in terms of trying
21 to get them to respond to a --

22 THE WITNESS: After the letter was
23 sent to Commissioner Bass Levin, we didn't get any
24 reply directly from her. Assistant Prosecutor
25 Charles Richmond did contact us, invited us down

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1 for a meeting, and I went down with an
2 investigator, we met with him, and I think
3 Director Petrillo was one week on the job at that
4 point, he was there, there were some people from
5 BHS, Mr. Connolly was there, Bureau of Housing
6 Inspection, some DAGs were there, and we just
7 discussed, you know, the content of the letter and
8 the issues that were raised, and basically --
9 well, I was told flat out by Mr. Connolly that
10 whoever wrote that letter didn't know anything
11 about fire inspection, and that's about where we
12 left off. He said there was no problem, there was
13 nothing to fix.

14 And Assistant Commissioner Richmond
15 has always been very cooperative in getting us any
16 of the records he could locate, anything we asked
17 for he's always been forthcoming, but, in terms of
18 at least advising us of any changes in how the
19 procedures are done, I am not aware of any.

20 COMMISSIONER SCHILLER: So, I mean,
21 if somebody doesn't see any problem, everything is
22 okay the way it is, there isn't much that person
23 can do about it.

24 THE WITNESS: Yes. I mean, there is
25 more than one person in the department, so it

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1 helps when we get up to the commissioner to do
2 something about it.

3 COMMISSIONER SCHILLER: But
4 apparently Mr. Connolly had summed it up as that.

5 THE WITNESS: Summed up his
6 position.

7 COMMISSIONER SCHILLER: Just to
8 follow up on something that Mr. Edwards brought
9 out, was that this -- perhaps shifting the
10 inspections to -- on things to places where we
11 enforce more heavily where there is pervasiveness
12 of this nonadherence to the fire code standards,
13 and one of the other things that seems to me, too,
14 that there is a gap between the single-family
15 homeowner and the two or more families. That
16 doesn't seem to fit anyplace, either, in terms of
17 even from your enforcement part. That, if you
18 look towards taking enforcement so that it would
19 be even applied to single-family homes and would
20 apply, obviously, to Society Hill where there is
21 condominiums and, therefore, if we did attempt to
22 change some of these regulations that, you know,
23 there would be enforcement, even if there was not
24 bodily injury, but, just knowingly, and the
25 pervasive habit of just ignoring fire code safety

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1 issues that you could see, that you would also
2 include that in anything that the commission was
3 talking about, in terms of looking at the statute,
4 to give you a stronger hand, in terms of
5 criminality?

6 THE WITNESS: It would. Certainly,
7 though, in a situation such as a development,
8 Society Hill or any other development, if there
9 was a knowing violation, it could have taken place
10 at any time. With fire code inspection, once it's
11 a single-family unit, it's the owner that's
12 responsible, the person that's living there at
13 that time.

14 And, obviously, a fire official
15 isn't allowed to go crawl around up in the attic
16 to go look at things. That's supposed to be done
17 by the construction officials when the building is
18 going up. Only if something has been breached and
19 they find out about it, if it's a maintenance
20 violation, they can cite them, they give them only
21 three days to fix it.

22 But, if I was going to be conducting
23 this hypothetical investigation in this
24 hypothetical fire, I would look back to whenever
25 the violation occurred and take a look at who knew

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1 about it, who knew about it when, and if it was --
2 whatever officials were involved at that time
3 would have to answer some questions.

4 COMMISSIONER SCHILLER: And go after
5 that individual developer or individual builder?

6 THE WITNESS: We would do a thorough
7 investigation of the facts, for sure.

8 COMMISSIONER SCHILLER: Thank you
9 very much, Mr. Cartwright. I appreciate your time
10 and effort.

11 THE WITNESS: Thank you, Mr.
12 Chairman.

13 COMMISSIONER SCHILLER: We'll break
14 for lunch now. It's a little bit after 1:00. Why
15 don't we say 1:45 we'll come back and resume the
16 hearings.

17 (Recess called at 1:03 p.m.)

18 (Resumed at 1:47 p.m.)

19 COMMISSIONER SCHILLER: We'll resume
20 the hearing, then.

21 COMMISSIONER FLICKER: Good
22 afternoon, ladies and gentlemen.

23 When the State Commission of
24 Investigation undertakes an investigation, it's a
25 bit like turning over a rock in the woods. You

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1 know that something is going to come scurrying
2 out, but you certainly don't expect something like
3 what we encountered. It's like opening a can of
4 worms and having a 24-foot boa constrictor come
5 out.

6 Witnesses this afternoon will
7 describe a system rife with conflicts of interest
8 and compromised ethics. It is a system where
9 government employees, including municipal code
10 officials and inspectors, accept gifts of meals,
11 liquor, parties, and golf outings from builders
12 and developers seeking favors. A system where
13 builder escrow accounts are charged for
14 engineering inspections which never took place. A
15 system where pay-to-play is a proven tactic and
16 where private influence is peddled to the
17 detriment of the public interest.

18 And what about instances where
19 planned new homes never even get built, when
20 builders take your money and then go bankrupt or,
21 for whatever reason, fail to complete the job?
22 It's called builder default and, as you will hear
23 this afternoon, it is a worsening problem in New
24 Jersey.

25 Witnesses will describe situations

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1 where buyers have been left with no alternative
2 but to complete construction on their own. In
3 other cases, unscrupulous builders have simply
4 reorganized to pursue business as usual under a
5 different name. In one such instance, a builder
6 went on ripping off home buyers and
7 subcontractors, even while under criminal
8 indictment.

9 It's not a pretty picture, but it's
10 one we need to examine in some detail if we are to
11 get to the bottom of the abuses in new home
12 construction and inspections.

13 Ms. Gaal, if you'd please call the
14 first witness.

15 MS. GAAL: There will be a panel --
16 or two witnesses, Joseph Becht and Karen Guhl.

17 EXAMINATION

18 BY MS. GAAL:

19 Q. Mr. Becht, may we have your name,
20 please, for the record.

21 A. Joseph Becht.

22 Q. And by whom are you employed?

23 A. The State Commission of
24 Investigation.

25 Q. In what position?

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1 A. Chief accountant.

2 Q. Are you a Certified Public
3 Accountant?

4 A. Yes.

5 Q. And, prior to working -- well, how
6 long have you been with the SCI?

7 A. Approximately seven years.

8 Q. And prior to that where did you
9 work?

10 A. I worked for the Division of
11 Criminal Justice for 20 years as the supervising
12 investigator of the major fraud section and
13 approximately four years for Prudential Insurance
14 Company as a special investigator in their
15 healthcare field.

16 Q. And, Special Agent Guhl, may we have
17 your name for the record.

18 A. Karen Guhl.

19 Q. And by whom are you employed?

20 A. I'm currently a member of the State
21 Commission of investigation.

22 Q. And did you work at the Division of
23 Criminal Justice?

24 A. Yes, I did, for 20 years as a state
25 investigator.

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1 Q. And you are a special agent with the
2 Commission?

3 A. That is correct.

4 Q. This is directed to both of you.
5 Were you both assigned to the Commission's
6 investigation concerning new home construction
7 issues?

8 MR. BECHT: Yes, we were.

9 MS. GUHL: Yes.

10 BY MS. GAAL:

11 Q. Starting with Chief Accountant
12 Becht, did the Commission subpoena the records of
13 various builders in relation to expenditures that
14 they may have made on behalf of municipal
15 employees and local construction office officials
16 and inspectors?

17 A. Yes, we did.

18 Q. And did you personally analyze the
19 records received from the builders to determine
20 whether there was any money expended on behalf of
21 any local municipal officials or code officials
22 and inspectors?

23 A. Yes, I did.

24 Q. And did you prepare a breakdown for
25 us of a sample of some of the money that was

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1 expended?

2 A. Yes, I did.

3 Q. Could we have 193 up.

4 And is this a chart depicting some
5 of what you found?

6 A. Yes.

7 Q. And what I would like you to do is
8 kind of give us an overview, if you would, of the
9 types of expenditures you found and some of the
10 examples of the amount of monies expended.

11 A. Well, it starts off with the
12 municipal officials in the building departments
13 and the zoning departments, planning boards. They
14 received donuts, bagels, trays of sandwiches.
15 They got cookie trays, they got pies, some
16 received flowers. There was a golf trip to Myrtle
17 Beach. There were hotel reservations paid on the
18 part of municipal employees when they attended a
19 convention. There were holiday parties, there was
20 a day at the races.

21 Q. A day at the races is what?

22 A. That was a day at Monmouth Park
23 where you come and all the food and everything
24 else is supplied to you.

25 Q. So, local officials were hosted by a

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1 builder at a day at the races?

2 A. Yes. Normally the cost was about
3 \$46 a person, and we had numbers of approximately
4 how many people attended that.

5 Q. I don't know if you recall, but, on
6 that particular example, were there any local
7 construction officials involved?

8 A. Yes. On the expense reports what
9 they did was, the building official would list the
10 names of the guests that were invited. Sometimes
11 it would just be the town, other instances it
12 would be a department, and in particular they
13 would even list who the people are who attended.

14 Q. I see on your list you've got over
15 \$4600 in gift baskets. Can you give us any
16 information about what those related to?

17 A. They were baskets that were supplied
18 during Christmas, ranging anywhere from 30 to \$50.
19 They contained fruit, liquor, cheese, crackers,
20 whatever.

21 Q. Did you find some examples where
22 builders were hosting holiday parties?

23 A. Yes.

24 Q. How about, do you have an example
25 there of over \$800 in flowers?

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1 A. The flowers were generally for like
2 secretaries' day or, if they found out somebody
3 had a baby, they sent flowers. For Christmas they
4 sent poinsettias to different building officers.

5 Q. League of Municipalities.

6 A. After the -- the League of
7 Municipalities meets -- in fact, I think they are
8 meeting today, but, during November, after the --
9 after each day, some of the builders host parties
10 at different locations down in Atlantic City and
11 invite -- what we saw were just the names of the
12 towns that were invited.

13 Q. Okay. Special Agent Guhl, did you
14 have occasion to conduct a surveillance of a local
15 construction official just this past holiday
16 season, that would be December, 2002, based on
17 information that a local builder was hosting a
18 party for the construction office?

19 A. Yes, we did. It was on December 18,
20 2002.

21 Q. Could you speak up a little bit so
22 we can make sure we hear you.

23 A. Sorry. December 18, 2002.

24 Q. And what did you observe?

25 A. We observed the construction

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1 official entering into a local restaurant located
2 in a shopping mall, and we observed a number of
3 other public employees, and the information that
4 we had developed indicated that it was being paid
5 for by a builder.

6 Q. Now, was the developer one that
7 regularly did business in the municipality in
8 which the construction official was employed?

9 A. Yes.

10 Q. Did you notice other local or
11 municipal officials also attending the same party?

12 A. Yes. We observed the building
13 subcode official, we observed an elected official,
14 we noticed the director of the department of
15 public works and a number of the office staff.

16 Q. And did this occur during the
17 workday?

18 A. Yes, it did.

19 Q. Now, did any of those employees take
20 any personal time to attend that party?

21 A. A review of the time sheets for that
22 day revealed that none of the employees put in for
23 extended lunchtime and, in fact, the building
24 subcode official put in for four hours of
25 overtime.

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1 Q. Now, were we able to actually
2 corroborate this expenditure in the books and
3 records of the builder?

4 A. Yes, we were. We were able, through
5 subpoenas, to determine that the site
6 superintendent for the builder paid for this.

7 Q. Paid for it?

8 A. Paid for it.

9 Q. Now, did you conduct any other
10 surveillance of this particular construction
11 official during the same holiday season?

12 A. Yes, I did. We conducted another
13 surveillance on December 20, 2002.

14 Q. Two days later?

15 A. Yes.

16 Q. And what did you see?

17 A. Well, we learned that the party was
18 being hosted by a builder, invitations had been
19 extended to municipal employees, had been extended
20 to business acquaintances and to the employees of
21 the builder.

22 Q. And did your surveillance
23 corroborate that, in fact, there was such a party
24 and that those individuals were attending?

25 A. Yes. We observed the construction

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1 official, we observed the director of public
2 works, and we also identified four municipal
3 vehicles.

4 Q. Now, again, were we able to
5 corroborate, through the builder's financial
6 records, that this expenditure was paid for
7 through the builder?

8 A. Yes, through subpoenas to the
9 builder and to the restaurant owner, plus an
10 interview of the restaurant owner corroborated
11 that information.

12 Q. Now, Chief Accountant Becht, with
13 respect to the builders we looked at, we did not,
14 in this instance, subpoena these records from
15 every builder, did we?

16 A. No. Only the ones that we were
17 looking at.

18 Q. So, it was a smaller, more selective
19 number of builders?

20 A. Right. We issued approximately 28
21 subpoenas.

22 Q. And looking again at this exhibit,
23 do we have some additional information concerning
24 some of these expenditures?

25 A. Yes, I do.

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1 Q. And is that now up on the screen?

2 A. Yes, it is.

3 Q. And under the category what we call
4 comments or you call comments?

5 A. Yes.

6 Q. And what do those comments --
7 overall what do they represent? Information you
8 found in the files?

9 A. Yes, they were contained on the
10 individual expense reports, I guess to
11 substantiate what they were paying and -- I guess
12 they have to give a reason for taking somebody out
13 for dinner, or whatever it was, and these were the
14 comments that were on their expense reports.

15 Q. In other words, to distinguish it as
16 a business expense, so to speak, from a personal
17 expense?

18 A. Yes.

19 Q. If we might take a look at some of
20 those comments, let's -- the comment number one
21 next to lunches and dinners, you've got two
22 notations there in quotes. Could you read those
23 for us?

24 A. On one of the expense reports it
25 stated, "Maintain relationship, upcoming jobs we

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1 are doing in township."

2 Q. So that, in other words, that's what
3 the builder's records reflected was the purpose of
4 that lunch?

5 A. Right.

6 Q. And the second one?

7 A. There was another one to release the
8 performance bond.

9 Q. So there was a lunch or dinner with
10 some municipal officials for these purposes?

11 A. Yes.

12 Q. How about the golf outings? What
13 notations did you find in the records there that
14 were of interest?

15 A. On one it had, "Needed to keep the
16 name of the project at the name of the township
17 moving."

18 Q. So, in other words, the records say
19 they needed to keep a project in the township
20 moving, so they took somebody to a golf outing?

21 A. Yes.

22 Q. And how about the second comment?

23 A. The second was -- on some of the
24 golf outings they were actually run by
25 different -- this was the code officials

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1 association held the golf outing, which a lot of
2 the builders attended.

3 Q. Now, "On trip to Myrtle Beach," is
4 that all it says?

5 A. Yes, that's what it said, and I
6 think it may have said "Golf outing," but I
7 don't -- it may have been separated.

8 Q. Now, under the comments for holiday
9 parties, the total amount there is over \$38,000.

10 A. That was the total cost of the
11 holiday party on the part of the builder, and
12 approximately -- we noted 24 different public
13 officials who attended that party.

14 Q. At that party?

15 A. Right.

16 Q. At a per person cost of \$92?

17 A. Yes.

18 Q. So that's how you came out with the
19 \$4700?

20 A. Yes.

21 Q. Same thing there with a day at the
22 races. Is that how you came up with that
23 calculation?

24 A. Right.

25 Q. There were \$46 spent per person for

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1 24 municipal officials?

2 A. Yes.

3 Q. One of the quotes, the next quote,
4 is "Maintain good relations." That's how they
5 logged in some of those expenditures?

6 A. Right, when they sent the donuts or
7 the bagels to the different offices, they would
8 put down "to maintain good relations."

9 Q. Now, I notice that it's only \$1160
10 in political contributions, but you have noted it.
11 Why have you noted that?

12 A. Well, it could possibly be a fourth
13 degree crime when a -- an employee donates to a --
14 to a political event and then bills the
15 corporation for that money. It would be okay if
16 he paid it for himself, but, when he then asked
17 for reimbursement on the part of the corporation,
18 it may bring it to a fourth degree crime.

19 Q. And that would be something that we
20 would refer?

21 A. Yes.

22 Q. Now, just so we are clear, did the
23 records that you looked at reveal that these
24 goings on were not just limited to construction
25 officials and inspectors?

-PUBLIC HEARING-

1 A. Oh, no. Some of them listed the
2 mayors -- the names of the mayors, deputy mayors,
3 there were planning boards, some were MUAs, some
4 were various offices throughout the townships.

5 Q. And might there also be personal or
6 other guests invited, too?

7 A. Oh, yes.

8 Q. Are those other employees and
9 officials included in the totals that you cited
10 here?

11 A. No.

12 Q. They are not in the totals?

13 A. No, not at all.

14 Q. So this would be related to
15 construction officials?

16 A. Yes.

17 Q. Okay.

18 A. And -- no. There are some other
19 municipal officials noted here, too.

20 Q. Now, by the way, during our
21 investigation did we find one instance where a
22 builder actually hosted a party which included,
23 among these other highlights, nude dancers and was
24 attended by a subcode official in an unfinished
25 building in that community?

-PUBLIC HEARING-

1 A. Yes.

2 Q. And was that one of the homes that
3 this same subcode official would have been
4 required to inspect?

5 A. Yes, it was.

6 Q. And was any action taken when the
7 community found out about it or the municipality
8 found out about it?

9 A. When they found out about it, he
10 received a 30-day suspension without pay, and
11 eventually the home did get a CO.

12 Q. It got a CO?

13 A. Yes.

14 Q. Didn't we also find that it was not
15 uncommon for builders to make what, for a lack of
16 better term, I'm going to call large donations or
17 gifts to municipalities in which they are
18 building?

19 A. Yes.

20 Q. And tell us a little bit about that.
21 In other words --

22 A. I know. There were three -- we saw
23 three gifts. One municipality got two ambulances
24 and other emergency equipment. Another
25 municipality had a first aid squad building built,

-PUBLIC HEARING-

1 an ambulance was donated and two bays on the fire
2 department were repaired, and another municipality
3 also got an ambulance.

4 Q. Did we see one in which there were
5 \$340,000 donated?

6 A. Yes.

7 Q. Now, did we find that these,
8 quote -- and, for lack of a better word, I'm going
9 to quote -- donations are linked or associated in
10 some way with a developer?

11 A. Yes.

12 Q. And how did you see that linkage?

13 A. Well, they write it into the
14 agreement that they may have to meet Mount Laurel
15 agreements and then they also put in, "In addition
16 we are going to donate \$340,000 for emergency
17 services."

18 Q. Special Agent Guhl, and this
19 question is not just directed to you personally,
20 but, in the course of our investigation, did the
21 Commission question a number of code officials and
22 inspectors and builders' employees about the
23 solicitation and acceptance of gifts and
24 gratuities?

25 A. Yes, we did.

-PUBLIC HEARING-

1 Q. And what did they tell us? In
2 general, what did they tell us?

3 A. Generally, that the builders will
4 provide them and that the officials request them.

5 Q. Did they give us some idea of the
6 nature of what these gifts or benefits are?

7 A. As shown on NCI-193, it was
8 basically dinners, golf outings, holiday baskets.

9 Q. Building materials?

10 A. And building materials.

11 Q. Do the municipal ethics codes in
12 place in all these municipalities prohibit the
13 employees and officials from accepting gifts and
14 other benefits such as we've seen during the
15 course of this investigation?

16 A. Absolutely. We surveyed 50
17 municipalities and utilities. Those that don't
18 have specific codified ethical standards in place
19 defer to the state's local government ethics law,
20 and the language is quite clear.

21 Q. So, either way, whether they had
22 their own or they used the state's, it would have
23 been prohibited?

24 A. Yes. Additionally, the Uniform
25 Construction Code has a provision in it for

-PUBLIC HEARING-

1 conflicts of interest, but it doesn't necessarily
2 relate specifically to acceptance of gifts.

3 MS. GAAL: That's all I have.

4 COMMISSIONER MARINIELLO: The
5 agreement that you are saying that you, I think --
6 Mr. Becht, that you had referred to agreements
7 that may have been part of Mount Laurel Housing
8 requirements, you are saying that, within the
9 actual agreements, themselves, the donations to
10 the municipalities are in writing in those
11 agreements?

12 MR. BECHT: Yes. What they say is,
13 we'll do this and we'll do that, and 340,000 was
14 mentioned in the agreement. On just one. The
15 other two were just donations.

16 COMMISSIONER MARINIELLO: You
17 mentioned building materials, Agent Guhl. Can you
18 tell us what kind of building materials you found
19 donated and how extensive that is.

20 MS. GUHL: We found major
21 appliances, we found landscaping, we found
22 windows, we found ceramic floors.

23 COMMISSIONER MARINIELLO: And --

24 MS. GUHL: And, to try to put a
25 dollar amount on it on those specific items, we

-PUBLIC HEARING-

1 would be talking around \$20,000.

2 COMMISSIONER MARINIELLO: And are
3 those provided to people who are directly involved
4 in the inspection process or other municipal
5 officials?

6 MS. GUHL: These were to individuals
7 directly related to the inspection process.

8 COMMISSIONER MARINIELLO: Have we
9 referred any of those scenarios to law enforcement
10 authorities?

11 MS. GUHL: Yes. We've referred a
12 number of matters to the Division of Criminal
13 Justice.

14 COMMISSIONER MARINIELLO: That's all
15 I have, Mr. Chairman.

16 COMMISSIONER FLICKER: Other than
17 the ones we referred to criminal justice, are you
18 aware of any history -- recent history of any
19 building or code inspectors being indicted?

20 MS. GUHL: I believe a subcode
21 official in Manalapan was recently indicted.

22 COMMISSIONER FLICKER: Can you think
23 of one? I'm not testing you. I'm just saying,
24 it's not common, is it?

25 MS. GUHL: No.

-PUBLIC HEARING-

1 COMMISSIONER FLICKER: But you found
2 quite a bit of this type of gift giving and gift
3 receiving?

4 MS. GUHL: Yes.

5 COMMISSIONER FLICKER: In spite of
6 the fact that it violated ethics rules, both
7 local, state and, in fact, violates the laws of
8 the State of New Jersey?

9 MS. GUHL: That would be correct.

10 COMMISSIONER FLICKER: Did you find
11 any examples of code officials insisting upon or
12 expecting workers for the builders to be working
13 for them?

14 MS. GUHL: Yes.

15 COMMISSIONER FLICKER: Would you
16 explain that.

17 MS. GUHL: When various code
18 officials or inspectors were doing renovations to
19 their own homes, the -- there would be a request
20 made by the individual of the various builders to
21 please send a crew to do the landscaping, to do
22 the -- install the windows.

23 COMMISSIONER FLICKER: And the
24 builder would accommodate that request?

25 MS. GUHL: Yes, the builder would.

-PUBLIC HEARING-

1 COMMISSIONER FLICKER: Have we
2 referred some of those examples to criminal
3 justice, as well?

4 MS. GUHL: Yes.

5 COMMISSIONER FLICKER: Thank you.

6 COMMISSIONER SCHILLER: Thank you
7 very much, agents.

8 MS. GAAL: The next witness is a
9 protected witness, so we just need a minute or two
10 for the technical hook-up to be done. He's not in
11 this room with us. Just a minute or two.

12 COMMISSIONER SCHILLER: Maybe you
13 could explain to the --

14 MS. GAAL: What we are going to do
15 is we have a witness whose identity is being
16 protected and we are handling it from a remote
17 location, so we just kind of need a minute or two
18 to get the technology hooked up and then I will
19 question the witness and the witness will be able
20 to hear and answer and, if the Commissioners have
21 any follow-up, they will be able to do so, but we
22 only have one live mic. I just need somebody to
23 tell me when it's on. You should be able to see a
24 silhouette at least on the screen.

25 EXAMINATION

-PUBLIC HEARING-

1 BY MS. GAAL:

2 Q. Witness A, can you hear me?

3 A. Yes.

4 Q. Are you comfortable?

5 A. Yes.

6 Q. I have a couple of questions for you
7 this afternoon. Have you ever been employed as a
8 project manager for a home builder in New Jersey?

9 A. Yes.

10 Q. And, during your employment as the
11 project manager here in New Jersey, were you ever
12 subjected to personal requests from municipal
13 construction code or inspectors wherein they asked
14 you for gifts or things?

15 A. Yes.

16 Q. And did this occur in the very
17 municipality where you were building?

18 A. Yes.

19 Q. What kinds of things were you asked
20 for?

21 A. Windows, appliances, construction
22 equipment.

23 Q. Windows?

24 A. Yes.

25 Q. Large appliances?

-PUBLIC HEARING-

1 A. Yes, stoves, washers and dryers.

2 Q. Construction materials?

3 A. Yes.

4 Q. Can you give us an idea of how often
5 this occurred? I mean, would it occur more than
6 once while you were on a project?

7 A. Yes.

8 Q. Did it happen with more than one
9 individual?

10 A. Yes.

11 Q. Did the municipal employees or
12 inspectors make some of the requests for
13 themselves?

14 A. Yes, they did.

15 Q. Did they also ask at times for
16 things for their family members?

17 A. Yes.

18 Q. Now, in your experience, is this a
19 common occurrence with certain individual
20 inspectors or code officials?

21 A. Yes.

22 Q. And is it fair to say that other
23 code officials or inspectors don't make these kind
24 of requests?

25 A. Yes.

-PUBLIC HEARING-

1 Q. Now, have you also, in your past,
2 served as an inspector yourself in a New Jersey
3 municipality?

4 A. Yes.

5 Q. And, in connection with that
6 employment, have you learned of other building
7 inspectors requesting materials or personal items
8 from builders and developers doing work in your
9 municipality?

10 A. Yes.

11 Q. And did those requests also include
12 things like home building materials?

13 A. Yes.

14 Q. How about major appliances?

15 A. Yes.

16 Q. Could you do your best to give us a
17 value of what some of those individual requests
18 were worth? I'm talking about a dollar amount.

19 A. Five to \$10,000.

20 Q. Each time?

21 A. Yes.

22 Q. And are you aware of municipal
23 inspectors and construction code officials
24 socializing with builders at the builders'
25 expense?

-PUBLIC HEARING-

1 A. Yes.

2 Q. And what kind of activities might
3 the builder pay for for the local construction
4 code officials or inspectors?

5 A. Lunch, dinner, ball games, sporting
6 events.

7 Q. Now, when these requests were
8 made -- when you worked for the builder, when the
9 requests were made, did the builder that you
10 worked for always agree to provide these things?

11 A. Yes.

12 Q. And have you seen instances where
13 builders get preferential treatment when it comes
14 to inspections?

15 A. Yes.

16 Q. And how do they -- what are some of
17 the ways that they can get preferential treatment?

18 A. Inspections are done faster.

19 Q. So, in other words, if you are a
20 preferred builder, your preferential treatment
21 might be just getting your inspection done
22 quickly?

23 A. Correct.

24 Q. On the other hand, have you seen
25 situations where inspectors or code officials will

-PUBLIC HEARING-

1 ride certain builders?

2 A. Yes.

3 Q. And what does it mean when they ride
4 a builder?

5 A. Just to take your time and find out
6 whatever they want.

7 Q. Nitpick?

8 A. Nitpick, yes.

9 Q. Make him wait for inspections?

10 A. Yes.

11 Q. Have you seen any situations where a
12 builder who didn't choose to give the gifts then
13 was subjected to being ridden by the other
14 inspectors?

15 A. Yes.

16 Q. Are you also familiar with the fact
17 that, in the case of engineering inspections and
18 construction code inspections, they are not always
19 actually done?

20 A. Correct.

21 Q. Are there times when the inspectors
22 will sign off and indicate that they did
23 inspections when they really didn't do them?

24 A. Yes.

25 Q. Do local inspectors simply sign out

-PUBLIC HEARING-

1 and take, say, three hour lunches and drive
2 around, if they don't feel like working?

3 A. Yes.

4 Q. Have you seen situations where
5 engineering inspections have actually been charged
6 against monies escrowed for inspections by the
7 builders and those inspections were never done?

8 A. Yes.

9 Q. In your opinion, is there much
10 oversight over inspectors and code officials in
11 New Jersey when they are out in the field?

12 A. Yes.

13 Q. There is a lot of oversight or there
14 isn't?

15 A. There is a lot of oversight.

16 Q. Who oversees them?

17 A. Oh, no, I'm sorry. No, there is no
18 leadership.

19 Q. Say that again.

20 A. There is no leadership.

21 Q. My question was, once the inspector
22 is out in the field, is there anybody really
23 watching what they do?

24 A. No. They are pretty much on their
25 own.

-PUBLIC HEARING-

1 Q. Have you seen situations where
2 inspectors have billed for overtime which is not
3 performed?

4 A. Yes.

5 Q. Have you heard the term "Drive by"
6 or "Windshield inspections?"

7 A. Yes.

8 Q. What are they?

9 A. Just that. You don't get out of
10 vehicle, you just drive through the development or
11 drive through wherever a request might have been
12 made.

13 Q. And do they occur in New Jersey?

14 A. Yes.

15 Q. How often? Do you have any idea?

16 A. Pretty often.

17 MS. GAAL: Okay, these are all the
18 questions I have and we are going to see if there
19 are any other questions for you.

20 COMMISSIONER MARINIELLO: Good
21 afternoon. Can you tell us, to what extent have
22 the building departments or construction
23 departments that you've worked in been infiltrated
24 with this type of corruption? In other words, do
25 the people who work within those departments or

-PUBLIC HEARING-

1 within those municipalities beyond the individual
2 inspectors know what's going on?

3 THE WITNESS: Only the people that
4 are involved.

5 COMMISSIONER MARINIELLO: Have you
6 seen instances where anyone other than inspectors,
7 themselves, in other words, people who work in the
8 office, or people who work outside of the
9 construction office, have demanded or requested
10 certain items from developers?

11 THE WITNESS: Yes.

12 COMMISSIONER MARINIELLO: And, in
13 your experience, has that been a common
14 occurrence, as well?

15 THE WITNESS: Yes.

16 COMMISSIONER MARINIELLO: So it's
17 not just the people doing the inspecting who are
18 requesting builders to do this type of -- I mean,
19 to do work for them or provide them with certain
20 items?

21 THE WITNESS: That's correct.

22 COMMISSIONER MARINIELLO: And did
23 you experience that on the developer's side, as
24 well?

25 THE WITNESS: Yes.

-PUBLIC HEARING-

1 COMMISSIONER MARINIELLO: What is it
2 about this process that -- is there something
3 specific about this process that invites this type
4 of corruption, in your mind?

5 THE WITNESS: Just to try to get the
6 houses built as fast as possible in the easiest
7 way.

8 COMMISSIONER MARINIELLO: Is
9 there -- do developers who are seeking this
10 benefit from the town, do they have any sense or
11 fear of being found out?

12 THE WITNESS: No.

13 COMMISSIONER MARINIELLO: So they
14 pretty much do this type of activity without
15 regard to whether or not they are breaking the
16 law?

17 THE WITNESS: Correct.

18 COMMISSIONER MARINIELLO: Have you
19 witnessed or do you know of personally any
20 circumstances where -- within people you have
21 worked with who have been prosecuted for this type
22 of activity?

23 THE WITNESS: No.

24 COMMISSIONER MARINIELLO: And, yet,
25 you've seen it many times?

-PUBLIC HEARING-

1 THE WITNESS: Yes.

2 COMMISSIONER MARINIELLO: On the
3 inspection side, do you have any suggestions for
4 us that would help us to provide better oversight
5 of the inspectors who are working for the people
6 of the individual towns?

7 THE WITNESS: I guess someone has to
8 supervise them, watch them closer, constantly
9 watch them closer.

10 COMMISSIONER MARINIELLO: In your
11 circumstance, are the officials directly above you
12 supervising your daily activities.

13 THE WITNESS: No.

14 COMMISSIONER MARINIELLO: Are they
15 involved in the type of corruption that you are
16 referring to?

17 THE WITNESS: Some are.

18 COMMISSIONER MARINIELLO: And the
19 people above them, to what extent are they
20 involved in overseeing your bosses.

21 THE WITNESS: I don't have an answer
22 for that. I'm not privy to that.

23 COMMISSIONER SCHILLER: We want to
24 thank you very much. We are going to have a lot
25 more questions for you in private sessions, I'm

-PUBLIC HEARING-

1 sure, but, for the time being, I think you've
2 given us an overview of what is the state of the
3 situation out there and, so, the Commissioners,
4 both in deference to you and also gaining more
5 information, will probably defer most of our
6 questions to a private session, so we thank you
7 very much and thank you for your cooperation.

8 THE WITNESS: You're welcome.

9 MR. GLASSEN: The Commission would
10 like to call the next witness, Mr. William Kondla,
11 please.

12 Mr. Kondla, I would like to thank
13 you for your corporation and apologize for making
14 you wait this long, but we appreciate your
15 testimony and appearance here today and value what
16 you have to say and believe it important to hear
17 from you.

18 THE WITNESS: Thank you.

19 MR. GLASSEN: Will you please stand
20 and be sworn.

21 WILLIAM J. KONDLA, after having been first duly
22 sworn, was examined and testified as follows:

23 EXAMINATION

24 BY MR. GLASSEN:

25 Q. For the Commissioners, would you

-PUBLIC HEARING-

1 please state your name and address.

2 A. William Kondla, 609 Four Seasons
3 Drive, Wayne, New Jersey.

4 Q. And could you inform the
5 Commissioner of your background, please.

6 A. I'm a retired electrical contractor,
7 having my business for 40 years. Served 12 years
8 as a commissioner on the State Board of Electrical
9 Examiners in the State of New Jersey, an ex-fire
10 chief in Oakland, New Jersey.

11 Q. Do you continue to maintain any
12 licenses?

13 A. Yes, I do. I maintain my electrical
14 license.

15 Q. What type of community is the Four
16 Seasons at Wayne?

17 A. Four Seasons at Wayne is a senior 55
18 and over community, and the complex is made up of
19 14 buildings, of which 12 are 16-unit complexes
20 and one is a -- or two are 19-units, so we have
21 230 residents residing in there.

22 Q. Again, how many buildings are there
23 at Four Seasons at Wayne?

24 A. A total of 14.

25 Q. Do you hold a position with the

-PUBLIC HEARING-

1 homeowners association?

2 A. Yes, I do. I am transition chairman
3 and I'm also vice-president of the homeowners
4 association.

5 Q. Could you explain to the Commission
6 when a transition chair is and what a transition
7 committee does?

8 A. Sure. What we are supposed to do,
9 once a developer has notified us that they are
10 ready to turn the community over, the transition
11 committee and myself, as chairman, we are to look
12 over what they've provided us and see if we accept
13 what's been provided, and we had a bunch of
14 eye-opening experiences.

15 Q. As the transition committee chair,
16 were you responsible for hiring an engineering
17 firm?

18 A. The way it works is that, early on
19 in the development of the complex, when the
20 developer has the majority of the members of the
21 board, at that time they hire an engineering firm
22 and they also hire a management company and
23 usually an attorney.

24 Q. And then does the homeowners
25 association inherit those individuals?

-PUBLIC HEARING-

1 A. Yes, we do.

2 Q. Does it cause you concern that the
3 developer has initially hired the engineering
4 firm?

5 A. Well, yes. I think you have to
6 question where the loyalties are. Is the loyalty
7 going to be the with the homeowners association or
8 is it going to be with the developer who is going
9 to continue to recommend these various different
10 individuals and firms?

11 Q. Who pays the engineering firm for
12 the --

13 A. The homeowners association does.

14 Q. Were you satisfied with the report
15 of the engineer hired by the builder for Four
16 Seasons at Wayne?

17 A. The engineering firm produced a
18 report to us indicating, I want to say, maybe
19 about 200 items that they felt were code
20 violations, unworkmanlike conditions and, upon
21 further investigation by myself and another member
22 of the transition committee, we found about 2600
23 code violations, life safety issues, and
24 unworkmanlike workmanship.

25 Q. What enabled you to be able to find

-PUBLIC HEARING-

1 that many more violations at Four Seasons at
2 Wayne?

3 A. Well, I think what happens with most
4 of these communities is the engineering firm
5 that's hired is hired under a limited amount of
6 money, so their investigation is limited by the
7 dollar amount, so they are doing a quick purview
8 of the whole complex and they are not really
9 disclosing or uncovering a bunch of the problems.

10 Q. Did your background and the
11 background of your colleague assist you in the
12 discovery of --

13 A. Sure did.

14 Q. -- multiple violations?

15 A. Sure did, yes.

16 Q. And how did that assist you? Can
17 you explain that to the Commission.

18 A. Well, we found actual blatant code
19 violations that should have never gotten past the
20 township inspection. We found things such as
21 attic access panels that were installed that were
22 suitable for a single-family residential unit,
23 but, in the class of construction it is, where you
24 have multiple families residing in the building,
25 they were supposed to be metal fireproof doors,

-PUBLIC HEARING-

1 and there was 28 occurrences in 14 buildings, and
2 that should have never gotten past either building
3 or fire.

4 Q. And you are familiar with these code
5 inspections because of your background and your
6 colleague's background, is that correct?

7 A. That is correct.

8 Q. Can you put a dollar value on the
9 amount of work that you and your colleague did in
10 inspecting the Four Seasons at Wayne facility?

11 A. The law firm that represents the
12 homeowners association has put a value of probably
13 somewhere between 150,000 and \$200,000 of time
14 spent between this fellow colleague and myself in
15 preparing all these reports, because none of this
16 was disclosed in the engineering reports
17 initially.

18 Q. How did you conduct your inspection
19 of the facility?

20 A. We actually went building by
21 building and did a visual inspection. We didn't
22 open up many things, although DCA had come in at
23 one point after the mayor from Wayne Township had
24 requested their presence, and they actually
25 started to open up electrical boxes, plumbing

-PUBLIC HEARING-

1 access panels, to find additional code violations
2 that we didn't, as well as myself and the fellow
3 helping me, we didn't get on the roofs, because
4 the roofs are like three stories high.

5 Yet, the engineering firm has found
6 almost everything similar to what I saw down in
7 Newark, that all the step flashing was incorrectly
8 installed, roof shingles were not installed
9 correctly.

10 Q. Did you find a repetition of the
11 errors in your development?

12 A. Yes. That's what surprised us. In
13 the process, I guess it was about three years or
14 four years that they built the complex, they
15 repeated the same errors, code violations, life
16 safety issues in all 14, so it wasn't that it
17 passed by an inspector in just one instance. It
18 happened 14 times.

19 Q. When you speak of code violations,
20 are you talking about workmanship issues or life
21 safety issues? And can you kind of differentiate
22 that for the Commission?

23 A. We had a tremendous amount of
24 building code violations, electrical code
25 violations, plumbing code violations, fire code

-PUBLIC HEARING-

1 violations, life safety issues, and where you even
2 got into -- the fine line was, in some of the
3 areas where you had improper workmanship or poor
4 workmanship, that came very close to a code
5 violation or created a code violation.

6 For instance, just all the fire
7 doors, when I was listening to the gentleman from
8 Essex County talking about all the one-hour
9 fire-rated doors, the closers -- automatic closers
10 that are on the doors are incorrectly installed so
11 the doors don't even close and, when they do, the
12 latching mechanisms that were put in there are the
13 incorrect latching mechanisms for those doorways,
14 so you have a workmanship issue, but that
15 workmanship issue actually creates a fire code
16 violation, because the doors aren't closing to get
17 the one-hour fire rating.

18 Q. Since we are talking about fire
19 issues in the Four Seasons at Wayne, was there a
20 failure relating to the fire suppression system at
21 the development?

22 A. Yes, there was. In the very first
23 building they built they had a fire sprinkler
24 system fail with freeze-up. It was a dry system
25 up in the attic that got condensation in the

-PUBLIC HEARING-

1 lines, and in one of the elbows -- a 90-degree
2 elbow was sitting low, it was not pitched
3 properly, water accumulated in there and the
4 fitting cracked in low temperature conditions and
5 flooded the building out. They had to move the
6 residents out.

7 Q. What was the result of it? They
8 moved the residents out?

9 A. And they had to repair the building.
10 Extensive repair to the building, yes.

11 Q. Did that happen more than once?

12 A. It happened twice.

13 Q. And this is a community of 55 and
14 older?

15 A. Yes.

16 Q. Were the residents inconvenienced?

17 A. To say the least. I would say also
18 unhappy.

19 Q. Can you give us an example of a
20 structural failure that occurred at that --

21 A. Yes. We had a structural failure
22 occur approximately two years ago on a building
23 where a column failed and the building dropped a
24 half an inch. Upon further investigation, it was
25 found by the developer, K. Hovnanian, that the

-PUBLIC HEARING-

1 columns were not put in according to original
2 design drawings, and that every column in the
3 entire complex had to be redone into steel. They
4 were concrete originally, and we had over a
5 hundred fifty steel columns in the entire complex
6 that had to be replaced.

7 Q. Now, were these columns inspected?

8 A. Yes, they were.

9 Q. And are you saying every column was
10 installed incorrectly?

11 A. They didn't meet the engineering
12 specifications, certain components of the columns
13 were missing, they were not finished on the top
14 correctly. There was a nonshrink grout that was
15 supposed to be applied at the tops that was
16 missing, and that's what really caused the
17 structural failure on the one building.

18 Hovnanian has been working on the
19 columns for about 14 months and we are just coming
20 close to being done, but there has been a
21 tremendous amount of inconvenience. You are
22 dealing with seniors and handicapped people that
23 were forced out last winter during snowstorms as
24 their buildings were being worked on, so there has
25 been a tremendous inconvenience to the residents

-PUBLIC HEARING-

1 and their customers.

2 Q. Could you describe for the
3 Commission what the 14 buildings are like? When
4 you say that it dropped a half an inch --

5 A. Well, the unique part about this
6 complex, and I believe it was the first time this
7 developer attempted to do this type of
8 construction, what we have is we have an underside
9 garage parking that will handle about 30 some odd
10 cars, and it's a 16-unit building, and where I
11 think the failure -- and, of course, it's been a
12 dual failure. The failure has been by supervision
13 on behalf of the developer and failure by the
14 Township of Wayne in not getting the proper
15 inspections due, and I think that the homeowner
16 has not been protected. The end consumer was not
17 protected. We all did pay inspection fees in the
18 price of our homes and, yet, it wasn't properly
19 inspected.

20 It appears that the individual units
21 that the people reside in don't have the -- as
22 significant amount of code violations as the
23 common areas. The common areas being garages,
24 hallways, elevators, roof. These -- it seems like
25 there was almost like a noninspection. That's

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1 where we are finding all of these problems. Of
2 course, as transition chairman, we can only report
3 on common areas. The homeowners have to take care
4 of their individual units.

5 Q. Would the problems with the columns
6 that you observed, would they have been
7 self-evident to an inspector?

8 A. Especially a couple of them, which I
9 think I did provide a picture to the Commission,
10 because the DCA had told me that the building
11 inspector said that they were hidden by the forms
12 and he couldn't see where the structural parts
13 were missing from the whole column assembly.

14 Well, I produced a drawing that
15 shows that one column is only under half of the
16 beam, so how that got passed is beyond me.

17 Q. As a consequence of the repair of
18 the columns, have other problems developed?

19 A. Yes, we've uncovered -- actually,
20 the first thing that ended up happening was that I
21 went into our clubhouse, into our clubhouse attic
22 area, where the air conditioning system and
23 heating system is for the clubhouse, and it had to
24 be the worst installation I have ever seen in my
25 40 years of construction experience.

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1 One day we had all of the fire
2 sprinkler valves -- they are called RPC valves --
3 let go because of a high pressure condition from
4 the Township of Wayne and it flooded out all the
5 garages. Well, that particular day the newspapers
6 were there, the mayor was there, the council was
7 there, and what I did is I took the mayor and I
8 brought him up into the attic and I said, "I want
9 to show you what your town officials are
10 approving," and his comment was, "I'm only a
11 layperson, but, boy, I don't believe what I'm
12 looking at," and he was the one who instituted the
13 investigation by the DCA.

14 Q. Has the DCA been helpful to you?

15 A. The DCA has been in there and
16 they've been in for three or four investigations,
17 and they were working on a list that they felt as
18 though there was code violations and they were
19 also concerned that there was some handicap
20 accessibility violations within the complex, which
21 I had only raised in minor essence in my 2600 item
22 report back to the developer, but DCA, all of a
23 sudden, after doing their investigations, on their
24 last visit they said that, under a new court
25 ruling, they would no longer be going to the

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1 developer and that us homeowners would now be
2 handed the deficiency certificates and we would
3 then have to fix it and litigate to get it done,
4 which, to me, we are not protecting the consumer
5 here. Something is lost in that ruling.

6 Q. Do you have any estimate as to how
7 much additional money the homeowners association
8 has had to expend as a result of these
9 deficiencies?

10 A. Yes. We've spent in excess of a
11 hundred thousand dollars and, to date, we've been
12 reimbursed by the developer about 40 percent of
13 that money, and we are under discussions with them
14 and things were promised where we were told, "Go
15 ahead and fix it and we'll reimburse you," and now
16 we are arguing over those issues right now.

17 Q. What is the financial impact on the
18 homeowners association and the individual
19 homeowners?

20 A. Well, beings that we are a 55 and
21 older community, of course we are governed on our
22 budget, our budget has to be a zero balance basis
23 budget at the end of the year, so we can't develop
24 extra dollars like this is costing us, so it is
25 hurting us. I mean, we are spending dollars we

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1 don't have.

2 MR. GLASSEN: Mr. Chairman, I have
3 no more questions.

4 COMMISSIONER EDWARDS: Bill, you
5 found 2600 violations?

6 THE WITNESS: Yes. Unworkmanlike
7 workmanship and also code violations.

8 COMMISSIONER EDWARDS: Did you break
9 them down between -- have you broken them down
10 yourself between which are unworkmanlike and which
11 are code?

12 THE WITNESS: I would say, probably,
13 Commissioner, that we are probably at a 50/50
14 split, but then, like I had said earlier, some of
15 the workmanship issues create a code violation, so
16 it's a fine line where the developer is -- what
17 the developer has done is responded in taking care
18 of a lot of the code violations, and we are still
19 dealing with some, but the code and life safety
20 issues. They've taken care of some of the
21 drainage. We've had the same drainage
22 situation -- storm drainage. All the storm
23 drainage was half the size. It's all been
24 replaced now.

25 So, the inconvenience to the

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1 homeowners has been phenomenal because we've just
2 been ripping up and tearing apart, but we are
3 getting there.

4 COMMISSIONER EDWARDS: You heard the
5 testimony earlier today in Newark. It seems as
6 though the same developer is working with and/or
7 resolving a lot of your problems. You've been
8 complaining about them, but they are involved at
9 least very aggressively in solving those problems
10 as opposed to the Newark circumstances. Am I
11 seeing that accurately?

12 THE WITNESS: You know, that's what
13 I gathered today. I mean, we had the same problem
14 as them, but our issues are being resolved. I
15 mean, they are looking for a final transition
16 agreement from us and we are not ready to sign it
17 because there is issues that they are not agreeing
18 to, so we still have to hammer that all out, but I
19 think our transition process is well along the
20 way.

21 It just shouldn't happen, though,
22 Commissioner. In other words, this should never
23 be, and the thing is, is that, if it wasn't for
24 myself and this other individual on the transition
25 committee, most of those things would have gone

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1 undetected. You know, most communities don't have
2 a couple professionals that can dedicate the time
3 that we did to uncover a lot of this and that's
4 pitiful. We are losing protection to the
5 consumer.

6 COMMISSIONER EDWARDS: Before you
7 get to the transition agreement, which is still to
8 come, under the Newark circumstance, they were
9 already in a transition agreement --

10 THE WITNESS: Yes, right.

11 COMMISSIONER EDWARDS: I'm
12 gathering, also, that you are focusing and have
13 focused a significant amount of your complaints
14 to -- about the inspection process. There is no
15 consumer advocate out there, government is not
16 there protecting and, point in fact, the homeowner
17 who is buying the property, the government is
18 protecting the health and safety violations and
19 walking away from the rest of them and protecting
20 themselves by these inspections more than they are
21 protecting the consumer.

22 And you have a builder in this case,
23 I guess, who is not, for whatever reason that I'll
24 tell you I'm not aware of, and I'm assuming before
25 we end here we'll find out more about it, is

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1 having a problem with the quality of construction
2 that he's doing. That project should not have
3 that level of problem in violations without the
4 builder himself finding out what the problem is.

5 THE WITNESS: That is absolutely
6 correct. That's what I'm saying. Lack of
7 supervision. I mean, it's a dual -- it's a dual
8 catastrophe that's taken place. Supervision by
9 the developer and lack of inspections by the town,
10 and everybody has an excuse, but the poor
11 homeowner sits there.

12 COMMISSIONER EDWARDS: I've asked
13 the question of most people over the last couple
14 of days. What recommendations do you have for
15 us -- I know you've given us extensive amounts of
16 information and data, and we deeply appreciate
17 that, and I know personally of your expertise for
18 about 30 years, so I can attest to the fact that
19 the citizens in your community are -- should be
20 thankful for having you there to have caught a lot
21 of these things.

22 With that level of background, with
23 that expertise, with that information and with
24 this experience, are there recommendations you can
25 make to us about how we might move to make the

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1 system better?

2 THE WITNESS: A couple suggestions
3 I'd like to offer to the Commission. First of
4 all, I think it's an unacceptable answer when the
5 township says that the inspector is too busy,
6 okay, and that's why he didn't perform the full
7 inspections. If the inspector is too busy, there
8 best be some more inspectors out there and, if a
9 town is hit with a heavily load, perhaps the state
10 should have it that inspectors can be moved around
11 a little bit to cover these high peak times when
12 towns are hit.

13 The other thing that I see that New
14 Jersey lacks, and I think it's important, is on
15 HVAC, heating, air conditioning, ventilating,
16 where we don't have an inspector for that. All
17 HVAC work falls under the chief building code
18 official, the fire code official and the plumbing
19 code official, so no one has the total authority,
20 and I got to say that most of the HVAC work in our
21 complex was a disaster and that's because no one
22 saw it -- I mean, you know, when you have major
23 air conditioning systems, there has to be a
24 walkway around the equipment to service it. There
25 was no walkways, trusses were cut to get the air

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1 conditioning equipment in, never repaired. Things
2 like that just shouldn't happen, so I think there
3 has to be a responsible inspector and many states
4 have an HVAC inspector, where New Jersey doesn't.

5 COMMISSIONER MARINIELLO: Do you
6 have any idea, Mr. Kondla, how much it would have
7 cost the Four Seasons at Wayne association to have
8 a private engineering company come in and do the
9 work that you did?

10 THE WITNESS: Our attorneys tell us
11 that probably that value was somewhere around
12 150, \$200,000 by the time we prepared all the
13 reports, took pictures, which the Commission does
14 have a copy of the pictures, like 200 some odd
15 pictures noting all the code violations.

16 COMMISSIONER MARINIELLO: Obviously
17 there are some, and probably many, developments
18 where that's cost prohibitive and they don't have
19 the experience of yourself and the other person --

20 THE WITNESS: And someone found it.
21 So, these developments are existing with all these
22 same problems, but they just haven't been
23 uncovered.

24 COMMISSIONER MARINIELLO: Right.
25 Thank you, Mr. Kondla.

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1 COMMISSIONER FLICKER: Hello, Mr.
2 Kondla.

3 THE WITNESS: How are you?

4 COMMISSIONER FLICKER: Nice to see
5 you again.

6 During some of the problems that
7 your home and your development encountered, was
8 there a lot of press up in your area about some of
9 these issues?

10 THE WITNESS: No.

11 COMMISSIONER FLICKER: There was no
12 attention by the local media?

13 THE WITNESS: The only time we got
14 attention by the local media was when all the fire
15 suppression systems let loose one Saturday morning
16 and that brought the media out, but the media is
17 not responsive and, you know, it's a tough call,
18 you know, actually why, but, you know, do you beat
19 over the head of the person that's feeding you?
20 And, you know, there is where the question comes
21 in with the media.

22 COMMISSIONER FLICKER: What do you
23 mean?

24 THE WITNESS: Well, advertising
25 revenue versus bad press.

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1 COMMISSIONER FLICKER: Do you think
2 your -- the day that the press did show up, did
3 you then get some attention in the local papers or
4 the other media?

5 THE WITNESS: Yes.

6 COMMISSIONER FLICKER: Was there a
7 flurry of activity thereafter by the developer?

8 THE WITNESS: Yes, there was.

9 COMMISSIONER FLICKER: And when that
10 media then died down, what happened to the
11 developer?

12 THE WITNESS: Well, no, I think that
13 that probably instituted a better working
14 relationship and understanding that we had some
15 real problems there, and I think it maybe brought
16 everybody to attention. I think we have developed
17 a fairly good rapport with the developer at this
18 time, but I don't think it should have had to take
19 this long and I don't think we should have had to
20 uncover all of these problems.

21 COMMISSIONER FLICKER: What was your
22 relationship with your local mayor and how did
23 that play in?

24 THE WITNESS: Just the one time when
25 he was out there, and he was the one that brought

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1 the DCA in because he was trying to swing, I
2 believe, the responsibilities from the town to the
3 developer and, you know, like I had stated
4 earlier, it's really a dual responsibility that
5 has failed there.

6 COMMISSIONER FLICKER: Before the
7 ruling -- before DCA told you about that court
8 ruling, had DCA given you any reports or done
9 anything with the developer?

10 THE WITNESS: Just verbalized to us
11 things that they found and, since the last meeting
12 with DCA that I had, we have not received any
13 further reports. We were just notified that the
14 developer would no longer be in the picture.

15 COMMISSIONER FLICKER: Mr. Kondla,
16 we all thank you very much.

17 THE WITNESS: Thank you.

18 COMMISSIONER SCHILLER: Mr. Kondla,
19 just like to ask one question. What would be the
20 average cost of one of the homes in your
21 development, Four Seasons?

22 THE WITNESS: They are selling now
23 in the 350 to almost \$400,000 range.

24 COMMISSIONER SCHILLER: And
25 basically it seems, as you said before, that this

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1 has worked toward some solution with the developer
2 as opposed to what we've heard about at, in
3 particular, Newark's situation.

4 THE WITNESS: Um-hum, and I think
5 only because we caught it before we signed off on
6 transition.

7 COMMISSIONER SCHILLER: I think Mr.
8 Edwards pointed out, too, that the work you've
9 done, as compared to most people, it is really
10 very important to the rest of the community and
11 you've supplied an invaluable service to your
12 community and we appreciate your coming in and
13 filling us in on that. Thank you very much.

14 THE WITNESS: Thank you.

15 MS. GAAL: Next will be a panel,
16 Mary DeVaney, James Sabetta and Richard Mursheno.
17 If we could have you remain standing and the
18 reporter will place you under oath.

19 MARY L. DeVANEY, JAMES A. SABETTA and RICHARD
20 MURSHENO, after having been first duly sworn, were
21 examined and testified as follows:

22 MS. GAAL: Thank you. You may all
23 be seated.

24 EXAMINATION

25 BY MS. GAAL:

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1 Q. I'm going to start with Mr. Mursheno
2 on my right. May we have your name, please, for
3 the record.

4 A. My name is Richard Mursheno.

5 Q. And by whom are you employed?

6 A. I'm employed by the New Jersey State
7 Commission of Investigation as a special agent.

8 Q. Prior to your employment with the
9 Commission, who did you work for?

10 A. I was employed by the New Jersey
11 State Police for 26 years, 21 of which I spent
12 with -- in the Narcotics and Organized Crime
13 Bureau.

14 Q. I'm going to ask you to make sure
15 you are close to that mic. I'm going to ask
16 everyone that. It's a little hard to hear you.

17 Ms. DeVaney, can we have your name
18 and address, please, for the record.

19 A. Yes. It's Mary Louise DeVaney, 14
20 Two Penny Run, Pilesgrove, New Jersey.

21 Q. And that's in Gloucester County?

22 A. Salem County.

23 Q. Salem County, excuse me.

24 Mr. Sabetta, your name, please.

25 A. James Sabetta, construction official

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1 of Woolwich Township, Gloucester County.

2 Q. How long have you been the
3 construction official in Woolwich?

4 A. I've been a construction official
5 for seven years.

6 Q. What licenses do you hold?

7 A. I have HHS building, building
8 subcode, construction official license, local
9 dwelling inspector and local housing inspector.

10 Q. Okay. Mr. Mursheno --

11 A. Excuse me. I also have a New Jersey
12 home builders license.

13 Q. Okay. Thank you.

14 Special Agent Mursheno, were you
15 assigned to the Commission's investigation related
16 to new home construction issues?

17 A. Yes, I was.

18 Q. And were you given a specific
19 assignment to look at the question of builder
20 defaults?

21 A. Yes, I was.

22 Q. Could you tell the Commission how
23 many scenarios -- approximately how many scenarios
24 you examined?

25 A. Since April, when I came to the

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1 Commission, I uncovered nine builders,
2 approximately 91 victims throughout eight counties
3 in the state.

4 Q. And those counties would be which?

5 A. Cape May, Salem, Gloucester,
6 Monmouth, Morris, Burlington, Mercer, Middlesex
7 Counties.

8 Q. And, just so we are clear, you found
9 those scenarios since April when you joined our
10 staff?

11 A. Yes.

12 Q. Was it difficult to find the
13 scenarios?

14 A. Yes. The scenarios -- there is no
15 central place where these scenarios are kept or
16 these complaints are kept. No state, federal,
17 local clearinghouse.

18 Q. So how did you find them?

19 A. Through Internet searches, through
20 our analysts that are part of the staff, through
21 paper reports, media, and also we sent out
22 questionnaires to the 21 prosecutor's offices
23 within the state and asked them if they had any
24 default issues.

25 Q. So what you found is not, by any

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1 means, necessarily an all-inclusive list?

2 A. No, by no means.

3 Q. I'd like you to take a look at
4 Exhibit Number 192, which is -- probably you have
5 a hard copy there. It should be up on the screen.
6 Is it up there?

7 A. Yes.

8 Q. It's a chart entitled "Typical
9 Builder Default Scenario," is that correct?

10 A. That's correct.

11 Q. And was this prepared by the
12 Commission staff based upon your investigative
13 findings on the default issue?

14 A. Yes, it was.

15 Q. And I'd like to kind of briefly go
16 through it and have you explain to us how this
17 depicts what you found occurring in the State of
18 New Jersey. If we start with the circle up at the
19 top that says "Homeowner enters into contract,"
20 that's sort of where the process starts, right?

21 A. Yes, the process starts where the
22 builder and the home buyer enter into a contract.
23 Usually they deposit anywhere from five, 10
24 percent on the building and the builder typically
25 uses that deposit to begin the process of building

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1 a house, although, when you are in a development,
2 usually what happens is the builder uses that
3 deposit -- your deposit to finish someone else's
4 house.

5 Q. Okay.

6 A. Then what happens is the builder
7 recoups that -- under normal circumstances recoups
8 that deposit for the homeowner or for the home
9 buyer through settlement and then puts that into
10 his house.

11 Q. Okay. So, if we walk through this
12 scenario, you have a homeowner enters into a
13 contract and they normally take maybe five to 10
14 percent down as a deposit, am I right?

15 A. Yes.

16 Q. And the money isn't segregated in
17 any type of escrow account for that particular
18 homeowner?

19 A. No, it isn't.

20 Q. Did you find that generally the
21 builder or often the builder begins work utilizing
22 subcontractors?

23 A. Yes, he does.

24 Q. So the builder hires subs, and in
25 the default scenario what happens with respect to

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1 the payments to the subs?

2 A. Well, what happens is, if the
3 builder gets in trouble, either through
4 mismanagement, building costs go up, or some other
5 means, whatever other means there are, the
6 subcontractors subsequently do not get paid. They
7 are working, they don't get paid.

8 Q. And what did we find occurs when
9 those subcontractors no longer get paid?

10 A. Well, they stop working.

11 Q. And what else do they do?

12 A. And then subsequently they place
13 liens on the property.

14 Q. And after that what do some of the
15 builders do?

16 A. Well, the builders -- obviously they
17 were not paying the subcontractors. The
18 homeowner, he -- they are aggravated because they
19 are not getting their house built. Attorneys step
20 into the process and they attempt to litigate the
21 situation, but, in the process, the builder
22 goes -- files for bankruptcy protection.

23 Q. And, so, now we've got the builders
24 file for bankruptcy protection, the homeowners
25 often hire a lawyer, and there are liens on the

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1 homeowners.

2 What did we find occurs with respect
3 to the homeowners' efforts to get those homes
4 completed?

5 A. Well, typically what happens is the
6 homeowner has to satisfy the liens, thereby paying
7 twice for the same services that they already paid
8 for and, once they satisfy that, then they
9 continue building themselves, become the
10 contractor, and muddle through the process
11 themselves.

12 Q. So we've found homeowners that end
13 up sort of muddling through themselves as the
14 contractor, and did we find sometimes where they
15 have to go out and get somebody else to finish the
16 work?

17 A. Yes. If they go to another
18 contractor, then sometimes they start brand new,
19 and that's more expense to the homeowner.

20 Q. And --

21 A. On top of that is the lawyer's fees
22 that they are paying through this whole process,
23 too.

24 Q. What's happened to our builder? Now
25 he's gone into bankruptcy and what do we find that

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1 they often do?

2 A. Oh, the builder. The builder
3 typically reorganizes under another name and
4 continues the same practice to another
5 homeowner -- home buyer.

6 Q. So the cycle starts again?

7 A. Yes.

8 Q. Now, what's the average time for
9 completion of a home ordinarily?

10 A. Ordinarily it's anywhere from six to
11 nine months.

12 Q. Based on your analysis of the
13 default issue, what was the average time to
14 complete the homes you found?

15 A. The average of the homeowners that
16 I -- home buyers that I've taken into
17 consideration was 20 months.

18 Q. Can you give us or give the
19 Commission some description of the impact that
20 this kind of thing has had on some of these
21 homeowners?

22 A. Well, the homeowner -- the American
23 dream of owning a home in -- with these homeowners
24 has become a nightmare and people just starting
25 out, the young family just starting out with a

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1 family or the people that have been saving all
2 their lives for that retirement home are
3 financially devastated. The remedies that the
4 courts offer are -- usually they do not recover
5 the money that they -- that they are awarded in
6 the courts.

7 On top of that, you have these
8 families going -- they sell their homes to have
9 the deposit for their new home. Now they've
10 settled on their houses, they've moved out, and
11 now they are forced into either homelessness or
12 they have to move in with in-laws, they have to
13 rent an apartment, and there is families that --
14 one family had five kids, the two sons, 19 and 17,
15 and a daughter 13, two- bedroom apartment, and
16 those three kids are living in the same room, the
17 girls and the boys, on mattresses, because they
18 don't have enough room to put furniture into the
19 room. This is a nice family.

20 Q. We found people that have had to go
21 to motels, trailers, live with relatives, so
22 forth?

23 A. Yes.

24 Q. Now, did you recently investigate --
25 or you recently actually learned of a scenario in

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1 Burlington County where homeowners have put down
2 money for homes, but they haven't received
3 anything yet?

4 A. Yes, there was an 18-lot subdivision
5 located in Maple Shade on Farmhouse Lane.
6 These -- nine of the 18 houses are finished and
7 occupied. The other nine, the builder took
8 deposits anywhere from 14 to \$75,000, and in some
9 cases those lots are vacant -- and these deposits
10 were taken between the year of 2000 and 2002. Now
11 these lots are either vacant or the houses that
12 are on there are incomplete and abandoned.

13 Q. Now there are nine lots you
14 mentioned?

15 A. Yes.

16 Q. How many buyers involved?

17 A. Twelve.

18 Q. Now, you say nine lots. How did you
19 get the 12 victims?

20 A. Oh, the builder took several
21 deposits on the same lot.

22 Q. Were any of those deposits put into
23 an escrow account?

24 A. No. The builder wouldn't permit
25 that because he said he wanted to put it into the

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1 construction of the houses.

2 Q. Were you able to get sort of a total
3 dollar amount for us on just that one scenario?
4 How much the builder got?

5 A. The builder -- approximately a half
6 a million dollars.

7 Q. Now, Mrs. DeVaney, who was the
8 initial developer on the home in which you reside?

9 A. Well, Alan Rosenstock was the
10 developer for the land and then we purchased the
11 home from Heritage Building Group, LLC.

12 Q. And did you sign a contract to
13 purchase your home?

14 A. Yes, we signed that November 17,
15 1997.

16 Q. Was it new construction?

17 A. Yes.

18 Q. You are the first owner?

19 A. Yes.

20 Q. What was the purchase price?

21 A. It was supposed to be 47,000 for the
22 land and 153,000 for the home, total of 200,000.

23 Q. And when was the construction to be
24 completed?

25 A. Well, they said 150 days from the

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1 signing of the contract, which would probably have
2 brought it to around September of '98 -- not from
3 the contract, I'm sorry. From completion of the
4 foundation.

5 Q. So 150 days, you think? 120 days,
6 150 days?

7 A. Right, 150.

8 Q. So, about four and a half months
9 from the foundation the home was supposed to be
10 completed?

11 A. Correct.

12 Q. Did that contract that you had call
13 for you, as the buyer, to deposit your monies for
14 the residence in an escrow account with a title
15 company?

16 A. Yes. Our builder wanted us to have
17 the money in an escrow account with Surety Title
18 and supposedly our money was going to be safe
19 there and we had --

20 Q. How much money?

21 A. As of February of '98 we had
22 \$74,684.43, and by the end of June that same year
23 we had -- there was only \$91.43 left in there.

24 Q. Now, did the builder tell you which
25 title company to use?

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1 A. Yes, he did.

2 Q. And was there supposed to be a
3 procedure in place so that you would be notified
4 before any money was to be paid out on the
5 construction?

6 A. Yes. We had an escrow agreement
7 combination, it's called. Is it okay to read
8 this?

9 Q. Sure.

10 A. It said, "In order to release" --
11 well, first it says, "Surety Title Group agrees to
12 hold in escrow the sum of \$72,684.43 from the
13 settlement of the property above-captioned," which
14 is Two Penny Run. "The funds are to be retained
15 in safe" -- ha-ha -- "custody by the within named
16 escrow agent with interest. In order to release
17 the funds held, the following terms and conditions
18 must be met. By phone call from either Leonard M.
19 DeVaney" -- who is my father-in-law who went in on
20 the house with us -- "Timothy J. DeVaney" -- which
21 is my husband, and myself, "Mary Louise DeVaney
22 for construction draws payable to Heritage
23 Building Group."

24 Q. So the gist of it is that either
25 you, your husband or your father-in-law were to be

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1 notified before there were any draws?

2 A. Right.

3 Q. Now, did there come a time -- I
4 think you started to reference it earlier -- when
5 you learned that most of the funds that you had on
6 deposit had been disbursed?

7 A. Yes.

8 Q. Do you remember approximately how
9 much time went by before you learned that?

10 A. I would say probably -- maybe a
11 couple months or so, because it came around
12 October and our home still wasn't completed and we
13 were getting a little suspicious because the subs
14 weren't coming back to complete their work and we
15 found out they weren't being paid by our
16 contractor.

17 Q. And did you also find out that at
18 least one of the subs had put a lien on your
19 house?

20 A. There were two that did, yes.

21 Q. And do you remember how much money
22 their liens were for?

23 A. Yes. One lien was from Glassboro
24 Lumber Company, that was in August of '98, that
25 was for \$24,263.19, and the second was from B & L

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1 Mechanical for \$4,000, and that was filed in
2 September of '98.

3 Q. I think I heard you say there was
4 only \$91.43 left in the escrow account.

5 A. Correct.

6 Q. Were there other liens placed on
7 your home besides the ones you mentioned?

8 A. Not that I'm aware of.

9 Q. How about a lien for dumpsters or
10 anything along that line, or outstanding bills?

11 A. I'm sorry, yes, I do have that. We
12 had a lot debris on our property that wasn't being
13 removed and we had a dumpster that was filled to
14 the brim and we kept asking the builder to have it
15 removed so a new one could be brought and, oh,
16 yes, I'll take care of it. Never happened. So I
17 called the company and they told me that they had
18 a hold on Heritage Building Group, LLC because
19 they owed \$740, so we had to pay that out of
20 pocket before we could have that one dumpster
21 removed and a new one brought in.

22 Q. In addition to the liens that were
23 placed on the property, did you also learn that
24 there were outstanding debts to some of the other
25 subcontractors? In other words, they hadn't put

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1 liens on the property, but they were owed money?

2 A. Right, yes, yes, I did. There was
3 the plumber, the framer.

4 Q. The roofer?

5 A. Roofer, yes.

6 Q. Now, the subs stopped working, am I
7 right?

8 A. Correct.

9 Q. And did you seek or pursue legal
10 action?

11 A. Yes.

12 Q. So you hired an attorney?

13 A. Yes.

14 Q. And --

15 A. I don't want to say hire. My
16 husband, through his job, gets free legal
17 services.

18 Q. Did you ultimately get your home
19 finished?

20 A. Yes.

21 Q. And how did you go about doing that?

22 A. I became the general contractor.

23 Q. Did you know anything about building
24 a home before this?

25 A. No, but I learned very quickly.

-PUBLIC HEARING-

1 Q. So you took over the construction?

2 A. Yes.

3 Q. And who satisfied the liens?

4 A. We satisfied the \$4,000 one and then
5 eventually Heritage Building Group did satisfy the
6 \$24,000 one, and we satisfied the \$740 one for the
7 dumpster.

8 Q. Do you remember how long it took
9 before you got a CO on that house?

10 A. We had a temporary one April of --
11 April 23rd, I believe it was, of '98, and then the
12 final CO was May 24th -- I'm sorry, I said '98.
13 '99, and the final CO was May of '99.

14 Q. My rough calculation is that that
15 was about 13 months after the foundation was
16 completed. Does that sound about right?

17 A. That sounds about correct.

18 Q. Where did you live during the
19 construction of your home?

20 A. Well, first we sold our home, we
21 moved in with my father up in Trenton here and we
22 lived with him from the end of January until
23 September of '98, and the house wasn't done so
24 then we moved into an apartment down in Woodstown
25 and we lived there from September of '98 until we

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1 moved in at the end of April, '99. It was a
2 one-bedroom apartment and I had two children at
3 that time -- I still have two children. They were
4 younger children, is what I mean.

5 Q. But there were four of you?

6 A. There were four of us in a
7 one-bedroom apartment.

8 Q. Mr. Sabetta, you've worked for
9 Woolwich about seven years, is that right?

10 A. Yes.

11 Q. Do you, as a code official in New
12 Jersey, enforce workmanship?

13 A. No.

14 Q. What do you enforce?

15 A. UCC, Uniform Construction Code.

16 Q. And is that sort of a minimum code
17 standard?

18 A. It is a minimum standards code.

19 Q. Did you encounter situations where
20 you have had projects that seem to have difficulty
21 passing code?

22 A. Yes. I have a large -- we have a
23 large failure right in our township.

24 Q. And, when you say "Large failure,"
25 what do you mean by that?

-PUBLIC HEARING-

1 A. We do the inspections and they get
2 red stickers, they do not pass, they go to the
3 next step, because things have not met to the
4 code.

5 Q. And would that be something that
6 causes you have to to do an excessive amount of
7 additional work?

8 A. It's part of the job, it's what we
9 are paid to do, to go back and make it right.
10 That's what we do in our office and that's what
11 we'll continue to do.

12 Q. Do you find when you are called back
13 that the work hasn't been completed or just hasn't
14 been completed properly or is it a mix?

15 A. You find both. You find people who
16 do not know how to build a home constantly calling
17 in inspections. The home is not ready or the work
18 was never done, and they are upset with the
19 construction department saying, "You are holding
20 up our customer from getting their house." You
21 hear every excuse out there.

22 Q. Now, in your official capacity as a
23 construction code official, have you come across
24 scenarios or situations similar to what Mrs.
25 DeVaney and Special Agent Mursheno just talked

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1 about?

2 A. Yes, many of them.

3 Q. Do you have a particular one that
4 stands out in your mind in your municipality?

5 A. I have a minor -- a subdivision of
6 nine homes that was started. Some of those houses
7 were three and a half to four years. It took --
8 the builder did do two of the homes. The
9 remaining nine homeowners had to take over various
10 states to finish the house.

11 I had one where the builder told the
12 homeowner to move into the house over
13 Thanksgiving. They had their Thanksgiving dinner.
14 There was no CO, we cited them, gave them a Notice
15 of Violation. It went to the builder, he ignored
16 it. We took it to municipal court. It went
17 through the municipal court process until the
18 fines reached in excess of \$5,000. At that time a
19 bench warrant was put out for him, we did have a
20 hearing, he did pay, we did finally get a CO, but
21 the homeowners did all the work to get --
22 necessary for the CO to pass.

23 Q. Have you found that construction
24 maybe was done under one name for the builder and
25 changed somewhere during the process?

-PUBLIC HEARING-

1 A. I have one builder which, according
2 to your state records, has over \$20,000 of
3 judgments over three different companies. Every
4 time they would have a problem they would go up to
5 Trenton and get another builders license.

6 Q. How -- go ahead.

7 A. Just a matter of walking in with
8 \$200, no qualifications, no nothing, and you walk
9 out and you are now a builder. This is what
10 seriously is wrong with the problem. I've been a
11 home builder for 26 years, I'm proud of my
12 license.

13 I was an elected official, I heard
14 the same complaints. This is what's the problem.
15 Trust this. Anybody can walk in off the street,
16 take a pen, sign their name and they are now on
17 that as a registered builder. No test, no
18 bonding, no nothing, no experience.

19 Q. You mean I could do that tomorrow?

20 A. Absolutely.

21 Q. As long as I pay \$200?

22 A. State of New Jersey would gladly
23 take your check and renew it for you every two
24 years.

25 Q. What is the renewal fee, 200?

-PUBLIC HEARING-

1 A. \$200. A hundred dollars a year.
2 Cheapest license out there. If you've been
3 involved in the home building industry, if you
4 know how to work your pencils, how to do your
5 deals, it's a very lucrative industry.

6 Q. Sounds like you can get the
7 registration even if you haven't been involved in
8 the home building industry.

9 A. Absolutely. I can show you proof of
10 that, too.

11 Q. Now, have you seen situations where
12 the builder has not been able to get a new home
13 warranty for the home?

14 A. Yes. That problem happens if they
15 don't pass the CO or they don't have -- or their
16 license has been revoked or they have a judgment,
17 they haven't paid a judgment. The homeowner moves
18 in. Now we are faced with the builder, the
19 developer who built the home, under proto
20 pretense, which means --

21 Q. Slow down a second. So the builder
22 builds a home under what, a prototype?

23 A. Yes. A prototype is, he follows one
24 general plan for that house and it's concurrent.
25 Every house is going to be similar. For that we

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1 give him a discount on his permit fee because
2 there is not a plan review. We've seen this house
3 time after time again.

4 Now, when a homeowner comes in and
5 says, "I've got to finish this house," he doesn't
6 own that plan. That plan didn't really go with
7 that house. It's in the file, but it was the
8 property of the builder or his developer. He's
9 then stuck with, if he needs architectural work,
10 paying that architect additional fees to come in
11 and re-do the plans and say, "They are now your
12 plans, Mr. Homeowner, not the developer's
13 anymore."

14 Q. Have you seen situations where the
15 homeowners have gone to the closing and there was
16 no new home warranty for them?

17 A. Yes.

18 Q. Is that because the builder had lost
19 the insurance? Maybe he bounced a check or
20 something like that?

21 A. In the one case the builder bounced
22 the checks to the homeowner company in Georgia and
23 they would not give the warranty. So a CO then
24 was not issued. The title company settled without
25 the CO.

-PUBLIC HEARING-

1 Q. Did homeowners -- by the way, was
2 there more than one homeowner involved there?

3 A. Yes.

4 Q. Did those homeowners get a warranty?

5 A. No.

6 Q. Why not?

7 A. Because the state would charge them
8 the percentage for a warranty, in which case, who
9 would do the warranty work? Since the builder
10 walked away, why should they pay 15 -- \$2,000,
11 \$1500 for a warranty, if no one is going to do the
12 work or no one is going to stand behind it?

13 Q. So, did the State of New Jersey or
14 DCA work out some kind of arrangement with the
15 homeowners?

16 A. Yes, they did. What they did, they
17 allowed the homeowners to sign affidavits that
18 they did more than 20 percent of the work on their
19 own home, therefore, the statute says they do not
20 need a home warranty.

21 Q. Now, if we just step back a second,
22 this builder was building, am I right, without the
23 ability to give a new home warranty to these
24 homeowners?

25 A. When he acquired the permits he had

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1 valid home builders license.

2 Q. Right.

3 A. Through the process he had home
4 builders license, but he could not pay the
5 warranty companies because he bounced the checks.

6 Q. Now, were people still buying homes
7 from him?

8 A. Yes.

9 Q. And, so, they go to closing and
10 they've got no warranty?

11 A. Have no warranty and then some
12 people -- their houses are still in various states
13 of disrepair because the builder cannot -- he's
14 robbed Peter to pay Paul.

15 Q. Did the construction at that
16 development essentially stop?

17 A. Yes.

18 Q. And did the homeowners then go out
19 on their own and engage contractors to complete
20 the work?

21 A. Yes, and much to her -- what her
22 problem was, paid the liens off for the plumbing,
23 the HVAC, the lumber, and all the other liens that
24 were put on the properties.

25 Q. Were many of those homeowners young,

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1 first time buyers, or some of them first time
2 buyers, do you recall?

3 A. Seven out of the nine.

4 Q. Was this their dream home?

5 A. Absolutely.

6 Q. How much were some of the liens that
7 they found on their homes?

8 A. \$40,000 for lumber, \$10,000 for
9 septic and plumbing, HVAC, \$5,000.

10 Q. So the totals were what, up in the
11 60s plus, 70s?

12 A. 60 plus. Some more than that. Some
13 90 some thousand. These were average 350 and
14 higher homes.

15 Q. And, so, the homeowners had the
16 liens maybe between 60 and \$90,000 on them?

17 A. And they had to negotiate with the
18 contractor to pay so much on it or have them
19 finish it or hire other contractors to come in and
20 litigate it.

21 Q. To your knowledge, is that builder
22 still building in the state?

23 A. I was just informed yesterday that
24 they -- in another neighboring township he's
25 taking out permits again.

-PUBLIC HEARING-

1 Q. Mrs. DeVaney, did you learn that the
2 builder that had built your home had filed for
3 bankruptcy?

4 A. Yes, Lee Garell did, he was one of
5 the partners, and I have a copy of it here, if you
6 want to see it, so -- but, yes, he filed for it so
7 he was out of the picture.

8 Q. So the builder -- you learned he did
9 file for bankruptcy?

10 A. Yes, Lee Garell did.

11 Q. Was he one of the principals at the
12 firm?

13 A. Yes. It was just himself and Jay
14 Cooke. They were the two.

15 Q. They were the two principals?

16 A. Um-hum.

17 Q. Did you learn that your builder also
18 operated under different names?

19 A. Yes, yes. There was a couple
20 different developments he had done. I believe one
21 was up around like the Marlton area. He had one
22 called Heritage Walk in Swedesboro, he had one
23 called -- in Willow -- Willow Grove Commons in
24 Upper Pittsgrove, so he was around a few different
25 places with different names.

-PUBLIC HEARING-

1 Q. Was this purchase of your home the
2 single largest expenditure you've ever made?

3 A. Yes.

4 Q. What was the impact of this home
5 purchase on you and your family, both emotionally
6 and financially?

7 A. It was awful. We were living in the
8 apartment. You know, I had to drive my children
9 to school and whatnot. My daughter at the time
10 was seven years old and she used to come home from
11 school every day and say, "Mommy, how come you cry
12 every day," and, you know, how do you explain to
13 her exactly what you are going through, but it was
14 very difficult to try to maintain a family and
15 then take over as a construction manager, which I
16 had no clue, my husband was working, so it kind of
17 all fell on me and it was very stressful and I
18 don't wish it on anyone. There has to be
19 something done so it doesn't happen to another
20 person.

21 Q. How much additional expense did you
22 and your family have to expend as a result of
23 this? Can you give us an estimate?

24 A. Well, we had items in storage, we
25 lived in the apartment for so many months, also.

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1 I'm going to say, just off the top of my head,
2 maybe 20 to 30,000. It might be more.

3 Q. Was that a hardship for you?

4 A. Yes.

5 Q. Do you have any recommendations for
6 us?

7 A. Just he was saying that something
8 has to be -- anybody can become a builder, and I
9 don't know if like fingerprinting or taking their
10 Social Security number every time they apply and
11 then have some kind of record. You know, have
12 their name with the Social Security number or
13 fingerprints -- they can't change them -- I mean,
14 what you are is what you are. Just some kind of
15 system where, if they tried to go from County A to
16 County B, they could say in County B, "Oh, he
17 isn't a reputable builder."

18 Q. Based on what we've heard today, it
19 sounds like you, yourself, could get a license as
20 a builder.

21 A. I wouldn't even have to pay the
22 \$200. I know what to do now. I mean, legally I
23 don't have to do that, but I wouldn't want to.

24 Q. Mr. Sabetta, are aware of any
25 protection provided by any government agency in

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1 New Jersey to help homeowners in situations like
2 this?

3 A. That was the intent of the Home
4 Warranty Act. I was involved in that in 1983 when
5 it went through this legislative process. That
6 was the intent there. It just failed.

7 Q. It failed?

8 A. It failed.

9 Q. And why do you think it failed? We
10 know why it's failing now, but what do you think
11 happened to that process?

12 A. I think it got lawyered up. The
13 system that came out of the legislature was
14 nothing but was -- when the hearing started what
15 it was supposed to be. When you read the Warranty
16 Act, it is so vague that it covers everything the
17 first year. Yes, every responsible builder will
18 give you a hundred percent guarantee the first two
19 years. Then we go to, you know, if a crack is
20 this big or step, it covers a lot of gray area,
21 and a lot -- part of that warranty is not just
22 black and white, which -- you take a young couple
23 who put every dime they had into it, they are
24 expecting -- it's just like their car. If they
25 think their car doesn't work, they take it back to

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1 General Motors or somebody and they fix it. With
2 a house, after the two years, it's very gray, and
3 there is no protection after that two years. If a
4 builder goes out of business or something, that's
5 the way it is.

6 Q. Do you have any recommendations for
7 us, besides what we've heard?

8 A. Yes. Some of the problems in the
9 home building industry have been addressed.
10 Starting in April DCA informed all the inspectors,
11 mandatory framing checklist. It's a very detailed
12 inspection where you go through and you count
13 clips, you count braces, you do everything there
14 and you sign your name to this.

15 This is a start to making housing
16 inspectors come back in New Jersey. This list
17 here has personal accountability. When you go in
18 and make the inspection, it can't be a window
19 inspection here. You got to go in there and count
20 things and see it met the plans. You got to have
21 a have a set of plans in your hands and walk the
22 house. Yes, it takes time, and, yes, the
23 municipalities I'm in have already stepped up to
24 the plate and hired additional staff. It takes
25 additional staffing. To deliver a good product,

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1 you need additional staffing and you need trained
2 staffing. New Jersey does have trained staffing.

3 I've been involved in other states.
4 If you want to cross over the river and look at
5 the horror stories over there, they are much worse
6 than what you are hearing here today. New Jersey
7 has stepped forward. This is one step.

8 The next thing is we have to make
9 home builder license personally responsible. We
10 have to make it like a plumbing or electric
11 license, where you have an individual who took a
12 test or somehow /TKPW0t a license, is bonded and
13 is insured to do that work in the State of New
14 Jersey.

15 Just coming up here and just signing
16 a piece of paper and giving them \$200, walking out
17 and becoming a home builder, because today you can
18 make money being a home builder being a pencil
19 builder. A pencil builder is someone that never
20 knew what a hammer, saw or any type of equipment
21 was, doesn't own any equipment, just owns that
22 piece of pencil or that checkbook and just writes
23 the things through and just a markup on the top.

24 It's very common today that we have
25 this type going on.

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1 Q. You mean pencil builders are common?

2 A. Absolutely. I think that, if the
3 Regulatory Affairs on the licensing, and we had
4 some way where you had to be responsible, I think
5 it would go a long way. The shore communities had
6 it for years. Every time you wanted to build a
7 house you took a test. It was a simple test, but
8 at least they had confidence in that you knew what
9 you were going to do.

10 You showed you had insurance, you
11 showed you had business insurance, you showed you
12 had some financial know-how, that you weren't
13 going to stick these young homeowners out and live
14 out in a tent, which I've had, or a trailer behind
15 the house.

16 MS. GAAL: That's all I have.

17 COMMISSIONER MARINIELLO: Good
18 afternoon, panel. You've been very informative
19 I'm sure all of us up here have taken a lot away
20 from the testimony of all three of you. When I
21 was a teenager my parents did a renovation, and
22 after it was over my mother, who is one to give
23 out advice to everyone, said, "Son" -- and I must
24 have heard her say at least 200 times since
25 then -- "if you ever do any home construction,

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1 make sure your marriage is on good footing."

2 So, with that, I'll pose this to Mr.
3 Mursheno because you've had the most experience in
4 dealing with the different types of -- in the nine
5 different developments all the people that have
6 gone through this. Can you elaborate on some of
7 the things that these people go through
8 emotionally during this process?

9 That Ms. DeVaney was very eloquent
10 in explaining what her family went through. Was
11 that common for most of these families?

12 MR. MURSHENO: That is common. Like
13 I said, there is a few families, they -- one
14 family, they moved in with their inlaws. Then,
15 shortly thereafter, they moved to a rented house
16 and then that house was sold on them, so then they
17 had to find an apartment. That apartment they
18 could only lease month to month because they are
19 believing that their house is going to be built
20 sometime in the future. Well, they are still in
21 the apartment. It's been a year and a half. And,
22 like I said, this is a family that used to go on
23 vacations in the summer, had their own home,
24 everybody had their own bedroom. They were just
25 building a nicer home. And these are the things

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1 that are common to these people.

2 Unfortunately, there is no
3 legislation out there to protect the depositor
4 from the time -- from the time you pay that
5 deposit to the time you get that -- you go to
6 settlement.

7 After that there is very minimal
8 protection under the home warranty, but there is
9 absolutely no protection from the time of the
10 deposit to the completion of construction.

11 COMMISSIONER MARINIELLO: And, even
12 if the homeowner was lucky enough to find a
13 builder who had deep enough pockets to pay back
14 their monetary damages, they would have virtually
15 no recourse for all the emotional damage that the
16 process has done to themselves and their families?

17 MR. MURSHENO: Oh, that's correct.

18 COMMISSIONER MARINIELLO: Mr.
19 Sabetta, you referred to some of these builders
20 robbing Peter to pay Paul. Do you find builders
21 who use the deposits from one home to buy
22 materials for other homes?

23 MR. SABETTA: Yes.

24 COMMISSIONER MARINIELLO: Have you
25 seen instances where homeowners have liens placed

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1 on their home for subcontractors or for materials
2 where the ability to prove that those materials
3 were actually used on those homes -- that onus is
4 left on the homeowners?

5 MR. SABETTA: Yes. We've had where
6 material was supposed to be shipped to that home
7 and went somewhere else.

8 COMMISSIONER MARINIELLO: So, absent
9 hiring competent counsel or experts, these
10 homeowners are left to pay these liens on their
11 own without knowing truly whether or not the
12 materials are in their homes?

13 MR. SABETTA: That's correct.

14 COMMISSIONER MARINIELLO: In some of
15 these cases that you are referring to, if I can
16 sum up some of the circumstances that you
17 testified to, you could have a homeowner contract
18 with a builder to buy a home -- by a piece of land
19 with a home on it, the builder defaults during the
20 process, the home isn't completely constructed,
21 the homeowner has to come in and essentially take
22 on the general contractor hat, pay off the liens
23 from the last builder. At the end of the day he
24 still has no homeowners warranty -- home warranty
25 because he has to sign an affidavit just so he can

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1 get in the home, saying that he did more than 20
2 percent of the work.

3 MR. SABETTA: That about sums
4 everything up.

5 COMMISSIONER MARINIELLO: So you
6 paid more, did it yourself, and have no one to go
7 after for the damage that was done in the process
8 of building the home?

9 MR. SABETTA: And if your wife
10 hollers, you have to go fix the repair.

11 COMMISSIONER MARINIELLO: Sounds
12 like a total system failure for those people.

13 MR. SABETTA: Yes. Not what it was
14 intended to do when we started this in the '80s.

15 COMMISSIONER MARINIELLO: Thank you.
16 Mr. Chairman.

17 COMMISSIONER FLICKER: Agent
18 Mursheno, you described how you uncovered these
19 nine failures. Would there be any way for a
20 homeowner to have any idea about the builder with
21 whom he or she is contracting?

22 MR. MURSHENO: Really I don't know
23 of any way that the homeowner -- other than
24 checking -- what some of the homeowners have done
25 is they make a call to the Better Business Bureau,

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1 but what they do is maybe check the references of
2 the builder, check some developments of the
3 builder, but that doesn't guarantee that the
4 builder has the money that he had when he built
5 the houses that he did previously.

6 There has got to be some type of
7 financial check that the homeowners can look at to
8 see if the builder is financially capable of
9 building a house.

10 COMMISSIONER FLICKER: And all I can
11 say to Mrs. DeVaney is, you are a better man than
12 I.

13 MS. DeVANEY: Thank you.

14 COMMISSIONER FLICKER: Thank you.

15 COMMISSIONER EDWARDS: Mr. Sabetta,
16 I've got a couple of things you might be able to
17 help me with. First of all, you described a
18 circumstance surrounding a set of plans -- a set
19 of prototype plans and I didn't quite follow the
20 details of that. Walk me through that one more
21 time.

22 MR. SABETTA: According to the New
23 Jersey Department of Community Affairs, the UCC
24 regulations, a contractor or builder who is going
25 to build repetitive homes will file what's called

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1 proto plans, which is one set -- you know, mark on
2 the bottom of the construction jacket "Prototype."

3 That means he's going to build
4 repetitive -- that same style home. In that you
5 may have eight or ten different options in that
6 packet, but he's marked out this is the home he's
7 going to build. Typically in a development you
8 may have three or four different style homes or
9 you may have all and he says that's what they are
10 going to build. On the regulations they get a
11 discount for that, being it's not plan reviewed
12 each time, so that can be between five and 25
13 percent, whatever the municipality does in their
14 ordinance. Some municipalities do five because
15 they don't want to give more of a discount than a
16 homeowner could get. That means that one print is
17 on file as a master print and there may be 50
18 homes built under that.

19 Now, when that guy goes out, those
20 homeowners who we don't really know, because the
21 permit is in the name of the builder, and it's not
22 Mr. and Mrs. Smith or somebody, it's whoever the
23 builder was who took out the permit, and that
24 block and lot is in that builder's name, so that
25 permit then goes with the block and lot, but that

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1 plan was the property of that builder.

2 So now there is questions, there is
3 problems with the plans, the architect didn't get
4 paid for something, he's not going to respond
5 until the new homeowner says, "I'm going to
6 contract with you," because most architects, even
7 if they are protos, they work on a residual.
8 Every time you use that print, it's a thousand,
9 1500 charged at the settlement table at the end
10 for use of his print.

11 So he knows he wasn't getting that,
12 so the homeowner then has to pay that. Get an
13 addendum, get a cover sheet, now we are using
14 authorized use Mr. Smith's print and here is the
15 seal.

16 COMMISSIONER EDWARDS: Even though
17 the construction has already begun on that
18 particular house and that particular style house?

19 MR. SABETTA: Right. But what
20 happens is, the state makes you change the jacket.
21 The jacket before would be in the builder's name.
22 Now, to qualify for this warranty and all that, if
23 they are going to be the home builder, they are
24 now the general contractor, they come in and
25 change the front of the jackets. They take the

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1 builder's name off, they become the responsible
2 party, they sign the affidavits on the inside and
3 they have to either redraw the print, because it's
4 their own home -- in many cases the technical
5 part, the engineering part is what they need or
6 what might be missing, is where they have to go
7 back to the architect.

8 COMMISSIONER EDWARDS: The plans on
9 file they are not permitted to use, as a result of
10 this process that you've just described, and, so,
11 they have to submit new plans or hire the
12 architect who was on those plans to make any
13 modifications? I'm having trouble understanding
14 why they can't use the plans that are there.

15 THE WITNESS: Well, it depends on
16 what stage it's in. Now, if that house hasn't
17 been started, then the permit would be void
18 because it's been six, seven months, a year,
19 nothing has been done, so they come in -- we were
20 a contractor, we want to buy this house, we
21 were -- paid our builder to build this house, he
22 didn't do it, so, now we need plans, we need a new
23 permit processed, you are paying additional fees.

24 What the township committee decided
25 to do, they didn't want these homeowners punished

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1 to pay additional fees. They says, you know, work
2 with them, let's get them through the process,
3 let's try to get these people in their homes. Do
4 whatever we can do here to get them in and that's
5 what the township decided and that's what we did,
6 and we did not want to charge them additional
7 fees, but they were already out --

8 COMMISSIONER EDWARDS: Right,
9 wherever they were.

10 Fundamentally, we can also make
11 recommendations to clean up the recordkeeping in
12 that process to allow plans to get carried forward
13 with the property, if somebody is stuck in the
14 middle of a permit and a developer is changed, we
15 can help other people around the state whose
16 township may not be as insightful as yours.

17 Let me ask you a question. When we
18 have renovations that happen and we have new
19 construction, and you do inspections on both of
20 those. Do you find any bigger or lesser problems
21 on renovations versus new construction?

22 MR. SABETTA: You'll hear about more
23 on new construction, but it's blatantly worse on
24 renovations. The abuses in renovations is much
25 worse than in new construction, but you'll hear

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1 about the new construction, because you do have
2 some of these safeguards.

3 COMMISSIONER EDWARDS: You mean, on
4 the renovation side you have some safeguards?

5 MR. SABETTA: You don't have too
6 many, because there is nothing -- they'll take a
7 deposit and they won't put the roof on, and then
8 leave, and Mrs. Jones, who is 86 years old, just
9 got ripped off. Just like back in the old days
10 with the aluminum siding salesmen going door to
11 door. They are still out there.

12 COMMISSIONER EDWARDS: I was asking
13 the question with reference to some of the
14 remedies that are available for people in the new
15 construction are not available to the same length
16 they are in the renovations. The Consumer Fraud
17 Act applies to renovations. The Consumer Fraud
18 Act does not apply to new construction, so the
19 level of fraud protection may be exactly the same,
20 it's the remedy that's not available, and I was
21 wondering how well that remedy was, in fact,
22 working and, from your perspective, you don't see
23 a particular difference because of the Consumer
24 Protection Act and that protects them from a fraud
25 claim.

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1 THE WITNESS: The biggest thing we
2 have telling, I'll say our customers, people who
3 come in for the permits, we put on the back of
4 every permit, "Do not make final payment until all
5 inspections have passed," and we put the state
6 statute on there that says that.

7 Most people, renovators, pool
8 contractors, never want to give the homeowner that
9 yellow placard because it says that on the back
10 and they all want their payment at the end before
11 they get the final inspection. That is the
12 safeguards there, and we stress that, we post that
13 in the two offices that I run, we blew it up, put
14 it on the door when you came in, and we tell every
15 consumer, you know, we are there probably to work
16 for you -- we work -- we work for the
17 municipalities. Here is what it says. This is
18 what the statute says. Use it.

19 COMMISSIONER EDWARDS: The last area
20 that I want to ask you a couple questions about.
21 What is the structure of your employment
22 arrangement? Who is your boss? Who do you work
23 for? Who hires you? Who can fire you in that
24 world?

25 I'm not saying any of those would

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1 happen. The opposite. You are obviously doing a
2 wonderful job, you are that representative of that
3 very significant number of building inspectors and
4 officers who work very well in the state.

5 We need to understand maybe a little
6 bit more about some of the questions like how you
7 are hired, who controls what you do and what you
8 don't do? Some of it -- I think I have some of
9 it, some of it is practical, some of it is legal,
10 some of it is not.

11 MR. SABETTA: Well, Mr.
12 Commissioner, you came from the political process,
13 you know how most jobs in the State of New Jersey
14 are hired. I had the fortunate -- I was hired by
15 both political parties, being in one, so I do have
16 tenure in both municipalities I do work in. It
17 is -- how you deal with the people is a lot of it.
18 You are hired and fired by your township mayor,
19 township committee. You are on a four-year term.
20 At the end of that term you can get tenure. You
21 do your job, you'll get tenure, and then you are
22 there for life. Unless you do something to
23 somebody else, you aren't going to lose your
24 license. That's pretty much how it works in New
25 Jersey.

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1 COMMISSIONER EDWARDS: And who
2 supervises what you do, if anybody?

3 MR. SABETTA: I am supervised by the
4 Department of Community Affairs. What they do,
5 they have a monitoring staff, which -- they'll
6 come into the office after I or someone went out
7 and made inspections and they'll spot check.
8 They'll come in and say, "I want to see the
9 inspection logs of Jim Sabetta today." Those
10 licensed inspectors then will go back out to where
11 I made inspections, follow behind me and see what
12 they did.

13 Now, a state inspector is required
14 to make four inspections a day. Well, you've got
15 an eight-hour day. If you are two hours on each
16 inspection, you can find probably almost anything
17 you want to think about. In the real world, the
18 municipalities -- they are not going to tell you
19 to make four inspections a day. They are going to
20 tell you, make the inspections, but you have to
21 make them thorough.

22 Now, in our departments, we -- our
23 people are salaried, so they are not getting paid
24 overtime, but they have to do the job. Don't come
25 back to that office and say, "I only had time to

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1 do two inspections." Come back at 10:00 o'clock
2 at night, 8:00 o'clock at night, whatever it takes
3 to get the job done.

4 Our paperwork shows my people who
5 work there, they are caring and they are doing
6 that, but we do have a high failure rate. If we
7 had a high pass rate, 95 percent pass rate, then I
8 would be concerned of the windshield or the other
9 things that have been brought up here today. I'm
10 not having that problem. I have dedicated people
11 and there is a lot of dedicated inspectors in the
12 State of New Jersey.

13 COMMISSIONER EDWARDS: There are
14 subcode officials. To what extent do you control
15 the people and who do you control in that subcode
16 and subinspection process?

17 MR. SABETTA: I'm the construction
18 official, I'm the boss, so, I mean, I take the
19 brunt of the complaints. And, you know, I was 13
20 years on the elected side, so I got the complaints
21 from the homeowners about the construction
22 official or about the building inspector, so I try
23 to mesh that together and, when you sit there and
24 you realize people -- I do go out and spot check.
25 When I'm making my building inspection, I'll look

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1 at the plumbing inspector.

2 I have 26 years of experience
3 building homes. I know the inside and the
4 outside, I know a 12 wire from a 10 wire, I
5 know -- so I do spot check. Most of your towns
6 where you don't have your -- your smaller towns,
7 especially, the construction officials do have to
8 get out in the field, they do spot check the other
9 subcodes. You don't have as much problems that
10 way. You do do a better job for the consumer.

11 COMMISSIONER EDWARDS: Do some
12 communities subcontract that out to where a
13 subcode may have -- or an inspector may have two
14 or three or four towns that they work for?

15 MR. SABETTA: Correct. They
16 subcontract out to a third-party agency, but most
17 of the smaller communities, they will hire
18 part-time inspectors. That way you'll work in two
19 towns. I'm fortunate to work in two adjoining
20 towns, so I'm three hours in one, eight hours in
21 the other. I mean, I have a 57-hour work week.

22 COMMISSIONER EDWARDS: That helped
23 me a lot.

24 I have to make a comment about the
25 homeowners warranty program. I was counsel to the

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1 governor when the homeowners warranty program came
2 through and, like you, I think I was younger and a
3 lot more naive then, and the homeowners warranty
4 turned out to be a homeowners warranty for
5 builders. It was a recommendation from -- that
6 came out of hearings similar to this, but it
7 wasn't -- the warranty program that came out --
8 the warranty program excused the builders by
9 putting something less than the kind of guarantees
10 they should be responsible for in the quality of
11 the work.

12 The staff knows this, I'm anxiously
13 looking forward to -- we are going to deal with
14 the homeowners warranty program in the next
15 session in a lot more detail and a lot more
16 aggressively, so I'm looking for some solutions to
17 that particular problem, too, and, if you have
18 any -- I mean, I've been around as long as you
19 have, I would appreciate hearing from you about
20 that, but I would like to thank you for your hard
21 work and your coming here today.

22 MR. SABETTA: Thank you,
23 Commissioner.

24 COMMISSIONER SCHILLER: I echo what
25 the Commissioner just said, that basically the

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1 three of you have put a face onto a little bit
2 different problem than what we've been hearing all
3 day. The individual homeowner contracting for a
4 home and all those pitfalls that you get into, and
5 we appreciate your bringing that to the fore and
6 helping us also to address that problem.

7 I would also like to echo, Mr.
8 Sabetta, it's one thing that you forgot to put in
9 your recommendations, and it's hire people of
10 integrity and responsibility, as you are, and
11 perhaps we could achieve a lot in the way of
12 getting -- having construction code officials that
13 we need in the State of New Jersey.

14 So, I want to thank you all for
15 coming and we appreciate your participation.

16 MR. SABETTA: Thank you.

17 COMMISSIONER EDWARDS: Ms. DeVaney,
18 I'll pay you \$200 for your license.

19 MR. SABETTA: She can only build one
20 house every five years.

21 COMMISSIONER SCHILLER: If we could
22 give the court stenographer just a five-minute
23 break and we'll resume in five minutes.

24 (Recess called at 3:45 p.m.)

25 (Resumed at 4:04 p.m.)

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1 COMMISSIONER SCHILLER: We'll resume
2 the hearing, please.

3 Mr. Glassen.

4 MR. GLASSEN: The Commission calls
5 Abraham Chasnoff. If you could stand to be sworn,
6 Mr. Chasnoff.

7 ABRAHAM J. CHASNOFF, after having been first duly
8 sworn, was examined and testified as follows:

9 EXAMINATION

10 BY MR. GLASSEN:

11 Q. Mr. Chasnoff, could you state your
12 name and your background for the Commission,
13 please.

14 A. My name is Abraham Chasnoff and I'm
15 an assistant prosecutor in Middlesex County.

16 Q. And, as assistant prosecutor in
17 Middlesex County, do you work in a particular
18 bureau or have a specialized unit?

19 A. I'm working in the special
20 investigations unit.

21 Q. Mr. Chasnoff, did you prosecute an
22 individual named Kenneth Filmore?

23 A. Yes, I did.

24 Q. And what was Mr. Filmore initially
25 charged with?

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1 A. He was charged with various counts
2 of theft and writing of bad checks.

3 Q. And could you describe to the
4 Commission the business or scheme through which
5 Mr. Filmore committed these offenses?

6 A. He operated a corporation, it was a
7 one-man corporation, called Premo Modular Homes,
8 and he advertised in the types of throw-aways that
9 you would find at the supermarkets, advertising
10 what he called a turnkey operation where someone
11 would -- he would provide the land and he would
12 provide a modular home from beginning to end, and
13 you would just give him the money and you would
14 walk in to a new house.

15 Q. So, as a turnkey operator, you
16 entrusted him to take care of you from beginning
17 to end, is that correct?

18 A. That's what he proposed.

19 Q. Now, did he hold a real estate
20 license?

21 A. He did.

22 Q. And did he operate through a
23 corporation?

24 A. Yes, the corporation was Premo
25 Modular Homes.

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1 Q. And could you describe to the
2 Commission how Filmore's scheme worked.

3 A. Well, as I said, he had the
4 corporation, he advertised in these local
5 community publications, he was located on a major
6 highway with a large sign in front that said
7 "Premo Modular Homes" and people would read these
8 ads or they would just drive by and they would
9 stop in and he would explain the operation of how
10 a modular home is constructed, he would tell them
11 that he could provide -- he would put them in
12 contact with financing, he would find them the
13 land, if they didn't have the land, and he would
14 build them the home.

15 Q. Would he take an initial deposit
16 from them?

17 A. He would give them what was called a
18 nonbinding application form, which a person could
19 put down \$2500 and -- just to hold the price of
20 lumber, and then they could think about it and, if
21 they decided they didn't want to go through with
22 the deal, then he would give them their money
23 back.

24 Q. Did any one of his clients ever
25 decide they didn't want to go through with the

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1 deal and seek their money back?

2 A. Yes.

3 Q. Did they get their money back?

4 A. No.

5 Q. How did you come to discover Mr.
6 Filmore's pattern of stealing money in this
7 manner?

8 A. I learned it almost accidentally. I
9 was at the time in a trial team, which meant that
10 I would get the files after an indictment had been
11 returned and I would then end up prosecuting it or
12 assigning it to someone else on my team, and it
13 turned out that I saw five separate indictments,
14 each individually presented by different assistant
15 prosecutors, and they all ended up on my list.

16 When I read them and I saw what they
17 were and I saw that there were additional
18 complaints, I moved and I had them all
19 consolidated and I brought another indictment, as
20 well, so there were a total of six separate
21 indictments with 23 counts charging these various
22 theft and bad check counts.

23 Q. About how many victims were involved
24 in Filmore's scheme?

25 A. In that particular one there were 18

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1 victims.

2 Q. And was he prosecuted?

3 A. Yes, he was. Of those 18 victims,
4 there were nine people who were purchasers or
5 potential buyers, one was an employee, and the
6 rest were suppliers or subcontractors who had been
7 either not paid or been paid with bad checks.

8 Q. Now, had these victims attempted to
9 check out Mr. Filmore? Had they retained
10 attorneys? Had they taken steps to protect
11 themselves?

12 A. Many of them did. They went to the
13 Better Business Bureau, they attempted to do a
14 background check. He provided them with a list of
15 some references. I don't know if they ever
16 checked out the references.

17 Many of the people had attorneys for
18 the land purchase, but, when you are dealing with
19 a modular home -- a modular home is a separate
20 thing -- entity. It's a very good value because
21 you can get a lot of house for a very little
22 bit -- for relatively little bit of money, and
23 many of the people who came to him were people who
24 were adventuresome, who were trying to get the
25 most bang for their buck, and some of that meant

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1 that they would not go to an attorney when it
2 might have been to their benefit to do so.

3 So they would go to the attorney, if
4 they did, the attorney would handle the land
5 purchase, but that would be it.

6 Q. You say you prosecuted him. What
7 was the result of that prosecution?

8 A. He was convicted of 13 counts,
9 including all nine of the home buyers.

10 Q. Was he a registered builder?

11 A. Yes.

12 Q. And was his registration revoked?

13 A. Eventually it was. I don't know the
14 details of what it was, but I know that there had
15 been complaints, I know that he had failed to
16 answer the complaints, and I believe when he
17 failed to answer his license was revoked.

18 Q. And did he continue to do business,
19 nevertheless?

20 A. He formed or he had formed a new
21 corporation. He was no longer an incorporator or
22 a corporate officer, but he had his wife, who
23 previously had been a hairdresser, I believe, and
24 another gentleman who was in the construction
25 business who were the corporate officers.

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1 Q. What was the name of that
2 corporation?

3 A. That corporation is Built To Order
4 Modular Homes.

5 Q. So was he able to reorganize his
6 business under another name?

7 A. His business was in the same
8 location, he changed the sign. The contracts, by
9 the way, were pretty much the same. They changed
10 the names on them.

11 Q. So, in effect, all he did was change
12 the name on the sign and the name on the contract?

13 A. That's what we say.

14 Q. Did the second company operate
15 within the law?

16 A. There is another indictment
17 outstanding with 17 victims, including a
18 corporation. By the way, the second corporation
19 was incorporated on May 22, 1998. The first
20 indictment included charges that went through
21 February of '98.

22 Q. How much money has he allegedly
23 cheated customers out of the second time?

24 A. The second indictment we've
25 identified 358,000 some dollars. Of that, 171 of

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1 it we've traced to having been cashed at a check
2 cashing business, and another \$66,000 was in cash
3 that he received.

4 Q. How many victims are included in the
5 second offense?

6 A. There are 17 that we've -- that we
7 have presented. There are other people who have
8 other complaints that we decided we were not going
9 to present to the Grand Jury.

10 Q. Were the victims able to complete
11 their homes?

12 A. Are you talking about the first or
13 the second?

14 Q. Well, either or both.

15 A. In the first, the nine buyers all
16 ended up with some level of construction. In the
17 second, none of the victims that have now been
18 presented have any kind of housing.

19 MR. GLASSEN: Thank you, Mr.
20 Chasnoff.

21 Mr. Chairman.

22 COMMISSIONER MARINIELLO: The first
23 set of indictments he ultimately was convicted
24 for?

25 THE WITNESS: Yes.

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1 COMMISSIONER MARINIELLO: And what
2 was the penalty associated with the sentence that
3 came with that?

4 THE WITNESS: The judge sentenced
5 him to five years probation with 364 days of
6 imprisonment as a condition.

7 COMMISSIONER MARINIELLO: Not
8 knowing the statute's particulars, was that the
9 minimum that he was eligible for?

10 THE WITNESS: No. Although none of
11 the victims, none of the thefts individually went
12 to the level of \$75,000, which would make it a
13 second degree crime, in the aggregate it was
14 closer to two or \$300,000, and we urged that it
15 was all part of a common scheme or plan, and that,
16 therefore, he would be eligible for sentencing as
17 a second degree, which would make it a ten-year
18 maximum sentence, and the judge found that it was
19 not part of a common scheme or plan.

20 COMMISSIONER MARINIELLO: You
21 probably won't have that problem this time around.

22 Is there something specific that we
23 can recommend that would help you in that type of
24 a prosecution where the first time -- it may be
25 the gentleman's first time being caught, but it

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1 was 17 different victims, or however many victims
2 it was, and obviously a substantial number of
3 people were bilked out of a substantial amount of
4 money.

5 THE WITNESS: I don't think that the
6 criminal laws have to be changed. The problem is
7 identifying the crime, itself, and whatever can be
8 done to help the homeowners, which is what you are
9 trying to do now, but I think that the criminal
10 law, itself, is sufficient to handle this type of
11 crime, once you get to that level.

12 COMMISSIONER MARINIELLO: I have
13 nothing further, Mr. Chairman.

14 COMMISSIONER FLICKER: Where is this
15 gentleman currently?

16 THE WITNESS: Home.

17 COMMISSIONER FLICKER: He's out on
18 bail?

19 THE WITNESS: No. He served his one
20 year of incarceration and he's on probation, so
21 he's out.

22 COMMISSIONER FLICKER: And how about
23 the second indictment?

24 THE WITNESS: It's pending.

25 COMMISSIONER FLICKER: Is he on bail

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1 for that?

2 THE WITNESS: I don't know what the
3 bail status is, but, yes, he is out.

4 COMMISSIONER FLICKER: Do you know
5 if he's still selling modular homes?

6 THE WITNESS: Not under either of
7 these names.

8 COMMISSIONER FLICKER: Maybe another
9 name?

10 THE WITNESS: I don't think so.

11 COMMISSIONER FLICKER: Thank you
12 very much.

13 THE WITNESS: You're welcome.

14 COMMISSIONER EDWARDS: Wouldn't the
15 subsequent violation be a violation of his
16 probation?

17 THE WITNESS: He hasn't been
18 convicted yet.

19 COMMISSIONER EDWARDS: But I don't
20 know that you have to be to be involved in a
21 scheme, but anyway, the -- in making this
22 particular case or other cases like this, have you
23 found the records and the information available
24 within the official community of the home
25 construction industry is adequate, inadequate, did

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1 it have any --

2 THE WITNESS: Well, I have to deal
3 with the construction official -- you know, the
4 construction officials, and they were very helpful
5 and I didn't -- I didn't have a problem getting
6 the information from the individual offices, but I
7 had to go to individual offices to get it, and --
8 but I didn't have any problem once I had that
9 information, and it was forthcoming.

10 COMMISSIONER EDWARDS: And they had
11 the information in their files that was necessary
12 for you to do that?

13 THE WITNESS: Their portion of it,
14 yes.

15 COMMISSIONER EDWARDS: Thank you.

16 COMMISSIONER SCHILLER: Can I
17 surmise from that last comment you made that it
18 would be better if we had a more centralized place
19 where these kind of homeowner complaints or a
20 better way of tracking contractors or building
21 licenses?

22 THE WITNESS: It's difficult to
23 identify the difference between a bad businessman
24 and a criminal, because they are dealing with --
25 it's a matter of degree, I think. Some people --

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1 it's true that the builders -- and, as a matter of
2 fact, Mr. Filmore indicated that he was robbing
3 Peter to pay Paul, when, in fact, he was robbing
4 Peter and cheating Paul, but there is a difference
5 between that type of person and the person who
6 does go hand to mouth or go from project to
7 project, and it's really a matter of degree. I
8 don't know that putting a central location, a
9 central registry would help in that regard. It
10 might help the individual who is trying to find
11 out whether the builder he is contemplating
12 working with is any good or not.

13 COMMISSIONER SCHILLER: That's what
14 I'm basically trying to go to. If we had a place
15 where we could at least know that this same person
16 has opened up three or four businesses over a
17 period of time, and all doing the same thing, and
18 folded them because of financial problems,
19 somebody could find that out and at least know
20 that just getting a builders license is not
21 sufficient to go into business.

22 THE WITNESS: Right, and some of
23 these people, I think, had gone to Community
24 Affairs, but, of course, he never got to the point
25 where there were problems of warranty because the

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1 homes weren't being built, so the Community
2 Affairs portion of it only dealt with complaints
3 of shoddy workmanship or something like that, but
4 not dealing with the -- with the criminal aspect
5 of what he was doing.

6 COMMISSIONER EDWARDS: It would seem
7 to me that a registry would be valuable. Here is
8 somebody who bilked 17 or 18 people and then went
9 out and did it again and there is no source that
10 anybody could go to to find out he did it the
11 first time.

12 THE WITNESS: That's right.

13 COMMISSIONER EDWARDS: We almost
14 need a playbook for the builders or something,
15 really to protect the good ones, as much as it is
16 to get the bad ones.

17 THE WITNESS: Sure, but it's a
18 question, then, of who is going to make the
19 complaints. You are still going to have to rely
20 on the individual victims to make the complaints
21 to the -- to whatever registry there is. And, if
22 they go -- excuse me -- to one of the 500 and some
23 municipalities or police departments, it's a
24 question of the police department recognizing that
25 there is a pattern.

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1 COMMISSIONER EDWARDS: It just seems
2 that like -- we, as a system, have dropped the
3 ball. If we've got somebody -- first of all, 18
4 people, got indicted and convicted, and does it
5 again and gets 18 more people, I mean, there is no
6 vehicle by which those people could have
7 ascertained -- reasonably ascertained -- I
8 wouldn't have been able to even pick that one up.
9 I would have to call your office to find out.

10 THE WITNESS: Well, even if you went
11 and tried to find out about Built To Order, his
12 name would not appear.

13 COMMISSIONER EDWARDS: Right,
14 exactly. So, we are missing something in the
15 system here in registering people who are
16 unscrupulous or incompetent. As you said, that's
17 a matter of degree. Some are incompetent, some
18 are unscrupulous. The consequence to the victim
19 is the same.

20 THE WITNESS: Doesn't matter.

21 COMMISSIONER EDWARDS: Right.

22 COMMISSIONER SCHILLER: Thank you
23 very much. I appreciate your coming in, and that
24 concludes the hearings.

25 I want to thank our stenographer,

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1 obviously, for putting up with our long-winded
2 commissioners and also -- but we really want to
3 thank our staff who have put a lot of time and
4 effort into this ongoing investigation. This is
5 only the beginning of gathering of all the facts
6 and doing a presentation of them to the public, so
7 there will be other hearings in January to look at
8 more on that and to present other sides of the
9 story, and also that their work was tireless and
10 also, as always, very professional. And, so, we
11 thank you for all your appearances and for your
12 testimony here today.

13 Ladies and gentlemen, that will
14 conclude these proceedings for the time being.
15 This is an ongoing investigation and the
16 Commission intends to hold additional hearings
17 early next year at a time and place to be
18 announced.

19 Before we officially adjourn today,
20 I would like to offer some observations. The
21 issues we are examining in this process duplicate
22 issues that demand the attention of every
23 responsible elected and public official in this
24 state.

25 We have listened these last days as

-PUBLIC HEARING-

1 witness after witness has described a system that
2 has failed in many fundamental ways. It is a
3 system that allows faulty and deficient
4 construction practices to persist, despite a
5 regulatory and statutory apparatus that was
6 established to prevent such abuses. Why, in this
7 day of high technology and advanced construction
8 techniques, do the residents of an entire
9 development such as Society Hill in Newark, as we
10 heard in harrowing testimony this morning, have to
11 exist in the shadow of life-threatening structural
12 flaws in their own homes?

13 It is a system that all seems
14 designed to enable greed and graft to prevail over
15 the best interests of the public. How is it
16 possible for the actual inspection process, as we
17 have heard here this afternoon, to be undermined
18 and subverted by unscrupulous code officials
19 operating in league with builders?

20 It is a system that ultimately
21 provides its victims, the unsuspecting buyers of a
22 piece of the American dream gone wrong, with no
23 quarter when it comes to proper governmental
24 oversight, workable mechanisms for remediation and
25 adequate safeguards against recurring abuses.

-PUBLIC HEARING-

1 As the Commission works its way
2 through this process, we will develop a
3 comprehensive package of recommendations for
4 wide-ranging systematic reform in all of these
5 areas. Our forthcoming second round of hearings
6 in January will focus on a host of remedies, and
7 we welcome the input of all interested parties,
8 home buyers, builders, code inspection personnel
9 and others with a direct stake in the outcome of
10 our work.

11 Ultimately, our goal is to provide
12 expert guidance to New Jersey's leaders so that
13 this system, now broken in so many ways, can be
14 made to function in a way that is productive for
15 all of us.

16 Thank you, and these hearings stand
17 adjourned until a date in January.

18 (4:24 p.m.)

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C E R T I F I C A T E

I, Sean M. Fallon, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination, the witness and/or witnesses were sworn by me to testify to the truth and nothing but the truth.

I do further certify that the foregoing is a true and accurate computer-aided transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action and that I am not interested in the event nor outcome of this litigation.

Certified Shorthand Reporter
XI00840
Notary Public of New Jersey
My commission expires 4-29-08

Dated: _____