

*CITY OF NEW YORK*  
*THE SPECIAL COMMISSIONER OF INVESTIGATION*  
*For The New York City School District*

*ED STANCIK*  
*SPECIAL COMMISSIONER*

***PRIVATE INTEREST OVER PUBLIC TRUST:  
AN INVESTIGATION INTO CERTAIN  
IMPROPRIETIES BY THE LEADERSHIP AT THE DIVISION  
OF SCHOOL SAFETY***

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## INTRODUCTION

At the same time that the newly created Office of The Special Commissioner of Investigation for the New York City School District (SCI) became operational, February 1991, SCI received complaints from a variety of sources alleging serious misconduct at the Division of School Safety. Those complaining consisted of current and former School Safety employees, Board of Education administrative personnel and members of the former Inspector General's Office.

This report examines and analyzes, in the following order, four allegations: (1) the employment at School Safety of public service retirees who were allowed to collect illegally both a salary and a pension (double-dipping); (2) false representations made by School Safety's Chief of Operations regarding his prior criminal conviction and the review of that conviction by the Executive and Deputy Executive Directors; (3) an unlawful financial and business relationship between the Chief of Operations and the Executive Director; and, (4) the hiring by School Safety of 12 of its Deputy Executive Director's relatives.

The investigation spanned many months and included more than 100 interviews, physical surveillance, and examination of thousands of documents maintained by financial institutions, the Board of Education, the New York City Department of Personnel, the New York City Police Pension Fund and the New York City Employee Retirement System. During the latter stages of the investigation, an attorney from this office, utilizing our authority to issue subpoenas, commenced fact-finding hearings. After several months of hearings, including testimony from more than 30 witnesses and generating 2000 pages of transcripts, this report results.

#### SUMMARY OF FINDINGS

The allegations, as set forth above, have been proven. At least 38 school safety employees, including the Deputy Executive Director, Henry Murphy, have collected their pension and salary in violation of New York State law. More than \$3,000,000 in unauthorized city monies was paid to these employees, in some cases spanning more than 10 years.

The Executive Director, Bruce Irushalmi, and Murphy sat in review of their next in command, Joseph Capalbo, Chief of Operations, respecting an arrest and conviction of Capalbo for

Criminal Possession of Stolen Property. Irushalmi and Murphy recommended retaining Capalbo. An analysis by SCI of court records pertaining to Capalbo's conviction by guilty plea and the Board of Education's records reflecting the above mentioned review demonstrate significant misrepresentations by Capalbo to Irushalmi and Murphy during the review and, at best, negligent acceptance of the story by them.

Further, in violation of the City Charter, the same Chief of Operations, Capalbo, entered into a financial and business relationship with Irushalmi respecting a real estate transaction and misrepresented the nature of that relationship to the Chancellor and SCI.

Finally, Murphy has had 12 of his relatives, a brother, son, nieces and nephews, employed by School Safety. Irushalmi has been aware of, and approved, the employments.

## RETIRED PUBLIC SERVANTS

Persons retired from public service are not allowed to collect their pension while subsequently employed by New York State or New York City, unless special exemptions are obtained. The practice of simultaneously collecting a city or state paycheck and pension without authorization, sometimes called "double-dipping," is prohibited by the New York City Charter and New York State Retirement and Social Security Law. Having been denied in 1982 its application for exemptions for retired police officers, the Division of School Safety simply ceased applying for exemptions while continuing to employ more and more retirees. The result was that city pension systems needlessly and without lawful authorization paid more than three million dollars to 38 retirees employed at School Safety, including its Deputy Executive Director Henry Murphy.

### The Law

Article 7 of the New York State Retirement and Social Security Law, Section 211, provides in pertinent part that no person retired from public service may be subsequently employed in public service without suspension or forfeiture of the retirement allowance, except upon approval of the New York City Department of Personnel. Such approval may be granted only on the written request of the retiree's prospective employer and on a finding that (1) other persons (non-retirees) are not available to perform the same services; (2) there is a need for his services; (3) the retired person is qualified; and, (4) the employment is in the best interests of the government. Approvals, almost universally referred to as "waivers," may be granted for periods not to exceed two years. If these conditions are not satisfied, then the retiree's salary with the prospective employer is limited to an amount set each year by the Legislature (\$9,362.00 for 1991), provided application is made pursuant to section 212 of the law.<sup>1</sup> Earnings in excess of the Legislative limit result in suspension or forfeiture of the retiree's pension.<sup>2</sup>

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<sup>1</sup> There have been no applications made pursuant to Section 212 on behalf of the public service retirees employed at DSS.

<sup>2</sup> The public policy behind this law is to eliminate the incentive to a public service employee to retire and promptly to re-enter public service to increase his income. Exceptions are made only where the jobs can not be filled by regular employees.

The Original Complaint

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Matter of Mintzer, Supreme Court of New York State, Kings County (1979).

In February 1991, investigators of SCI received information from the Board of Education Office of Administrative Personnel that a former employee of the Division of School Safety, presently assigned to another department, worked for School Safety for several years without having received at any time a "waiver." The employee was said to be a retired New York City police officer who simultaneously collected both his full pension (about \$17,212 in 1990) and salary (about \$34,083 in 1990). SCI investigators quickly confirmed that the Board of Education indeed had no record of a waiver pursuant to Article 7, Section 211 of the Retirement and Social Security Law (RSSL) for this employee, who was, in fact, a retired police officer earning a Board salary while, at the same time, collecting his entire pension. Further investigation at the New York City Department of Personnel, the only commission with authority to grant waivers, confirmed not only that no waiver had been authorized, but also that no application for a waiver had ever been made - neither by the Division of School Safety (DSS) nor the Board of Education (BOE). When it became clear that DSS was attempting to avoid responsibility by blaming this failure on other BOE departments, SCI investigators undertook a broader examination of DSS personnel. As set forth above, 38 public service retirees were found to have worked for DSS in violation of law. And more than \$3,000,000 in pension monies was paid out.

### How Did It Happen?

Because so much city money was at stake and so many DSS employees involved for so long a period of time, SCI investigators sought to determine how these 38 employees were able to get paid by the BOE and collect their full public service pensions without necessary waivers. Despite overwhelming evidence placing responsibility in the first instance on DSS, the heads of that division, including Irushalmi, Murphy and Robert Ascher, the Administrative Director, pointed their collective fingers at other BOE departments. While it is true that units within BOE's Division of Human Resources failed in some instances in their responsibility to maintain a check on DSS's personnel practices, it is abundantly clear that primary fault for this abuse lays with DSS. What is not so clear, however, is whether the violative practice was the result of intentional wrongdoing on the part of certain DSS executives or merely gross negligence. The evidence supports intentional wrongdoing.

### The Structure and History of DSS

Before we can examine the proper procedure for the hiring of public service retirees (hereinafter, "retirees") by another public agency, it is helpful in our situation to understand the structure and history of DSS.

The Division of School Safety is charged with maintaining the security of our schools and the safety of our schoolchildren. Its executive and administrative offices are located on East 6th Street in Manhattan, separate from other BOE offices. Prior to 1980, it was a department with fewer than 1000 school safety officers and, according to many of those interviewed during this investigation, lacking in professionalism. In order to improve that appearance, and under the direction of then Chancellor Frank Macchiarola, DSS<sup>3</sup> began hiring retired police officers to fill management-level positions. The wisdom of this, at the time, cannot be challenged.

Henry Murphy was one of the first such hirings. A retired police lieutenant, Murphy permanently joined DSS in 1979 as its Deputy Director. DSS, in rapid succession, then hired three more retired police officers to fill management-level positions – Michael Romeo, Albert Church and Mario Freda. Shortly after this round of hiring, in 1981, DSS hired another retired police officer – Lawrence Whiting – to head up security for the chancellor.<sup>4</sup>

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<sup>3</sup> DSS was at the time actually known as the Office of School Safety (OSS). It was not until 1989 that OSS became known as the Division of School Safety (DSS).

<sup>4</sup> According to Marie DeCanio, Deputy Executive Director,

According to documents in the custody of City Personnel,<sup>5</sup> the BOE, acting through Mary Hendrickson in Administrative Personnel, sought waivers from City Personnel on behalf of the abovementioned retirees.<sup>6</sup> In 1982, in four separate letters (Exhibit 1) to Mary Hendrickson, City Personnel denied the requests to appoint Murphy, Freda, Church and Whiting pursuant to Article 7, Section 211 of the RSSL. Specifically, City Personnel said on four separate occasions in four letters: "This request has been denied for the reason there is not a shortage of qualified persons from which to recruit." The

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Division of Human Resources, the above retirees were hired under a job classification described as non-pedagogical. With only a few exceptions, this classification included, and includes, all BOE staff who are not teachers. Shortly after the hiring, though, the BOE attempted to re-classify these retirees, along with others unrelated to DSS, to a job classification similar to that of teachers. Employees in this category do not need the above-described waivers from the New York City Department of Personnel in order to collect both a salary and a pension. The chancellor may grant such approvals. But, shortly after classifying the retirees similar to teachers, the NYC Corporation Counsel advised and the NYS Department of Education determined that this new classification was not appropriate. The result, according to DeCanio, was that the needed approval to hire the retirees without diminution of pension benefits could only come from the NYC Department of Personnel (City Personnel).

<sup>5</sup> BOE documents relative to Section 211 waivers could not be found by BOE officials. According to a representative of the Division of Human Resources at BOE, these "files are either missing, were discarded or were never maintained to begin with. [The person] who might have kept records...passed away last year."

<sup>6</sup> A waiver application was not made on behalf of retiree Michael Romeo however. Romeo was transferred at this time from DSS to the now defunct Inspector General's office and, apparently, his situation was overlooked.

retirees nevertheless continued to collect both their salaries and full pensions – Murphy and Freda have collected both salary and full pension continuously from their hiring until the present, and Church and Whiting did so from their hiring until their resignation in May and August of 1989, respectively.<sup>7</sup>

Not only did these four retirees continue to work notwithstanding the denials from City Personnel, but DSS continued to hire other retirees throughout this period up until 1989.<sup>8</sup> The only difference being that in these other new hirings, no effort was made to even apply to City Personnel for the required waivers.<sup>9</sup>

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<sup>7</sup>These four cases alone account for about \$450,000.00 in unlawful pension payments.

<sup>8</sup>Events of April and May 1989 resulted in a DSS suspension of hiring retirees. These events will be discussed later in this report.

<sup>9</sup>In December 1982, Bruce Irushalmi, who had been an acting Assistant Principal, was named Director of DSS.

## The Hiring Process

Before we proceed further, it is helpful to understand the manner in which DSS hired its staff, including the retirees.

According to Genevieve Aloia, former Personnel Director at DSS, a pre-application list was maintained which included the names, addresses and qualifications of all persons seeking employment with DSS as a School Safety Officer (SSO). When DSS received approval to hire SSOs, letters were sent to the applicants on the pre-application list who met certain minimum requirements. The letters invited the applicants to DSS for an interview. Provided the interview results were satisfactory, the applicant then completed a full application package.<sup>10</sup> The full application, along with fingerprints, medical test results, proof of education level, among other items, was then sent to a unit within Administrative Personnel at 65 Court Street for further processing and "payrolling." It is essential to understand that at this point Administrative Personnel at 65 Court Street processed the application based upon the paperwork provided by DSS. With respect to retirees, Administrative Personnel was charged with the responsibility of seeking waivers, but only if DSS in the first instance made them aware of the need for waivers. This was to be accomplished, according to Joseph LoSchiavo, Senior Assistant to the Director of Administrative Personnel, by DSS completing and submitting form DP-68, entitled

<sup>10</sup> Retirees who spoke with SCI investigators stated they disclosed their public service retirement during these interviews.

"Request for Approval to Employ Retiree." In the absence of a DP-68 in the full application package, it is very unlikely, and in fact never happened, that Administrative Personnel would have discovered the need for a waiver with respect to any particular applicant.

In fact, LoSchiavo buttressed his position with reference to a personnel memorandum sent in duplicate to DSS, among all other offices, every year from 1980 through the present. That memorandum, which has annexed to it a sample request for a waiver (DP-68), is entitled in bold print: "Employment of retirees from New York City and New York State Agencies." It states that "City and State retirees...must be processed for Section 211 employment. An external authorization by the City of New York Civil Service Commission is required." (Exhibit 2) The memorandum continues that the sections on the DP-68 calling for a "description of duties to be performed" and "justification for hiring retirees" are to be completed by the responsibility center, and the executive director of the responsibility center must indicate (by signing) the approval of the request (DSS is, and for the years at issue has been, a responsibility center, according to LoSchiavo). The inclusion of the sample DP-68 (Exhibit 3) with the annually circulated personnel memorandum also makes it clear that the DP-68 is to be filled out by the various field offices, or responsibility centers. Finally, the DP-68, by its very content, further makes clear that the responsibility center must both fill it out and approve it. For instance, the section asking for a description of the duties to be performed by the applicant can only be answered by the office, or responsibility center, seeking to hire

the retiree. Similarly, the section asking for the justification for hiring the retiree can only be known, again, by the particular office who seeks the retiree. Although DSS officials nevertheless disclaim responsibility, as set forth below, BOE regulation is clear - sections of the DP-68 must be filled out, in the first instance, by the responsibility center and the request must be approved by the responsibility center. Of course, though, the issue remains - Was the DSS failure to submit the "Request for Approval to Employ Retiree," the DP-68, merely a grossly negligent omission or an act of intentional wrongdoing?

#### The DSS Early Response

As the result of the SCI investigation, the concerned pension systems<sup>11</sup> and the BOE's Executive Director of Human Resources made their own limited inquiries into the situation, at various times communicating directly with retirees and DSS executives. According to the Executive Director of Human Resources, Thomas Ryan, and Joseph LoSchiavo, DSS executives blamed the situation on their understanding that it was not the responsibility of DSS to initiate application for waivers. Ryan and LoSchiavo continued that individual retirees offered differing explanations. For instance, Murphy, with respect to his own waiver, insisted that he believed he had a waiver and that he was unaware of having been denied the waiver in 1982. Other retirees insisted they discharged whatever legal responsibility they had once they informed DSS executives of their retiree status.

#### Where Does the Fault Lie?

Can the DSS explanation provided to Ryan and LoSchiavo, and later repeated under oath to SCI, be believed? It is helpful to examine the involved DSS executives individually.

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<sup>11</sup> New York City Police Pension Fund and the New York City Employee Retirement System.

HENRY MURPHY

Murphy testified that he believed another BOE department - Administrative Personnel - "took care" of waivers. In Murphy's view, once a prospective applicant indicated on his employment application that he was a retiree, then it was Administrative Personnel who completed and processed the DP-68. The following exchange between SCI and Murphy, who had his attorney at his side, demonstrates Murphy's position:

Q: Are you aware if DSS played any part whatsoever in the filling out of waiver forms...in other words, did your division, your office, play any part in this or was this totally the responsibility of 65 Court Street personnel (referring to Administrative Personnel)?

A: I believe it was the responsibility of 65 Court Street based on the paperwork being sent to them.

Although Murphy admitted knowing of the need for waivers, he insisted that the whole responsibility for seeking waivers was with Administrative Personnel. His answer does not survive scrutiny.

By all accounts of DSS executives and staff and Murphy, himself, Murphy oversaw all personnel matters within DSS. This included regular conferences with Robert Ascher, DSS

Administrative Director, regular communication with Administrative Personnel at 65 Court Street, the reading of BOE generated memoranda relative to personnel issues, and the approving, by signature, of SSO employee application packages. Murphy also admitted to having familiarity with form DP-68 – the request for a waiver. Given this level of involvement with personnel matters, it strains credulity to believe Murphy was not aware of the DSS responsibility in the waiver process.

For instance, Murphy proclaimed that he was diligent about reading BOE memoranda. In fact, he said, "Any memorandum coming from another unit or division...I would read it...I would have read it." Both Murphy and Ascher said that BOE memoranda relative to personnel matters have been, and still are, routinely shown to Murphy. Curiously though, Murphy denied having ever seen a personnel memorandum sent in duplicate to DSS every year from 1980 through the present entitled, in bold print, : "Employment of retirees from New York City and New York State Agencies." As set forth above, it contains a sample DP-68 and it lays out the responsibility of DSS. It is difficult to accept as true Murphy's assertion that he, who is himself a retiree and the overseer of DSS personnel matters, has never in 12 years seen this annually circulated memorandum.

The questions on the DP-68, as described above, further make clear that DSS need play a critical part in seeking waivers and that Murphy was aware of that part. Murphy admitted familiarity with DP-68s and the questions therein. He testified, though, that he understood that Administrative Personnel at 65 Court Street completed the sections on the DP-68 calling for a description of duties to be performed by retiree and justification for hiring retiree based upon the applicant's resume. It is absurd to suggest that a clerk at 65 Court Street, not a part of DSS, could even begin to describe the duties to be performed at DSS by the retiree and justify the hiring of the retiree for DSS based on what is in the applicant's resume.

Murphy's sworn position on this point contradicts an earlier statement he made to SCI. On January 29, 1992, Murphy, in an attempt to bolster his position that he was unaware that DSS had hired retired sanitation and transit workers, said with respect to these retirees, "There was no justification that I could think of to put on a piece of paper or to tell anybody else in the Board why we would need them working while on a pension."

After much further questioning on this point, further review of the request for waiver forms, and review of some of the resumes submitted by retirees, even Murphy had to recognize the absurdity of his original position. Apparently he did, because he

eventually admitted that the abovementioned information required by the DP-68 would have had to come from someone within DSS.

#### The Rufolo/Ciaccia Incident

Additionally, the events surrounding the DSS employment of two retirees, Anthony Rufolo and James Ciaccia, further demonstrate Murphy's awareness of the proper procedure for employing retirees. According to BOE documents, police retirees Rufolo and Ciaccia began work as school safety officers on May 23, 1988. They each completed at DSS employment applications wherein they disclosed 20 years of prior police employment but failed to answer questions about membership in the police retirement system. On approximately March 1, 1989, they each applied for additional time and leave benefits with the BOE based upon their prior city employment with the police department. They were properly denied these benefits by BOE's Administrative Personnel.

In the course of reviewing the applications for additional benefits, however, a specialist in Administrative Personnel made an important discovery. Irma Kolodny, the related staffing services specialist, noticed that neither Rufolo nor Ciaccia had a waiver, and, even though neither retiree mentioned

in their BOE employment application their membership in the police retirement system, Kolodny recognized the possibility of an impropriety. She made inquiries of DSS and the police department and learned that, in fact, these two retirees were collecting their city pension and their BOE salary without the needed waivers. Kolodny informed her superiors.

Quickly the matter reached Marie DeCanio, Deputy Executive Director at the Division of Human Resources. By letter dated May 9, 1989, she referred the matter directly to the former BOE Inspector General. One week later, the Inspector General returned the matter to DeCanio with the instruction to "follow-up administratively." For her part, DeCanio issued a memorandum to all BOE personnel directors reminding them of their responsibilities with respect to waivers. This memorandum should have been received by Ascher. Further, she instructed her staff to exercise care in reviewing employment applications submitted for processing by other BOE departments, paying particular attention to waiver requirements. Finally, she testified that she spoke personally with Irushalmi about his division's failure to properly process Rufolo and Ciaccia. Irushalmi recalls this conversation.

Several months later, Thomas Ryan, the Human Resources

Executive Director, himself, applied to City Personnel for waivers on behalf of Rufolo and Ciaccia, retroactive from their first day of BOE employment. City Personnel denied the requests explaining, as they had seven years earlier with respect to Murphy and associates, that there did not exist a shortage of persons qualified to perform the duties of the prospective employee. Rufolo and Ciaccia terminated their BOE employment and agreed to reimburse the police pension system the pension benefits received during the employment, which they are currently doing over a ten year installment plan.

At the same time Irma Kolodny told her superiors of the above situation, she also told Faye Wright. Ms. Wright was, at the time, a clerical supervisor for DSS who administered their personnel unit. Wright, who testified to having recognized the gravity of the situation, immediately drafted and delivered a memorandum to Murphy dated April 13, 1989. (Exhibit 4) In substance, Wright said to Murphy the law may not have been complied with respecting Rufolo and Ciaccia and that their pensions may be in jeopardy. She concluded with a last paragraph which simply said, "Please advise!"

Wright continued to testify before SCI that she allowed Murphy a long period of time to respond to her memorandum before

she approached him again in the early summer of 1989. Murphy's answer to the matter, according to Wright's testimony, was, "Let them suck wind." On August 23, 1989, Wright again wrote a memorandum to Murphy on the same issue. (Exhibit 5) In it she said, ". . . I have no record of your response. Please review and advise. All of the forms . . . are attached. They must be completed by this office and signed." Wright does not recall having received any response from Murphy, and she never again raised the subject of waivers with Murphy. In fact, she testified that the entire area of waivers was a "touchy" subject with Murphy and that she drafted the above two memoranda because she felt that "this is going to be ugly." Finally, she testified that it was her practice to advise Murphy anytime a prospective employee indicated prior city employment although she was not aware of what, if anything, Murphy did with this information. Murphy, during his testimony, denied recalling any of the above communication with Wright. He added that he had at best only a vague recollection of the entire incident - this despite the fact that Murphy, in August 1989, authorized by signature the "after-the-fact" requests for waivers on behalf of Rufolo and Ciaccia and, in December 1989 or January 1990 received a memorandum from the Executive Director of Human Resources addressed to Irushalmi advising DSS that the request for waivers for Rufolo and Ciaccia had been denied. (Exhibit 6) The latter correspondence also

discussed terminating their employment. By memorandum dated January 19, 1990, Murphy wrote back to the Human Resources Executive Director telling him that Rufolo and Ciaccia had recently resigned. (Exhibit 7) Either Murphy's recollection of the Rufolo-Ciaccia affair is very faulty or he was less than truthful with SCI. Murphy was then asked if in April 1989, or anytime, he "undertook to determine whether or not other people within DSS fell into the same category as Rufolo and Ciaccia, namely not having a waiver?" He answered, "No, I didn't do anything special."

The circumstances surrounding Murphy's own application for a waiver further suggest that he was fully aware of the process and the DSS part in it. In 1981, BOE Administrative Personnel applied to City Personnel for a waiver on behalf of Murphy. The information used by Administrative Personnel to justify the hiring was provided by DSS, i.e. "Description of duties" and "Justification for hiring retiree." In August of 1982, City Personnel notified in writing Mary Hendrickson of Administrative Personnel that the request to employ Murphy was denied for the reasons set forth above.<sup>12</sup>

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<sup>12</sup> The same application process and eventual denial occurred with Murphy's contemporaries - Church, Freda and Whiting.

Hendrickson testified before SCI that she recognized the denial, and the ones to follow that same year for Church, Freda and Whiting, to be of major importance. She stated that she immediately alerted her boss, Jerry Olshaker, who was then Director of Administrative Personnel. She continued that she told Olshaker about each and every waiver application which had been denied during that time. Olshaker, according to Hendrickson, said he would take care of the matter. Although Hendrickson never learned what, if anything, Olshaker did to address the matter, she recalled that from that time forward she knew not to even bother applying for similar waivers because "the city would not grant them."<sup>13</sup>

Olshaker told SCI investigators that he recalled learning in 1982 of the waiver denials respecting Murphy and others. He said it was obviously an important matter at the time and not one that he "would just sit on." In fact, he said he told either Murphy or Irushalmi<sup>14</sup> that Murphy could be

<sup>13</sup> Ms. Hendrickson's testimony is supported by a review of BOE and City Personnel records. Although DSS hired about 14 retirees since the above - described denials, there was only one application made of City Personnel for a waiver between 1982 and 1989, the time at which the Rufolo - Ciaccia affair was made known by Irma Kolodny. That one application was a unique situation involving the Chancellor's driver and even that application was denied (Exhibit 8).

<sup>14</sup> If Olshaker is correct about having spoken with Murphy or Irushalmi in 1982 regarding the August 11, 1982 denial by City Personnel of Murphy's request for a waiver, as he insists he is, then Olshaker probably spoke with Murphy since Irushalmi did not

jeopardizing his pension. The response, from either Murphy or Irushalmi, was "let's take a chance." Olshaker concluded that it is very unlikely that Murphy was unaware of the denial of his own waiver application.<sup>15</sup>

Murphy admits to speaking with Olshaker regularly. The following exchange between SCI and Murphy, who was under oath, demonstrates this:

Q. The date on the document I just showed you is August 11, 1982 (referring to City Personnel's denial of Murphy's request for a waiver). That was a time, was it not, when you were communicating regularly with Jerry Olshaker's unit?

A. Yes. Yes.

It is difficult to believe that Murphy was not alerted to the abovementioned denial.

#### ROBERT ASCHER

Robert Ascher, like Murphy before him, insists that the current waiver-related problem is not the fault of DSS. He testified that he was not aware that retirees needed waivers

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become associated with DSS until December 1982.

<sup>15</sup> Olshaker, himself, was the subject of an investigation by SCI involving his integrity. As a result of that investigation, his employment was terminated.

until the Rufolo-Ciaccia affair of 1989. In fact, when asked by SCI what he and other DSS executives concluded about the matter, the following exchange occurred:

A. That it was the Board of Education's problem and fault.

Q. When you say Board of Education...

A. Central Personnel.

The evidence strongly suggests that Ascher knew of the proper role to be played by DSS in employing public service retirees. As set forth above, Ascher is the Administrative Director for DSS. He reports directly to Murphy on personnel issues. He supervises the 35 people who make up the DSS support-services staff, and he has held BOE administrative positions, with increasing responsibilities, since 1979. In short, he is an expert in administrative matters.

Despite this expertise, Ascher denies familiarity with the above described memorandum, circulated annually since 1980, which sets forth the obligations of DSS, and other BOE offices, regarding the hiring of public service retirees. According to Marie DeCanio, this memorandum was sent not only to the heads of offices but to personnel administrators as well, such as Ascher.

Additionally, Ascher admits to regular discussions with Murphy and Administrative Personnel, specifically Olshaker's

unit, about DSS personnel matters. Given that Administrative Personnel was corresponding with City Personnel regarding waivers and that Murphy had the above-demonstrated knowledge, it is not entirely plausible that Ascher knew nothing of waivers, as he testified, until the Rufolo-Ciaccia incident of 1989.

Ascher continued that even in 1989, after the Rufolo-Ciaccia incident, neither he, nor Murphy, nor Irushalmi undertook to determine whether any of the many other retirees at DSS were illegally employed - even though all three admitted to SCI knowing that there were many retirees on the DSS staff. It would seem that if Ascher were unwitting until 1989, he would, at least, after that time make inquiries of other similarly situated retirees. His failure to act even at this time suggests his own knowledge that many retirees were illegally employed by DSS. An exchange between SCI and Irma Kolodny, who spoke in 1989 with Ascher about the Rufolo-Ciaccia affair, is illustrative:

Q. Did Bob Ascher seem to be ignorant of the requirement for 211 waivers?

A. Expressed ignorance.

\* \* \*

Q. Can you elaborate on that a little bit?

A. I could not believe that someone in his position at School Safety Personnel with all those other high level

former policemen around did not know that this was a requirement.

Q. Did you mention that to him?

A. I don't know. I may have just closed my mouth in amazement that he expressed this ignorance.

BRUCE IRUSHALMI

Quite simply, Bruce Irushalmi, the Executive Director, must be held accountable for the acts of his Deputy Executive Director and Administrative Director. Beyond this, however, there is evidence that Irushalmi, in fact, knew of the DSS responsibility in hiring retirees. Irushalmi, as with Murphy and Ascher before him, denied familiarity with the annual memorandum setting forth the DSS duties in hiring retirees. That memorandum was addressed to all Directors and Executive Directors. Irushalmi has been both a Director and then Executive Director since he started at DSS in 1982.

Further, Irushalmi, who testified with his attorney at his side, claimed that he believed his supervisors who needed waivers had waivers. Unlike Ascher, Irushalmi at least admits knowing, and having known, of the need for waivers when hiring retirees in supervisory capacities. He claimed, however, that he

was unaware of a need for waivers for non-supervisory DSS staff.

Significantly, he could provide no reason for the distinction and said he never asked anyone for an explanation. Irushalmi continued that in 1989, with the Rufolo-Ciaccia affair, he learned for the first time that he could not properly hire retirees either in supervisory or non-supervisory capacities. Again, he did not know the reason for this nor did he ask anyone for an explanation. Even with respect to the Rufolo-Ciaccia affair, Irushalmi claimed to know little. The following exchange demonstrates this.

Q. Do you know James Rufolo and Anthony Ciaccia?

A. Anthony who?

Q. Ciaccia.

A. I would pronounce it Ciaccia. I know those to be names of School Safety Officers and I believe they were listed in those records of the ones you subpoenaed.

Q. What else about them, if anything, do you know?

A. Nothing.

Q. Do you know if they are retired police officers?

A. I am assuming that because you subpoenaed their records but I really don't know.

Q. How many records did we subpoena?

A. Thirty, forty.

Q. And you remember all the names of the records we

subpoenaed?

A. No, but I remember the Italian ones.

Q. Why do you remember the Italians?

A. Because they are hard to pronounce and some people seem to stumble over them, like I would pronounce Ciaccia, so people repeat them more often.

Q. Is it your recollection that your only remembrance of these two individuals is because we subpoenaed them a year ago?

A. That is the only thing.

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A. But I was looking at that subpoena very recently.

Q. Do you have that subpoena with you?

A. No.

Later in the examination, Irushalmi admitted recalling an incident in 1989 involving two unnamed school safety officers who were retired police officers. He said their employment was terminated for some administrative impropriety possibly involving the continuation of their vacation and sick benefits. He denied any recollection that it involved waivers. Irushalmi's memory with respect to this matter is at the very least suspicious.

When the matter involving Rufolo and Ciaccia was first

made known by Irma Kolodny, a great flurry of activity occurred.

Kolodny spoke with Faye Wright and Robert Ascher of DSS. Wright wrote two memoranda to Murphy. Deputy Executive Director DeCanio of Human Resources referred the matter to the former Inspector General, who advised the matter be handled administratively. DeCanio then discussed the matter with Irushalmi. Applications for retroactive waivers approved and signed by Murphy were submitted to City Personnel. The applications were denied, and in a memorandum dated December 8, 1989, the Executive Director of Human Resources informed Irushalmi of this as well as the need to terminate the employment of Rufolo and Ciaccia. Irushalmi, though, maintained that his only recollection of Rufolo and Ciaccia comes from their names being on a one year old subpoena containing 30 or 40 other names, and that even with respect to the two unnamed SSOs whose employments were terminated, Irushalmi denied knowing that it involved waivers. Although Irushalmi supervises many SSOs, the events surrounding the discovery of the illegal employment of Rufolo and Ciaccia only two and one-half years ago coupled with a massive BOE response to it suggest Irushalmi may have been less than credible here. A possible motive might be that neither Irushalmi, nor anyone else at DSS, took corrective action on the many other retirees working at DSS, including Murphy, even when the Rufolo-Ciaccia affair surfaced.

Curiously, those who arguably had among the greatest interest in knowing of the waiver situation and outcome of Rufolo and Ciaccia, namely their DSS employers, were the persons who professed the greatest ignorance on the subject. Irushalmi, Murphy and Ascher expressed little, if any, knowledge of Rufolo and Ciaccia and of their responsibility generally in the waiver process. Faye Wright, on the other hand, a supervising clerk at DSS, immediately recalled the incident dubbing Rufolo and Ciaccia the "buddy team." And, of course, Kolodny, LoSchiavo and DeCanio, who supervises more than 500 people herself, recalled the affair rather vividly.

An exchange between SCI and Joseph LoSchiavo, Senior Assistant to the Director of Administrative Personnel, demonstrates clearly the position of the BOE both with respect to initiating waiver applications and the approval or denial thereof.

Q. From your years of experience from the late 1970's, do you believe it reasonable that a Responsibility Center could think it is the responsibility of [another] unit to handle section 211 waivers?

A. Absolutely not. And I would just refer to the circulars that go out every year. They're going out there, a bell should be going off.

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Q. Isn't it the case that it is the Responsibility Center who seeks to hire the employee?

A. Correct.

\* \* \*

Q. So won't the answer or the decision from New York City Personnel be very important to the Responsibility Center?

A. Yes, it would.

Q. Can you conceive of a situation where the Responsibility Center would not be interested in the outcome of an application for a 211 Waiver?

A. Having been a Line Personnel Manager and knowing what their role is, no, I can't conceive of them not thinking it is important.

## Conclusion

New York State law states that persons retired from public service may not collect their pension when subsequently employed by New York City or New York State, unless a waiver is granted by City Personnel. The BOE provides a procedure for seeking waivers - that procedure, and the law governing it, is set forth clearly in a memorandum which goes in duplicate every year to all BOE offices. Attached to the memorandum is a DP-68 - the form by which waivers are sought from City Personnel. The body of the memorandum makes it clear that the respective office seeking to employ the retiree must fill out and approve the DP-68. The DP-68 itself, by its very questions, also makes clear that the office seeking to hire the retiree must fill out certain sections. The BOE procedure for employing retirees is clear and has largely been followed - except by the Division of School Safety.<sup>16</sup> There have been 38 retirees working at DSS without waivers. They have been allowed to collect both their full pension and salary, violating the law. In four instances early on, however, waivers were sought on behalf of DSS upper-

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<sup>16</sup> Another defense put forward by DSS executives is that the "waiver problem" is not unique to DSS. It has always been a meritless defense in our system of jurisprudence to argue that one person's unlawful act should be excused, or even mitigated, because others have engaged in the same unlawful conduct. In any event, the numbers do not entirely support the DSS claimed defense. There are a total of 83 public service retirees, without waivers, working for the BOE in non-pedagogical positions. There are about 60,000 non-pedagogical employees. 38 of the unlawfully hired retirees work for DSS alone, where there are about 2,500 employees. The other 45 retirees work in all of the other BOE departments combined, where there are about 57,500 employees.

management retirees, including Murphy. The requests in all cases were denied by City Personnel, but the concerned retirees continued collecting their pension and salary. DSS officials blame other BOE departments. Their defense is without merit.

Irushalmi and Murphy are the top two people at DSS. Ascher is the Administrative Director. Surely, between the three of them, one of whom is himself a retiree, at least one must have known of the procedure for lawfully employing retirees. Murphy, who oversaw all personnel matters, admitted to regular conferences with Ascher, a personnel expert. He admitted to regular conferences with Administrative Personnel at 65 Court Street, the unit which received the written notice of Murphy's own denial of a waiver. He admitted reading all BOE generated memoranda of the type described above. He was sent two notes from a DSS supervisory clerk warning him of a waiver problem with respect to Rufolo and Ciaccia. He then exchanged correspondence with the Human Resources Executive Director regarding the lack of waivers for Rufolo and Ciaccia, ultimately causing their resignation. Yet he denied knowing, except vaguely, about Rufolo and Ciaccia and insisted that he was unaware of the process for seeking waivers.

Ascher, as set forth above, very bluntly blamed "central personnel." Even though he is the personnel expert at DSS, he too denies familiarity with the above-described memorandum. In fact, Ascher admits that he has held BOE administrative positions, with increasing responsibility, since 1979. Despite this level of experience, he claimed in 1989 to not know of the need for waivers when the Rufolo-Ciaccia affair surfaced. A BOE clerk described his claimed lack of awareness best: "I could not believe that someone in his position at School Safety Personnel with all those other high level former policemen around did not know that this was a requirement. ... I may have just closed my mouth in amazement that he expressed this ignorance."

Irushalmi must be held accountable for Murphy, his top deputy, and Ascher. He, too, denies knowing of the procedure for getting waivers, and claimed to know little of the Rufolo-Ciaccia affair - despite the great flurry of activity it evoked, including a memorandum to him from the Human Resources Executive Director and a telephone conversation with the Human Resources Deputy Executive Director about the matter. The refusal by Irushalmi, as well as Murphy and Ascher, to admit knowing of the Rufolo-Ciaccia incident is arguably explained by their failure even at that point to look into the waiver situation of the many other retirees at DSS, including Murphy. Finally, when Murphy and his three contemporaries were denied waivers in 1982, the Director of Administrative Personnel told SCI that he informed Irushalmi or Murphy of the denials. Subsequent hiring of retirees by DSS, without even applying for waivers, supports this. From the time of the four separately communicated denials in 1982 forward, DSS, and particularly Murphy, knew that waivers were not available.

Irushalmi, Murphy and Ascher knew and had reason to know of their responsibilities in obtaining waivers but ignored both the law and BOE regulations. Murphy and other retirees kept their BOE jobs and collected their full pensions, and the city lost more than three million dollars in pension payments.<sup>17</sup>

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<sup>17</sup> Although all 38 public service retirees employed by DSS who have collected both their salary and full pension have done so without authorization of law, this report does not attempt an exhaustive review of each retirees culpability, if any. A few points need to be made however. Almost universally each retiree completed his BOE application accurately. In fact, six retirees claim, under oath, to have raised with various DSS staff, including Murphy, the issue of their public service retirement. All six claim to have been told, in essence, that it does not present a problem. On the other hand, the retirees are not blameless. Each retiree, at the time of retirement, received extensive information from his respective retirement system relative to section 211 of the New York State Retirement and Social Security Law. It generally contained a warning that it is the responsibility of the retiree to verify that the prospective employer has obtained a waiver under section 211 and that the waiver is continued in force throughout the duration of employment. Further, the back of each retiree's monthly pension check contains a statement which reads, "By endorsing this pension check I hereby certify that I am not in the employ of the State of New York or any municipal subdivision of the State of New York." Finally, the BOE application contains a statement which reads, "Prior to employment with the Board of Education, a New York City or State retiree must notify the Retirement System from which he/she is receiving benefits of the impending employment with this agency." All retirees were invited to speak with SCI. Those who came forward claimed, in defense, that they notified DSS of their public service retirement by acknowledging it on their employment applications. A review of the applications supports this. Having done this, these retirees contend that it was the responsibility of the BOE then to obtain waivers. No retiree, however, notified his retirement system nor attempted to learn if waivers had been obtained. Section 211 appears to place the burden of seeking waivers on the prospective employer. In any event, SCI representatives are prepared to meet with City Personnel representatives in efforts to determine the individual liability of retirees, if any, with respect to pension benefits collected outside the requirements of Section 211.

## THE CAPALBO ARREST

Whenever a BOE employee is arrested, former Chancellor's regulations require, at a minimum, that the Office of Personnel Security be immediately notified, and that a panel of three review the arrest, interview the arrested employee and witnesses and review physical evidence.<sup>18</sup> Joseph Capalbo, DSS Chief of Operations,<sup>19</sup> was arrested in 1982 for Criminal Possession of Stolen Property (an automobile) in the First Degree, a felony. Through a plea-bargain, he pled guilty on June 4, 1982 to the reduced charge of Criminal Possession of Stolen Property in the Third Degree, a misdemeanor. Four years later, a panel of three convened to review the arrest and conviction. Bruce Irushalmi and Henry Murphy were two of the three panel members. A representative from another BOE division was the third panel member. Capalbo, who by this time had been promoted by Irushalmi to Chief of Operations reporting only to Irushalmi and Murphy, provided the panel with an explanation inconsistent with his sworn allocution before the court. The panel accepted, without investigation, Capalbo's explanation and recommended his retention.

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<sup>18</sup> Resulting from a previous SCI investigation and with the input of SCI, this regulation has recently been amended to prevent abuses of the kind which occurred here.

<sup>19</sup> At the time of his arrest, Capalbo was not Chief of Operations but a high-ranking DSS executive nevertheless.

Standard BOE Procedure for Reviewing Employee Arrest

Whenever a BOE employee is arrested, former Chancellor's Regulation C-105 required that the Office of Personnel Security ("OPS") and the Office of Legal Services ("OLS") be notified immediately<sup>20</sup> and that the criminal behavior be reviewed by a specially designated Personnel Review Panel ("PRP") to develop a recommendation on the employee's eligibility for continued employment. One of the areas singled out by BOE regulation for special concern is an act which has a direct relationship to the employee's particular position. The panel is directed to review such crimes with "close scrutiny."

Obviously, a criminal conviction of any sort against the third highest ranking member of the BOE's internal "police force," charged with the safety of schoolchildren, must be treated with great concern and reviewed with close scrutiny.

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<sup>20</sup> Chancellor's Regulation C-105 does not make clear who is to make the notification. Further, nowhere is it stated that the arrested employee is under such a duty.

The PRP is to consist of three members: a chairperson from the former Division of Personnel, another person from the division where the employee works, and a third person from the Division of School Safety, designated to be the Chancellor's representative.<sup>21</sup>

The review procedure calls for the arrested employee to explain his or her case to the panel, which can ask questions, hear witnesses and review physical evidence. The panel then submits its recommendation to the Executive Director of Personnel, now Human Resources, on an official document designed for PRP proceedings. At the conclusion of the process, after the Executive Director has approved or disapproved the recommendation, the PRP file is sent to OPS, where it is filed. The PRP proceeding, which is normally tape-recorded, may be appealed to the Executive Director of Personnel, who appoints an appeal panel headed by the Director of Appeals and Review.

#### The Capalbo PRP

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<sup>21</sup> Under this structure, anytime an employee from DOP or DSS is reviewed by a PRP, two of the three members on the review panel come from that employee's division. Of course, though, as set forth in footnote 18, the revised regulations no longer allow for this.

According to the PRP documents, a personnel review proceeding was held with respect to Capalbo on April 16, 1986 - a full four years after his arrest for stealing a car. Neither Irushalmi nor Murphy could explain in any detail why the review proceeding occurred when it did - four years late - although Irushalmi had some recollection that it was somehow brought to his attention at that late date. Capalbo testified that he informed his supervisor, Angelo Aponte (Irushalmi's predecessor), at the time of the arrest. Besides Irushalmi, the BOE documents further reflect that Murphy also sat on the panel as well as Sandra Alexander, a mid-level administrator with the former Division of Personnel. Capalbo, according to the PRP documents, stated to the three member panel that a "...car was repaired without his knowledge with stolen parts. The police came to his house and after the investigation he was arrested..." The panel went on to note that Capalbo pled guilty to a misdemeanor but was highly recommended by DSS - the same DSS people recommending Capalbo as a valued employee were two of the three panel members reviewing his arrest. Finally, the panel recommended that Capalbo be retained, and the then Executive Director of the Division of Personnel accepted, without further inquiry, the panel's recommendation. Both Irushalmi and Murphy testified, in effect, that they recommended keeping Capalbo because he was a good worker and that they did not believe the conviction

interfered with his ability to do his job. Both men said they based their decision, in part, on Capalbo's representation that he unknowingly had stolen parts placed in his car.

### Analysis

Apparently, neither Irushalmi nor Murphy, both law enforcement men, investigated the accuracy of the statement nor even asked Capalbo for further explanation. Alexander, on the other hand, considered it odd that Capalbo would plead guilty to a crime he in effect denied, before the PRP, committing. A very simple review by SCI representatives of court transcripts demonstrates that Alexander's suspicions were well-founded. The following exchange between the court and Capalbo reveals a story different from the one put forth during the personnel review proceedings.

Court: Is it also your personal application to plead guilty to that charge?

Capalbo: Yes.

Court: Has anybody forced you or threatened you or coerced you into making this guilty plea?

Capalbo: No, sir.

Court: You are pleading guilty of your own free will?

Capalbo: Yes, sir.

Court: Do you realize your pleading guilty is the same as having being convicted of the charge after trial by judge or jury?

Capalbo: Yes.

Court: And by pleading guilty you are waiving whatever rights you have to trial in this matter?

Capalbo: Yes.

Court: Do you admit by your plea that on May 1, 1982, approximately 10:45 a.m., that you did knowingly and unlawfully possess a Toyota, 1978 Toyota Celica automobile? (emphasis provided)

Capalbo: Yes.

Alexander added that although she did not feel threatened by the presence of Irushalmi and Murphy on the panel, she did not pursue normally asked questions and, in part, described a review process existing more in form than in substance. For instance, she added that at Capalbo's request, no tape recording was made of the review proceedings - a rare occurrence. Finally, as this report will later demonstrate, this is the one and only review proceeding Irushalmi ever recalls participating in - the subject of which was not only a social friend but one to whom Irushalmi claimed to later loan, interest-free, \$42,000.00.

Capalbo, for his part, explained to SCI why he pled guilty. This represents Capalbo's third version of the arrest and conviction - first, during the PRP proceedings, he effectually denied committing any crime; second, in court, he admitted to being in knowing and unlawful possession of a car; and, third, to SCI, he admitted to being in possession of a car which he knowingly had repaired with stolen parts. He explained that he pled guilty in court to possessing a stolen car to facilitate the plea-bargain. He offered no explanation concerning the statement attributed to him in the review panel proceedings except to say he thought he had described it in a manner more consistent with what he said to SCI. Neither Irushalmi, nor Murphy, nor Alexander support this.

#### Conclusion

Capalbo's conviction for a larceny-related crime strikes at the very core of his integrity. His rather slick explanation of the crime to the review panel four years later further casts a pall over his character. The BOE requires that such acts be reviewed with "close scrutiny" and SCI heartily agrees, especially when the offender whose integrity is diminished is the third highest-ranking member in a division of 2,500 peace officers charged with the safety of schoolchildren.

Although Irushalmi and Murphy technically complied with the "letter" of the Chancellor's regulation in convening this panel and participating as two of its three members, common sense and good judgment would have dictated to Irushalmi a review panel consisting of persons not so closely connected with the subject.

Even if this review process were proper in form and substance, arguably it was not, it nevertheless reeked of cronyism and preferential treatment. When asked about this, Irushalmi said to SCI he did not think to first discuss this with the Chancellor nor does he recall discussing this with anyone outside of DSS prior to the review proceeding. This kind of apparent favored treatment combined with the approved hiring of 12 relatives of the DSS second in command, as set forth below, fosters the sentiment expressed by several school safety officers to SCI that partisanship prevails at the DSS highest levels.

Further, Irushalmi's and Murphy's performance in the PRP proceeding is suspicious. It is difficult to believe that two men with sophisticated knowledge of law enforcement would blindly accept Capalbo's assertion that he pled guilty to knowing possession of a stolen car when, in fact, he was claiming the car had merely been repaired with stolen parts without his knowledge.

This lack of discerning questioning only lends weight to the inference that the PRP proceeding was not a meaningful review,

but rather a formality designed to protect the employment of a favored, high-level subordinate.

## THE FINANCIAL RELATIONSHIP BETWEEN IRUSHALMI AND CAPALBO

No public servant may enter into any business or financial relationship with another public servant who is a superior or subordinate of such public servant.<sup>22</sup> The New York City Charter makes it a misdemeanor to do so knowingly.<sup>23</sup> Irushalmi and Capalbo, using a third person as the link, engaged in a real estate deal. When information about the deal became public through confidential sources, Irushalmi at first denied it to Chancellor Fernandez, labeling the deal a \$42,000.00 interest bearing loan instead. Almost one year later he then admitted his ownership interest in the property on his BOE "Report of Financial Interests." And then, again almost a year later, he denied it to SCI, calling the \$42,000.00 transaction a loan - but now claiming it was interest-free.

### Policy Behind the Law

The City Charter provision protects against personal business relationships from intruding on the professional relationships of public service superiors and subordinates. For instance, the superior may need to discipline or fire the subordinate. He must be able to do so without regard to the impact it may have on the personal business relationship between

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<sup>22</sup> New York City Charter, Ch. 68, Sec. 2604 (14)

<sup>23</sup> Id., Ch. 68, Sec. 2606 (C)

the two. Similarly, the subordinate must not be subject to pressure, real or imagined, that he make personal business decisions based on a fear that he may lose his job or be disciplined in some way. In this way also, the City Charter seeks to promote the effective administration of government free of improper influences.

### Background

Confidential sources alleged in March 1990 to the former BOE Inspector General's Office, various news organizations and the Department of Investigation that Irushalmi and Capalbo were engaged in a real estate partnership. The Department of Investigation, after a preliminary investigation, referred their results to the BOE Inspector General. Although several news articles critical of the relationship between Irushalmi and Capalbo were later published, at least one reporter, Rob Polner, then with the New York Post and now with the Daily News, probed the allegations at the time. Little direct evidence linking Irushalmi and Capalbo in a joint real estate venture could be developed.<sup>24</sup> However, with the passing of the Inspector General's office and the creation of the Special Commissioner's office, along with the latter office's authority to issue subpoenas, voluminous bank records were received and analyzed by SCI investigators.

### The Documents

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<sup>24</sup> It was rather quickly established that Capalbo held ownership interests in several multiple-unit dwellings, but there was no documentary evidence which could be found linking Irushalmi to these properties. In fact, on or about September 28, 1990, Irushalmi told Chancellor Fernandez and Deputy Chancellor Litow, that he had no interest in Capalbo's investments but that he, for the past two years, had volunteered 20-30 Saturdays per year working at Capalbo's properties.

No bank records could be found which on their surface linked Irushalmi and Capalbo to a real estate venture. However, a critical connection was discovered nevertheless. Capalbo, by his own admission to SCI and confirmed by tax and land records, is a partner of William Christy in several realty holdings. Records at the Bank of New York disclosed a joint checking account titled Bruce A. Irushalmi and William Christy and bearing each of their signatures as joint owners. The account was opened on February 2, 1990 and closed on May 31, 1990. Checks drawn on the account, some signed by Irushalmi and others by Christy, were used to pay the operating expenses of a multiple-unit dwelling at 510 East 142nd Street in the Bronx. Land deeds, a mortgage application and property tax records showed that the property was sold to Capalbo and Christy on or about January 29, 1990. There was no mention of Irushalmi. In fact, even the seller of the dwelling could not identify Irushalmi as one of the buyers.

Now aware of Christy though, SCI investigators reviewed Irushalmi's several bank accounts looking for further links between Irushalmi and Christy. A \$4,000.00 check drawn on the personal account of Bruce and Roberta Irushalmi was made payable to Christy on November 10, 1989. This corresponded with the time during which Capalbo and Christy contracted with the seller of 510 East 142nd Street and made an \$8,000.00 down payment.

Continued review of Irushalmi's bank accounts showed a flurry of large-sum withdrawals at several financial institutions during January 1990. In most instances, the withdrawals were against various lines of credit - exhausting some of them.

Beginning on April 27, 1990 and ending June 18, 1990, however, Irushalmi's account at Citibank showed six deposits totalling \$40,000.00. The deposits were checks drawn by Capalbo or Christy and made payable to Irushalmi.

#### The Beginning of the Irushalmi-Capalbo Financial Relationship

Irushalmi's sworn explanation to SCI to whether he has ever engaged in financial transactions with Capalbo was "no" with an explanation. He explained that sometime toward the end of 1988 he became aware that Capalbo owned houses in the Bronx where a principal language of the residents was Spanish. Since Irushalmi speaks Spanish, although limited, he was asked by Capalbo to translate with a particular tenant, which he did. This happened at a time when he had just bought, for the first time, his own house and became interested in the repairs being made by Capalbo at his several investment properties. Irushalmi continued,

"At some point I volunteered to help him in some of these houses and that was usually on

Saturdays and it went on for -- a day here, sometimes not another Saturday but I became a volunteer, so to speak. I derived no benefit from it, I was not paid, I had no interest in any of those houses and from my perspective I was volunteering to help somebody and speaking Spanish and doing a little bit of work but nothing substantial, at least not in value. In the middle of 1989, which, was approximately six months later, he and his partner [William Christy] were discussing the purchase of an additional piece of property [510 East 142nd Street].

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They asked me if I would be interested in being an owner in that new piece of property.

I thought about it and I said yes. I could be interested, and I said that because, one, I had been volunteering and deriving no benefit and I thought perhaps I could make an investment and get some benefit from it and, two, because the work was very good therapy for me. [But, near the end of 1989,] I began to have second thoughts, one, because I was

not in the financial position to raise a large amount of money ... it would have been borrowed money. Two, I began to wonder whether it was appropriate for me to be in any relationship with Mr. Capalbo. I didn't know that it was not but -- "

Irushalmi continued that there was at least one other reason which made him uncomfortable with the venture: "If I were to get any obligation, that would certainly encumber me more from just being free, free spirit. As I said the volunteer part was nice, it was therapy ..."<sup>25</sup>

Capalbo, in his testimony to SCI and with his attorney at his side, substantially corroborated Irushalmi's version of how the "volunteer" relationship began and what it entailed. He was asked, "Before Irushalmi, who worked as your interpreter?"

A. Anybody I could grab off the corner.

Q. Off the street corner?

A. Yeah. I said, do you speak Spanish? I need you to

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<sup>25</sup> According to Capalbo, Litow's memorandum citing Irushalmi, and, to a lesser extent, Irushalmi's testimony, Irushalmi "volunteered" 40-60 days, usually Saturdays, over two years to work on Capalbo and Christy's properties. Irushalmi and Capalbo also attest to working very long hours at School Safety - sometimes 15 and 16 hours per day, weekends and occasional holidays.

come in.

However, Capalbo added that Irushalmi spoke Spanish "fluently." Irushalmi testified, on the other hand, "I do speak some Spanish and if it was relatively simple vocabulary I could translate it.

I could not conduct business in Spanish." Further, Irushalmi never testified to SCI, as did Capalbo, that interpreters were "grabbed off corners." Rather, he said that Capalbo explained the language problem to be one where "he knew they were trying to say something to him but he didn't know quite what."

Irushalmi and Capalbo said that during these volunteered Saturdays, Christy was also present. But, Capalbo added that Irushalmi and Christy each have very strong personalities, and they tended "to bang heads together." Capalbo was asked, "Wasn't Mr. Irushalmi volunteering 24 Saturdays a year to spend time with this man?" Capalbo responded, "I think he was really spending the time with me." Christy, however, was present on these Saturdays.

#### The Down Payment on 510 East 142nd Street

By all accounts, an \$8,000.00 down payment was made in November 1989 at the time of the signing of the contract to purchase 510 East 142nd Street. This corresponds with a \$4,000.00 check from Irushalmi to Christy at the same time.

Irushalmi and Capalbo each admit that Irushalmi provided the down payment and that he did so, in part, with a check made payable to Christy. Irushalmi testified that by the time of the down payment, November 1989, he had already decided not to proceed with the purchase of 510 East 142nd Street, but that he loaned Christy and Capalbo the down payment nevertheless. He explained he did so because he had "obligated" himself to them. Irushalmi was examined by SCI about this.

Q. Can you tell me how you obligated yourself to them?

A. I said I was interested [in mid-1989, see above] and wanted to go into this arrangement, and I didn't believe they had a lot of resources, and I felt if I were to withdraw from the deal they might have lost their investment and the opportunity for the investment property.

Q. Let me just stop you again. When you say, "withdraw from the deal," is that another way of saying withdrawing the interest that you had expressed? Because if I understood you correctly, the only commitment you have made so far is that you expressed interest?

A. That is correct.

Q. When you say, "withdraw from the deal," what do you

mean?

- A. Remove the interest I had expressed.

Irushalmi continued that he provided the down payment, and ultimately the remainder of the \$42,000.00, because his sense of obligation to them overcame, among other things, his fears that since he did not have the cash on hand he would be forced to borrow the very \$42,000.00 he would eventually lend to Christy and Capalbo and his suspicion that such a relationship with Capalbo might be inappropriate. This sense of obligation, defined by him to be a verbal expression of interest six months earlier, caused him to largely deplete his various lines of credit - his cash on hand was insignificant - and loan \$42,000.00 to a person he knew for only a few months prior, Christy, and with whom he "banged heads" often and to his BOE subordinate - Capalbo. However, Irushalmi testified that he made it clear to them at the time of the contract that the money was a loan and that he did not want to be part of the purchase.

Capalbo, on the other hand, said that Irushalmi was still uncertain about joining the partnership when he provided the down payment, and that it was not until the closing approached, January 29, 1990, that Irushalmi said, "Don't put my name on anything. I am going to give you the money, but do not

put my name on it because I want to get out."

### The Closing

Irushalmi continued to testify that shortly before the closing he gave the remainder of the \$42,000.00 to Capalbo in a bank check and cash. Unfortunately, Irushalmi testified that even though he had never before or since loaned this much money to anyone, he could remember few details about the check - what bank it came from, to whom it was made payable and the exact amount. He said, though, that the difference - about \$20,000.00 - was given to Capalbo in cash. Irushalmi added that he had to visit several banks and tap into several lines of credit to raise this much money. As he testified, except for his residence, it was the largest, single financial transaction of his life. Irushalmi also said there was no writing embodying this \$42,000.00 loan which went jointly to Capalbo and Christy, a person he had known only for a matter of months.

Q. Was there a document, a contract, an agreement, some writing which embodied the loan that you made to Mr. Capalbo and Mr. Christy?

A. No.

Q. Did you confer with counsel at the time of making this loan?

A. No.

Q. Did you discuss this matter with anyone at the time?

A. No.

Q. What security did you have, if any, that the loan would be repaid?

A. Trust.

Q. In Mr. Capalbo?

A. Yes.

Q. How about in Mr. Christy?

A. I didn't know him that well, in the sense of this question.

Q. Did you know Mr. Christy at all?

A. Well, I had met him as I described earlier.

Q. You knew he was going to be a joint owner of the property, though, right?

A. That was what was discussed.

Q. So you loaned money, forty-two thousand dollars, to Mr. Capalbo and Mr. Christy as joint owners of East 142nd Street?

A. Yes.

Capalbo, on this point, testified that the 42,000.00 was loaned on a "handshake." The following exchange between SCI and Irushalmi demonstrates the purported motivation behind the deal:

Q. What did you get in exchange for loaning this money to Capalbo?

A. Nothing.

Q. What was your motivation for loaning this money?

A. As I said, I felt obligated because I had agreed to do something and I was trying.

Q. Earlier you called it, "expressed an interest ..."

A. I had expressed an interest.

Capalbo also said the \$42,000.00 provided by Irushalmi was an interest-free loan, which gave Irushalmi no interest in the property. He echoed that there was no writing memorializing the loan. Capalbo explained it this way: "Mr. Irushalmi is a man of his word. If he says he is going to do something, he does it." Capalbo was further questioned on this.

A. Just that he kept saying -- we kept telling him the only reason we went into the deal was because we figured we had the backing here, and if we did not have it, it was going to go sour. And if the deal went sour, we would have lost some money.

Q. What would you have lost?

A. \$8,000.00 I guess, you know, whatever, but the building more so than anything else.

Q. Tell me what the "whatever" was.

- A. I do not know what the total would be.
- Q. Even if you do not know the figures, where did the figures come from? In other words, the down payment I understand came from Mr. Irushalmi, so what else would be at issue that you would have lost?
- A. I guess that is right. There would have been -- there would have been no loss.
- Q. No financial loss, just an opportunity lost?
- A. Yes, correct.
- Q. So to prevent two people from losing an opportunity, one of whom he does not care much for, he borrowed \$42,000.00 in cash?
- A. Yes.
- Q. And decided to loan it to you?
- A. Right.
- Q. How much interest was paid?
- A. None.

SCI asked Capalbo if he and Christy could have borrowed the \$42,000.00 elsewhere. He said, "We probably could have, if we had some more prior notice . . . We could have borrowed the money somewhere." . . ."I'm sure I could have borrowed it if I had to." In fact, Capalbo acknowledged that he personally financed his first two investment properties, does not recall how

he financed the third, and had equity in these properties. Capalbo admitted that he had borrowed large sums of money before but never interest-free.

#### The Christy-Irushalmi Joint Checking Account

As bank records discussed earlier reflect and Irushalmi acknowledges, there was a joint checking account opened a few days after the property closing. Irushalmi and Christy were the joint owners. Irushalmi said it was used to collect the rent deposits at 510 East 142nd Street. He testified that the money in the account was used to pay the operating expenses of 510 East 142nd Street. Irushalmi further testified that he wrote checks on this account to pay expenses of the property, as did Christy. The bank records described above confirm this.

Capalbo offered a different, and convoluted, explanation of why Irushalmi, allegedly not a partner in the property, and Christy opened a joint checking account excluding himself ". . . I guess maybe it was just the way he thought he would get his money back. I really do not know . . ." Capalbo was asked, "Why was it necessary to go through all of this to get the money [loan] back?" "I do not know Mr. Viteretti. I really do not know."

### The Repayment

Beginning on April 27, 1990 and ending June 18, 1990, Irushalmi received \$40,000.00 in checks from Christy and Capalbo in repayment of the \$42,000.00. The \$40,000 in checks were drawn against either the personal accounts of Capalbo or Christy or a business account involving one of their properties. In fact, Capalbo testified that the first payment to Irushalmi, \$15,000.00, on April 27, 1990, came from his "pocket" and his personal checking account. Irushalmi believes that he also received a relatively small amount of cash to make up the difference even though he is uncertain to this day if he has been fully repaid. Capalbo, on the other hand, believes that Irushalmi's loan was fully satisfied in June 1990. Each man testified that they at one time each maintained notes involving the monies loaned and repaid but neither could locate those notes for SCI.

### The Cost to Irushalmi

Irushalmi admitted that because he borrowed the \$42,000.00 and then loaned it interest-free, he lost money. He explained that he was paying at an annual rate of about 18 per cent to borrow the money, and that Christy and Capalbo took about six months to repay the bulk of the loan. According to SCI auditors, the cost to Irushalmi at 18 per cent per annum to loan the \$42,000.00 interest-free was about \$2,147.00. Irushalmi testified that he did not even seek to recover his costs from Christy and Capalbo.

### Irushalmi's Explanation to the Chancellor

As indicated earlier, the confidential sources were not content to complain only to DOI and the BOE Inspector General in March and April of 1990. They complained also to several news organizations, especially Rob Polner, who conducted his own probe in those early months - speaking with BOE people and others. In September 1990, Polner published a news article very critical of Irushalmi and Capalbo. This prompted Irushalmi to call his supervisor, Stanley Litow, the Deputy Chancellor, on September 27, 1990 and explain that he had done nothing wrong. On the next morning, at the request of Chancellor Joseph Fernandez, Irushalmi explained himself to the Chancellor and Deputy Chancellor. The conversation was memorialized in a memorandum by Litow two days

later, and a copy sent to the Chancellor. The Chancellor and Deputy Chancellor each testified to SCI that the memorandum accurately reflects the substance of the conversation.

According to the October 1, 1990 memorandum (Exhibit 9), Irushalmi said, in response to Polner's article, that he had done nothing wrong. He continued that he had no business relationship with Capalbo and held no interest in Capalbo's investments. But, Irushalmi added that he had borrowed \$42,000.00 in January 1990 and loaned the money to Capalbo, in cash and money orders, and was repaid with interest in April 1990. He added that the money was used by Capalbo to purchase rental properties. Irushalmi also said that he worked, without remuneration, about 20 to 30 Saturdays per year over the last two years on Capalbo's rental properties. Finally, the Chancellor urged Irushalmi to report this information to Alex Zigman, a DOI Assistant Commissioner who was at the time the acting head of SCI. Irushalmi indicated he would do so. Zigman denied to SCI that Irushalmi ever discussed the matter with him. In fact, Zigman told SCI that he was obviously aware of the allegations but believed it more appropriate that his successor, Ed Stancik, the permanent Special Commissioner, oversee the investigation. Thus, Zigman is certain he did not discuss the allegations with Irushalmi. Commissioner Stancik said that he also did not

discuss the allegations with Irushalmi nor is he aware of any attempts by Irushalmi to seek him out.

Irushalmi, in his testimony before SCI, largely confirmed the accuracy of the Litow memorandum but added the following in an examination by an SCI attorney:

Q. Did you get interest on your loan?

A. No.

Q. Didn't you tell Mr. Litow and Mr. Fernandez that you were getting interest on this loan?

A. I believe I recall this. I believe that issue came up and I went back and told the Chancellor at a subsequent time that I had checked and there wasn't interest.

Q. When did you tell the Chancellor that?

A. A day later. Two days later.

Irushalmi said to SCI that he realized he made a mistake when he originally said that he collected interest. He based that on "notes I guess that I had." When asked if he still had those notes, he said, "No."<sup>26</sup> The following exchange then occurred with respect to this claimed second meeting with the

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<sup>26</sup> Irushalmi said the "notes" reflected the repayment schedule. He added that even though he questions to this day whether he has been fully repaid, he does not know the whereabouts of these notes which purportedly demonstrate that he collected no interest on the \$42,000.00 loan.

Chancellor.

Q. Where did that second meeting occur?

A. In his office.

Q. When in relation to the first meeting (referring to the one with the Chancellor and Deputy Chancellor) did it occur?

A. Couple of days.

Q. Can you narrow it down? Was it the next day?

A. I don't remember.

\* \* \*

Q. Do you keep a diary?

A. Of things like that, no, I don't.

Q. Did you make an appointment to see the Chancellor?

A. I don't recall.

\* \* \*

Q. Did Chancellor Fernandez ask you any questions during this second meeting with him?

A. During the second meeting?

Q. Yes. The second meeting - the one where you explained to him that you had not collected any interest?

A. No. It was very brief. He may have asked a question but it was very brief. I don't recall him asking any questions but it was a very brief meeting.

Q. Do you recall him asking you any questions whatsoever

with respect to your statement that you did not charge any interest on this \$42,000.00 loan?

A. I do not recall.

Chancellor Fernandez testified that he reviewed the Litow memorandum on October 2, 1990, the day after it was prepared, and found that it accurately reflected what transpired between himself, Litow and Irushalmi four days earlier. Although during the SCI examination the Chancellor was unable to recall all of the details of the meeting, he again emphasized, "If I had disagreed with what took place at that meeting as reflected in this memorandum, it would have been corrected." Chancellor Fernandez was specifically asked about a "second meeting" he may have had with Irushalmi about the same subject.

Q. Did you have a subsequent meeting with Mr. Irushalmi where he provided information that was different from the information contained in the October 1, 1990 memo (the Litow memorandum)?

A. No. . . .

\* \* \*

Q. Did Mr. Irushalmi ever arrange for a second meeting with you subsequent to this one that we have been discussing wherein he told you that - - words to the effect - - Chancellor, I know I told you that I got

this money repaid with interest [but] I am here now to tell you that I never got any interest on this repayment. Did you ever have such a meeting with Mr. Irushalmi?

A. I don't recall that. I really don't recall that.

The Deputy Chancellor was also asked about the memorandum he drafted on October 1, 1990 to memorialize the meeting three days earlier between himself, the Chancellor and Irushalmi. He said that he timely showed the memorandum to the Chancellor and that they were in agreement that it accurately reflected what occurred in the meeting. The following exchange between SCI and the Deputy Chancellor is illustrative:

Q. Did Mr. Irushalmi, subsequent to the meeting and creation of the memorandum, ever attempt to correct anything that he said to you at this meeting or change his story or represent different facts in any significant way?

A. Not that I recall.

#### Irushalmi's Report of Financial Interest

Irushalmi filed his 1990 Report of Financial Interest with the BOE on or about June 18, 1991. In schedule 9 of that report, called "Real Property Holdings of \$20,000.00 Value or

More," Irushalmi lists his residence and the 510 East 142nd Street building he claims not to own with Capalbo and Christy. Irushalmi's explanation of this is so confusing it is better to quote it directly:

Q. Do you recall filling this out? (referring to the Report of Financial Interest)

A. Yes.

Q. Did you fill it out accurately?

A. No.

Q. Tell us about that?

A. But there is an explanation, obviously. . .

Q. Yes?

A. From my perspective this whole business in the newspapers and articles have been going on for almost sixteen months, I guess -- No, I am sorry, ten or twelve months but in every one of those articles including one that purported to be an inside scoop, so to speak, the constant reference was made to the fact that if I didn't disclose I could go to jail, if I didn't disclose I could this, if I didn't disclose I would lose my job, if I didn't disclose and so on and I guess I should have consulted with counsel and I didn't, so I felt putting this down at least opened the door for discussion, which I knew would eventually come

in this form and I felt that over reporting was better than not reporting. I didn't know how to deal with it so I put down that statement in order that I would have an opportunity to explain it, not here today but at some point.

Q. Let me make sure I understand that. Are you suggesting that you put down something you knew not to be accurate to make certain it would open the door at some later date?

[Discussion between counsel]

A. What I am suggesting is that I didn't have any legal understanding of how this whole issue would be looked at and how this issue of ownership would be looked at, I didn't know how to characterize it so I felt if I put down more would be better than putting down nothing. . .

Q. I want to go over the question that you were not sure about at the time you filled this out. The question for which you did not confer with counsel. It is question number nine and it reads, "Did you or your spouse own real property worth twenty thousand dollars or more," to which you answer yes, and you list two properties - your own home and East 142nd Street. Can you tell me what it is about the wording there that you

did not understand, namely the wording, "Did you or your spouse own real property worth twenty thousand dollars or more?"

A. There were a couple of issues. Number one, as I said to you earlier, I wasn't present at the closing. I didn't know what the pieces of paper said. And other things was the papers said if I own, if I own, if I own, the newspapers I am referring to. When I say papers, I meant newspapers. There were articles repeatedly from September of 1990 up until just weeks ago, months ago that constantly refer to the fact that I was in some sort of a real estate deal and those articles said that if I didn't disclose I could be subject to this and subject to that and there was no way to disclose this story on a piece of paper of that nature.

Q. Am I to understand that you actually did not believe you owned this property but were reporting it for some other reason?

A. Yes.

\* \* \*

A. What I mean is that no, I didn't believe I owned the property, there were no deeds, there were no documents, there were no bills, I wasn't party to any of the

legalities of purchasing it but I needed some sort of vehicle to make sure that the opportunity for financial disclosure didn't come and go without me articulating something. . . This was the only opportunity for disclosure I had and it was a major issue in my mind and as I said, I didn't get counsel.

Q. I asked you if you disclosed this issue to the Chancellor and yes, you did, with the forty-two thousand dollar loan. But did you go into this aspect of it?

A. No.

Q. Did you disclose this to Deputy Chancellor Litow?

A. No, I thought I was doing the right thing, by telling more I thought I was doing the right thing.

Q. Well, when you say, "telling more," what does that mean, "telling more?"

A. I didn't own the property, I don't believe I owned the property but I didn't have any way of saying this.

\* \* \*

Q. I have before me that document which is a sixteen page document. There is a space on page sixteen for additional comments and there is a sentence at the end that says, "If needed, attach additional information on appropriately labeled continuation sheets." Are there

any continuation sheets that explain the interest that you listed which is consistent with the way you are explaining it now?

A. No.

Q. Did you seek to explain it to anyone at the time, just like you are explaining it now? Did you seek to explain it to anyone back in July of 1991, when you filled out this disclosure form?

A. No, nobody asked me.

Irushalmi signed his 1990 "Report of Financial Interest" directly beneath a statement which reads in oversized block letters: I Certify That All Information Given Herein Is True And Accurate To The Best Of My Knowledge."

Capalbo's Report of Financial Interest

Although Capalbo admitted all of his real estate holdings on his 1990 BOE Report of Financial Interest, he failed to disclose, as required, the \$42,000.00 received from Irushalmi he claims was a loan. The question in the report asks, "Were you or your spouse indebted to one creditor in an amount of \$5,000.00 or more for a period of 90 consecutive days?" Capalbo lists numerous creditors, but fails to list Irushalmi. By the end of January 1990, Irushalmi had provided Capalbo with \$42,000.00. Irushalmi did not get repaid until June 18, 1990, although by June 3, 1990 all but \$3,500.00 was paid. Nevertheless, this exceeds the 90 day threshold. The following exchange between SCI and Capalbo demonstrates his explanation:

Q. How about the creditor we have been talking about, Mr. Irushalmi. Did you report him anywhere?

A. No.

Q. Why is that?

A. I think it says for 90 days, less or more.

Q. For 90 days it says.

A. I thought he was paid back in less than 90 days.

Q. The original money came in November, 4,000, and another amount later which brought it up to 42,000 on January 28. June 18 is when the last payment was made to him.

A. June 18?

- Q. Even by your own admission earlier, you said it ended in May. Even that would get you beyond the 90 days. So is that your reason for not putting it in?
- A. I thought I paid him back in less than 90 days.

William Christy's Refusal to Testify

Obviously, Christy is in a position to shed light on the financial relationship between Irushalmi, Capalbo and himself. SCI made exhaustive efforts to compel Christy to testify. Thus far, he and his attorney have chosen to refuse to comply with an SCI subpoena. Partly as a result, SCI made inquiries about Christy. We learned from various sources that his listed profession is that of plumber, that he appears to be of some wealth, that he is partners with Capalbo in numerous real estate ventures, and that he has a criminal history including two separate 1967 convictions related to narcotics and a 1974 conviction involving a forged instrument. Capalbo stated that Christy refused to testify because Christy believed it "absurd" to voluntarily testify against Capalbo.

## Analysis

Irushalmi and Capalbo may maintain that the \$42,000.00 was an interest-free loan but the evidence demonstrates otherwise. The evidence establishes that in mid-1989 Irushalmi, Capalbo and Christy entered into an agreement to purchase 510 East 142nd Street. This is undisputed. To further the agreement, Irushalmi provided Christy, not Capalbo, in November 1989 with the down payment for the property, thus avoiding any paper connection with his subordinate. In January 1989, Irushalmi exhausted his various lines of credit to provide Capalbo with more than \$30,000.00 for the closing on 510 East 142nd Street - \$20,000.00 of it in cash, carried in his pocket, and the remainder in an undiscovered bank check, according to Irushalmi. Again, there is no paper connection between the two DSS executives. Christy and Capalbo appear as the owners of record. Only a few days after the closing, in February 1990, Irushalmi and Christy, again not Capalbo, opened a joint checking account in connection with the expenses of 510 East 142nd Street. Both Irushalmi and Christy wrote checks on this account to pay various expenses of 510 East 142nd Street. Still, no paper trail exists linking Irushalmi and Capalbo - but much links Irushalmi with Christy and Christy with Capalbo. Then, in and about March and April 1990, confidential sources reported the silent land deal to DOI, the former Inspector General, news organizations and others - many of whom began probing. The confidential sources

continued to be outspoken about their complaints against Irushalmi and others. Apparently, and not surprisingly, the complaints came to be known by Irushalmi and Capalbo. Irushalmi at about the same time stopped signing checks on the joint account with Christy, received \$15,000.00 on April 27, 1990 from Capalbo allegedly to repay the loan, and closed the joint account with Christy the next month.

The various probes continued, some making their way into newspapers. This forced Irushalmi to explain for the first time the circumstances surrounding the \$42,000.00 transfer. He did so to the Chancellor in September 1990, calling it at first an interest-bearing loan and then, during testimony before SCI in April 1992, labeling it interest-free. He testified that he had previously changed his story with the Chancellor. The Chancellor has no recollection of Irushalmi ever changing his story and neither Litow's testimony nor the Litow memorandum reflect the changed story. In June 1991, with much of this matter public, Irushalmi admitted in his Report of Financial Interest an ownership interest in 510 East 142nd Street - he said to SCI he represented falsely in the report to prompt later discussion.

Finally, the testimony of Irushalmi and Capalbo to SCI

further illustrates the true nature of the transaction between Irushalmi, Capalbo and Christy. It is hardly credible for them to testify that for two years, about two Saturdays per month, Irushalmi worked without compensation for Capalbo and Christy - a man with whom he often "banged heads" at the same time that his BOE job required he work up to 15 and 16 hours per day, weekends and some holidays. It becomes even more incredible for them to further testify that Irushalmi, who had insignificant savings, borrowed \$42,000.00 from several different banks; that he paid more than \$2,000.00 in related interest expense, which he did not recover from either Capalbo or Christy; that he loaned the \$42,000.00 completely interest-free - the second largest financial transaction of his life; that he loaned the money to his BOE subordinate and another person whom he did not know well, and that he did so on a "handshake" without any writing embodying it or collateral securing it. Irushalmi's and Capalbo's testimonies are still all the more incredulous when you consider that Irushalmi claims to have done all of this because he verbally "expressed an interest" in jointly purchasing the property, even though Capalbo could have readily raised the money elsewhere as he did with his other investment properties.

### Conclusion

The City Charter makes it a crime for supervisors and subordinates to engage with each other in business or financial transactions. Irushalmi and Capalbo admit to a \$42,000.00 financial transaction, labeling it a loan. They have already admitted committing an act outside the law. But, they did much more. Irushalmi and Capalbo were silent partners in a real estate deal which ended only when investigators and reporters began probing. Irushalmi, in particular, misled the Chancellor, and both Irushalmi and Capalbo were less than candid with SCI. They placed their own financial interests above their commitment, as law enforcement officers, to maintain the highest of integrity standards.<sup>27</sup>

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<sup>27</sup> This is not the only financial transaction engaged in between Irushalmi and Capalbo. In 1988, Capalbo sold a used car to Irushalmi for \$6,800.00. Capalbo testified that he has sold approximately 20 used cars from 1984 through about October 1991 on behalf of Mercagliano Enterprises, a seller of used cars, for which he has earned commissions. Capalbo recalls selling at least 10 of these cars to BOE employees including several subordinates at DSS. When asked by SCI, in effect, how he marketed the cars to BOE employees, Capalbo testified, "Through the years, people have said if you ever need to get a good used car, see Mr. Capalbo. . . it was more word of mouth."

RELATIVES OF HENRY MURPHY

It is the policy of the Board of Education that no person employed in the city school district hire, employ, or supervise a near relative. Henry Murphy, and DSS, violated this regulation of the Chancellor by employing 12 of Murphy's relatives.

### The Regulation

A Chancellor's regulation issued on September 6, 1983<sup>28</sup> prohibits BOE employees from hiring or supervising near relatives, except in special situations not relevant here. A "near relative" is defined in the regulation to include a parent, spouse, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild or the spouse or child of any of them. "Supervise," in the regulation, includes giving or furnishing work assignments, ratings and approval of ratings, among other things. "Hire" includes any substantial participation in the hiring, selection, promotion, and termination process, including requesting or approving employment. The rationale for this regulation is self-evident.

### The Violations

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<sup>28</sup> Although five of Murphy's relatives were initially hired prior to September 6, 1983, all 12 of the relatives were employed at DSS after the effective date of the regulation.

At various times during the 1980s through the present, Murphy had as many as twelve nieces, nephews, granddaughters, a foster son, and brother employed at DSS where Murphy, of course, was second in command. At one time in 1988, there were nine Murphy relatives on the DSS payroll at the same time. Presently, there are seven Murphy relatives working at DSS. With the exception of Murphy's brother, Raymond, the relatives were and seven still are assigned as school safety officers. Raymond Murphy, who resigned on July 5, 1985, was assigned as a borough coordinator, a high-level supervisory position. In fact, there was only one layer of supervision between Murphy as Deputy Executive Director and his brother as borough coordinator.

Murphy's explanation to SCI was that he played a "minimal" role in the DSS hiring process. Irushalmi echoed this. However, Faye Wright, a supervisor in the DSS personnel unit, provided conflicting testimony. She said that Murphy oftentimes referred job applicants to her unit for processing, until about 1988 or 1989. In fact, she testified that prior to 1988 or 1989 it was her understanding that "if you want a job [at DSS] go see Mr. Murphy." In 1988 or 1989, though, she was told by Irushalmi's executive assistant that requests for processing prospective employees can only come from Irushalmi or the assistant, Marsha Schneider. The following exchange between SCI

and Wright is enlightening:

Q. What was the reason for that? Do you know?

A. I don't have the exact reason, but my observation led me to believe that maybe there were too many family members being brought in by Mr. Murphy. But that was just my observation.

\* \* \*

Q. Did anyone else share your opinion that Mr. Murphy was providing jobs for friends or relatives?

A. It was basically the talk among the officers, that unit; yeah.

Irushalmi testified that he also was aware that about five or six of Murphy's relatives currently worked at DSS. He defended the situation arguing that Murphy neither hired nor supervised his relatives. SCI asked Irushalmi how it is "that the number two person in your agency does not supervise anyone who is below him?" He responded, "Direct supervision. . ." Even this answer conflicts with one given later. Irushalmi testified he transferred a borough coordinator for, in part, dating a school safety officer. He admitted, "I think it would be difficult to supervise someone that you might be dating." However, the School Safety Officer was not directly supervised by the borough coordinator. Irushalmi continued that although the

borough office in question was smaller than most, about 120 SSOs, there was still one layer of supervisory personnel between the borough coordinator and the officer he may have been dating. That is the same amount of supervisory separation that existed between Murphy and his brother for years.<sup>29</sup>

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<sup>29</sup> Joseph Capalbo, DSS Chief of Operations, testified before SCI that he too had an uncle employed at DSS in the "alarms unit." He added that there was one supervisory layer between himself and his uncle.

### The Employment Applications

A review by SCI investigators of the employment applications concerning the 12 relatives of Murphy reflect the signed name "Henry Murphy" on eight of the applications. The signed name appears on the line calling for the approval of the hiring. However, testimony adduced during the hearings from several sources, including Murphy, shows that several DSS officials had authority to sign his name. An examination of the Murphy signatures on the eight applications reflect the signature to be apparently genuine in three applications - 1978, 1979 and 1982.

### Conclusion

Murphy and Irushalmi, the latter through his acquiescence, violated a very sensible and significant rule of the BOE. Just as importantly, and regardless of whether a BOE rule even existed, they failed to exercise sound judgment. Irushalmi, it must be remembered, was hired at a time when the focus was to professionalize DSS. Multiple hirings of relatives is hardly consistent with that objective. Irushalmi, nevertheless, defended the hirings: "Other than the allegations I read in the newspaper, I wasn't aware that anyone had a complaint to anything of that nature." Very arguably, few employees would dare complain about their boss's hiring of a brother, granddaughter, or the like. In fact, one former school safety officer told SCI that he was fired when he complained to his supervisors about this matter. Maybe if Irushalmi had spoken with Faye Wright, as SCI did, he would have learned that Murphy's hiring of friends and relatives "was basically the talk among the officers. . . ." In our view, Irushalmi's acquiescence in the employment of a dozen of his Deputy Director's relatives is not defensible.

## RECOMMENDATION

Irushalmi, Murphy, and Capalbo -- the top three persons at DSS -- are charged with the safety and security of our approximately 1,000,000 schoolchildren and the physical integrity of our 1000 schools. They provide protection for the Chancellor, Central BOE members and other BOE officials. They control an annual budget of 57 million dollars. They supervise more than 2000 peace officers - persons with statutory authority to make arrests. They share an important and awesome responsibility. It is precisely because of this responsibility that they be held to the strictest standards of scrupulousness. Each of the men has failed those standards. Accordingly, each should be strongly disciplined, which may appropriately include termination of their employment. More importantly, however, these men should be removed permanently from their DSS positions.<sup>30</sup> Their disregard of law and regulations makes it inappropriate for them to hold these key positions directly affecting the safety of our children

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<sup>30</sup> Although this investigation and report focused its attention on the top three executives at DSS, evidence was adduced respecting Robert Ascher, the DSS Administrative Director. The evidence demonstrates that Ascher is either incompetent in his administrative position for his claimed ignorance of virtually anything having to do with section 211 waivers or that he wilfully misrepresented to SCI and other BOE officials his knowledge on the matter. In either case, SCI recommends that Ascher's continued employment as Administrative Director be reviewed by the Chancellor's office.

and security of our schools.

Bruce Irushalmi, as the person in charge at DSS, is accountable for the widespread "double-dipping" at that agency. More than \$3,000,000.00 in city pension monies was unlawfully paid out to 38 of his subordinates, including Henry Murphy, his next in command. Most significantly, however, he failed to take any remedial action in 1989 when the Rufolo-Ciaccia affair must have made it obvious to him that his department was employing retirees without waivers. Whether he simply chose to look the other way or was affirmatively seeking to protect himself and his subordinates, Irushalmi violated his position of public trust.

Further, Irushalmi placed himself in a conflict of interest by engaging in a prohibited \$42,000.00 real estate deal with his third ranking subordinate and friend, Joseph Capalbo. The evidence that he engaged in this transaction is overwhelming: Irushalmi made the down payment on the property, 510 East 142nd Street, paid one-third of its cost, paid some of the ordinary and recurring expenses associated with the property through a joint checking account with the recorded owner of the property, and admitted ownership of the property in his BOE financial disclosure forms. Neither the public nor other BOE officials can

have any confidence that the private business relationship between the two men did not intrude into their professional, superior-subordinate relationship.

Just as troubling as this transaction are the efforts Irushalmi made to conceal it. These efforts included misrepresentations to the Chancellor and to this office. He first told the Chancellor in September 1990 that he had no business relationship with Capalbo and held no interest in any of Capalbo's investments. Irushalmi continued, though, that he did loan \$42,000.00 to Capalbo in January 1990 for which he was repaid with interest in April 1990. Irushalmi next admitted in his BOE financial disclosure form for calendar year 1990 that he, in fact, did have an ownership interest in 510 East 142nd Street. Lastly, Irushalmi testified before this office in February 1992 that he did not have an ownership interest in that property and that he, instead, loaned \$42,000.00 to Capalbo for which he was repaid with no interest.

Irushalmi continued to testify that his representation to the Chancellor that the \$42,000.00 was repaid with interest was a mistake of memory, and that he corrected this with the Chancellor telling him only a day or so later that the loan was

repaid without interest. The Chancellor denies this. Irushalmi then tried to explain away the misrepresentation in his financial disclosure form. He testified that he admitted an ownership interest only to prompt later discussion and not because he believed he was actually an owner. Irushalmi's explanations can not be believed.

Irushalmi demonstrated his willingness to confer favored treatment on his favored subordinates by his participation in and conduct at the personnel review for Capalbo. His participation in the review of Capalbo's criminal conviction - the only review panel he recalls sitting on - demonstrates poor judgment. His blind acceptance of Capalbo's highly improbable explanation, however, suggests that the PRP review was nothing more than a formality designed to protect his friend and eventual real estate partner.

Irushalmi's predilection to partisanship is further demonstrated by his awareness and approval of the DSS hiring of many of Murphy's relatives. This kind of favoritism serves not only to diminish morale among an organization's employees but also undermines the public's confidence that governmental decisions are being made free of improper influences.

Henry Murphy bears direct responsibility for the "double-dipping" scandal. He oversaw personnel matters at DSS and was, himself, a retiree. He was twice emphatically advised in writing by a subordinate that DSS may not be complying with the law relative to waivers and, yet, did nothing. In fact, after having been denied his own waiver in 1982 he has continued to collect his own pension and salary since that time without a waiver. The evidence supports the conclusion that he intentionally ignored his waiver denial and the denials for his contemporaries. Finally, his testimony on the matter was less than candid. Murphy employed 12 of his near relatives at DSS, further supporting the perception that partisanship and not professionalism prevails at DSS. Murphy, like Irushalmi, sat on the dubious PRP for Capalbo. Like Irushalmi, he failed to challenge Capalbo's improbable explanation.

Joseph Capalbo, of course, engaged in the prohibited real estate deal with Irushalmi. His account of the transaction is no less improbable than Irushalmi's. With respect to his criminal conviction, Capalbo offered three dissimilar versions of the circumstances surrounding it - to the criminal court, to the PRP, and to SCI. It is clear that Capalbo has not been credible with respect to either occurrence.

By their actions and lack of candor in explaining their actions, Irushalmi, Murphy and Capalbo each have forfeited the trust placed in them by the BOE, Chancellor and public. Cumulatively, the acts of these men have cast a cloud of suspicion over the operation of DSS. In reaching our recommendation, we are mindful that the administration of School Safety should not be subject to even the slightest suspicion of wrongdoing. Such suspicion undermines the individual school safety officer's confidence in his or her leadership and the public's trust in the agency charged with securing the safety of its schoolchildren. While each man should be disciplined for his individual wrongdoing, all three should be removed from DSS in order to restore confidence in the integrity of its operations.<sup>31</sup>

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<sup>31</sup> The New York City Charter, at section 803 (c) requires that we forward allegations of criminal conduct to the appropriate prosecutorial authorities. Because Irushalmi's and Murphy's action in employing retirees without lawful authorization and Irushalmi's and Capalbo's conduct in engaging in a business transaction may constitute criminal conduct in this state, we are referring this report to the New York County District Attorney's office. The City Charter, at section 803 (c) further requires that we forward allegations involving a conflict of interest or unethical conduct to the Board of Ethics. That board has been replaced by the Conflicts of Interest Board and we are referring this report to the attention of that office as well.