

PROFIT vs. CARE:

A Review of

The Greenwood Rehabilitation Center, Inc.,
A Private School for the Mentally Retarded
and
Related Regulatory Processes

by

New York State Commission on Quality of Care
for the Mentally Disabled*



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March, 1981

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* Designated by Governor Hugh L. Carey as New York State's
Protection and Advocacy System for the Developmentally
Disabled pursuant to Public Law 94-103, as amended.

ACKNOWLEDGMENTS

The Commission would like to recognize the exceptional efforts of its staff in the conduct of this complex investigation and in the preparation of this report:

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A special acknowledgment is due to Richard Berman, former Director of the Office of Health Systems Management, for making available to this Commission the outstanding services of auditors Michael Galub, Ralph Hocker, Arnold Goodman and Ronald Higgins. Their considerable efforts proved invaluable in conducting certain aspects of the financial review.



PREFACE

This report into fiscal and programmatic practices at The Greenwood Rehabilitation Center, Inc., and into the nature of the regulatory process, reflect conditions found to be in existence during the Commission's 21-month long investigation.

A confidential copy of this report was shared with the Office of Mental Retardation and Developmental Disabilities and the responses of that Office to our recommendations are included in parentheses following each of the recommendations.

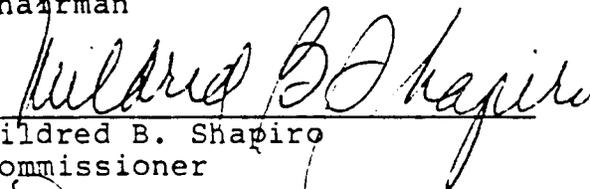
A draft of the report was also forwarded to the President of The Greenwood Rehabilitation Center, Inc., Mr. Sam A. LaMagna; to Mr. Carl Simone, a former owner; and, to Mr. Lawrence Lesser, the Certified Public Accountant for Greenwood. Their responses are summarized as Appendix E. At Mr. LaMagna's request, the Commission met with him and his attorney on December 5, 1980 to discuss the draft report and their objections to portions of it. Complete copies of their responses are available upon request from the Commission.

Events which have occurred subsequent to the completion of the investigative phase of this inquiry are recounted in the Epilogue.

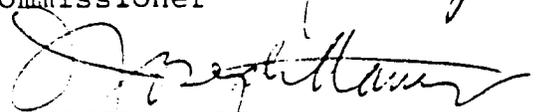
The findings, conclusions and recommendations contained in this report reflect the unanimous opinions of the members of the Commission.



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Chairman



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EXECUTIVE SUMMARY

The Commission on Quality of Care for the Mentally Disabled was created by the New York State Legislature at Governor Hugh L. Carey's request as a monitor of programs and services for the mentally disabled. The Commission's functions include the investigation of unusual deaths or deaths from other-than-natural causes, as well as the performance of cost effectiveness studies in State-operated or State-licensed facilities and programs.

This investigation commenced with an inquiry into the death of a resident at The Greenwood Rehabilitation Center, Inc., a private school for the mentally retarded, and the inquiry was expanded to embrace the general operations of that facility when widespread deficiencies in the programs were discovered upon a cursory review conducted in connection with the investigation of the death.* The Commission's investigation received further impetus when Governor Carey, in approving Chapter 720 of the Laws of 1979, which authorized the provision of additional funds to private schools for the mentally retarded, specifically asked the Commission to monitor the effect of the legislation.

Chapter 720 of the Laws of 1979 was enacted in response to pleas of the private schools for the mentally retarded for additional State aid since the existing funds available were deemed inadequate for proper client care.**

It is the conclusion of this report that, with respect to the Greenwood Rehabilitation Center, public funds, intended primarily for the care of the residents, have been

* See, In the Matter of Cheryl J., April 1980, a Report by the State Commission on Quality of Care for the Mentally Disabled.

** See Appendix A for an explanation of the funding of private schools for the mentally retarded.

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diverted through a variety of means to the personal and corporate enrichment of the owners, their families and associates--to the detriment of the mentally retarded residents the corporation was ostensibly created to serve.

Summary of Findings

The findings contained in this report, unless otherwise noted, reflect conditions as they existed at the time of the investigation.

I. Corporate Profit vs. Resident Care*

Of the several circumstances that made possible the diversion of a significant portion of the public funds intended for client care to other purposes, two are perhaps the most critical. First, there is no clear recitation under State law or regulation of the basic services a private school is expected to provide in return for the receipt of Supplemental Security Income (SSI) monies. Thus, a school such as Greenwood can provide substandard care while pleading for additional State funds to maintain that level of care--all the while incurring excessive expenses unrelated to care. Secondly, the lack of credible independent audits of the finances of private schools has removed any meaningful check on corporate profligacy.

The Commission investigation uncovered the following concerning Greenwood's finances:

* The corporate financial picture presented here is incomplete. Many of the corporation's business relationships are with other corporations wholly or partly owned by the principals, their families or associates. Without access to the books and records of these related corporations, a complete depiction of the nature of the business practices is not possible.

- A. The corporate owners, their relatives and associates drew loans from the corporation that were interest-free and without payback terms totaling \$307,359 between 1975 and 1978. Of this, \$123,112 was repaid; most of the balance of \$271,343 was simply written off against a variety of accounts in largely unsubstantiated transactions at year end (Report, pp. 30-33).
- B. One owner, Carl Simone, personally and through corporations he controlled, had \$205,866 in outstanding loans from 1975 to 1978 which were written off the books in largely unsubstantiated year-end transactions. Loans continued to be made to him after he sold his interest in The Greenwood Rehabilitation Center, Inc., (Report, pp. 8, 30-33).
- C. In addition to the loans previously described, Greenwood provided operating capital for Carl Simone, Inc., to perform work allegedly related to Greenwood. In 1975 Carl Simone, Inc., as landlord of the Greenwood facilities received \$103,039 in addition to normal rental payments as an advance for future modernization and maintenance of buildings. The amount, recorded as Rent Expense, was in addition to the loans to officers just noted. On November 7, 1975 this amount was deducted from the amount due Carl Simone, Inc., when the property and buildings were acquired by the Greenwood corporation (Report, p. 14).
- D. After selling his 50 percent interest in the Greenwood Rehabilitation Center on April 6, 1976,

Carl Simone continued to write checks on behalf of the Greenwood corporation. He also received salaries of \$56,000 and \$71,000 in 1977 and 1978, respectively, for vaguely defined services relating to the maintenance of buildings and grounds. Carl Simone continues to be compensated as an employee although he resides in Florida. The new owner, Dr. Sherwood Greiner, received no salary during this period (Report, pp. 19 n.15, 37, 39-40).

- E. Between 1976 and 1978, the Greenwood corporation diverted \$32,769 to another corporation in Florida, controlled by Greenwood's owners, which was involved in the construction of an Intermediate Care Facility for the Mentally Retarded (Report, pp. 42-45).
- F. Corporate financing was structured to repay a \$450,000 mortgage on the land and buildings within seven years, while the property's estimated useful life was 33 years, thus incurring excessively high "overhead" expenses (Report, p. 42).
- G. The corporation incurred high, non-client related expenses including:
 - 1. The leasing of executive vehicles not only for the owners and operators of the Greenwood Rehabilitation Center but for their children as well;
 - 2. Season tickets to hockey games for a Long Island team; and,
 - 3. Payments for telephone services for various private residences (Report, pp. 38-39).

- H. Annual salaries for owners Sam LaMagna and Carl Simone, both of whom held other regular full-time employment, exceeded the annual expended amounts for food for 190 mentally retarded residents, and staff. Indeed, even without considering other remuneration, their salaries comprised 9.4 percent and 10.4 percent of the total operating budget for Greenwood respectively for the years 1977 and 1978. In 1977 these two individuals drew salaries of \$129,830; the food expenditure for the year was \$120,283. In 1978, the corresponding figures were \$144,907 and \$125,112, respectively (Report, pp. 37-38).
- I. Due to errant procedures of the Social Security Administration, Greenwood in 1974 and 1975 received overpayments of SSI and Social Security Disability Benefits in excess of \$100,000. The practice continued on a limited basis into 1978, when procedures were revised. As of December 31, 1978, \$72,453 was still owed the Social Security Administration (Report, pp. 45-46).
- J. Because of a lack of clear government guidelines, personal funds of clients were not deposited in interest-bearing accounts as required by federal law. There was non-compliance with a federal requirement that client personal funds be handled as they would be by a fiduciary and trustee (Report, pp. 48-50).

II. Quality of Care of the Residents at Greenwood

Commission findings regarding the quality of care provided are based on extensive review of the records pertaining to the Greenwood Rehabilitation Center in the files

of the Office of Mental Retardation and Developmental Disabilities (OMRDD) as well as site visits by Commission staff in 1979, and a review of the report of a more recent survey by OMRDD staff in February, 1980. The Commission found:

- A. The Greenwood Rehabilitation Center has consistently operated beyond its approved capacity thus receiving excess revenue;
- B. Programming was inappropriate, insufficient and unproductive with clients involved in meaningless tasks;
- C. There were consistent deficiencies in staffing and orientation of staff at the facility;
- D. Although the facility served a large number of high functioning clients, they were afforded little or no opportunity to progress to more independent living;
- E. The food service was not administered consistent with Department regulations, and clients appeared to be maintained on high starch diets;
- F. Individual treatment plans or habilitative plans were inadequate and record keeping was poor;
- G. Medical and nursing policy was substandard and the nursing staff was inadequately trained to work with this type of population;
- H. Visiting policies were restrictive and contrary to State regulations;
- I. Incident review was insufficient and inconsistent with State regulations.

III. Regulation

Early in its investigation, the Commission discovered that Greenwood, like many other private schools, had no operating certificate. Indeed, since its creation, the corporation has been licensed only briefly for nine months in 1972 and six months in 1976. Its failure to conform its operations to the requirements of State regulations is responsible for its lack of certification.

However, the lack of an operating certificate has not proved to be a practical handicap, nor apparently even an inconvenience. As stated most recently in a letter from James E. Introne, Commissioner of Mental Retardation and Developmental Disabilities, dated September 4, 1980, disapproving an application for an operating certificate for Greenwood:

The significant deficiencies that exist and have existed for six years in many critical areas, including organization and administration, program, treatment planning, staffing and physical plant, have demonstrated an inability or unwillingness on Greenwood's part to assure the health, safety and welfare of its clients, to provide acceptable habilitative programs, to correct outstanding programmatic and administration deficiencies, to adhere to the requirements of law regarding the operations of a private school for the mentally retarded, to observe and satisfy the requirements set forth by the Commissioner, and to assure that all resources of Greenwood and of the clients are managed and appropriately used for the clients' benefit.

While choosing intransigence in the face of State attempts to regulate it, Greenwood has remained financially unscathed. Public funds have continued to flow, providing little economic incentive for the corporation to conform its conduct to the health, safety, sanitation or program standards required by the State.

The Office of Mental Retardation and Developmental Disabilities and the former Department of Mental Hygiene have never effectively regulated the private schools nor did they assign adequate staff to do so. Greenwood has violated many State regulations with impunity, including:

- A. Regulations requiring a corporation such as Greenwood to obtain the prior approval of the Commissioner of all incorporators as to their character and experience.
 1. There is no record of this approval having been sought or obtained. The absence of such an inquiry could permit undesirable persons to enter the field of care for the mentally retarded for profit alone.
 2. There is evidence that, while an owner or employee of Greenwood, Carl Simone engaged in questionable business practices through his related corporations and subsequently misstated, under oath in a deposition in connection with a lawsuit, his income from Greenwood and his relationship with the other owners (Report, pp. 18-20).
 3. In 1975, while still an owner of Greenwood, Carl Simone personally guaranteed a \$4.5 million loan by the Teamsters Pension Fund to the C & S Golf and Country Club, Inc., on Long Island of which Simone was a principal owner. C & S defaulted on this loan after making three payments. In a federal civil suit, the Secretary of Labor alleges that the trustees of the Pension Fund failed to require sufficient collateral for this loan

and failed to enforce compliance with the loan agreement. In a criminal investigation, a federal grand jury is investigating the possibility of loan kickbacks, fraud and organized crime activity involving this loan and financial conduits called Arawak Trust Company and Christine, Ltd., in Grand Cayman, Cayman Islands, British West Indies. No criminal charges have been filed against Mr. Simone (Report, pp. 8-13).

4. On November 7, 1975, Carl Simone, Inc., a corporation wholly owned by Carl Simone, sold the Greenwood land and buildings to The Greenwood Rehabilitation Center, Inc., of which Carl Simone was a partner. Part of the payment was in the form of a second mortgage of \$110,500 given to Carl Simone, Inc. A week later this mortgage was assigned to the Arawak Trust Company of Grand Cayman, Cayman Islands, British West Indies. On January 9, 1978, Arawak assigned this mortgage to Christine, Ltd., also of Grand Cayman, which in turn assigned the mortgage on June 29, 1978 to Theodora Simone, mother of Carl Simone. There were no accounting entries in Greenwood's books for 1978 that any payments were made on this mortgage to Carl Simone, Inc., Arawak Trust Company, Christine, Ltd., or Theodora Simone. According to Greenwood's former attorney, Theodora Simone and Greenwood bought this mortgage for a total of \$37,300 with Mrs. Simone contributing \$20,000 and Greenwood the balance. It should be

noted that at the time of this transaction the mortgage was for \$110,500 and was secured by property appraised at \$2.7 million with less than \$450,000 in prior liens against it (Report, pp. 15-16).

5. There is also evidence suggesting that for the year 1976, Carl Simone participated in a plan to evade New York State sales tax in excess of \$100,000 by ordering the falsification of the records of another corporation wholly owned by him (Report, pp. 21-26).
- B. Regulations requiring the Commissioner's approval of ownership of more than 10 percent of the stock of a corporation as well as of changes in ownership.
1. There is no indication that such approval was given for any of the owners to own more than 10 percent of the stock, nor that the Commissioner was ever informed of changes in the ownership of the corporation that occurred, particularly the sale by Carl Simone of his 50 percent interest in the Greenwood corporation to Dr. Sherwood Greiner in 1976 (Report, pp. 4, 18-19, 27, 39-40, 76 n.39, 77).
 2. This inquiry raises serious questions whether Carl Simone's sale of his half interest in a corporation appraised at \$2.7 million for \$50,000 was part of an attempt to divest himself of assets in order to evade his obligation to repay a \$4.5 million loan to the Teamsters Pension Fund (Report, p. 27).

C. Regulations requiring an annual audit by a Certified Public Accountant (CPA).

1. The audits performed were done by a Certified Public Accountant, who performed services for other related corporations owned by Carl Simone, raising questions as to the objectivity and accuracy of his audits and certifications regarding Greenwood (Report, pp. 31-36).
2. Financial statements for the year 1975 were not certified nor was a disclaimer opinion rendered. For the years 1976, 1977 and 1978, the CPA issued unqualified opinions as to the adequacy of Greenwood's financial statements. In the Commission's audit of the accounts, irregularities were found including the omission of the effects of financial transactions and the recording of transactions in a manner that raises questions as to their bona fide substance and intent to mislead. The CPA's examination of the books was not sufficient in scope to provide evidence to support the unqualified opinions (Report, pp. 34-36).

Examples of transactions that raise questions as to their substance and materiality include:

- a. Borrowing or lending by officers and others on an interest-free basis;
- b. Selling real estate at a price that differs significantly from its appraised value;
- c. Making loans with no scheduled term as to when or how the loans will be repaid;

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- d. Large, unusual or non-recurring transactions or balances at or near the end of the reporting period;
 - e. Transactions not supported by proper documentation.
- D. Regulations requiring that corporate offices be located in the same place as the facility.
- 1. Greenwood has consistently had its business office separate from the facility, since its inception.
 - 2. This separation has generated needless costs for office space, transportation and telephones which have been financed, for the personal convenience of the owners, from funds intended for residents' care (Report, pp. 72-77)..
 - 3. The corporation apparently misled the Secretary of State in the Certificate of Amendment to the Certificate of Incorporation filed on April 5, 1976 by stating that Ellenville was the principal and only place where the corporation did business (Report, pp. 74).

Conclusions

This investigation reveals certain weaknesses in the statutes authorizing regulation of private schools--e.g., insufficient explicit authority on the part of OMRDD to require detailed financial information from the schools and their owners and an insufficient range of sanctions available to enforce regulations without drastically disrupting the lives of the residents. More importantly, however, it illustrates the consequences of ineffective regulation by the regulating agency resulting, in part, from the failure to assign adequate staff and resources.

Ineffective regulation is worse than no regulation at all, for it creates an illusion of public scrutiny that is belied by the reality. The lack of effective regulation permits individuals to victimize, through shoddy care, the most defenseless of our citizens. A commitment by the regulating agency of staff and resources needed for strong and effective regulation will not only protect the mentally retarded, who have already suffered more than their share of misfortune, but will also pay for itself by insuring that public funds are used primarily for the care of residents rather than for the personal enrichment of operators.

It is interesting in this regard to review the events both prior and subsequent to the enactment of Chapter 720 of the Laws of 1979. The private schools for the mentally retarded, including Greenwood, had argued vigorously for additional funds to supplement SSI funds. During deliberations on this legislation, the Commission recommended the addition of two conditions to the receipt of any supplementary funds:

1. A determination by the Commissioner of OMRDD that the school be in substantial compliance with all applicable State regulations for such facilities, and
2. The provision to State regulating agencies of detailed information on the financial position of the school.

These provisions were incorporated into Chapter 720 which also appropriated the sum of one million dollars for the purposes of these supplementary contracts. Despite the strong lobbying by the private schools for this legislation, their enthusiasm has markedly waned since the inclusion of these two provisions. As of April 1980, only 2 of 15 private schools eligible for Chapter 720 funds had serious applications pending to participate in the program.

Summary of Recommendations

I. Legislation

The Commission recommends that statutory authority be sought which vests in the Commissioner of the Office of Mental Retardation and Developmental Disabilities the power to:

- initiate, through the Attorney General, a legal proceeding to have a receiver or master appointed to assume operation of a private school for the mentally disabled pursuant to court order in cases of serious or persistent non-compliance with laws and regulations;
- place staff of the Office of Mental Retardation and Developmental Disabilities as monitors in any such private school;
- assess much larger fines than currently authorized by law for violations of the terms of an operating certificate;
- obtain any data, including financial records, of any other business in which the school's owners, operators or officers have a financial interest and which transacts business with the school; and
- appoint a citizen (not a parent of a resident at the school) to be a non-voting member of a corporation which operates a school.

[The Commissioner of OMRDD states:

The 10 Commission recommendations that require a change in statute and/or regulation have been referred to our counsel's office for review. We have already drafted a receivership statute that will be introduced during the next legislative session. I expect that we will incorporate all of your suggestions in either our 1981-82 legislative package or in the new private school regulations.]

II. Regulations

The Commission recommends that the Commissioner of OMRDD promulgate regulations:

- specifying services which are required under Supplemental Security Income payment categories;
- amending current provisions, which require an annual audit of schools by a Certified Public Accountant, to require that the CPA be free from any other financial dealings or interest in the school, its management or owners, and that the audit report be filed with OMRDD;
- requiring the submission of an independent appraisal of any real property transfers to or from a school;
- amending current regulations to require that personal allowance monies be maintained in interest-bearing accounts; and
- requiring a code of ethics applicable to holders of operating certificates.

[The Commissioner of OMRDD reports that the process of developing a new regulation on minimum standards for private schools has begun with input from operators, parents, and clients. The task-oriented group assigned to this project has been assigned the development of a code of ethics.]

III. Administrative Actions

On the basis of the facts disclosed in the course of this investigation and the pattern of conduct of the corporate principals, whose zeal for personal financial gain

adversely impacted their obligation of providing quality care for the residents of Greenwood, the Commission has grave reservations over their continuing role in the operation of Greenwood with the sanction of the State. The history of deficiencies at the facility, coupled with intransigence in the face of attempts at correction, as articulated in Commissioner Introne's letter of September 4, 1980, do not inspire confidence in the owners and operators of Greenwood. While recognizing that the determination of "character and experience"--a determination that has not yet been made for any of the owners of Greenwood--is one reserved by law for the Commissioner of OMRDD, the Commission is of the opinion that the "character and experience" revealed by this investigation disqualify the current owners from eligibility for an operating certificate issued by the State of New York.

The Commission recommends that:

- OMRDD perform full financial audits on the other private schools and maintain a periodic schedule for such audits;

[OMRDD reports that it has awarded a contract to an independent audit firm to commence financial audits on eight of the private schools. The remaining schools will receive similar audits as resources are made available to OMRDD.]

- OMRDD strictly enforce its rule barring more than 10 percent ownership or control of corporations which operate such schools unless exempted by the Commissioner;

[The Commissioner of OMRDD reports: "We have included a careful review of this requirement in all our certification and recertification activities. It will be enforced."]

- OMRDD seriously and carefully review the character and fitness of persons who hold operating certificates for such schools;

[The Commissioner of OMRDD states:

We would like very much to be able to document a careful review of the character, fitness and experience of such persons. However, we would have to rely heavily on records, references, existing policy or BCI files. Such files would not identify potential criminal activity and I suspect references would be self-serving. We have, however, developed a questionnaire that is part of the Part 51 application process. We have intentions of pursuing more information if responses to these questions are inadequate or suspicious in nature.]

- The Department of Social Services make periodic inquiries requesting the status of residential facilities licensed by OMRDD in order to monitor compliance with already established notification procedures on facility status; and

[The Department of Social Services has adopted this procedure.]

- The Social Security Administration commence recoupment proceedings for the overpayment of SSI money to Greenwood.

IV. Referrals

On the basis of the findings which are reported, the Commission itself has referred or will refer this report to the:

- United States Department of Justice, Organized Crime Strike Force, Brooklyn, NY;
- United States Department of Labor, Washington, DC;
- United States Department of Health and Human Services, Social Security Administration, Baltimore, MD;

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- NYS Office of the Attorney General;
- NYS Department of Taxation and Finance;
- NYS Department of Social Services;
- NYS Education Department, State Board for Public Accountancy;
- NYS Department of State; and
- State of Florida, Office of Secretary of State.

I. INTRODUCTION

A. Nature of the Problem

The regulatory framework enabling profit-making corporations to provide care and treatment to mentally disabled persons was created by the Department of Mental Hygiene in 1973.¹ The regulations that were promulgated by the Department were purposely designed to curb any tendencies of a profit-making corporation to enhance its financial position or that of its principals to the detriment of high quality care for those whom it was incorporated to serve.

Government scrutiny of the behavior of corporations providing care and treatment to mentally disabled persons is particularly important since the consumers are less able to detect and to check corporate excesses or improprieties. Furthermore, the scarcity of alternate services and of community placements limits the options available to this clientele.

Given the inherent purposes of a profit-making corporation to maximize its net return and a governmental financing structure that provides a resident with an income fixed by law, there is a natural tension between the profit-making and care-providing activities of the corporation. In such circumstances, only by increasing internal efficiency in the delivery of services, or by reducing the quantity or quality of services, can the corporation increase its profit.

Checks on any tendencies to inappropriately reduce or misappropriate corporate resources must come either from internal corporate controls such as officers, directors or trustees devoid of ownership or pecuniary interests, or from monitoring and regulation by a governmental licensing

¹ 14 New York Code of Rules and Regulations, Part 73 (eff. date June 1, 1973) (hereafter N.Y.C.R.R.).

authority. Absent such outside governance, regulation or the availability of adequate free market competition through alternative services which are better or more inexpensive, the resident might well be left to the mercy of an unchecked corporate profit motive.

B. Overview of the Problem

The study of the financial and programmatic operation of The Greenwood Rehabilitation Center, Inc., is illustrative of a lack of vigorous regulation, resulting from inadequate staffing of the regulating agency and the weaknesses in the statutory and regulatory framework, permitting corporate resources to be used for the personal enrichment of corporate owners, directors and officers and their relatives and friends. This diversion of corporate funds away from programs and services has clearly been to the detriment of the mentally retarded clients whom the corporation was created to serve. Facilitated by their interrelationship by blood, marriage or other business ventures, these persons controlled corporate resources, extracting them either directly--through generous salaries, interest free or unrepaid loans, expense payments and perquisites--or indirectly, by conducting business between and among themselves or corporations they controlled, at less than arms length.

Greenwood is in violation of many of the regulatory requirements for profit-making corporations which are contained in 14 N.Y.C.R.R. §73.2, in addition to its failure to have a valid operating certificate since 1976.² The three following regulations are particularly relevant.

² See, infra, Discussion at Section III.B. at pp. 53 et seq. and Section IV. A. at pp. 72 et seq.

In 14 N.Y.C.R.R. §73.2(a)(3), (4) and (5), there are the requirements that: the location of corporate offices be the same as the facility; no person shall own more than ten (10) percent of corporate stock or control without written approval by the Commissioner; and all incorporators or directors of record obtain written approval by the Commissioner as to their character and experience.

The Commission became interested in studying the operation of Greenwood in the course of an investigation into a death of a resident, pursuant to its statutory mandate contained in the N.Y. Mental Hygiene Law, §45.17.³ The deficiencies in the care and treatment of Cheryl J. led to a broader review of the facility's operation and programs, as well as related regulatory procedures--their adequacy and application. When the routine request⁴ for facility documents was met with inordinate resistance and delay by Greenwood's officers, reportedly upon the advice of their attorney, who stated his concern over breaching the confidentiality of patient records, the Commission requested all records of Greenwood from the Office of Mental Retardation and Developmental Disabilities (OMRDD), which immediately complied.⁵

³ See, In the Matter of Cheryl J., April 1980, a Report by the State Commission on Quality of Care for the Mentally Disabled.

⁴ Pursuant to N.Y. Mental Hygiene Law §45.09(a), "The commission...must be granted access at any and all times...to all books, records, and data pertaining to any such [mental hygiene] facility...."

⁵ The Department of Mental Hygiene was the regulatory agency until the departmental reorganization effective April 1, 1978, which transferred this authority to the separate Office of Mental Retardation and Developmental Disabilities (OMRDD).

On April 15, 1970, Carl Simone, Inc., purchased certain land and buildings, known as the Greenwood Inn, a hotel and resort in the Catskill Mountain region. Carl Simone was the only stockholder of Carl Simone, Inc. These assets were leased to the Greenwood Camp, Inc., which in turn operated a summer boarding camp for retarded children. Greenwood Camp, Inc., stockholders were Carl Simone and Sam LaMagna. Information regarding the original purchase price in 1970 paid by Carl Simone, Inc., was not available for review, but was reported to be \$185,000 in a 1975 property appraisal by Flynn Appraisal Service, Inc.

On September 30, 1970, a new entity, The Greenwood School, Inc., leased the assets from Carl Simone, Inc. The Greenwood School, Inc., was subsequently granted a charter by the State Board of Regents pursuant to the Education Law, and a license by the Department of Mental Hygiene pursuant to the Mental Hygiene Law to operate as a school for the mentally retarded. The two stockholders of the Greenwood School, Inc., were Carl Simone, 51 shares; and Sam LaMagna, 49 shares. At the time of incorporation, Sam A. LaMagna paid \$5,000 for his shares. The corporation's board of trustees consisted of Carl Simone and Sam LaMagna, their wives Elaine Simone and Rae LaMagna, and Carl Simone's personal and corporate attorney, Anthony Bellucci. Mr. Bellucci also acted as Greenwood's corporate attorney until the end of 1979.

Prior to 1972, the Department of Mental Hygiene had not permitted profit-making corporations to be licensed to provide resident care and treatment to the mentally disabled. However, beginning in 1972, the Department was considering a change in policy and by June 1, 1973 had promulgated regulations to permit and regulate such activity. During 1972, the Department approved the incorporation of The Greenwood Rehabilitation Center, Inc., as a business entity under the N.Y. Business Corporation Law and granted it an operating certificate.

The new Certificate of Incorporation was filed on June 21, 1972. On December 1, 1972, an organizational meeting was held to establish The Greenwood Rehabilitation Center, Inc. Carl Simone and Sam A. LaMagna were elected as directors and officers of this corporation, and they authorized the issuance of 200 shares of stock. Shares were issued as follows: 51 shares to Carl Simone, 49 shares to Sam LaMagna and 100 shares undistributed. A tax free re-organization and merger between The Greenwood School, Inc., and The Greenwood Rehabilitation Center, Inc., was effected with the latter corporation being the surviving entity. At this point, Carl Simone, Inc., still retained ownership of the land and buildings and the lease was transferred to the new corporate entity, The Greenwood Rehabilitation Center, Inc. Subsequently, The Greenwood School, Inc., was dissolved as an educational corporation by the Board of Regents.

At the joint directors/stockholders meeting of The Greenwood Rehabilitation Center, Inc., on December 1, 1974, Carl Simone, Inc., notified The Greenwood Rehabilitation Center, Inc., that Carl Simone, Inc., planned to refinance the mortgage on the property. It is not known if this refinancing was based on increased original book values or changed any provisions contained in the original mortgage.

At a special meeting of the Greenwood Rehabilitation Center directors on October 7, 1975, a motion to purchase the land and buildings from Carl Simone, Inc., was approved. The purchase price of the property, and improvements since 1970, was set at \$700,000. The appraised value based on its "highest and best use" as a school for the mentally retarded as of November 14, 1975 was \$2.7 million, according to Flynn Appraisal Service, Inc. Title was actually transferred on November 7, 1975 at which time Carl Simone privately transferred one share of stock in The Greenwood Rehabilitation

Center, Inc., to Sam A. LaMagna which gave both shareholders equal ownership and corporate control.

On April 6, 1976, in a private transaction, Carl Simone transferred his 50 shares in The Greenwood Rehabilitation Center, Inc., to Sherwood Greiner for a reported \$50,000.

B. Character, Fitness and Experience of Carl Simone, and His Other Businesses

It was learned that Carl Simone did business through many other closely-held corporate entities, including Carl Simone, Inc.; Cappy-Simone, Inc.; and C & S Golf and Country Club, Inc., (hereafter "C & S").⁷

Carl Simone, Inc., is a company which primarily engages in construction, earth moving and ground alteration. Carl Simone, Inc., along with Carl Simone personally and his other corporations, received large payments from Greenwood, many of which were recorded as loans to officers.⁸

⁷ The Commission has learned that Carl Simone has been developing an Intermediate Care Facility for the Mentally Retarded (ICF-MR) in St. Augustine, Florida. This ICF-MR is operated under the corporate name, St. Augustine Center for Living, Inc. The principal stockholders of this corporation have been listed as Carl Simone, Sherwood Greiner (now co-owner of Greenwood), and Craig Greiner. This operation has received services paid for by Greenwood which included payments to its own attorney, Anthony Bellucci, for services he performed for St. Augustine Center for Living, Inc. This funding is more fully discussed infra at pages 42-45.

⁸ January 1, 1975 balance to 1978

	<u>Total loan</u>	<u>Cash repayments</u>	<u>Written off as expenses</u>
Carl Simone, Inc.	\$100,804.06	\$ 591.33	\$ 99,991.42
Carl Simone	95,748.56	56,227.80	41,596.63
Cappy-Simone, Inc.	24,117.11	-	24,117.11
C & S Golf & C.C., Inc. (only 1975)	20,500.00	-	20,500.00
St. Augustine Center	<u>22,061.47</u>	<u>-</u>	<u>19,661.47</u>
TOTAL	\$263,231.20	\$56,819.13	\$205,866.63

Little else could be learned about Carl Simone, Inc., except for the fact that in the early 1970's it had done some work on constructing a golf course called Charter Oaks Golf and Country Club in Muttontown, New York. By virtue of this work, Carl Simone, Inc., became a major creditor of the golf course which was in financial trouble and entering bankruptcy.

As a result of the bankruptcy, Carl Simone was able to acquire ownership of the golf course, paying major creditors between 10 and 20 cents on the dollar. Although originally operating with a partner, he established another wholly owned corporation called C & S Golf and Country Club, Inc., to operate and own the course, formerly the Charter Oaks Golf and Country Club.

The golf course was not financially stable because it lacked adequate membership and was embroiled in a zoning dispute over its existence as a membership-owned golf club versus a proprietary golf club.⁹ To enhance the club's viability in 1975, C & S received, and Carl Simone on its behalf personally guaranteed, a mortgage loan of \$4.5 million from the Trustees of Central States, Southeast and Southwest Areas Pension Fund of the Teamsters Union ("Teamsters Pension Fund"). This loan has become the subject of a lawsuit brought by the United States Department of Labor under the Employee Retirement Income Security Act of 1974 ("ERISA"), [29 U.S.C. §1001 et seq.] alleging that there

⁹ In the Matter of C & S Golf and Country Club Corp. v. Stevens et al., 60 A.D. 2d 841 (2d Dept. 1978).

were improprieties in this transaction, namely insufficient security for this loan.¹⁰

This same loan and others have also become the subject of federal grand jury proceedings by the Federal Organized Crime Strike Force in the Eastern District of New York which is investigating possible criminal violations involving these loans, such as kickbacks, fraud and organized crime activity. No criminal charges have been made against any of the officers or employees of Greenwood.

The Commission has become aware of the general scope and some significant specifics through public legal documents filed in federal court and by communication with federal attorneys. Furthermore, because this information has sensitivity and secrecy in the organized crime investigation and possible presentation to the grand jury, the Commission was advised by attorneys for the United States Department of Labor that they were proceeding cautiously in prosecuting their civil action against the Pension Fund in

¹⁰ Marshall, Secretary of Labor v. Fitzsimmons, et al. (defendants) and Anthony Bellucci and Central States, Southeast and Southwest Areas Pension Fund (third party respondents), 78 C-342 (N.D. Ill. filed Feb. 1, 1978). The complaint alleges, in part:

In January 1975, the defendants [Trustees of the Teamsters Pension Fund] made a loan of plan assets to C & S Golf and Country Club [Corp.] of \$4.5 million, which loan was secured by real property located in Muttontown, N.Y. At the time the loan was made, the defendants failed to require compliance by the borrower with material provisions of the loan commitment. After disbursal of the loan, the defendants agreed to the request of the borrower for a moratorium on loan payments without obtaining sufficient reliable information concerning the value of the collateral, the operation of the venture and the financial status of the borrower and the guarantors when such information, if obtained, would have indicated insufficient security for further extensions of credit.

Illinois to avoid interference with the criminal investigation. These investigations have converged upon the Teamsters loan to the golf course during the time of Carl Simone's ownership and in both the civil and criminal proceedings there is interest in taking the sworn testimony of Simone's attorney, Anthony F. Bellucci, and Simone's accountant, Lawrence B. Lesser. These persons also served the Greenwood corporation.

Simone and his attorney, Bellucci, sought a loan from the Teamsters because of the financial trouble being experienced by the golf course in 1975 due to a lack of operating capital caused basically by low membership. Despite receiving \$4.5 million from the Teamsters, the money did not improve the situation of the golf course. Indeed, C & S was able to make only three payments on the mortgage and was thereafter technically in default.

The theory of the civil action, according to allegations contained in the federal complaint and from information from Labor Department attorneys, is that the payments due on the mortgage were not properly pursued by the Teamsters Pension Fund. And, from the beginning of the mortgage the collateral of the golf course itself, appraised at approximately \$2.6 million, was grossly insufficient to secure a \$4.5 million loan. Under the theory of the criminal investigation, there were kickbacks from the loan proceeds to officials of the Teamsters Pension Fund which accounted for their less than vigorous enforcement of the loan agreement and initial willingness to grant a mortgage with such inadequate collateral.

In 1977 the Teamsters Pension Fund commenced a foreclosure proceeding against the golf course, C & S, Inc., and

Carl Simone and his wife.¹¹ In October 1978, the Pension Fund took the deed to the golf course and all the outstanding stock of C & S in lieu of foreclosure. Under pressure from the U.S. Secretary of Labor, the Pension Fund turned over exclusive management and authority for the golf course and C & S to an independent management firm.

According to federal attorneys, most of the \$4.5 million was used by C & S, Inc., and Carl Simone to pay off another pre-existing mortgage and other creditors. However, approximately \$300,000 is unaccounted for and this sum is being investigated by the federal grand jury as possible kickback payments to members of organized crime. More specifically, attorneys for the Federal Organized Crime Strike Force suspect that approximately \$100,000 was sent to be "laundered" to financial conduits in the Grand Cayman Island called Arawak Trust Co., Ltd., and Christine, Ltd.¹²

The term "laundered money" is a metaphoric expression used to describe a process whereby the identity or source of money is obscured along with any impropriety or illegality

¹¹ The Trustees of Central States, Southeast and Southwest Areas Pension Fund, et al. v. C & S Golf and Country Club Corp. et al., Index No. 105-77 (N.Y. Sup. Ct., Nassau Co.)

¹² In an NBC television news broadcast (aired 7:00 p.m., March 18, 1980), it was reported that federal prosecutors have subpoenaed bank records of a Cayman Islands' corporation, Christine, Ltd., and a New York City law firm. The Federal Organized Crime Strike Force is pursuing a \$100,000 embezzlement from the Teamsters Fund which was a portion of monies originally loaned to the Charter Oaks Golf and Country Club in Muttontown, New York.

It was reported that federal prosecutors believed this money was laundered through the Grand Cayman Island and eventually used as kickbacks to Teamster officials.

See also, "Inquiry on Teamsters Seeks Law Firm Data as Clue to Kickbacks," New York Times, March 20, 1980, at p. A-20, col. 1.

associated with it. By repeatedly transferring money through various hands or financial conduits, it becomes difficult or impossible to trace its path back to the impropriety or illegality. Thus, money which is tainted in an individual's possession at first, may be transferred and subsequently returned to a malfeator under seemingly legitimate circumstances. Such money could be termed laundered or cleansed of its tainted or provably tainted nature.

Foreign banks and other financial conduits are particularly useful in such schemes because of the increased difficulty in obtaining information from them and the limited jurisdiction of the United States' courts to compel disclosure, as demonstrated by the inability of the Federal Organized Crime Strike Force in the Teamsters Pension Fund investigation to subpoena information from Christine, Ltd.

1. The Greenwood Connection

In its investigation of various real estate transactions used to establish the Greenwood corporation, the Commission has discovered transfers of substantial amounts of money to Carl Simone and his numerous corporations, including C & S Golf and Country Club, Inc. Significantly, one of these transactions of the Greenwood corporation to Carl Simone, Inc., in the form of a second mortgage of \$110,500 was eventually assigned to Christine, Ltd., of Grand Cayman Island and then back to Carl Simone's mother.

The major transfer took place on November 7, 1975 and concerned the sale of the Greenwood property and buildings by Carl Simone, Inc., to the Greenwood corporation.

The basis for payment of the acquisition, as determined from the Commission's audit, is as follows:

SELLER

Recorded value per seller	\$702,584.00
Less: Chicago Title Insurance Company expense	2,584.00
Purchase price to Carl Simone, Inc.	<u>\$700,000.00</u>
Plus: Prepaid taxes owed to seller	9,274.15
Total to seller	<u>\$709,274.15</u>

PURCHASER

Reduction of Carl Simone, Inc., indebtedness to purchaser	\$108,400.00
Prepaid rent (22 days - November 1975)	14,413.18
Subtotal	<u>\$122,813.18*</u>
Assumption of Tri-Union Welfare Fund Mortgage	435,231.98
Carl Simone, Inc. (second mortgage)	110,500.00
Carl Simone, Inc. (third mortgage)	26,150.00
Interest payable to Tri-Union Welfare Fund assumed by Greenwood Rehabilitation Center, Inc.	626.66
Check #5292 payable to Carl Simone, Inc.	13,952.33
Total by purchaser	<u>\$709,274.15</u>

* Recorded on corporate books as follows:

Reduction of rent expense	\$103,039.40	13
Loan Receivable, Carl Simone, Inc.	<u>19,773.78</u>	
Total	<u>\$122,813.18</u>	

¹³ Although the closing statement shows a "Reduction of Carl Simone, Inc., Indebtedness to Purchaser" for \$108,400, this amount was never posted to the corporate books as such. The journal entry on Greenwood's books recording the purchase of the land and buildings from Carl Simone, Inc., stated amounts totaling \$103,039 were credited to "Rent Paid in Advance", but were actually posted as a reduction to an expense account, specifically "Rent Expense".

The entries are better understood from an explanation by Greenwood corporate attorney, Joseph P. Hoey, in a meeting with the Commission on December 5, 1980. He explained that, over the course of time, funds recorded as Rent Expense had been advanced to Carl Simone, Inc., for past and future construction work (modernizing and maintaining buildings), and as rent came due the surplus in the Rent Expense account was reduced. Thus, Greenwood was providing operating capital for Carl Simone, Inc., to carry out work allegedly related to Greenwood.

Upon sale of the property, the amount owed Greenwood was deducted from the amount due Carl Simone, Inc., as seller of the property.

It should be particularly noted that Carl Simone, Inc., gave a second mortgage of \$110,500 and a third mortgage of \$26,150 in this transaction on November 14, 1975. The Commission commenced a title and lien search in the County Clerk's Office, County of Ulster, and discovered that the second mortgage was thereafter assigned on November 14, 1975 by Carl Simone, Inc., to the Arawak Trust Company of Grand Cayman, Cayman Islands, British West Indies, "in consideration of Ten dollars (\$10.00) and other good and valuable considerations." This assignment was signed by Carl Simone as president of Carl Simone, Inc., and attested to by his attorney, Anthony Bellucci. On January 9, 1978 this second mortgage was again assigned from the Arawak Trust Company to Christine, Ltd., of Grand Cayman, Cayman Islands, British West Indies, "in consideration of Ten and 00/100 dollars (\$10.00)."

On June 29, 1978 the second mortgage was again assigned from Christine, Ltd., of Grand Cayman to Theodora Simone, the mother of Carl Simone. As far as this \$110,500 second mortgage is concerned, there are no accounting entries in Greenwood's books that any payments have been made on this mortgage to Carl Simone, Arawak, Ltd., Christine, Ltd., or Theodora Simone.

In a letter from Attorney Bellucci to Lawrence Lesser, CPA, dated June 4, 1980, it was stated that the \$110,500 assignment was made by Carl Simone, Inc., to Arawak Trust Company, but the further assignment from Arawak to Christine, Ltd., was done "apparently without the knowledge of the Greenwood Rehabilitation Center." The letter adds that the mortgage in June 1978 was assigned to Theodora Simone, mother of Carl Simone, to avoid foreclosure by Christine, Ltd. Full settlement was effected by Theodora Simone (\$20,000) and Greenwood (\$17,300). Greenwood payments of the \$17,300 to Christine, Ltd., allegedly began in

July 1978 and were completed by early 1979. Theodora Simone's payment was apparently made in June 1978 at the time of the assignment of the second mortgage.

According to Bellucci's letter, Mrs. Simone's interest in Greenwood was limited to \$20,000 at 9-1/2 percent interest for which she receives monthly payments of \$250 from Greenwood.

There are a number of unanswered questions surrounding this transaction. What consideration induced Christine, Ltd., to accept an assignment of a mortgage on which no payments had been made for almost three years? Why, after duly registering its lien on the Greenwood property with the Ulster County Clerk's Office, would Christine, Ltd., fail to notify its debtor, The Greenwood Rehabilitation Center, Inc., (whose officers "apparently" had no knowledge of the assignment) of the assignment prior to threatening foreclosure proceedings? Why would Christine, Ltd., holding a mortgage for \$110,500 secured by real property appraised at \$2.7 million in 1975 and encumbered only by another prior mortgage of \$435,231 at that time, surrender its interest in this mortgage in 1978 for a total of \$37,300, approximately a third of its value? Since Greenwood and Theodora Simone jointly paid out a total of \$37,300 against a mortgage debt of \$110,500 (to say nothing about the interest on this principal that may have been accumulating), what happened to the balance of the debt amounting to \$73,200? And, why were there no accounting entries in Greenwood's books for 1978 reflecting the claim made by Attorney Bellucci that a portion of the \$17,300 was paid in 1978? Lastly, if Attorney Bellucci is correct that Theodora Simone's interest in the assignment of the \$110,500 mortgage was limited to the \$20,000 she paid, then why does the assignment lien document on file in the Ulster County Clerk's Office fail to contain any such limitation?

The third mortgage of \$26,150 was assigned by Carl Simone, Inc., on November 14, 1975 to Jennifer Davis residing in Toronto, Canada. The Commission has been informed that Jennifer Davis is the wife of Gil Davis, a resident of the State of Florida, who was reportedly associated with the operation of the C & S Golf Course Restaurant. This mortgage was satisfied and discharged on July 12, 1978.

The first mortgage was originally given to Carl Simone, Inc., by the trustees of the Tri-Union Welfare Fund on March 9, 1972 in the amount of \$450,000. This obligation was assumed by the Greenwood corporation upon its purchase of the property.¹⁴

¹⁴ Little could be learned of Tri-Union Welfare Fund, except for financial statements which are publicly available under law. The original mortgage had a ten year term and provided for the payment of monthly installments of \$5,495.75. On August 1, 1975 Carl Simone, Inc., received a second mortgage from Tri-Union in the amount of \$112,330.76. On that same date the two mortgages were consolidated to create a single lien on the Greenwood property. The consolidated mortgage had a value of \$450,000 and provided for the payment of monthly installments of \$7,980 for a term of six years. When The Greenwood Rehabilitation Center, Inc., assumed the mortgage (as the first mortgage) on November 7, 1975, it had a value of \$435,231.98. The funds for these two mortgages constituted between approximately 30 percent to 40 percent of all Tri-Union's assets.

However, in regard to the other mortgages, except as stated earlier, no money has been or is being paid on the second mortgage, and the third mortgage was suddenly settled in its entirety in 1978. Payments on the mortgages have been as follows:

Mortgages	Outstanding mortgages	Principal repayments				Outstanding mortgages
	11/7/75	1975	1976	1977	1978	12/31/78
Tri-Union	\$435,231	\$4,989	\$62,520	\$67,709	\$73,329	\$226,684
Second	110,500	-	-	-	-	110,500
Third	26,150	-	-	-	26,150	-
TOTAL	<u>\$571,881</u>	<u>\$4,989</u>	<u>\$62,520</u>	<u>\$67,709</u>	<u>\$99,479</u>	<u>\$337,184</u>

Greenwood made substantial payments both directly to C & S Golf and Country Club and to business entities controlled by Carl Simone. Even though Simone and his corporations had sold their stock and other financial interests in Greenwood, he continues to receive a substantial salary and perquisites from Greenwood. Therefore, since this golf course was the subject of a \$4.5 million Teamster loan, which transaction was under investigation civilly for gross mismanagement and for lack of sufficient collateral by the U.S. Department of Labor and criminally for organized crime involvement and for loan kickbacks by the Federal Organized Crime Strike Force, and since Carl Simone was the principal owner in the golf course in these transactions while simultaneously the majority stockholder in Greenwood which transferred monies to the golf course, efforts were made by the Commission to learn how Carl Simone operated the C & S Golf and Country Club and what effect that might have had on his financial operations of Greenwood.

2. Simone and the Golf Course Foreclosure Litigation

The Commission obtained two depositions of sworn testimony taken pursuant to federal and state litigation which provided pertinent information on the operations of businesses controlled by Carl Simone. The first was a deposition taken of Carl Simone and his wife, Elaine, in the New York Supreme Court foreclosure proceeding brought by the trustees of the Teamsters Pension Fund (as mortgage holder) versus C & S Golf, Carl Simone, et al. on July 27, 1977 (N.Y. Supreme Court, Nassau Co., No. 105-77). The primary purpose of this deposition appeared to be a determination of the personal assets of Carl Simone since he was a personal guarantor of the Teamsters loan to the golf course.

In their testimony, the Simones indicated that they had few financially liquid assets. In terms of his financial dealings with Greenwood, Carl Simone by July 1977, the time of this testimony, had divested himself of most proprietary interests. He had already assigned his second and third mortgages on Greenwood to third parties and had sold his stock in the Greenwood corporation to Dr. Sherwood Greiner. Carl Simone testified that he did not own any automobile, but had the use of an automobile from Greenwood as well as a salary of \$3,000 per month at that time for being in charge of all maintenance, design and construction and grounds repairs at Greenwood. He had, in fact, received \$56,000 in 1977, according to the Greenwood accounting books.¹⁵

Carl Simone also testified that he had no business relationship with LaMagna and Greiner except as their employee for salary. However, as discussed in this report,

¹⁵ According to the Commission audit of Greenwood's books, Carl Simone received the following amounts classified as salary:

<u>1976</u>	<u>1977</u>	<u>1978</u>
\$26,381	\$56,000	\$71,000

in addition to many other payments for his expenses and unidentified loans and cash advances. In a letter dated October 5, 1979, in response to inquiry by the Commission as to the identity of corporate officers and owners, Anthony Bellucci did not list Simone as currently a corporate officer or as receiving any salary or other compensation. Furthermore, in an interview with Mr. LaMagna at the Commission offices on December 5, 1980, he indicated that Mr. Simone is still an employee of Greenwood although he is a resident of the State of Florida. Mr. LaMagna stated that he did not know what Mr. Simone did in return for his compensation but that he did visit the school premises on occasion and that in the past he had generally concerned himself with the maintenance of the buildings and grounds.

Simone apparently was involved, according to official documents of the State of Florida, with Greiner in building an Intermediate Care Facility for the Mentally Retarded which was being funded in some measure by the Greenwood corporation. He did not divulge this business interest.

Carl Simone testified that his estimate of the value of Greenwood in 1977 would be \$100,000. The Commission discovered documentary evidence that the price for which his Greenwood corporation purchased land and buildings in 1975 was \$700,000; it was independently appraised based on its income-producing value as a school at \$2.7 million proximate to the time of sale in 1975. Simone also testified that heavy equipment valued at approximately \$130,000 and belonging to Carl Simone, Inc., was shipped to the Dominican Republic where that company was engaged in construction work.¹⁶

In the civil action brought by the U.S. Department of Labor against the trustees of the Teamsters Pension Fund, attorneys for the Secretary of Labor took sworn testimony from an individual who was the office manager, comptroller and bookkeeper of the C & S Golf Course corporation from April 1972 to September 1977.¹⁷ The testimony corroborated what the Commission learned from other sources, namely that Carl Simone was the largest creditor of the golf course by virtue of having done substantial construction and because he managed the golf course in some measure in 1971. Simone

¹⁶ In listing total assets and liabilities, Carl Simone and his wife testified that they had approximately \$1,100,000 in liabilities. They testified that their only substantial assets were two legal claims, then in litigation, against the County of Chemung and the Town of Ulster in upstate New York.

¹⁷ Marshall v. Fitzsimmons, et al., supra, p. 9 n.9, Deposition of Manager/Comptroller (January 17, 1980).

then acquired the golf course, paying 10 cents on the dollar and promising to pay his own debts to creditors of the golf course operation at an additional 10 cents on the dollar.

In 1975 when Simone obtained the \$4.5 million loan from the Teamsters Pension Fund, the majority of the money was used to consolidate the golf course debt including a \$2.3 million mortgage held by the Security National Bank. According to the testimony of the golf club manager, none of this loan was used for capital improvements on the golf course.

Only three payments were made on this \$4.5 million mortgage in 1975, because there was insufficient money being generated by membership to make future payments. Nevertheless, at the end of 1974 a lump sum rent payment of \$250,000 was taken out of the golf course funds and paid to Carl Simone and his partner as a "rent" payment to the partnership.¹⁸ Until approximately this time, Simone used his offices at the golf course as a base for all his other business operations and corporations, including Greenwood. However, the Greenwood corporation office was later moved out in 1975.

Questioned as to whether the golf course could financially service the payments on the \$4.5 million loan (estimated to be approximately \$600,000 per year, or \$50,000 per month), the following answer was given by the manager/comptroller under oath:

¹⁸ Simone had a partner in this golf course venture about whom little is known, except that Simone assumed his interest in the business apparently some time in 1974.

I would say that the present rate of membership dues, the income of the club, the expenses of the club, there would be no way that the club could part with \$600,000 a year.... There was no way, at the rate of income we were getting, that we could take that much out of the club and still exist.¹⁹

It was apparent by 1976 that the golf course was in financial trouble, in default of its mortgage and facing a foreclosure proceeding. According to this testimony of the manager/comptroller, at the suggestion of Simone and with the cooperation of the accountant, the corporate books were intentionally altered to reduce the amount of sales tax owed to New York State. The following is the cross examination revealing this financial manipulation.

Q. In your experience at C & S, you were never asked to do anything improper; were you?

MR. CARR: Objection.

It's an unclear question.

Q. Did you understand the question.

A. Well, it's a question that it might take in a field, that would -- I could say, yes.

Q. Well, with regard to the books and records, were you ever asked to distort the figures, to change the figures or to make any notations in the books and records at C & S that were not correct?

A. Yes.

Q. When was that?

A. That was in 1976, the beginning of 1976.

¹⁹ Marshall v. Fitzsimmons, et al., supra, p. 9 n.9; Deposition of Manager/Comptroller (January 17, 1980), pp. 114-115.

Q. Who asked you to do something that was improper?

A. That was a deal going between Mr. Simone, Mr. Lesser and myself.

Q. What was that?

A. That was a figure that we owed New York State Sales Tax. We owed them the sum of over \$100,000.

We rearranged the figures to reflect that the sales tax was roughly twenty or thirty thousand dollars, which, I'd have to look at the books to really find out.

Q. Who suggested that you do that?

A. This was done between the three of us.

Q. Whose suggestion was it?

A. Mr. Simone's.

Q. You didn't quit because of that?

A. No.

Q. You went along with the suggestion, that the figures be distorted?

A. We changed the figures in the book.

Q. And when was that suggestion made by Mr. Simone?

A. Well, that was done -- just before we set up a new set of books.

In fact, I had the books set up. I had to take out a few pages and recopy a few pages.

That would be part of '77.

Q. So, this was in early 1977, relating to the sales tax.

A. Relating to sales tax.

Q. For 1976?

A. Yes.

It's a build up tax of many years. It wasn't just for the one year.

Q. Was there a meeting held at which you and Mr. Lesser and Mr. Simone were present, in which you discussed this?

A. Yes.

Q. Where was that meeting held?

A. In the club.

Q. Was anyone else present?

A. No.

Q. Was this sometime in early 1977?

A. Right.

Q. And as best as you can recall, what was said by each of the people in attendance at that meeting.

MR. CARR: Objection.

We would have an objection based on hearsay and also, the relevance of this testimony.

Q. As best as you can recall, what was said by each of the people present at that meeting?

A. Well, there were several methods of doing it, of showing where the -- where Mr. Lesser's plan was to put this money in a sort of a sales tax escrow account and leave it on the books, showing that it was sales tax, not paid, split the sales tax with current sales tax, which we would pay and hold back \$100,000 or so on sort of a holding account.

If the books were audited by anybody, it would be something that, an item was still on the books, but wasn't paid, so, a penalty of running into a big problem would not be there.

Mr. Simone decided, more or less, that he wanted it off the books all together, just drop it, so that in the case of anyone going over the books, it more or less -- you sort of skipped over certain things, if they are not there.

So, that was what was decided to do.

Q. Did you object to that being done?

A. No.

Q. Did Mr. Lesser object?

A. No, he objected to the fact that, of the way Mr. Simone wanted it handled.

Q. But it was agreed by all three people?

A. Yes. Then, we went ahead and worked it to that extent.

Q. How did you do it?

A. Just changed the January 1st figures.

Q. How did you change them?

A. They dropped the hundred and some odd thousand from the sales tax, and, I believe, we put it into equipment.

Q. So, mechanically, what would that have involved? What do you mean?

A. Just a matter of moving a figure from one side to the other.

It doesn't rearrange the structure of the corporation in any way.

It just adds a little bit more of what you would consider furniture fixtures and equipment.

Q. Are you talking about \$100,000 of sales tax owed or \$100,000 upon which a sales tax would have been charged?

A. No.

Q. The former?

A. The first one.

Q. How much sales tax was, in fact, paid then, based on your 1977 figures for 1976?

A. Whatever was decided. The books would have to reflect that.

Q. Other than the three of you, Mr. Lesser, Mr. Simone and yourself, did anyone else have knowledge of what you were doing?

A. Yes, my wife knew about it.

Q. Anyone else?

A. No, that is it.

Q. In addition or other than that particular sales tax matter, were you ever asked to do anything else improper in regard to the books and records?

A. No.²⁰

The U.S. Department of Labor also attempted to take the sworn testimony by deposition of Simone's long time attorney, Anthony F. Bellucci, who was also attorney for all Simone's corporations as well as being the general attorney for the Greenwood corporation even after Simone had apparently divested himself of all property and financial interests. At the first deposition on April 26, 1979, Bellucci refused to testify as to any dealings with these business interests because of an asserted attorney-client privilege. The Department of Labor then commenced a proceeding pursuant to the Federal Rules of Civil Procedure, Rule 37, for an order to compel Bellucci to testify and to produce records.²¹

²⁰ Id., pp. 117-122.

²¹ Marshall v. Fitzsimmons, et al., (U.S.D.C., E.D.N.Y., Docket No. 79-C-1115).

Bellucci indicated in statements at the April 26 deposition and later in a letter to the Chief United States District Judge hearing this motion, that:

I am an attorney-at-law, and am entirely willing to have my testimony taken, and to produce the requested records, once the attorney-client privilege question has been finally determined.²²

In a Memorandum of Decision and Order dated May 30, 1979, District Court granted the government's motion, ruling that there was no attorney-client privilege upon which Bellucci could refuse to testify. When the Commission inquired as to whether the deposition was rescheduled, it was informed that Anthony Bellucci now refused to testify based on his rights under the Fifth Amendment of the U.S. Constitution preventing compelled self-incrimination.

In sum, what does appear in the facts gathered so far is that Carl Simone was in financial trouble with the golf course beginning in 1975, particularly with the additional burden of payments on a \$4.5 million mortgage on golf course property worth about half this amount, and which was an amount of money for which he was personally liable. It was this same year that he sold his corporation's ownership of the Greenwood tract to the Greenwood corporate entity (of which he was the major stockholder) for \$700,000. Immediately, taking payment in cash, reduction of indebtedness, and two purchase money mortgages, he assigned the mortgages to persons and businesses outside of the United States. Shortly thereafter, Simone sold his 50 percent share in Greenwood to Sherwood Greiner for \$50,000, a sum well below the \$2.7 million appraised value of the corporation at that time.

²² Id., letter dated May 9, 1979 and filed by the Federal District Court on May 14, 1979.

In addition, Simone sent the heavy land moving equipment owned by Carl Simone, Inc., to the Dominican Republic and moved out of New York State with his wife while still drawing a salary and other remunerations from Greenwood. This series of transactions effectively protected these assets from any attachments, liens, or claims upon them and allowed the Simones to testify to having no substantial assets in the golf course foreclosure proceeding.

Thus, by a series of transactions beginning in 1975, Carl Simone reduced or eliminated exposure of his assets in Greenwood, the golf course and elsewhere prior to the foreclosure proceeding. According to federal authorities, there was \$300,000 unaccounted for in the \$4.5 million Pension Fund loan to the golf course and Simone, of which \$100,000 is suspected of being transferred to financial conduits named Arawak Trust Co., Ltd., and Christine, Ltd., in the Grand Cayman Island. About this same time Carl Simone assigned the Greenwood second mortgage of \$110,500 to Arawak Trust Co., Ltd., which in turn assigned it to Christine, Ltd., which sometime later was assigned to Simone's mother.²³

²³ As discussed supra at page 16, the third purchase money mortgage which Simone gave to Greenwood was assigned to Jennifer Davis who was the wife of Gil Davis, a business associate of Simone.

III. THE GREENWOOD REHABILITATION CENTER, INC.
1975 TO PRESENT

A. Corporate Financial Review:
Profit vs. Care, Treatment and Services

1. Scope and Background

The Commission conducted a limited financial review of various books and records of accounts for The Greenwood Rehabilitation Center, Inc. The period chosen was from January 1, 1975 to December 31, 1978 which marked the period of the Greenwood corporation's operation beginning with the year of its purchase of land and buildings from Carl Simone, Inc.

The audit was conducted with the cooperation of the New York State Department of Health, Office of Health Systems Management (OHSM), which provided the services of auditors to the Commission to be utilized by legal agreement pursuant to N.Y. Mental Hygiene Law §45.07. Areas for review were agreed to and generally accepted auditing standards applied.

It is important to note that the governmental monies which are assigned to Greenwood are allocated on a "flat rate basis," i.e., each resident personally receives a fixed amount of money. It is the prevailing practice that the money is assigned to Greenwood by each resident. The amount which Greenwood receives, therefore, varies only with the number of residents or by a governmental decision to alter the fixed rate. This is to be contrasted with a "cost-based rate," i.e., where only costs which are related to programs and services (defined in regulations) are reimbursed by government monies.

Although residential facilities such as Greenwood, receive the highest SSI rate under N.Y. Social Services Law §209, the Commission learned that many schools were complaining that payments were too low to provide appropriate care. Indeed, Greenwood's Executive Vice President wrote a letter dated March 17, 1978, to the Office of Mental Retardation and Developmental Disabilities stating that: "it is Greenwood's deep concern that without a reasonable increase in funding which makes possible the residents' tuition, the continuation of Greenwood at its present level would be in jeopardy."

During the pendency of the Commission's investigation of Greenwood, the New York State Legislature enacted, and the Governor approved, Chapter 720 of the Laws of 1979, codified as N.Y. Mental Hygiene Law §13.15(c) and (d), §13.16 and §31.07. The law allows the Commissioner of the Office of Mental Retardation and Developmental Disabilities to increase SSI payment under N.Y. Social Services Law §209 by approximately one-third, pursuant to a contract based on a negotiated rate for services provided. The Commissioner must find that the facility is in substantial compliance with all applicable regulations.

The Governor, in his approval message, requested this Commission to monitor and study the implementation and effects of this legislation.

2. Improperly Recorded Corporate Loan Transactions

The Commission's audit revealed that certain transactions were recorded involving interest free loans to officers, employees and related organizations. At best, minimal information was provided with reference to those transactions. Items of interest percent and charges,

payback terms, length of loans, and what transactions actually constituted loans and/or exchanges were not disclosed. The amount of these loans was sizable. The balance owed Greenwood from such loans as of January 1, 1975 was \$141,418. Additional transactions during the review period from January 1, 1975 to December 31, 1978 totaled \$307,359. The outstanding balance due Greenwood at December 31, 1978 was \$54,321. Repayments on these loans during the review period were \$123,112. Another \$271,343 in loans was "written-off" against various expense, liability and fixed asset improvement accounts. The cash repayments were made in the regular course of business and could be traced through the cash receipts journal. The "write-offs" were made at year end to reconcile the general ledger ending balance to the figures on the financial statements. These amounts do not reflect a \$42,000 interest-free loan to owner LaMagna's wife, Rae LaMagna, in July 1976 which was subsequently repaid in this same month.²⁴ They also do not reflect \$103,039 in 1975 which was advanced to Carl Simone, Inc., for operating capital.

Greenwood's bookkeeper recorded the loans but was unable to produce details about the terms of the loans being paid out of facility funds and charged as "loans and exchanges." The bookkeeper pointed out she was instructed by officers to make payments and assumed that the firm's Certified Public Accountant (CPA), Lawrence B. Lesser, posted the proper accounts in the general ledger at the end of each month. The following is a summary of the "loans and exchanges" account activities:

²⁴ According to Mr. LaMagna's statement to the Commission, this loan was to finance closing costs on the purchase of a new residence for his family and was necessitated by the sudden and unanticipated delay in the receipt of an insurance settlement due as a result of an accidental injury.

LOANS AND EXCHANGES

	Balance outstanding January 1, 1975	Cash withdrawals 1/1/75 to 12/31/78	Cash repayments 1/1/75 to 12/31/78	Loan write-offs 1/1/75 to 12/31/78
Carl Simone, Inc.	\$ 5,046.31	\$ 95,757.75	\$ 591.33	\$ 99,991.42
Carl Simone	58,627.23	37,121.33	56,227.80	41,596.63
Cappy Simone, Inc.	12,700.00	11,417.11	-	24,117.11
Samuel A. LaMagna	34,239.99	107,366.09	65,000.00	30,940.46
Herbert Miller	2,405.00	4,534.78	119.78	6,820.00
C. Tufano	5,400.00	-	-	-
Ralph Carroll	274.75	380.00	-	654.75
Charles Morgan	500.00	-	-	-
Eisten	50.00	-	-	50.00
LaMagna Design & Decorating	21,800.00	-	-	21,800.00
Greenwood Camp	125.00	675.00	1,073.88	-
Peter Sobera	250.00	-	-	-
J. Pittman	-	100.00	100.00	-
C & S Golf & Country Club	-	20,500.00	-	20,500.00
Myrtle Gibson	-	734.00	-	-
Dobler Brothers Furniture	-	4,162.00	-	4,162.00
V. Toimo	-	1,000.00	-	1,000.00
J. Martin	-	50.00	-	50.00
St. Augustine Center	-	22,061.47	-	19,661.47
D. Zambretta	-	1,500.00	-	-
Total	<u>\$141,418.28</u>	<u>\$307,359.53</u>	<u>\$123,112.79</u>	<u>\$271,343.84</u>

The loan "write-offs" were made with limited documentation at the close of each year. The adjusting entries were based on information arising out of board of directors' actions. Each entry had minimal or no written support. Discussions with the provider's accountant did not substantially add to an understanding of the transactions in question. The accountant apparently sees only a bill; no breakdowns by type of service rendered, hours worked, men and/or equipment utilized were available. The amount of the write-offs was agreed upon by the officers, Sam A. LaMagna and Carl Simone, at the end of the year and rotely accepted

by the CPA. In summary, in the end-year entries that served to close out outstanding "loans and exchanges" accounts were either not supported by adequate data, or had no substantiation at all. The following summarizes the entries:

1. Expense items

Travel	\$ 754.75
Payroll	10,348.51
Various rentals	25,284.90
Snow removal	23,000.00
Repairs	27,650.00
Road maintenance	<u>26,000.00</u>
Total	<u>\$ 113,038.16</u>

2. Fixed asset improvements

Buildings & land	\$ 19,773.78
Sewer project	68,000.00
Furniture & fixtures	<u>25,962.00</u>
Total	<u>\$ 113,735.78</u>

3. Reductions in outstanding liabilities

Notes payable	\$ 2,411.95
Accounts payable	<u>56,270.00</u>
Total	<u>\$ 58,681.95</u>

4. Increases in liabilities

Accounts payable	<u>\$(14,112.05)</u>
Total	<u>\$ 271,343.84</u>

On November 7, 1975, when Greenwood Rehabilitation Center, Inc., acquired the land and buildings from Carl Simone, Inc., for \$700,000, the purchase price was \$2,000,000 below the property's appraised value at its "highest and best use" as a school for the mentally retarded. Omission of the effect of this transaction in the notes of Greenwood's financial statements raises questions as to the bona fide nature of the transaction, as previously discussed.

The financial statements for 1975 received from Greenwood were not certified. They also failed to include a disclaimer opinion which itself would articulate the substantive reasons for failing to render a certified opinion. During 1975, a number of material transactions took place that should have been noted in the school's financial statements in this regard. The American Institute of Certified Professional Standards AU §509.04,²⁵ effective for reports on financial statements for periods ending on or after December 31, 1974, requires:

The report shall either contain an expression of opinion regarding the financial statements, taken as a whole, or an assertion to the effect that an opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons should be stated. In all cases wherein an auditor's name is associated with financial statements, the report should contain a clear-cut indication of the character of the auditor's examination, if any, and the degree of responsibility he is taking.

Lastly, Lawrence B. Lesser, CPA, issued for the years 1976, 1977 and 1978 unqualified opinions as to the adequacy of Greenwood's financial statements. These public opinions implicitly indicated for the period under review that the

²⁵ American Institute of Certified Public Accountant Professional Standards, Volume 1, Auditing Management Advisory Services, Tax Practice Accounting and Review Services (hereafter AICPA AU), as of July 1, 1979.

financial statements taken as a whole were not materially misstated because of errors or irregularities. However, irregularities were found including the omission of effects of financial transactions and the recording of transactions in a manner that raises questions as to their bona fide substance and intent. Such irregularities along with candid statements by the school's bookkeeper and the CPA indicate that the CPA's examination was not sufficient in scope to provide evidence to support the unqualified opinions.

An accountant should not express an unqualified opinion unless satisfied in all material respects with the adequacy of the disclosures in the financial statements. The examination must have been sufficient in scope to provide adequate evidence to support the opinion. (AICPA AU §509.28, effective for reports on financial statements for periods ending on or after December 31, 1974.)

Examples of transactions that raise questions as to their substance or materiality follow:

- "Borrowing or lending on an interest-free basis...." [AICPA AU §335.08, eff. July 1975].
- "Selling real estate at a price that differs significantly from its appraised value" [AICPA AU §335.08, eff. July 1975].
- "Making loans with no scheduled term as to when or how the funds will be repaid" [AICPA AU §335.08, eff. July 1975].
- "The completion of unusual transactions at or near the year end" [AICPA AU §327.08, eff. January 1977].
- "Transactions not supported by proper documentation" [AICPA AU §327.08, eff. January 1977].

Effective October 1977 in New York State, unprofessional conduct in the practice of public accountancy includes "failing to acquire sufficient information to warrant the expression of an opinion" [8 N.Y.C.R.R. 29.10(a)(1)(c)],

"failing to direct attention to any material departure from generally accepted accounting principles" [8 N.Y.C.R.R. 29.10(a)(1)(d)] or "issuing in the public accountant's name...a report purporting to be based upon an examination by the licensee or his or her firm of financial statements, when any material portion of the examination of such statements and related records...has not been made" [8 N.Y.C.R.R. 29.10(a)(3)].

Mental Hygiene regulations require "an annual audit of the financial condition and accounts on the facility by a certified public accountant" [14 N.Y.C.R.R. 81.5(b)(2)], yet there is no procedure whereby they are submitted routinely to the Department of Mental Hygiene, as in the case of hospitals, nursing homes and health-related facilities which submit audit reports to the New York State Office of Health Systems Management [N.Y. Public Health Law, §2893-b]. Nevertheless, there is a requirement that "minutes of all official meetings of the governing board shall be maintained as a permanent record of the decisions made in relation to the operation of the school" [14 N.Y.C.R.R. 81.5(a)(4)].

3. Inordinate Remuneration to Corporate Officers, Operators and Relatives

The past and current owners of Greenwood principally work at jobs other than Greenwood and live over 100 miles from the Ulster County facility. Owners, Sam LaMagna and Carl Simone, have awarded themselves substantial salaries for part-time or vaguely defined services to the school. Owner, Sherwood Greiner, although not apparently providing services or receiving a salary from Greenwood, purchased his 50 percent share, valued in 1975 at \$1 million, for \$50,000, and is the president and director of a school for the retarded in the State of Florida which received funds from Greenwood.

Carl Simone, as mentioned earlier, through his corporate entities conducted business in real estate, construction, earth moving and ground alteration. Sam LaMagna is the Director of Education for the Association for the Help of Retarded Children, Nassau County Chapter of the New York State Association for Retarded Children, Inc., (AHRC). Dr. Sherwood Greiner is an orthopedic surgeon engaged in private practice and is an attending physician at Nassau Hospital.

The following summarizes those persons involved with the Greenwood Rehabilitation Center, Inc., who reside and/or have their offices in the general area of the Greenwood's administrative offices located in Hicksville (Long Island):

<u>Name</u>	<u>Position</u>	<u>Home Town</u>
Carl Simone	Principal (until 4/6/76)	East Norwich, NY
Sam A. LaMagna	Principal	Lattingtown, NY
Sherwood Greiner	Principal (eff. 4/6/76)	Garden City, NY
R. Carroll	Executive Vice President	Queens, NY

Salaries recorded from 1975 through 1978 for owners, officers and relatives not working at the Greenwood facility included the following:

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
Rae LaMagna	-	\$ -	\$ -	\$ 5,960
Sam LaMagna	-	36,756	73,830	73,907
Carl Simone	-	26,381*	56,000	71,000
Ralph Carroll	-	20,549	26,867	30,550
Total	<u>\$71,828</u>	<u>\$83,686</u>	<u>\$156,697</u>	<u>\$181,417</u>

*Sold all stock on April 6, 1976.

At times, payments for services were recorded as a reduction to advances made to an owner in the form of a loan. The services performed included items such as snow removal, construction work and unspecified accounts payable. The support data for these services were vague and extremely weak.

In contrast the corporation spent the following amounts to feed between 180-190 residents annually:

1975	\$131,607
1976	132,833
1977	120,283
1978	125,112

There were also other monies expended for owners, operators and relatives which adds to the above forms of remuneration:

(a) <u>Auto insurance</u> 1975-76:	Ellenville	1972 Buick Electra
	Ellenville	1972 Buick Electra
	Bellmore	1974 Cadillac Fleetwood
	Bellmore	1973 Cadillac Sedan
	Ellenville	1974 Cadillac Fleetwood
	Ellenville	1972 Pontiac Catalina
	Ellenville	1976 Cadillac Seville

(b) Car rental payments

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
Executive Equipment- Long Island	\$3,793.92	\$ 3,507.13 ²⁶ 2,641.16 ²⁷	-	-
Dealers Leasing- Long Island	1,314.00	3,849.65	\$4,366.96	\$4,339.92
Melnar Leasing- Long Island	-	840.34	34.00	-
Tilden Comm. Alliance- Long Island	-	3,788.86 ²⁸	5,029.98 ²⁸	4,856.46
Hertz	-	155.80	-	-
	<u>\$5,107.92</u>	<u>\$14,782.94</u>	<u>\$9,430.94</u>	<u>\$9,196.38</u>

²⁶ Sam LaMagna.

²⁷ Payment for purchase of autos under lease agreement for LaMagna.

²⁸ Wendy Simone and Linda LaMagna, daughters of the principals.

(c) Other

- Rental of tractor and trailer from J & R Equipment, Inc., for \$468 for move from Ellenville to Wallington, New Jersey, (handwritten notes - "Pay G.R.C. per C.S." and "S²⁹ Greiner says OK, charge to Carl Simone, Inc.").
- Telephone charges totaling \$1,358 related to personal residences of Sam LaMagna, Frank Palmieri and Carl Simone.
- Payments totaling close to \$50,000 for the period January 1, 1975 through March 31, 1977 for American Express and Diner's Club credit cards held by corporate officers.
- Invoices for automobile repair, service and gasoline products, signed by individuals not identifiable as paid employees.
- \$1,084 covering costs of season tickets to the N.Y. Islanders Hockey Team.
- Payments to C & S Golf and Country Club (Charter Oaks Golf and Country Club) for lunches of the office staff for the period that the operators were using the club as a business address.
- A Lindenhurst, Long Island firm, Total Maintenance Co., was under contract for \$1,000 per month to shampoo rugs and polish floors at the Ellenville location. This service might have been obtained more prudently from a local vendor, thus avoiding substantial travel costs. The owner of Total Maintenance, Jack Nichols, also was paid by Greenwood for servicing boats of the Greenwood facility.³⁰

It is noteworthy from the above that Carl Simone, after selling his 50 percent interest for \$50,000 to Sherwood Greiner, continued to write checks on behalf of the Greenwood Corporation. Additionally, he received salaries

²⁹ S. Greiner's approval on December 23, 1975 voucher is reported to be Scott Greiner, son of Sherwood Greiner. Sherwood Greiner became an owner on April 6, 1976.

³⁰ See Appendix B which lists other expenditures which the Commission deems worthy of further investigation.

of \$56,000 and \$71,000 in 1977 and 1978 respectively,³¹ after he seemingly divested himself of ownership in the corporation. He is still on the Greenwood payroll as an employee although a resident of Florida. Many payments on his behalf classified as loans to officers were also made in 1977 and 1978. During this same period, Sherwood Greiner received no salary. Nevertheless, salaries and expenses related to the development of St. Augustine Center for Living in Florida, were incurred by Craig Greiner and paid for by Greenwood. Sherwood Greiner, Craig Greiner and Carl Simone are officers in the Florida school.

The presently defined role of Carl Simone as an employee raises the following questions:

- Why did Carl Simone relinquish his 50 percent ownership in favor of Sherwood Greiner for \$50,000 when his 50 percent equity position was valued over \$1,000,000 based on the assessment of Greenwood in 1975?
- Why was Carl Simone authorized to write checks on behalf of the Greenwood corporation after he had divested himself from the corporation?
- What specific services were provided to Greenwood at a cost of \$56,000 and \$71,000 for 1977 and 1978 respectively? And for the salary he has been paid from 1978 to the present, what services is he currently providing?
- Why did Greenwood provide funds to pay for costs associated with St. Augustine's School, an enterprise in which Carl Simone was an owner and still remains a principal officer?

³¹ As previously noted, in a July 27, 1977 Deposition Upon Oral Examination of Carl Simone and Elaine Simone before Supreme Court, State of New York, Nassau County, Carl Simone stated his compensation from the Greenwood Rehabilitation Center, Inc., was \$3,000 per month.

Unlike services reimbursed on a cost basis, in a fixed or flat rate scheme of government payment such as with Greenwood, there are no guidelines or requirements regarding the benefit that should be derived from a particular expenditure; reasonable limits on profit or return on investment; or salaries to officers of the school. Adequacy of programs is the sole requirement in the regulations 14 N.Y.C.R.R. §81.7(a).

As discussed in the following section on General Program Findings, III. C., it is a conclusion of this report that programs were inappropriate, insufficient and unproductive. If cost-based regulations applied, the total compensation paid the absentee operators would have been determined to be unreasonable because of ill-defined and questionable part-time services. Payments to absentee operators at Greenwood appear to represent a way of returning equity capital which would not be a compensable or a reimbursable cost in a cost-based system. Thus, the return of equity through compensation can be viewed as a conversion of potential retained earnings into corporate expenses and an opportunity for avoiding taxation of corporate income as well.

4. Diversion of Corporate Resources

On November 7, 1975, when The Greenwood Rehabilitation Center, Inc., acquired land and buildings from Carl Simone, Inc., it listed the following sources of financing:

Assumption of Tri-Union Welfare Fund Mortgage	\$435,231.98
Carl Simone, Inc. (2nd mortgage)	110,500.00
Carl Simone, Inc. (3rd mortgage)	26,150.00
Interest payable to Tri-Union Welfare Fund	626.66
Check payable to Carl Simone, Inc.	13,952.33
Reduction of Greenwood Rent Expense	103,039.40
Loan Receivable, Carl Simone, Inc.	<u>19,773.78</u>
Total	<u>\$709,274.15</u>

Most recently (1978), the Tri-Union mortgage has been repaid at a rate of about \$100,000 per year. The corporation's outstanding mortgages as of December 31, 1978 were \$337,184. At this rate of repayment, the mortgages will be repaid by 1982 or in about seven years compared to the original estimated life of the buildings which was 33 years, as evidenced by the depreciation schedule.

Accelerated payments on capital plant may be advantageous if the firm's owners are obtaining an adequate current income on their investment, and if the company's cash flow is sufficient to support operations.

At Greenwood, however, Commission auditors commented on the school's negative working capital position. The Executive Vice President of Greenwood stated that SSI payments should be increased to support the required programs. Nevertheless from current SSI payments, Sam A. LaMagna and Sherwood Greiner by 1982 will have paid all existing obligations on a business and plant appraised at \$2.7 million in 1975 and with subsequent improvements to an estimated value of \$3.3 million -- based on LaMagna's investment of \$5,000 and Greiner's subsequent entry into 50 percent ownership for \$50,000.

It is the conclusion of this Commission that the lack of resources to support acceptable programs results from management decisions as to the disposition of income, not from a lack of revenue. Given the unusually short term of these mortgages, along with practices cited elsewhere, it is inescapably clear that these funds have been diverted from client programs to enhance the equity as well as the financial status of the corporate owners.

There are other monies of Greenwood which have been directly diverted from client care such as the development of another enterprise by Greenwood's present owners and Carl Simone in the State of Florida, St. Augustine Center for Living, Inc. The review of The Greenwood Rehabilitation

Center, Inc., records showed that checks issued for a total of \$32,769.99 for the period August 2, 1976 through February 17, 1978 were for services associated with the establishment of the St. Augustine Center for Living, Inc., a business corporation chartered under the laws of the State of Florida. These payments were for weekly salaries, travel expenses, cost of moving the furnishings of a personal residence, legal fees and architectural fees. The payments were recorded as follows:

1. Cash was credited (decreased) for the amount of the check and Loans and Exchanges - Carl Simone, Inc., was debited (increased) for the same amount. At year end, the CPA, based on information supplied by the Board of Directors, credited (decreased) the Loans and Exchanges - Carl Simone, Inc., for the amount of the check and debited (increased) the same amount to Equipment Rentals or Maintenance as items billed to The Greenwood Rehabilitation Center, Inc., by Carl Simone, Inc. Written evidence to substantiate this reversal was minimal. This method resulted in the recording of \$24,001.47 cash disbursements which were distributed by check as follows:

a. Jack Rychweart - Travel Expense	\$ 40.00
b. Craig Greiner - Travel Expense	555.90
c. Craig Greiner - Salary	17,400.00
d. Craig Thorn - Architectural Fees	3,000.00
e. North American Van Lines - moving expense for Craig Greiner from Connecticut to Florida	<u>3,005.57</u>
Total	\$24,001.47

2. Cash was credited (decreased) for the amount of the check and Payroll and Travel Expense was debited (increased) for the same amount.

This method resulted in the recording of \$8,768.52 cash disbursements which were disbursed by check as follows:

a. Jack Rychweart - Salary	\$5,700.00
b. Jack Rychweart - Travel Expense	<u>3,068.52</u>
Total	\$8,768.52

The use of corporate funds to establish the above school was not disclosed as a related party transaction in Greenwood's financial statements or in board minutes. The transactions diverted necessary money from programs for New York clients to purposes unrelated to Greenwood.

St. Augustine Center for Living, Inc., is a 60-bed intermediate care facility located on U.S. Route 1-S in St. Augustine, Florida. This facility is operated by a business corporation and was granted a license to operate by the Florida State Division of Licensure on March 31, 1980. Florida regulations require that owners of 10 percent or more of a corporation applying for a license to operate an intermediate care facility for the mentally retarded be listed on the application form. According to the records on file at the State Division of Licensure, the only shareholder currently listed as owning more than 10 percent of the shares of the corporation is Sherwood Greiner.

St. Augustine Center for Living, Inc., was incorporated on September 29, 1976 and possesses general powers to carry on the business of providing services for mentally retarded and handicapped persons. The Certificate of Incorporation lists Sam A. LaMagna as the President and Treasurer, and Sherwood Greiner as Vice President and Secretary of the corporation. The most recent annual report filed by the corporation with the Florida Secretary of State lists Sherwood Greiner as President and Director, Carl Simone as Vice President and Director, and Craig Greiner as Secretary. Recently, the Commission was informed that Craig Greiner is now listed as the Administrator of this corporation.

The Greenwood Rehabilitation Center, Inc., in Ellen-ville, New York, was created on June 21, 1972 under the Business Corporation Law of the State of New York for the sole purpose of conducting a business providing services to mentally disabled persons. The propriety of such a corporation diverting its resources to finance the establishment

of an out-of-state business corporation is to be questioned in light of both the New York Business Corporation Law and the regulations of the Department of Mental Hygiene.

There is no evidence that repayment was ever made by the St. Augustine Center for Living, Inc., to The Greenwood Rehabilitation Center, Inc., for payments made by Greenwood on behalf of the St. Augustine Center for Living, Inc. As a general rule, New York corporations may make charitable contributions irrespective of corporate benefit [N.Y. Business Corporation Law §202(a)(12)], but nothing in that law, nor in the Certificate of Incorporation of The Greenwood Rehabilitation Center, Inc., would permit the outright gift of corporate resources to another profit-making business corporation. Naturally, a New York corporation may make investments and lend money to other corporations [N.Y. Business Corporation Law §202(a)(8)], but there is no indication in the present case that Greenwood has any expectation of recouping the money spent on behalf of the St. Augustine Center for Living, Inc.³²

5. Handling of Client and Public Funds

Due to errant procedures of the Social Security Administration (SSA), Greenwood in 1974 and 1975 received

³² 14 N.Y.C.R.R. §73.2(a)(2) (Mental Hygiene) provides that "the corporate powers and purposes as stated in the Certificate of Incorporation shall not include any powers or purposes which are not necessary to the operation of a facility..."

Insofar as any provisions of the Certificate of Incorporation of The Greenwood Rehabilitation Center, Inc., may be construed as the authorization for payments made in connection with the establishment of a Florida business corporation, those provisions necessarily violate the requirements of §73.2(a)(2) of the Regulations.

overpayments for "tuition income" totaling over \$100,000. The overpayments resulted from a duplication of Supplemental Security Income and Social Security Disability Benefits and continued on a limited basis into 1978 when SSA procedures were revised. As of December 31, 1978, \$72,453.45 was still owed the Social Security Administration.

The above overpayments occurred when the facility did not have knowledge of Social Security Disability Benefits being collected by the parents of residents at the same time the residents enrolled at the school were receiving SSI benefits. The payments to the facility should have been reduced by these amounts. Paybacks to the Social Security Administration have been through SSA reductions in client checks by amounts such as \$20 or \$50, or if the resident was discharged, Greenwood issuing a check for the balance owed. Failure of the Social Security Administration to promptly collect monies owed results in an interest free loan to Greenwood.

Personal Allowances

Mentally retarded persons may often be incompetent to handle their own finances. However, the rather high functioning clients at Greenwood are not offered any training or opportunities to learn about money management. Instead, the management at Greenwood has requested of all clients or their families that they (Greenwood) be designated the representative payee, or fiduciary for the personal allowance of at least \$10 and another \$20 per month for eligible individuals. Greenwood then keeps these funds in a single checking account but maintains personal allowance account ledger cards for each resident. On these cards is recorded monthly deposits for each resident and withdrawals for spending money, bus and bowling, transportation, leisure

time activities, toiletries, haircut, laundry and miscellaneous. On a routine basis, fixed amounts were deducted for bus and bowling for all clients who went on bowling trips even though some attending did not bowl; transportation for shopping, cultural events, etc., whether or not the client used such transportation; laundry, despite the fact that many of the clients were capable of doing their own; leisure time activities whether anything was purchased for that client.

The problem of deciding the legitimacy of using personal allowances of individuals at schools for the mentally retarded for transportation, laundry and leisure time activities relates to knowing what supplies and services are required to be provided by the facility as part of its basic SSI allowance.

The only reference in law specifying the types of services that the schools must provide is set forth in Section 209, subdivision (e) of the Social Services Law:

'Receiving care in a residential facility for the mentally retarded' shall mean residing in a group residence which provides twenty-four hour residential care and supervision, including academic, vocational, recreational and social skill programs for mentally retarded and brain-damaged adults.

There is also no reference in Mental Hygiene Law to any specific services or supplies that must be provided. Only indirectly are basic services referred to through a review of 14 N.Y.C.C.R., Part 81, Rules for Operation of Schools for the Mentally Retarded. These include food, nutrition, dietary needs, sleeping accommodations (including clean linen), clothing and proper hygiene, safety and sanitary facilities.

Accordingly, even though it would seem (1) under Social Services Law, transportation should be provided by the facility if it is part of a group recreational program, and (2) under Mental Hygiene regulations, cleaning of clothes by the facility is necessary for proper hygiene, the law and standards lack specificity--allowing Greenwood to charge the clients' personal accounts for these items. Since these funds were kept in a non-interest bearing account, no additional income accrued to the clients, and balances never grew to any substantial amount because of the monthly routine deductions, apart from deductions for clothing, special trips, etc.

Under the law and the regulations, there are separate requirements for each of the personal allowances that define how personal funds should be administered:

1. \$10 Personal Allowance

(a) N.Y. Social Services Law §131-o

- The facility shall establish a separate account for the personal allowance for each resident.
- When a facility exercises control over an individual's personal allowance, the funds are not to be mingled with facility funds and must be segregated and recorded on the facility's financial records as independent accounts.
- Each facility is required to maintain records of all transactions involving resident personal allowance accounts.

(b) OMRDD Instructions

Guidelines promulgated by OMRDD include the above restrictions as well as the following requirements:

- Receipts are required for purchase of goods or services for a resident other than routine recreational or educational activities for which receipts are not usually given, e.g., movies, museums, amusement parks.

- A fee may not be charged to maintain a personal allowance account.
- Funds from personal allowance accounts may be commingled as long as the manager's bookkeeping procedures provide for adequate identification of personal allowance funds belonging to any single resident.
- Personal allowance funds may be kept in either a checking account or interest bearing savings account. If funds of several residents are commingled in a savings account, the facility manager must develop procedures for the equitable distribution of all interest to the individual resident accounts.

2. \$20 Personal Allowance

Pursuant to Title II of the Social Security Act, 42 U.S.C. §§401 et seq.; and applicable regulations 20 C.F.R. Subpart Q, §§404.1601 et seq.:

- Benefits not required for foreseeable needs must be conserved or invested for the beneficiary;
- Preferred investments are U.S. Savings Bonds, but the money may also be deposited only in an insured account in a bank, trust company, savings and loan association, or credit union where it will draw interest...benefits may not be invested in any company, corporation, or association when such an investment will involve the representative payee in a conflict of interest. Money may not be kept at home or mingled with the representative payee's own money or with other funds. See also, Social Security Handbook [6th ed., July 1978; HEW Publication No. (SSA) 77-10135], §§1601 et seq.

It seems clear under both State and federal law that personal account funds should not be mingled and that separate records must be kept for each individual. However, while the federal law specifies that the representative payee should invest as would a trustee, the Office of Mental Retardation and Developmental Disabilities' instructions permit the retention of funds in either savings accounts or non-interest bearing checking accounts.

At Greenwood the residents receive either or both of these two types of personal allowances, i.e., \$10 from SSI and possibly \$20 from Social Security Disability payments. For those clients who are not eligible for disability payments, a \$20 per month voluntary payment is asked of families. This helps the operator to allow all residents to participate in various activities even though some residents, those receiving only SSI and with no family support, have insufficient funds. This results in negative balances to some accounts which may be offset through a next month's check, or written off.

Special Recreation Fund

Additionally, a special recreation fund is maintained separate from the accounts in Greenwood's financial statements in a separate checking account. Funds donated for this account go to the betterment of all residents, not only the ones whose relatives have given donations. This account was examined and appeared to be adequately controlled as to properly reflecting daily activity. In 1978, \$7,094 from contributions was deposited into this account. The audit did not review the amounts that may have been deposited for the years 1975 through 1977.

6. Fiscal Impact

The preceding sections have traced the flow of transactions that are concerned with the safeguarding of assets

for client care, as well as the reliability of financial records designed to assure compliance with laws and regulations and the preparation of financial statements in conformity with generally accepted accounting principles.

It is the conclusion of this Commission that quality of programs offered clients was deficient and that funds were being diverted to benefit the interests of the owners and their relatives.

To place into perspective the total impact of questionable expenditures on operations and programs, the following comparative operating statements are offered:

Operating Statements
1975-1978

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
Tuition income	\$1,473,650	\$1,434,186	\$1,471,727	\$1,453,911
Room and board ^{1/}	9,906	9,187	7,024	7,418
Sale of equipment	-	274	-	335
Miscellaneous income	50	6	86	-
Interest income	-	-	-	186
	<u>\$1,483,606</u>	<u>\$1,443,653</u>	<u>\$1,478,837</u>	<u>\$1,461,850</u>
Total income				
Payroll	\$ 627,409	\$ 663,284	\$ 647,350	\$ 696,391
Administrative expenses (telephone, professional fees, etc.)	60,124	76,224	72,850	67,121
Maintenance expenses (building and equipment repairs, supplies, etc.)	130,419	126,309	144,364	106,962
Overhead expenses (utilities, payroll taxes, etc.)	412,514	319,560	302,461	304,767
Promotion (travel and advertising)	11,763	5,820	350	375
Boarding costs (food, laundry, etc.)	146,462	155,337	144,704	145,928
Occupational and program costs (supplies and transportation)	9,816	4,149	4,992	5,504
Depreciation	28,019	45,319	51,231	50,170
N.Y.S. franchise tax	6,361	4,265	9,851	8,463
	<u>\$1,432,887</u>	<u>\$1,400,267</u>	<u>\$1,378,153</u>	<u>\$1,385,681</u>
Total expenses				
Net income ^{2/}	<u>\$ 50,719</u>	<u>\$ 43,386</u>	<u>\$ 100,684</u>	<u>\$ 76,169</u>

^{1/} Netted against boarding costs on financial statements.

^{2/} Per annual financial statements.

The totals of questionable expenses quantified through the auditors' review are listed below. Not included are questionable expenses for automobile insurance, operating and travel expenses related to the Hicksville office, and potential questionable miscellaneous expenses for 1978. Officer salaries are included as portions may represent equity return because services were ill-defined. Items capitalized or shifted to liability accounts are included in these financial summaries as they represent monies set aside for future gains that could accrue to the owners. The following, while not all-inclusive or fully reviewed, isolates questionable expenses and compares them to total expenses. Questionable expenses as a percent of total expenses account for 15 percent to 22 percent of the total during the period under study.

Questionable Expenses
1975-1978

<u>Item</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
Questionable expenses <u>a/b/</u>	\$ 27,778	\$ 36,802	\$ 12,515	not reviewed
Related party <u>c/</u>	40,756	48,893	46,798	\$ 31,982
Administrative salary	71,828	83,686	156,697	181,417
Loans and exchanges, "write-offs" <u>d/</u>	<u>81,984</u>	<u>134,775</u>	<u>54,585</u>	<u>none</u>
Total questionable expenses	<u>\$ 222,346</u>	<u>\$ 304,156</u>	<u>\$ 270,595</u>	<u>\$ 213,399</u>
Total expenses	<u>\$1,432,887</u>	<u>\$1,400,267</u>	<u>\$1,378,153</u>	<u>\$1,385,681</u>

a/ See Appendix B for further breakdown.

b/ Includes expense for leased vehicles:

<u>1975</u>	<u>1976</u>	<u>1977</u>
\$5,107	\$14,782	\$9,430

c/ See Appendix C for further breakdown.

d/ Based on figures from page 32 of this report.

B. Lack of a Valid Operating Certificate

Perhaps the most glaring regulatory deficiency in Greenwood's operation is the fact that the facility does not have a currently valid operating certificate and has not had one through most of its life.

The records of the Department of Mental Hygiene and Office of Mental Retardation and Developmental Disabilities indicate that Greenwood was operating and collecting monies from various governmental sources despite the fact that it had not sought timely renewal of its expired certification. The previous corporate entity, Greenwood School, Inc., was licensed through December 1972. In an OMRDD report dated March 23, 1978, it was emphasized that:

The center is presently uncertified. The operating certificate issued by the Department on June 1, 1976 expired November 30, 1976 and was not framed and displayed in any conspicuous place as required by Part 81.4. Required Action: Greenwood should submit a complete application for approval of recertification to the Southeastern County Service Group, of the Office of Mental Retardation and Developmental Disabilities.

One year later, April 16, 1979, a letter from OMRDD reminded the Greenwood director that:

...our records note that your operating certificate expired as of November 30, 1976 but our files do not indicate that you have ever made application for recertification. Therefore, we are enclosing the application form LS-20, which should be completed and returned...within 30 days.³³

³³ Under the N.Y. Administrative Procedure Act, §401(2) when there is a timely and sufficient application for renewal of a license, the existing license does not expire until the application has been finally determined by the agency. According to OMRDD's files, Greenwood had not applied for renewal of its 1976 operating certificate as of April 16, 1979. Such a delay of almost two-and-one-half years cannot reasonably be considered timely.

OMRDD undertook another recertification report and inspection of Greenwood in February 1980 partly as a result of the Commission's preliminary program findings. As described in the beginning of this report, these findings surfaced as a collateral result of a Commission investigation into a death of a resident at the facility during which investigators discovered several deficient and problem areas and immediately brought these to the attention of OMRDD. This OMRDD recertification report itself concluded that this facility demonstrated "a lack of substantial compliance with regulations...OMRDD cannot renew the...operating certificate at this time."

N.Y. Mental Hygiene Law clearly states in §31.02(a)(1) that "no provider of services shall engage in...[the operation of a residential facility]...without an operating certificate." A ramification of this requirement is that the lack of an operating certificate would lower the categorical level of care and concomitantly lower the level of the State portion of the Supplemental Security Income payments made to Greenwood's residents.

The category of the highest SSI payment for mentally disabled persons occurs when they are receiving residential care, but only "when such residence is approved or supervised by the appropriate office of the department of mental hygiene, in accordance with applicable provisions of law..." [N.Y. Social Services Law §209(3)(d)].

The federal portion of SSI is constant; however, for an individual receiving residential care in a licensed school for the retarded, the State portion of SSI is at its highest level of \$461.26 outside New York City [N.Y. Social Services

Law §209(2)(d)].³⁴ Thus, the lack of an operating certificate by Greenwood in non-conformance with appropriate provisions of law might relegate this amount to the lower "standard of monthly need" payments in N.Y. Social Services Law §209(2)(a) or (b) which in total is less than one-half of the residential care rate.³⁵

Greenwood's original license of March 1972, authorized a maximum capacity of 124 adult residents. The July 1976 operating certificate authorized a maximum capacity of 179 residents. However, in March 1976, there was a census of 188 residents. In correspondence of June 1976, the Department stated, "pending resolution of anticipated construction, capacity set at 179." On the day of site visit, June 1, 1979, there was a census of 187 residents. According to an OMRDD recertification report, there were 182 residents in February 1980.

³⁴ As discussed in this report, under Chapter 720 of the Laws of 1979 [N.Y. Mental Hygiene Law §13.15(c)], the Commissioner of the Office of Mental Retardation and Developmental Disabilities may by contract increase this amount up to \$900. The basic State payments were increased in 1980. See Chapter 113, L.1980 amending N.Y. Social Services Law, §209.

³⁵ Under federal law, the N.Y. Department of Social Services is the designated State agency for the administration of SSI funds [42 U.S.C. §1396a(5)]. The Department of Social Services also makes determinations of eligibility for assistance under the Supplemental Security Income program. [See, 42 U.S.C. §1396a(9), (11)(A), and (22)(c).] However, according to officials of the Department of Social Services, the certification process is left to the Office of Mental Retardation and Developmental Disabilities. Without official notification from OMRDD that a school is no longer certified, the Department of Social Services apparently has no other way of discovering this fact on its own.

C. General Program Findings

On the basis of site visits and access to the files of OMRDD and the State Health Department, the Commission has noted inappropriate and unproductive programming, absence of vocational training programs, violation of the Federal Labor Law, failure to train high-functioning clients for community placement or promote their movement to a less restrictive environment, poor treatment planning and record keeping, lack of knowledge of emergency procedures, inadequate nursing coverage, poor housekeeping, unsafe and unsanitary kitchen conditions, and deficiencies relative to the functioning and records of the Incident Review Committee.

According to OMRDD files, Greenwood programs were substandard in almost every dimension. Care was of sub-optimal quality and not geared toward promoting the independence and growth of the nearly 190 clients living there.

Inspections conducted by the Department in 1974 and 1976 cited Greenwood's many deficiencies. However, these deficiencies for the most part were not corrected by Greenwood, and neither sanctions nor enforcement actions were taken by the Department to compel compliance. Even when specific time frames were demanded of the facility, there is little indication that there was any actual follow-up at all. Greenwood ignored the admonitions and demands of the Department.

As recently as February 1980, OMRDD conducted an inspection of Greenwood, and on September 4, 1980 informed Sam LaMagna of disapproval of his application for a certificate to operate Greenwood Rehabilitation Center, Inc. The explanation for the denial of the operating certificate by the Commissioner of OMRDD follows:

The significant deficiencies that exist and have existed for six years in many critical areas, including organization and administration, program, treatment planning, staffing and physical plant, have demonstrated an inability or unwillingness on Greenwood's part to assure the health, safety and welfare of its clients, to provide acceptable habilitative programs, to correct outstanding programmatic and administrative deficiencies, to adhere to the requirements of law regarding the operations of a private school for the mentally retarded, to observe and satisfy the requirements set forth by the Commissioner, and to assure that all resources of Greenwood and of the clients are managed and appropriately used for the clients' benefit.

1. Incident Review

In the judgment of both this Commission and the Office of Mental Retardation and Developmental Disabilities, the incident review procedures at Greenwood are insufficient and do not comport with regulations.

A plan for Special Review of Incidents was found to be "missing" by the Department in 1974 and in April 1976 described as "deficient, not in force." In June 1976, it was still "unavailable and unknown to staff" and the Department again concluded that the facility was not in compliance with 14 N.Y.C.R.R., Part 24, ("Investigation and Reporting Incidents"). Further confirmation of this deficiency was that no copies of DMH Form 147 (Incident Report Form) had ever been received by Regional Office, despite the fact that a random review of records by the departmental inspection team documented the occurrence of incidents.

On June 1, 1979, the head nurse stated to this Commission that DMH 147 (Incident Report Form) was not being used and was unaware of a Special Incident Review Committee at Greenwood. A Greenwood administrator told Commission staff that this head nurse was a member of this Committee but was unaware of its formal name.

In the OMRDD Recertification Report of February 1980, the survey team found that the Committee failed to comply with the regulations because it did not meet on a quarterly basis; minutes indicate no conclusions or corrective action; there is no indication of participation by the consulting physician.

2. Programs

In general the quality and quantity of programming at Greenwood is inappropriate, insufficient and unproductive. In November 1976, the Department of Mental Hygiene had a rehabilitation consultant visit the facility. This person reported that the activity of all groups consisted of "putting together and taking apart items that have been gathered by the Center or donated to it." He termed this "a never-ending cycle, ...no outcome...a treadmill...." The facility's response to this, and earlier citing of deficiencies in this regard, was to reiterate that they were not a vocational or rehabilitation facility and requested permission to change their name to eliminate the word "Rehabilitation." Greenwood administrators stated that clients were long-term, probably life-long, residents of the facility. The Department refused to allow this facility to change its name.

In March 1978, the Department similarly concluded that programming was "a dead-end approach" and stated to the facility that it must develop an open door program where the high functioning can have an opportunity to get out and achieve more independent living. Further, the Department in 1974 and 1976 inspections found that the facility was "not in compliance with the Federal Labor Law and that they had not attempted to get appropriate Federal Labor Department certificates."

The consistent findings of the Department in 1974, 1976 and 1980 were that programs were generally "deficient" in the facility. On June 1, 1979, Commission staff observed the same types of deficiencies in five levels of programming, concluding that little if any meaningful training was being afforded to the clients by the staff. Criteria for placement in groups was vague and much "work" was meaningless to the clients, with benefits inuring to facility maintenance. For example, of all the residents, only six were in the "pre-vocational program and were busy scraping paint off of summer furniture." When asked about their wintertime programming, they said "shoveling snow." An office skills workshop was unused and consisted of two obsolete covered office machines and a broken typewriter. There was no transitional program, no training in "marketable" skills such as housekeeper or porter. There were no contracts with workshops or industry.

Each client was said to get \$1 per week for "incentive" purposes. However, the dollar is actually the client's own money because its source was a transfer from the personal allowance of the client.

The OMRDD Recertification Report detailed the continued lack of compliance with Departmental regulations and the continued absence of vocational training programs. Indeed, one group of 54 residents received no pre-vocational training due to the fact they were over 40 years of age. This team observed idle residents, residents manipulating tinker toys and others "assembling and disassembling screwdriver sets." The American Association of Mental Deficiencies adaptive behavior scales would have little relevance to the so-called programmatic goals for the resident at Greenwood because there were simply no vocational evaluations and virtually no movement of residents to less restrictive settings despite the fact that team members observed "there were clearly residents present who could benefit from vocational training services."

According to OMRDD, the distinction between the four levels of training was more artificial than actual, emphasizing the necessity of securing the services of a qualified vocational rehabilitation professional at Greenwood. And again, it was recommended that the facility should seek certification from the Department of Labor and that the payment of one dollar per week from the resident's own SSI funds is illegal.

3. Staff

The Commission found a great deal of correspondence between the Department and the facility relating to lack of job descriptions, lines of supervision, etc.

In March 1979, administrators stated to the Commission that new staff are oriented to the clients and their duties by the day supervisor. Methodology for this was: the supervisor would "go over" the records of each of the 180-plus residents and tell the new staff what they had to know; the remainder of the orientation was on-the-job. Houseparents, teachers or nursing staff never received any formal instruction in management or understanding of developmental disabilities, behavioral interventions, psychopharmacology, etc. Houseparent supervision was unacceptably informal and left to the responsibility of an evening recreational supervisor.

In February 1980, the OMRDD Recertification Report found no evidence that the facility was implementing its own written policies on in-service training for staff. The report further states that there were two separate conflicting and inconsistent staffing plans.³⁶

4. Services for Residents

The Commission believes that there is a preponderance of high functioning clients at Greenwood who are afforded no possibility of movement to less restrictive and more independent living.

In June 1976, the Department found that 9 clients had I.Q.'s over 69 and another 39 either had no I.Q. listed or the diagnostic category differed from the

³⁶ See, In the Matter of Cheryl J., April 1980, a Report by the State Commission on Quality of Care for the Mentally Disabled.

I.Q. score. The Department demanded of the facility that: "All non-mentally retarded individuals must be discharged within six months of the date of this letter."

The Department reported that admission policies were inadequate and "changed only very slightly from March 10, 1973" adding that Greenwood's administrators believed that most clients will "never leave." The Department also formally recommended that admissions be made only after "a comprehensive interdisciplinary evaluation of the individual."

Commission staff conversed randomly with several clients who expressed their desire to leave. Client S.W., cited as inappropriately residing at Greenwood by the Department, hesitated to speak when facility administrators were present. One high functioning client said she was preparing for a job on the outside by making flowers.

There was no social worker or rehabilitation counselor or any staff identified as having the responsibility of locating residences or other placements. Indeed, the administrator said to be in charge of all transfers to the community is located in Long Island.

It was apparent to Commission staff that many residents were high functioning, and with training would be appropriate for community placement. The OMRDD Recertification Report concurred with our observations regarding the functional level of clients. This report described the lack of any movement of clients to a less restrictive setting, the fact that community and growth opportunities are rare and there is no mechanism for residents to learn about such matters as money management and voting. Nor are issues

such as the residents' sexuality dealt with. Indeed, the report found that services at Greenwood were actually "more oriented to maintaining the residents at their current level of 'independence' [rather] than promoting their movement to a less restrictive environment."

Food service is not administered in accordance with Departmental regulations. In both 1974 and 1976, the Department labeled food service at the facility as "deficient." In June 1976, the Department notified the facility that they must "contract for or employ at least a part-time dietician." Department staff noted in particular that "a number of the clients have cardiac problems and may benefit from a special diet." On June 1, 1979, the menu was not posted; a copy was unavailable to Commission staff and was received some three weeks later after additional telephone requests. Furthermore, the Commission found that there was no documented policy regarding special diets and no listing in the kitchen of those on such diets. On June 1, 1979, according to the head nurse, there was one client on low-fat, two diabetics and one with "specialized needs." These diets are handled in an informal way by the clients themselves, and/or the teacher/aide staff who sit with the clients in the dining room.

The facility, as of June 1, 1979, still had no consultant dietician and the meals continued to be planned by a staff member who supervised the kitchen as well as maintenance, and formerly owned the facility when it was a hotel. In sworn testimony, this individual stated that he had no formal education in nutrition or other recognized certification as a

dietician. However, he thought of himself as a qualified dietician by virtue of his having operated the resort hotel which he sold to Carl Simone, Inc.

Former employees testified that the food served was generally a simple, high starch diet and quantities of food were limited. In February 1980, the OMRDD Recertification Report stated that on the staffing records there was a "nutrition consultant" noted, but that the qualifications of this person were not specified.

Individual treatment plans or habilitative plans were inadequate and record keeping was poor. In 1974 and 1976, the Department of Mental Hygiene labeled the case records as "deficient," "vague and non-specific." In June 1976, Greenwood was told by the Department that each record must contain long-range and short-term goals derived from the specifics of the patient's disabilities. In addition, the Department stated that there was to be a written record of periodic case review. In March 1978, although the Department found that five out of seven random records contained a service plan, it concluded that all were inadequate and again noted that progress notes were not written in relation to the goals and objectives of the treatment plan.

In both March and June 1979, Commission staff found that day program notes are separate from nursing notes which are also separate from houseparent monthly anecdotes.

There is no evidence of any multi-disciplinary team approach or participation by client or family in planning. There are no goals stated, nor are staff aware of any short-term or long-range placement goals. There are no schedules for treatment reviews or updating of plans.

In the February 1980 OMRDD Recertification Report, 18 records were reviewed and found to lack documentation in service plans that residents or families participated, and no material to support that plan was developed by an interdisciplinary treatment team. These records lacked goals, assessment dates, records of daily activities or staff responsible for implementation of plan, and lacked biannual reviews and evaluation of progress. Another deficiency was the separation of medical/nursing components from the general records. Also it was noted that direct care staff did not participate in treatment planning.

5. Medical and Nursing Care

Medical and nursing policy at Greenwood was uniformly substandard. In 1974 and 1976, the medical and nursing care was termed "deficient" by the Department. In June 1976, the Department stated that the facility must develop a nursing procedures manual, and that the regulation mandating yearly physical exams was in "substantial non-compliance." The facility also lacked a communicable disease plan and had no policy on the provision of medical care in an emergency. The nursing service was not under the direction of a Licensed Professional Nurse (LPN). In November 1976, the Department again stated that the nursing manual contained too few procedures and was "very cursory." The inspection team felt that the list of four staff who had First Aid training (two were administrators) was a problem and stated: "This lack of First Aid knowledge by other than a mere handful of staff was potentially very serious and bad administrative practice." The

Department stated that "all receive training in First Aid and be aware of action to be taken in an emergency." The Greenwood practice regarding body checks of residents which were regularly performed was strongly disapproved by the Department, stating that: "this entire procedure is too gross and does not provide proper safeguards for either the resident or the Center."

In March of 1979, the Commission learned that the head nurse was not trained in Cardiopulmonary Resuscitation (CPR) and in June 1979 many of the staff still had not had training in First Aid and CPR. Also in June 1979, the nursing kardex was grossly insufficient in providing a health profile on each client. Client K.G. had been noted as needing a follow-up of a breast nodule discovered in August 1978 at the Mental Retardation Institute (MRI) in Valhalla, New York, but there was no documentation in the Greenwood record that this had been done.

The psychiatric consultant was routinely writing medical orders for treatment of clients without documenting or recording the rationale for medication, the purpose of treatment or its progress and any subsequent modification.

Client K. was on three different anti-convulsants but his record stated, "last seizure in 1936." The head nurse said a neurological consultation was planned at MRI.

There was no nurse on duty during nighttime hours and nurse coverage at night was unacceptably informal, i.e., the LPN, the wife of the day supervisor who lives on the grounds, was the only nurse available for such assistance.

In March of 1979, the record keeping practices regarding medication were totally substandard in that medication records were not initialed when given but were "checked-off" on a weekly basis, not necessarily by the nurse administering the drug. This system of recording was of necessity unreliable.

Several of the LPN's employed had no specific psychopharmacological training despite the fact that the psychiatric consultant gave PRN, i.e., whenever necessary, orders for such drugs, and despite the fact that in the evenings it was routine for one LPN to cover nearly 200 clients.

The OMRDD Recertification Report found that although services are available through the Mental Retardation Institute, there were no reports received from this facility. There was a lack of personnel policy and qualifications for the position of physician. Because of this lack of documentation, it was impossible for OMRDD to verify licensure and/or certification of professional staff.

In sampling the medical records of 18 clients, OMRDD found 13 had received an annual physical exam, 4 an annual dental exam and 2 an annual eye exam. There was no mention of psychiatric consultation despite the fact that 2 of the 18 residents were on psychotropic drugs. There also was no description given by the psychiatrist of his actions, e.g., expected benefits of the medication, possible side effects, etc.

6. Visitation

In 1974 and 1976, the visiting policies of Greenwood were labeled "deficient", restrictive and contrary to policies by OMRDD auditors. In June 1976, the Department stated to Greenwood administrators that:

Facilities should encourage visits to and by residents. Your attitude is clearly to discourage visiting and must be changed. Your visiting and communication policies must be expanded to include provisions relative to correspondence and telephoning.

This report added that there was no private space available for visiting within the facility.

In March 1979, Commission staff were told that visitation in the case of client Cheryl J. was denied the family by the consulting psychiatrist. The family was told this was due to a "new program", yet our investigation substantiated no new program. Cheryl J.'s family was not only discouraged from visiting, but was also told to write their daughter rather than telephone her. In this regard, the February 1980 OMRDD Recertification Report stated that "out-going phone calls had to be cleared through the director and placed on a pre-determined schedule." This policy was labeled "restrictive" and the facility told to allow residents freer access to telephones.

7. Environment

Although generally a well maintained facility, the physical environment and housekeeping of portions of Greenwood were found to be deficient by OMRDD. In June and November 1976, the Department was critical of the housekeeping, lack of drapes, shower curtains, strong urine smell, hazardously worn carpeting, warped floors as well as the continued lack of covers for fire escapes that had been cited in 1974. The Department gave the facility 120 days to cover these fire escapes.

The Department further cited the assignment of clients to living areas was "very inappropriate as to age and developmental level and told the facility to...regroup ...within 90 days." Some clients were being required to clean other than their own personal area. This demonstrated an increased need for housekeeping help at Greenwood.

Commission staff in its March 1979 visit observed a less than clean environment in portions of the facility, e.g., bathroom and shower fixtures were often old, mildewed, dirty and in need of repair.

In June 1979 Commission staff queried facility administrators about the lack of locks on toilet stalls off the main lobby and were told the clients "rip the locks off." This response--that clients removed locks and other objects--was also the retort when the administrators were questioned about the lack of a menu being posted and the failure to post a statement of resident status and legal rights. Employees and former employees testified under oath that they knew of no incidents of damage to bathroom locks, much less any general problem in this regard. The new dormitories in contrast were generally clean and attractively decorated.

The OMRDD Recertification Report continued to criticize past stated deficiencies such as two buildings that had no sprinkler systems, as well as new deficiencies including surface sewage discharge, dining hall and other rooms where the ceiling is coated with asbestos and water wells which are inadequately protected from contamination.

It is worthy of mention that in 1974 and 1976 the Department noted the required disaster plan was "missing." In June 1976, Department correspondence again

observed that the plan "is the same inadequate plan submitted originally on November 23, 1973 and was not a plan but merely an indication of conducting fire drills." It further stated that the facility "obviously does not meet OSHA [Occupational Safety and Health Administration] standards" and gave the facility sixty days to contact OSHA and ensure the plan meets their requirements.

Based upon the deficiencies stated above, Greenwood programs were substandard in almost every dimension. The findings gleaned from review of the OMRDD files and inspection reports, facility records and the Commission's own site visits substantiate that the care and programs at the facility were of suboptimal quality and simply not geared toward promoting independence and growth of the nearly 190 clients living there.

Inspections conducted by the Department in 1974 and 1976 were accurate in identifying and citing Greenwood's deficiencies. However, these deficiencies for the most part were not corrected by Greenwood, and neither sanctions nor enforcement actions were taken by the Department to compel compliance. Even when specific time frames were demanded of the facility, there is little indication that there was any actual follow-up at all. Greenwood ignored the admonitions and demands of the Department, and the Department eschewed its legal responsibility to compel compliance.

From the very beginnings of Greenwood, there is little documentation of any continuous or sustained monitoring of this facility. It appears that in 1977 and 1978 there were no inspections or audits at all by the Department of the scope of those conducted in 1974 and 1976. There is even less indication of a serious enforcement effort by the Department.

The deadlines and mandates imposed upon the facility in 1974 and 1976 to a large degree went unheeded, and the situation observed by the Commission in 1979 reflected that which was documented by the Department in 1976; little had changed for the better.

IV. THE ROLE OF THE DEPARTMENT OF MENTAL HYGIENE AND THE OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

A. Adequacy of Regulations

It is clear that the regulations on operating schools for the retarded by profit-making corporations were written to prevent the kind of abuses that are apparent in Greenwood. The problem that developed in terms of the failure of the regulations to act efficaciously is two fold: first, in the past there was a lack of vigorous monitoring and enforcement of compliance on a continuing basis because OMRDD has had little power to enforce its regulations other than the action of closing the facility which may be counter-productive both for the residents and in its impact on the service delivery system operated by OMRDD itself; second, the regulations themselves lack sufficient provisions to assure that the corporate owners and directors do not have undue control of the corporation allowing them to divert funds or make questionable expenditures, or business deals among themselves with corporate funds. Generally, efforts and resources for audits have been weak. In the Commission's judgment, the lack of effective regulation has a doubly debilitating effect because it creates an illusion of regulation, security and quality care that goes with such policing. Additionally, it allows corporations to divert funds intended for care and treatment, making the clients the ultimate victims of this breach of the statutory fiduciary duties to spend their funds appropriately.

B. Evolution of State Policy of the Department of Mental Hygiene

Regulations were developed in 1972 which in part were aimed at preventing corporate deviation from licensure

requirements. Although the Department made numerous inquiries and demands for documentation of Greenwood's compliance with the regulations, these were often met with vague or nonresponsive answers or with simple defiance. In the judgment of this Commission, the failure of the regulatory structure to work in the case of Greenwood was primarily due to the inability of the Department, with the staff and resources available to it, to follow up and insist that its lawful demands for disclosure be honored, and to take forceful action on known violations of a serious nature.

For example, cognizant that corporate business offices should be required to be located at the facility itself, the Department promulgated such a regulation [14 N.Y.C.R.R. §73.2(a)(3), (effective June 1, 1973)] and notified Greenwood that it must comply. The regulations support a principle that the responsiveness of a human service enterprise should not be lessened by an organizational structure which puts the convenience of management before the interests of the client. As was demonstrated in the early stages of this inquiry, remotely situated headquarters made it difficult to obtain authoritative information related to the facility's operations.

According to its Certificate of Incorporation of February 2, 1972, Greenwood's corporate offices were located in the Town of Hempstead, County of Nassau, (Long Island) State of New York, over 100 miles from the facility in Ellenville, New York. Apparently noted by the Department in a letter dated April 11, 1973, it inquired of Greenwood:

This letter is being sent to you to determine if the facility has moved and to advise you that if such is the case, the license for the Greenwood Rehabilitation Center at Ellenville is null and void.

This letter also asked for clarification from the facility on this matter, but no further correspondence from

the Department was discovered, nor was there evidence of any formal action or notice withdrawing the operating certificate. Greenwood responded to this letter on April 16, 1973 by stating that the facility had not moved from Ellenville, it was only the business office which had moved from Freeport (Long Island) to the East Norwich (Long Island) location. Despite the fact that this was not responsive to the violation of §73.2(a)(3), no further follow-up or enforcement action was discovered.

In a letter from a Department attorney in July 1974, attention was again drawn to the requirement of §73.(a)(3), but no response or follow up was found. On February 10, 1977 Greenwood apparently again moved their corporate office by entering into a lease on that date for office space in Hicksville (Long Island), New York. There was no action by the Department on this last move, nor on the consistent failure to comply with §73.2(a)(3). A Certificate of Amendment of the Certificate of Incorporation of the Greenwood Rehabilitation Center, Inc., was filed with the Office of the Secretary of State on April 5, 1976 stating that: "the principal office and only place where the corporation shall operate its business are to be located in the Town of Warwarsing, County of Ulster..." (emphasis supplied). The address of the corporation was also changed to R.D. #1, Briggs Highway, Ellenville, New York. This certificate was signed by the corporate owners, Carl Simone and Sam LaMagna and verified by Carl Simone on March 17, 1976.³⁷

³⁷ See N.Y. Penal Law §210.10 Perjury in the Second Degree. See also, N.Y. Business Corporation Law §805. The N.Y. Business Corporation Law §1101(a) provides that the Attorney General may bring an action for the dissolution of a corporation if formed by fraud or misrepresentation. Section 1202 of the N.Y. Business Corporation Law authorizes the appointment of a receiver in cases of such dissolution.

The Department was aware of Greenwood's non-compliance with two other important corporate regulations, but did little to rectify the matter. In §73.2(a)(4), it is provided that:

No person shall own more than 10 percent of the shares of stock of the corporation or control more than 10 percent of the voting rights of the corporation unless prior written approval by the commissioner has been obtained.

And, §73.2(a)(5) provides that:

The corporation shall obtain prior written approval by the commissioner of all incorporators or directors of record as to their character and experience.

With regard to a 51 percent and 49 percent ownership of stock of the Greenwood corporate entity by two individuals, Carl Simone and Sam LaMagna, respectively, the Department was constructively aware of these circumstances violating the regulations by virtue of possessing the incorporation documents.³⁸

With regard to these regulations requiring written approval by the Commissioner of the character and experience of the incorporators [14 N.Y.C.R.R. §73.2(a)(5)], there was

³⁸ There were two subsequent transfers of stock which were not reported to the Department as required by 14 N.Y.C.R.R. §73.2(b). The first was a transfer of one share as a gift from Carl Simone to Sam LaMagna on November 7, 1975. The second was a sale of 50 shares from Carl Simone to Sherwood Greiner for \$50,000 on April 6, 1976. As far as the Commission was able to discover, the mandatory notice required by 14 N.Y.C.R.R. §73.2(b)(3) and (4), when such a gift or transfer of stock is made, and the relation between the transferees was never disclosed to the Department in either the gift of one share to LaMagna or the sale to Greiner.

no evidence compliance was ever pursued or achieved.³⁹ Indeed, the only inquiry found on this point was a letter written (dated April 26, 1972) over a year before the effective date of these regulations stating that this was a concern of the Department.

Of major concern to the Department is the disjuncture of knowledgeable operating responsibility of the owners of such a facility from the program of such a facility in the case of business corporations as compared to proprietorships. In order to lessen the possibility that a business or commercial concerns, acting at a distance, will adversely affect the services provided to a relatively vulnerable clientele, the Department may require majority ownership by an appropriately trained professional person who maintains direct involvement in the actual operating of the program (emphasis supplied).

Significantly, these regulations require surrender of an operating certificate at the time of any transfer of ownership of shares of stock or of control of voting rights of the corporation unless the corporation notifies the Commissioner of the specifics of such transactions [14 N.Y.C.R.R. §73.2(b)].⁴⁰

³⁹ In response to a letter of inquiry from this Commission to Greenwood, then Greenwood Attorney Anthony Bellucci stated in his letter to the Commission dated October 5, 1979 that:

Dr. LaMagna has been approved by the Commissioner of Mental Hygiene. However, a search of all records in my office as well as client's office has failed to turn up the formal approval, although I do have a recollection that we did receive same during the early 1970's. No formal approval has ever been received with respect to Dr. Greiner.

⁴⁰ In a letter from the Department's Associate Commissioner (dated February 7, 1972), Greenwood was expressly instructed to continuously inform the Department of proposed changes in names of stockholders, affidavits as to their character and intent to sell any interests. Greenwood has consistently failed to comply on any of its numerous changes in stock ownership, stock transfers or location of corporate offices.

C. Regulatory Violations

As discussed throughout this report, Greenwood has apparently violated many regulations pertaining specifically to the ownership of the school:

<u>REGULATION</u>	<u>VIOLATION</u>
14 N.Y.C.R.R. §73.2(a)(2) Corporate powers and purposes should be related to the operation of the school.	The development of a Florida enterprise does not relate to the purposes of Greenwood.
14 N.Y.C.R.R. §73.2(a)(3) Prohibits separate facility and corporate office.	The Greenwood corporation has consistently had its business office separate from the facility for its entire existence to the present.
14 N.Y.C.R.R. §73.2(a)(4) Prohibits ownership or control in excess of 10 percent without prior approval by commissioner.	Without approval, the stock ownership of the Greenwood corporation has always been in excess of the 10 percent maximum permitted. Up to 1975, Simone had 51 percent and LaMagna 49 percent, between 1975 and 1976, Simone and LaMagna had 50 percent each, and now LaMagna owns 50 percent and Greiner owns 50 percent.
14 N.Y.C.R.R. §73.2(a)(5) Requires written approval as to the character and experience of all incorporators and directors of record.	Although Greenwood claims LaMagna was approved as an owner and officer, no documentation of this fact was found in writing as required. With respect to Simone and Greiner, no approval was sought or received.
14 N.Y.C.R.R. §73.2(b) and subdiv. (1) to (4) Nullifies the operating certificate upon any transfer of ownership, stock or voting rights without identifying (1) parties to transfer; (2) number of shares in transfer; (3) consideration of value exchanged; (4) any stock given as a gift.	Greenwood has never complied with these provisions when: <ol style="list-style-type: none">1. The present corporation was formed in 1972;2. In the gift of one share from Simone to LaMagna in 1975; or3. In the sale of 50 shares from Simone to Greiner in 1976.

There are also potential or technical violations of regulations contained in 14 N.Y.C.R.R. Part 81, particularly §81.5(a)(1) requiring a governing body to be responsible for the overall operation and management of the school and §81.5(b)(2) requiring an annual audit of financial condition and accounts of the facility by a "certified public accountant who is not a member of the governing body or an employee of the facility."

REGULATION

VIOLATIONS

14 N.Y.C.R.R. §81.4(a)
Provides that no school for the mentally retarded may be operated without a valid operating certificate issued by the Department of Mental Hygiene.

Except for two periods (during 1972 and 6/76 to 11/76) during the decade of its operation, Greenwood held no valid operating certificate from the Department of Mental Hygiene or the Office of Mental Retardation and Developmental Disabilities.

14 N.Y.C.R.R. §81.4(d)
Requires that a current operating certificate be framed and displayed in a conspicuous place which is readily accessible to the public.

Greenwood failed to meet the requirement of this provision during the inspections of the facility in 1978 and 1980.

14 N.Y.C.R.R. §81.4(f)(5)
Provides that the holder of an operating certificate shall obtain prior approval from the Department of Mental Hygiene before increasing the maximum certified resident capacity.

Greenwood has persistently exceeded its maximum certified resident capacity without having first obtained the approval of the Department.

14 N.Y.C.R.R. §81.6(b)(2)
Prohibits a school from exceeding its certified bed capacity.

14 N.Y.C.R.R. §81.5(a)(4)
Board minutes should record decisions relating to school operations.

Board minutes failed to provide information on material transactions authorized or discussed at the meetings.

REGULATION

14 N.Y.C.R.R. §81.5(b)(5)

Provides that the governing body of a school for the mentally retarded must appoint a special review committee whose duty it is to develop a special review plan, review and evaluate untoward incidents, keep written minutes of its meetings, and include in its deliberations qualified physicians.

14 N.Y.C.R.R. §81.5(b)(6)

Requires that the governing body of a school for the retarded develop and make known to all employees a current plan for safeguarding all residents in the event of a major disaster or civil disturbance.

14 N.Y.C.R.R. §81.6

This section provides that the governing body develop program policies to provide for medical and health services; educational, work-study and vocational training programs; psychiatric consultation and therapeutic programs.

14 N.Y.C.R.R. §81.6(d)

Establishes minimum standards for medical and health services which include at least yearly medical, dental, eye and hearing examinations for residents over 18 years old. Additionally, there is to be a written communicable disease control plan and a written plan for obtaining emergency medical treatment.

VIOLATION

A plan for the special review of incidents was noted as "missing" by the Department of Mental Hygiene in 1974 and "deficient not in force" in 1976. In 1979 Commission staff found that meetings were held irregularly, minutes of the meetings were inadequate, and there is no indication that a physician ever participated in the deliberations of the committee.

In 1974 and 1976 the Department found a disaster plan "missing."

In 1974, 1976, 1978 and 1979 the Department found programs inappropriate, insufficient, and unproductive. In 1979 the staff of the Commission found much of the pre-vocational program meaningless.

In 1974 and 1976 the Department found Greenwood's medical and nursing care deficient and that there was substantial non-compliance with the requirement for yearly physical examinations. In 1979 Commission staff found deficiencies in first aid training, medical record keeping and medication administration practices.

REGULATION

VIOLATION

14 N.Y.C.R.R. §81.7

Requires that schools for the retarded continuously employ an adequate number of appropriately qualified staff to carry out effectively the program of examination, diagnosis, care, treatment and training.

Department and Commission staff have found that personnel policies are deficient and/or non-existent and that orientation and training for staff is inadequate.

14 N.Y.C.R.R. §81.8

Provides that individual records are to be kept for each resident and specifies the contents of those records.

The records maintained by Greenwood have been characterized as "deficient" and "vague" and "nonspecific" by officials of the Department.

14 N.Y.C.R.R. §81.6(a)(2)

Requires that an individual plan of care, treatment and training also be formulated and followed for each resident.

14 N.Y.C.R.R. Part 21

Encourages facilities to promulgate liberal visitation and communication policies and requires that any restriction on visitation be recorded in the resident's record and that access be granted to telephones, and stationery for the residents' use.

Greenwood restricts out-going telephone calls and has restricted visitation rights of certain residents without adequately documenting the reasons for such restrictions.

14 N.Y.C.R.R. Part 77

Establishes minimum requirements for safety, sanitation, maintenance, and design for schools for the retarded. The design is to "promote a non-institutional home-like environment" [§77.7(a)(1)].

Both Department and Commission staffs have found certain portions of the facilities at Greenwood to be maintained at substandard levels of cleanliness and no home-like atmosphere.

20 C.F.R. Subpart Q, §§404.1601, et seq.
Benefits not required for foreseeable client needs must be invested for the beneficiary.

Personal funds from income excluded in determining SSI eligibility were not invested in interest-bearing accounts.

8 N.Y.C.R.R. §29.10(a)(1)(c);
§29.10(a)(3)

The CPA should acquire sufficient data to express an opinion and examine items of materiality.

Failure to disclose interest-free loans to officers, sale of real estate substantially below its appraised value, and lack of documentation on year-end closing adjustments raises questions of unethical practices by CPA.

V. RECOMMENDATIONS

A. Complete Financial Review of All Private Schools for The Mentally Retarded

The Commission believes that credible regulation requires periodic financial review of all private schools for the mentally retarded which receive public funds. We therefore recommend that OMRDD conduct full scale financial audits for all such private schools as soon as possible and periodically thereafter.⁴¹

On March 18, 1976 a report was filed by the Office of the State Comptroller, Division of Audits and Accounts (No. NY-ST-77-76) concerning private schools for the retarded. Rather than focusing intensely on one school, it reviewed records for all 28 existing at that time and visited 11. However, unlike the instant study, the Comptroller did not undertake financial review either of the schools' operations or of the schools' owners.

Nevertheless, it is significant that the report of the Comptroller came to many of the same conclusions and made many of the same recommendations as are made here.

Although the Comptroller reported agreement and ameliorative action being undertaken by the (then) Department of Mental Hygiene, Division of Mental Retardation, the Commission perceives little, if any, improvement despite the passing of more than four years from the time this report was filed as indicated herein. The Comptroller's report described the Department of Mental Hygiene as "receptive to our recommendations" and noted that the Department "took prompt action to implement many of them," including developing minimum standards and keeping certification inspection

⁴¹ See Appendix D for a description of other audits and reports regarding private schools for the mentally retarded.

current. However, there have been no new regulations on minimum standards for these private schools [14 N.Y.C.R.R. Part 81] since 1973. And, as reported to this Commission by OMRDD, at the time of this investigation only 2 of the 24 schools presently have a current operating certificate and the inspection staff for the area where most schools are located consists of four staff positions, only one of which is filled at present.

Particularly noteworthy in this regard is the lack of financial review of the type which was conducted by the Commission. Although this function is assigned to the Central Office of OMRDD, no staff has been made available to perform it.

B. Recoupment of Overpayments of SSI Funds

The Commission recommends that the Social Security Administration seek recoupment of SSI overpayments from The Greenwood Rehabilitation Center, Inc.

C. Licensure

The Commission recommends that:

1. The regulation prohibiting stock control or corporatate ownership exceeding 10 percent without permission of the Commissioner [N.Y.C.R.R. §73.2(a)(4)] should be strictly enforced.
2. As a condition of eligibility for an operating certificate, the Commissioner of the Office of Mental Retardation and Developmental Disabilities should be authorized to nominate a citizen (not a parent or relative of a resident of the facility) or a State employee to serve as a non-voting member of the for-profit corporation which has an operating certificate. This person should periodically report to the Commissioner or his designee on the operation of the facility. Funds to pay reasonable per diem and

expenses of such a board member could be part of a licensing fee or condition of the license.

3. There should be a serious and careful review of the character, fitness and experience of persons who apply for licenses to operate a facility for the care of the mentally retarded, particularly for profit. The Office of Mental Retardation and Developmental Disabilities should consider requiring appropriate documentation and references, including financial disclosure of other businesses owned or controlled by applicants, and income to establish that such persons are fit and competent for such a license.
4. The Commissioner should consider promulgating a code of ethics applicable to holders of operating certificates and addressing issues such as business transactions with relatives or with businesses owned or controlled by the owners or officers of a licensed facility.⁴²

D. Regulations

The Commission recommends that statutes and regulations be amended to provide a full range of sanctions to compel compliance with all laws, regulations, licenses and policies which apply to these private schools. Specifically, the Commissioner should be authorized or required to:

⁴² Section 31.22(b)(2) of the Mental Hygiene Law prohibits the Commissioner from granting an operating certificate unless he is satisfied as to the character and competence of the proposed incorporators, directors, sponsors, or stockholders. Such individuals might also, by regulation and with some modification, be made subject to the code of ethics which governs the conduct of State employees [§74 of the Public Officers Law], the provisions of §73 of the Public Officers Law which restricts the business and professional activities of State employees, and to financial reporting requirements such as those contained in Executive Order No. 10 (May 20, 1975) [9 N.Y.C.R.R. §3.10], relating to the financial reporting by certain State employees and Chapter 937 of the Laws of 1977, pertaining to the activities of some lobbyists.

1. Assess fines which are commensurate with the violation for which they are being levied. If, for example, the violation involved the misuse of State monies, the fine ought to be a multiple of the amount of misappropriated money. The Commission believes that the current maximum fine of \$1,000 [N.Y. Mental Hygiene Law §31.15(b)] is inadequate. Part of a strengthened system of fiscal monitoring recommended elsewhere should ensure that any such fines levied should come from corporate or owner profits and not from client funds, services or programs.
2. Place such staff of the Office of Mental Retardation and Developmental Disabilities as deemed appropriate as monitors in any private school which, in the judgment of the Commissioner, presents an imminent danger to the health, safety or welfare of the patients, residents or employees of such school. [See, N.Y. Mental Hygiene Law §45.07(e)(4).]
3. Bring on a legal proceeding, by request to the Attorney General, for the appointment by a State court of a receiver or master to operate the school in the case of a serious or persistent non-compliance with law and regulations. The receiver or master should have the express statutory authority to ensure the health, safety and welfare of the residents, to carry on the operation of the facility and to bring the facility into compliance with law, regulations and policies of the State. The receiver or master will also be responsible for preserving the assets of the facility and its legal owners to the greatest degree possible, but not in derogation of the foregoing. Reasonable compensation for the receiver should be set by the court pursuant to its order and should be assessed against profits and income of the school as a necessary expense to obtain its compliance with law [cf., N.Y. Public Health Law §2810 and §2801-c].

Such a "receivership statute" is a necessary adjunct to the Commissioner's legal authority to revoke, suspend or limit an operating

certificate with appropriate due process under N.Y. Mental Hygiene Law §31.15(a). See, N.Y. Administrative Procedures Act §401(3) (allowing summary suspension of a license). It would also provide a mechanism to continue the provision of care without needless disruption of the lives of the residents.⁴³

4. Define the specific services which are appropriate for reimbursement from Supplemental Security Income.
5. Amend State regulations for maintenance of personal allowance accounts to require deposits be made into interest-bearing accounts to make them consistent with federal law and regulations.
6. Ensure that the Certified Public Accountant who performs the annual audit as required by 14 N.Y.C.R.R. §81.5(b)(2) has no business or other relationship with the corporation,

⁴³ N.Y. Business Corporation Law §1101(a)(a) provides that:

The Attorney General may bring an action for the dissolution of a corporation upon one or more of the following grounds:

1. That the corporation procures its formation through fraudulent misrepresentation or concealment of a material fact;
2. That the corporation has exceeded that authority conferred upon it by law, or has violated any provision of law whereby it has forfeited its charter, or carried on, conducted or transacted its business in a persistently fraudulent or illegal manner, or by the abuse of its powers contrary to the public policy of the State has become liable to be dissolved. (Emphasis supplied.)

§1101(c) allows joining these claims with any other, e.g., under N.Y. Mental Hygiene Law Article 31, or with N.Y. Business Corporation Law §1202(a)(1) which allows a court to appoint a receiver.

principals, owners, stockholders or officers of the private school being audited, or their families [cf., N.Y. Public Health Law §2807-a]. Such annual audits should be filed with the Commissioner.

7. Have access to all books, records and data, including financial data, pertaining to any other businesses, companies or corporations which transact business with a licensed private school, in which the school's owners, operators or officers or their families have a financial interest [N.Y. Mental Hygiene Law §31.07 (as amended by Chapter 720, Laws of 1979)].
8. Require that whenever real property is transferred by a private school, an independent appraisal of such property should be sent to the Office of Mental Retardation and Developmental Disabilities.
9. Hire adequate numbers of staff to conduct comprehensive audits, both programmatic and financial, of the private schools for the mentally retarded, and to monitor the annual financial statements submitted by such schools.

E. Specific Recommendations for Greenwood

On the basis of the facts disclosed in the course of this investigation and the pattern of conduct of the corporate principals, whose zeal for personal financial gain adversely impacted their obligation of providing quality care for the residents of Greenwood, the Commission has grave reservations over their continuing role in the operation of Greenwood with the sanction of the State. The history of deficiencies at the facility, coupled with intransigence in the face of attempts at correction, as articulated in Commissioner Introne's letter of September 4, 1980, do not inspire confidence in the owners and operators

of Greenwood. While recognizing that the determination of "character and experience"--a determination that has not yet been made for any of the owners of Greenwood--is one reserved by law for the Commissioner of OMRDD, the Commission is of the opinion that the "character and experience" revealed by this investigation disqualify the current owners from eligibility for an operating certificate issued by the State of New York.

F. Commission Referrals

The Commission has referred or will refer aspects of this investigation to other authorities as follows:

1. As discussed in this report (pages 22-26), the Commission has obtained a copy of testimony taken under oath by a former employee of Carl Simone which provides evidence of a conspiracy of these two men along with their accountant, Lawrence B. Lessor, to falsely understate and thus evade New York State sales tax. This matter has been referred to the NYS Department of Taxation and Finance and is under investigation.
2. In addition, Lawrence B. Lesser's activities in this regard as well as his questionable audits of The Greenwood Rehabilitation Center, Inc., will be referred to the NYS Education Department, State Board for Public Accountancy.
3. The Commission will forward its evidence of Supplemental Security Income overpayment made to The Greenwood Rehabilitation Center, Inc., to the United States Department of Health and Human Services with a recommendation the recoupment efforts be considered.

4. Because of the related nature of the information contained in this report to other investigations and jurisdictions, the Commission will forward a copy to:
 - a. United States Department of Justice, Federal Organized Crime Strike Force, Brooklyn, NY;
 - b. United States Department of Labor, Washington, DC;
 - c. United States Department of Health and Human Services, Social Security Administration, Baltimore, MD;
 - d. NYS Office of the Attorney General;
 - e. NYS Department of Taxation and Finance;
 - f. NYS Department of Social Services;
 - g. NYS Education Department, State Board for Public Accountancy;
 - h. NYS Department of State; and
 - i. State of Florida, Office of Secretary of State.

EPILOGUE

At the conclusion of the investigative phase of this inquiry, a confidential report of the findings was made to the Office of Mental Retardation and Developmental Disabilities. That Office had recently concluded a recertification survey of Greenwood that had revealed progress in some areas and continuing deficiencies in others.

On June 20, 1980 the Commissioner of OMRDD wrote Mr. LaMagna requesting a plan of correction for identified deficiencies by July 21, 1980 under threat of closure of the facility. The Commissioner stated that until substantial compliance was achieved, no plan for converting portions of Greenwood into an Intermediate Care Facility for the Mentally Retarded could be considered.

On August 27, 1980 a joint unannounced visit by staff from OMRDD and the Department of Health found over 50 violations of the Health Department regulations, as well as continuing deficiencies in other areas of operation that had been previously identified.

On September 4, 1980 the Commissioner formally notified Greenwood that its application for an operating certificate was being disapproved. The plan of correction submitted was found to be deficient. Greenwood was found to be in violation of Article 31 of the Mental Hygiene Law by operating without a valid operating certificate. The Commissioner stated, "Although Greenwood is operating illegally without an operating certificate, considerations beyond our control prevent our being able to remove the clients immediately from the Center. We will therefore not require the closure of Greenwood prior to October 15, 1980." The Commissioner ordered a moratorium on any further admissions to Greenwood.

As provided for by law, Greenwood requested a hearing on the disapproval of its application. On September 26, 1980 Mr. LaMagna wrote to the Commissioner suggesting that the facility could be converted to a not-for-profit corporation as part of a plan of correction of the deficiencies.

According to the Final Report on the Implementation of Chapter 720 of the Laws of 1979 (February 1, 1981) by the Office of Mental Retardation and Developmental Disabilities, Greenwood's request for a hearing "is pending a possible reorganization of the Greenwood Rehabilitation Center as a not-for-profit agency with thorough review of programming by an outside organization (Exhibit F)."

The Commission has cautioned that corporate structure, whether proprietary or non-profit, is not determinative in ensuring cost effective quality care. Rather, it is the "character and experience" of the owners and operators that is of primary significance.

The experience of the Special Prosecutor for Nursing Homes, the Office of Health Systems Management, and the Moreland Act Commission all indicate that unlawful or undesirable practices may continue under a not-for-profit corporation as readily as in a proprietorship. Indeed, the organization of a not-for-profit corporation creates new opportunities to receive supplemental government aids in the form of surplus food, educational equipment and aids, grants and other such subsidies which are not available to a for-profit corporation, and to conduct fund raising activities. In addition, the experience in the nursing home field has clearly shown that there is a danger of:

- * excessive salaries and perquisites to operators, including deferred income arrangements;
- * payroll padding with relatives and friends;

- * lack of arms length agreements with vendors and kickback arrangements;
- * lack of arms length agreements in the form of leaseback, rental or "sweetheart" arrangements with realtors, relatives or associates;
- * removal of amounts of money with inappropriate documentation such that it cannot be traced as to its appropriateness.

We have therefore suggested that if a not-for-profit corporation is to be established to operate Greenwood, both the operators of this corporation, as well as any other corporation that has a substantial financial interest in the facility (e.g., landlord), be able to withstand the closest scrutiny of their character.



Financing of Private Certified Schools
for The Mentally Retarded

To more fully understand the operations of The Greenwood Rehabilitation Center, Inc., and the potential state-wide applicability of some of the findings and recommendations set forth in this report, it is useful to summarize the different programs available for financing the care, habilitation, and education of the mentally retarded and developmentally disabled in the private schools. The cost of providing services may be reimbursable from a resident's own assets or those of responsible relatives, Social Security benefits, Education Department contracts, Medicaid funds and Supplemental Security Income (SSI) payments. While Greenwood does not avail itself of all of these sources because of the age profile of its resident population and its programs, nevertheless the State's overall financial contribution to a resident who pays it to the private schools is affected by programs offered.

The largest source of reimbursement for the private schools came into existence on January 1, 1974, when the Federal Supplemental Security Income Program took effect and replaced the State-administered program of Aid to the Aged, Blind and Disabled (AABD). In the AABD program, the federal government financed 50 percent of expenses with the State and localities sharing equally the remaining expenses. The SSI program is operated by the Social Security Administration and provides a minimum income for the aged, blind or disabled who have little or no income and resources. The program was designed with two objectives:

1. To transfer to federal rolls those persons who had been recipients of federal-state-local assistance payments as aged, blind and disabled.
2. To establish a nationwide guaranteed minimum income to the aged, blind or disabled.

Under federal law, the states had the option of supplementing the federal benefit and New York State chose to do so. Under State law, the rates established vary considerably for different residential settings and areas of the State [N.Y. Social Services Law §209]. The following summarizes for selected years the SSI benefit levels since 1974 for individuals placed in private schools for the mentally disabled.

	<u>Federal benefit</u>	<u>State supplemental</u>	<u>Total benefit</u>
January 1, 1974			
New York City	\$140.00	\$499.00	\$639.00
Suburban 1/	140.00	475.00	615.00
Rest of State	140.00	160.00	300.00
July 1, 1978			
New York City	189.40	482.90	672.30
Suburban 1/	189.40	458.90	648.30
Rest of State	189.40	143.90	333.30
July 1, 1979			
New York City	208.20	485.26	693.46
Rest of State 2/	208.20	461.26	669.46

Federal benefits for all areas increased 48.7 percent from 1974 to 1979. The State's contribution, however, decreased 2.8 percent for New York City and 2.9 percent for counties classified as Suburban, but increased 188 percent for counties included in the Rest of State classification.

1/ Includes Dutchess, Orange, Ulster, Sullivan and Westchester counties. Other counties such as Nassau, Suffolk, Putnam and Rockland counties were apparently omitted from the Suburban category as there were no private schools serving adult populations in these counties.

2/ Rest of State and Suburban are combined into single category.

The latter increase resulted primarily from a July 1, 1979 change which narrowed the wide benefit disparity between the Rest of State counties with those classified as Suburban. The combined State/Federal increases in benefits for the period are 8.5 percent for Suburban and 123 percent for Rest of State counties.

A second source of revenue for private schools is available for handicapped students under age 21 through contracts with the New York State Education Department. The students must have been determined to have been deprived of the benefits of public education because of a lack of appropriate public facilities [N.Y. Education Law, Article 89].

Payments for instructional purposes are made by the Education Department based on tuition charges per eligible pupil as determined by the Commissioner of Education and approved by the Director of the Budget. The State pays the major share of those costs for these privately administered programs that exceed the cost of educating pupils without handicaps. The local school district contribution consists of an amount equal to its per pupil expenditure for children without special needs plus a small portion of excess costs. Payments for maintenance (primarily room and board) of a handicapped child in a residential school are shared equally by the county of residence and by the State. Rates approved are based on budgeted costs submitted by the school and must be reasonable and allowable as defined by the New York Education Department.

A third potential source offered is authorized under Chapter 720 of the Laws of 1979, [N.Y. Mental Hygiene Law §§13.15, 13.16 and 31.07]. This recently enacted statute allows the Commissioner of the Office of Mental Retardation and Developmental Disabilities (OMRDD) to contract with providers furnishing services to residents of licensed OMRDD

schools for the mentally retarded, when such residents are over the age of 21 and are eligible to receive funding pursuant to N.Y. Social Services Law §209 (SSI provisions), at an amount not to exceed a total of \$900 per month when added to the current \$683.46 and \$659.46 (minus \$10 personal allowance) monthly private school SSI rates. The added monthly benefit, therefore, cannot exceed \$216.54 for New York City and \$240.54 for the Rest of State counties. The OMRDD Commissioner, however, is prohibited from contracting with any such facility found not to be in substantial compliance with the terms of its operating certificate and all rules and regulations that relate to the operation of the facility [N.Y. Mental Hygiene Law §13.15(c)(1)].

According to OMRDD records, as of December 31, 1979, there were 24 private schools for the mentally retarded in the State financed through SSI and/or Education Department contracts for tuition and maintenance. As of April 1980, none of those schools with adult clients (15 of 24) were providing services under the Chapter 720 program, although 3 were seeking contracts and 2 of these were pending final approval. The number of residents statewide in the private schools was 1,456. Forty-four percent, or 641, of these persons were under the age 21. The 56 percent of these residents whose age is 21 or over are usually supported through SSI payments, the funding mechanism used at Greenwood. Those from ages 18-21 could be on SSI if not considered a full-time student, but Greenwood had no residents in this category.

Department of Social Services' data show there were 957 persons in SSI pay status as of January 1980. Some 52 percent, or 504, of these recipients were located in New York City. At present benefit and recipient levels, the

total annual payments for SSI eligible residents in the private schools would be \$7.8 million. The actual cost to the federal and state governments, however, would be \$6.6 million, i.e., \$1.2 million federally financed, \$5.4 million state financed as SSI recipients had \$1.2 million of their own income. According to SSI regulations, any personal income of recipients is used to reduce first the Federal SSI monthly benefits and thereafter the State supplement to SSI. The primary type of such income is usually classified as "unearned." During January 1980, 674 of the SSI recipients had unearned income totaling \$113,656. The major source of this unearned income to some 522 of the 674 recipients was Social Security (Title II) Disability payments. Another 60 individuals had earned income in January totaling some \$2,000. To clarify, the following summary is offered:

(In millions)

Gross payments	<u>\$7.8</u>
Funded as follows:	
Federal benefit	\$2.4
Less: recipient income	-1.2
Net federal benefit	<u>\$1.2</u>
State supplement	5.4
Total SSI	<u>\$6.6</u>
Recipient income	<u>1.2</u>
Gross Payments	<u>\$7.8</u>

The total payment to operators of the private schools is somewhat less than the gross payment due to a \$10 per month personal allowance retained by the resident and an additional \$20 per month as an "income disregard" if the recipient had earned or unearned income. The estimated annual amounts retained by the residents given the above circumstances would be \$115,000 for the personal allowance and \$175,000 for the income disregard, totaling \$290,000 in

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personal income retained by the residents. The net payment to operators, therefore, under SSI would be \$7.5 million. This amount excludes potential additional revenue of \$2.6 million per year under the Chapter 720 program discussed above.

Tuition and maintenance support from the Education Department is difficult to estimate for OMRDD private schools because the data are summarized only on a nationwide basis for over 200 Education Department licensed schools. Nevertheless, applying the 1978-79 average per pupil charges of \$4,102 for tuition, and \$7,790 for maintenance to the non-SSI population results in an additional \$5.9 million in revenue to school operators.

In summary, net annual payments to operators of the private schools for care, rehabilitation and education has the following potential:

	(In millions)
SSI	\$ 7.5
Chapter 720	2.6
Education Department contracts	<u>5.9</u>
Total	\$16.0

There may also be contributions, fund raising and parent donations to private schools but these amounts are not readily determinable. However, if a client and facility become eligible for supplementation under Chapter 720, third-party liability for making payments cease. Payments to residents for personal allowances would be approximately \$290,000 per year.

Questionable Expenditures ^{1/}

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u> ^{2/}
J & R Equipment, Inc.	\$ 468	\$ -	\$ -	
New York Telephone	-	1,358	-	
American Express	8,428	26,559	10,989	
Consultants & Co.	-	5,317	2,813	
Dealer's Leasing Corp.	-	219	365	
Diners Club	2,048	1,147	362	
Eastern Airlines	-	1,866	-	
Executive Equipment Corp.	4,882	3,190	-	
Total Maintenance Co.	1,000	11,000	4,000	
Carl Simone, Inc.	10,000	14,112	-	
LaMagna Design & Decorating	9,984	-	-	
Alvin Adler, P.E.	-	2,782	-	
Charles Lobell (St. Augustine)	-	2,850	-	
C & S Construction Company	-	2,000	-	
Carl Simone	-	800	-	
Melmar Leasing (Wendy Simone Corp.)	-	300	-	
North American Van Lines (St. Augustine)	-	-	3,005	
AFCO Credit Corporation	-	-	19,632	
Craig Greiner (travel)	-	-	2,500	
Craig Thorn AJA	-	-	1,000	
Craig Greiner (St. Augustine)	-	-	900	
NY Islanders	-	-	1,048	
C & S Golf & Country Club	20,772	2,201	489	
Merrick Motors Sales & Service	3,068	1,047	-	
Gulf Oil	607	2,223	410	
Vans Garage, Inc.	5,721	463	-	
Myer Auto Repair, Inc.	-	-	1,053	
Wagner Construction	-	240	-	
Frank Paruolo	-	-	1,600	
Holtzman Carpet	-	-	864	
	<u>\$66,978</u>	<u>\$79,674</u>	<u>\$51,030</u>	
Less items classified on Appendix C as Loans and Exchanges	<u>39,200</u>	<u>42,872</u>	<u>38,515</u>	
Total	<u>\$66,978</u>	<u>\$36,802</u>	<u>\$12,515</u>	

^{1/} From scan of Purchase and Cash Disbursement journals.

^{2/} Calendar year 1978 not scanned in all areas as was previous three years.



Checks Drawn to the Order of/or Issued at Request
of Principals or Related Parties ^{1/}

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
Sam A. LaMagna	\$ 30,133.29	\$ 68,324.70	\$ 20,974.00	\$ 8,700.00
Gerald LaMagna	722.58	280.70	-	-
LaMagna Design and Decorating	1,963.45	-	-	-
Carl Simone, Inc.	307,652.33	30,500.00	23,513.28	32,191.46
Carl Simone	28,175.15	26,763.91	3,986.31	-
Theodora Simone	503.50	2,606.45	3,000.00	3,000.00
Elaine Simone	55.13	-	-	-
Thomas R. Graf	1,162.58	.43	-	-
S. Greiner	36.72	559.55	-	-
J. Rychweart				
St. Augustine	-	8,368.52	440.00	-
Craig Greiner				
St. Augustine	-	-	17,061.47	3,900.00
Craig Thorn				
St. Augustine	-	-	3,000.00	-
Security National Bank	12,906.68	13,092.82	1,817.76	-
General Motors Acceptance Corp.	898.92	374.55	-	-
Ellenville National Bank	199.25	-	-	-
National Bank of No. America	5,060.89	-	-	-
The Associates, Inc.	-	532.85	900.60	900.60
John P. Maguire				
Time Sales	6,712.25	16,946.72	12,699.89	-
Citibank	-	2,425.36	14,383.48	5,894.72
AFCO Financial	-	2,123.35	15,153.29	17,190.02
Total	<u>\$396,182.72</u>	<u>\$172,899.91</u>	<u>\$116,930.08</u>	<u>\$ 71,776.80</u>
Less checks charged to loans and exchanges account	<u>73,426.83</u>	<u>124,006.64</u>	<u>70,131.59</u>	<u>39,794.47</u>
Total	\$322,755.89	\$ 48,893.27	\$ 46,798.49	\$ 31,982.33
Less rent payments prior to November 7, 1975 property sale	<u>282,000.00</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total ^{2/}	<u>\$ 40,755.89</u>	<u>\$ 48,893.27</u>	<u>\$ 46,798.49</u>	<u>\$ 31,982.33</u>

^{1/} From Cash Disbursements journal.

^{2/} Checks issues and charged directly to expense accounts.

Office of The State Comptroller: Other Reports
on Private Schools for The Mentally Retarded

On March 18, 1976 a report was filed by the Office of the State Comptroller, Division of Audits and Accounts (No. NY-ST-77-76) concerning private schools for the retarded. Rather than focusing intensely on one school, it reviewed records for all 28 existing at that time and visited 11. However, unlike the instant study, the Comptroller did not undertake financial review either of the schools' operations or of the schools' owners.

Nevertheless, it is significant that the report of the Comptroller came to many of the same conclusions and made many of the same recommendations as are made here.

The major findings and recommendations of the Comptroller's report may be summarized as follows:

1. Lack of regulations prescribing operating standards, services and coordination of the schools' resources;
2. Generally, schools serve the higher functioning mentally disabled and some provide merely custodial care;
3. Lack of programs to encourage discharge to more independent living;
4. No standards of admission, services provided or discharge;
5. No routine inspections or certifications, and gross lack of inspection staff (18 of 28 schools lacked a valid operating certificate);
6. Overcrowding at almost all schools, substandard physical plan at many schools; and
7. Overpayment of SSI monies.

The Office of the Comptroller has conducted other audits of some private schools for the mentally retarded

pursuant to contracts into which these schools had entered with the N.Y. Department of Education. The findings of these studies again confirmed:

- inflation of equity value through transfer of ownership;
- inflation of costs through lack of arms length transactions;
- potential for kickback schemes to go undetected;
- non-allowable costs used to inflate contract rates;
- excess profits by operating beyond licensed capacity.*

* See, Comptroller's Audit Reports, Nos. NY-CL-61-77 (Margaret Chapman School); AL-CL-49-77 (Gra-Mar); and AL-CL-50-77 (Rhinebeck).

See also, "Private Proprietary Schools for the Retarded in New York State," by Paul R. Dolan, Executive Director of One to One (1350 Avenue of the Americas, New York, NY 10019). Draft Report, November 15, 1977.

Responses to the Commission Report
on Behalf of The Greenwood
Rehabilitation Center, Inc.

In following its standard policy, a draft of the findings pertaining to Greenwood was sent to Sam LaMagna, President of The Greenwood Rehabilitation Center, Inc., to provide an opportunity to comment, criticize and correct any statements contained in it. The draft report was transmitted on September 12, 1980 and asked for response by October 6, 1980. On October 6, 1980 a response was received from Mr. LaMagna's attorney, Joseph P. Hoey, on behalf of the Greenwood corporation and other separate responses were included; one from Lawrence B. Lesser, CPA, for the Greenwood corporation during the years which the Commission audited, and another response by an attorney, Anthony J. LaMarca, on behalf of Carl Simone, former co-owner and currently an employee of the Greenwood corporation.

In addition to these written responses, Attorney Hoey and Mr. LaMagna requested a meeting with the members of this Commission and their Counsel to discuss Greenwood's written response in more detail. This meeting was held on December 5, 1980 and, inter alia, Attorney Hoey vigorously criticized what he believed was a failure of the Commission's auditors to meet with and discuss its findings of "questionable expenditures" with Greenwood's accountant, Lawrence B. Lesser. In addition, Attorney Hoey questioned the use of the figure of \$2.7 million as the appraised value of Greenwood as a school by the Commission, even though it came from an appraisal performed for the owners of Greenwood in 1975 pursuant to the sale of the land and buildings.

Subsequently, the Commission was contacted by Mr. Hoey who informed us that the Commission was correct on the appraisal values and that he had not seen a copy of the appraisal before and simply relied on such information verbally provided by his client. Mr. Hoey also confirmed that Accountant Lesser now admitted meeting with Commission auditors but still disputed that the auditors requested documentary substantiation of Greenwood's questionable or poorly documented expenses.

In order to avoid any ambiguities or inaccuracies that might result from this confusion, the Commission invited Mr. Hoey to submit any additional information which was now available from Greenwood's accountant. These materials were submitted, and affected some, but not all, of those unexplained corporate and personal expenses; this report has been modified accordingly.

The three written responses on behalf of LaMagna, Lesser and Simone are quite lengthy and will be summarized below. However, the Commission will make the full texts available for inspection at reasonable times, and in an appropriate manner upon request. The Commission rebuttals to the responses follow in brackets.

Response of LaMagna

- I. Assignments of the \$110,500 second mortgage on Greenwood of Carl Simone to Arawak Trust Company (Grand Cayman Island), then to Christine Ltd. (Grand Cayman Island), then to Theodora Simone (mother of Carl Simone).

[Response on behalf of Greenwood et al is discussed at supra, pp. 13-16 of this report.]

II. As discussed above, Greenwood was subsequently given a third opportunity (in addition to Commission auditors meeting with Greenwood's accountant and in these written responses) to submit documentation to explain questionable expenses. This report has been modified in light of these later submissions.

III. LaMagna protests the judgment of this Commission that his salary and perquisites, and those of other officers and employees, are excessive in light of other full-time employment which they held and vague services performed for these monies. LaMagna recites his salaries mostly for years earlier than those of the Commission audit: \$700 (1971); \$4,850 (1972); \$24,000 (1973); \$41,000 (1974); and, \$40,328 (1975).

[To the extent that these salaries pre-date the audit years, they are not relevant. Nevertheless, except for 1971 and 1972 which were years before Greenwood operated as a licensed school, these salaries are still substantial where he held other full-time employment. Additionally, there was no mention of any perquisites, loans or other monies paid from 1971 to 1975, which were found to be substantial in addition to salary for the audit years (1976-1978)].

IV. Greenwood is currently paying off the accumulated overpayment of SSI monies.

[The Commission is seeking to verify this with the NYS Department of Social Services and the Federal Social Security Administration.]

- V. Greenwood alleges that maintenance of residents' personal allowance funds in non-interest bearing accounts was authorized by OMRDD.

[This Commission's report acknowledges the authorization by OMRDD but notes that OMRDD policy is not in conformance with federal law and regulations and has formally recommended that OMRDD rectify this policy. LaMagna claims that this practice was "verified" by the Social Security Administration, but he supplied no evidence of this.]

- VI. LaMagna claims that a resident's personal allowance money is only expended for services and activities each individual actually receives; there are no rote or routine charges upon individuals for services if they refuse to participate in an activity or receive a service.

[The Commission has testimonial and other evidence that residents were taken for bowling, whether or not they wanted to bowl or in fact did bowl. Transportation charges were deducted routinely whether or not a client requested and received transportation services. Charges for "leisure time activities" were also deducted routinely in addition to charges for picnics, ball games, and other special events. Greenwood withheld residents' own personal allowance money in order to use it as a reward for conduct and tasks performed at Greenwood. This is patently improper and Greenwood has agreed to cease this practice.]

VII. Census of Greenwood: Consistently in non-compliance with approved population maximum. LaMagna claims that this issue was a subject of continuous negotiation with the Department of Mental Hygiene (and later OMRDD), and a maximum census was never agreed upon.

[While it is true that Greenwood requested on numerous occasions that its authorized census be increased, the Department of Mental Hygiene never contradicted its authorizations contained in the 1972 or 1976 (temporary) operating certificates to Greenwood for a maximum population of 179. Greenwood's continual violation of this license provision was noted by DMH and OMRDD and Greenwood was instructed to comply with its license by decreasing its population.]

Response of Lesser (CPA)

I. Lesser denies that he ever met with Simone "for the purposes of altering the corporate books to reduce sales tax" or that he "ever caused the books to be altered."

[This Commission has not undertaken the task of resolving the apparent conflict between the sworn testimony of the manager/comptroller (See supra, pp. 21-26) with this exculpatory denial. The Commission will refer this matter to the appropriate State agencies, the NYS Department of Taxation and Finance and the NYS Department of Education, State Board for Public Accountancy.]

II. Lesser admits that in 1975 he did not render a certified opinion on Greenwood's accounts.

[Pursuant to 8 N.Y.C.R.R. §29.10(a)(1)(c) and §29.10(a)(3), a certification was required.]

III. Lesser contends that the valuation of Greenwood at \$2.7 million by the Flynn Appraisal Service was not actual value, but prospective value with a greater population and improved facilities and physical plant. Lesser contends that it would be less if the facility were not used as a school.

[The Commission simply disagrees based on its own review of a copy of this appraisal, which clearly states the current value at \$2.7 million and \$3.3 million with improvements discussed therein. And, as stated above, Greenwood's attorney, Joseph P. Hoey, has informed the Commission that he agrees with its reading that Greenwood was appraised at \$2.7 million in 1975.

While Lesser's point that this valuation would be less if the facilities were used for purposes other than a school could hypothetically be true, it might also hypothetically be worth much more if this once bustling Catskill, N. Y., area were to enjoy a resurgence as, e.g., if casino gambling were legalized in New York State. The real value of the buildings and property are obviously related to their actual use and income generation. And here the generic use has been constant for almost a decade.]

Response of Simone

(made by his Attorney LaMarca)

- I. The claim is made that the "character and fitness" of Simone is "entirely irrelevant and should therefore be deleted from your final report."

[Simone was an owner, co-owner officer and highly paid consultant to Greenwood. Additionally, he and his corporations did substantial business with Greenwood. From the beginning of these licensed schools, DMH regulations have mandated that a determination of character and experience of all incorporators and directors be made and approved by the Commissioner in writing. From all files available to the Commission, no evidence has been found of the submission of Carl Simone's name to the Commissioner for approval.]

- II. The claim is made that the C & S Golf Course, upon which the Teamster's Pension Fund loaned it and Carl Simone \$4.5 million, was worth \$6.5 million and not \$2.6 million as reported.

[The Commission based its statement on discussions with attorneys for the U.S. Department of Labor who have investigated this issue, as well as reports of an audit of the golf course listing the value at \$2.6 million. In any event, if the golf course were indeed worth much more than its mortgage, there would be little need to litigate the insufficiency of collateral as occurred in this matter. The property could be sold and the entire mortgage (as first lien) could be satisfied.]

III. The explanation is offered that Simone's testimony in the golf course foreclosure proceeding that Greenwood's value was \$100,000.00 referred to "book value."

[While the Commission would not dispute this figure with this subsequent qualification, it is misleading when it is realized that the question asked of the Simones sought to elicit the actual value of the Simones' assets if liquidated to satisfy the personal obligation of Carl Simone on the \$4.5 million Teamsters Pension Fund mortgage. This book value figure should be compared to the 1975 sale price from Carl Simone, Inc., to Greenwood, Inc., of \$700,000 and the appraised value of \$2.7 million, in order to have a more accurate reflection of market value.]

IV. The allegations of the golf course manager/comptroller that Simone ordered the corporate books altered to reduce sale tax are denied on his behalf.

[As with CPA Lesser, the Commission has referred this matter to the NYS Department of Taxation and Finance.]

V. Attorney LaMarca also notes that his client, Carl Simone, has not been charged with or indicted for any criminal violation and that, even if he were, he would be entitled to a presumption of innocence.

[The Commission agrees with this statement.]

Copies of this report are available in large print, braille, or voice tape. Please call the Commission for assistance in obtaining such copies at 518-473-7538.

The Commission on Quality of Care for the Mentally Disabled is an independent agency responsible for oversight in New York State's mental hygiene system. The Commission also investigates complaints and responds to requests concerning patient/resident care and treatment which cannot be resolved with mental hygiene facilities.

The Commission's statewide toll-free number is for calls from patients/residents of mental hygiene facilities and programs, their families, and other concerned advocates.

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