

# ARSON-FOR-HIRE

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HEARINGS  
BEFORE THE  
PERMANENT  
SUBCOMMITTEE ON INVESTIGATIONS  
OF THE  
COMMITTEE ON  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
NINETY-FIFTH CONGRESS  
SECOND SESSION

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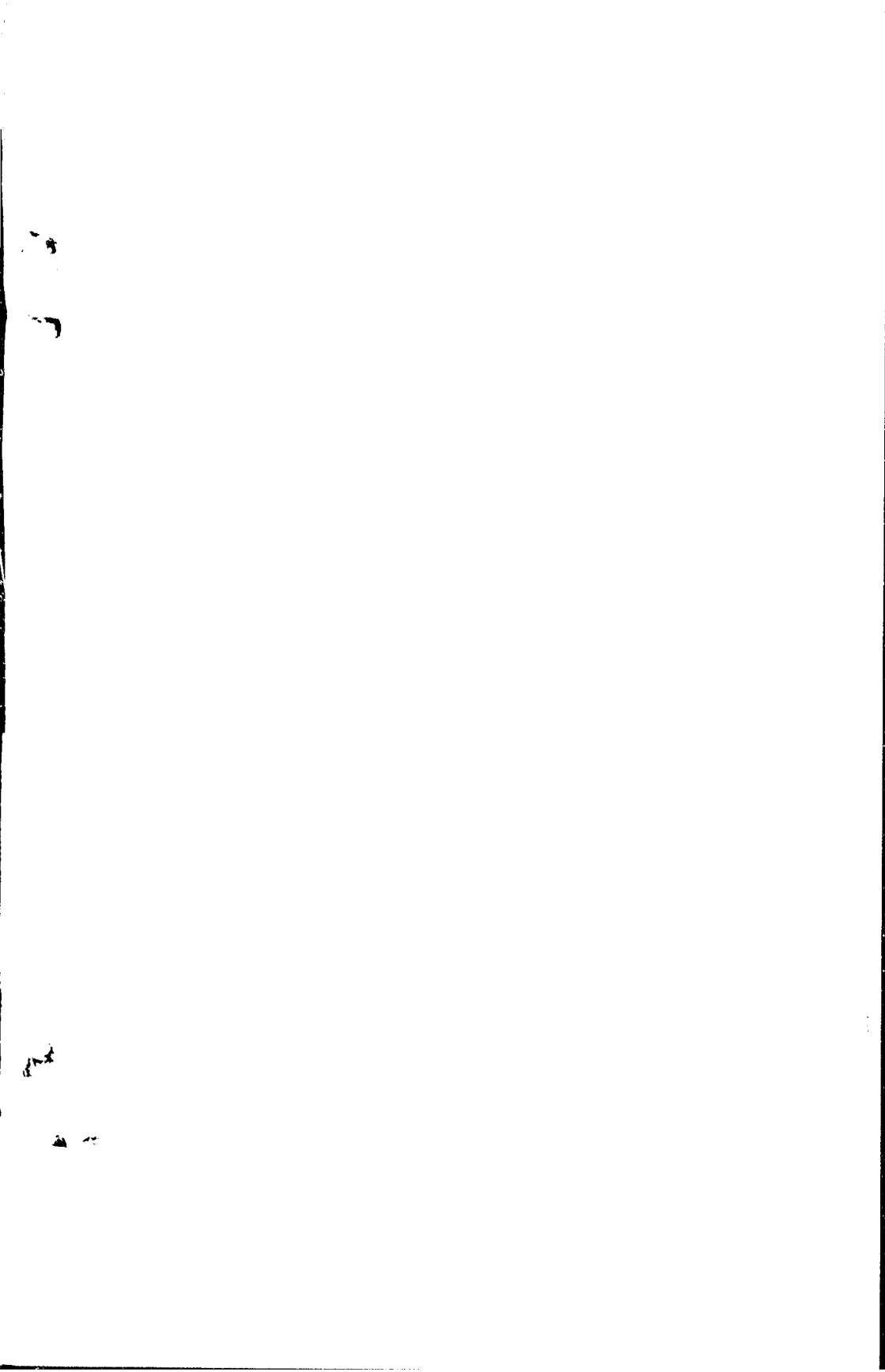
AUGUST 23 AND 24; SEPTEMBER 13 AND 14, 1978

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Printed for the use of the Committee on Governmental Affairs



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U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1978

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## CONTENTS

---

	Page
Appendix.....	398
Testimony of—	
Benson, C. Neil, Chief Postal Inspector, Postal Inspection Service.....	371
Byrd, Hedy, arson victim.....	143
Carter, Joseph.....	85
Clark, George, Pacific coast vice president for claims, Cravens, Dargen & Co.....	134
Davis, Richard J., Assistant Secretary, U.S. Department of the Treasury.....	371
Ewert, Ronald, acting executive director, Illinois Legislative In- vestigating Commission.....	198
Gregg, James M. II., Assistant Administrator, Law Enforcement Assistance Administration.....	327
Hampson, Thomas, senior investigator, Illinois Legislative In- vestigating Commission.....	198
Hill, Eleanor, strike force attorney, U.S. Department of Justice.....	109
Hogue, Eades, strike force attorney, U.S. Department of Justice.....	109
Jimenez, Gloria M., Administrator, Federal Insurance Administration.....	212
Keefe, Robert L., Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice.....	327
Krogman, John G., Acting Director, Bureau of Alcohol, Tobacco and Firearms.....	371
McMullen, James, director of security investigations, Farmers Group, Inc.....	128
McNamara, Joseph D., chief of police, San Jose, Calif.....	182
Mikeska, Leonard, chief arson investigator, Houston, Tex., Fire Department.....	170
Monachino, Angelo.....	36
Moor, Donald W., Jr., Assistant Director, Federal Bureau of In- vestigation.....	327
Nesvig, Gordon, attorney for Michael Smith.....	9
Peterson, Elsa, arson victim.....	143
Reilly, Frank, Chief Actuary, Federal Insurance Administration.....	212
Smith, Michael (an alias).....	9
Stein, Lester, Deputy Chief Counsel, Internal Revenue Service.....	371
Williams, William E., Deputy Commissioner, Internal Revenue Service	371
Willis, Joe (an alias).....	67
Zolbe, Paul, Director, Uniform Crime Reports Section, Federal Bureau of Investigation.....	355

## EXHIBITS

	Intro- duced on page	Appears on page
1. Transcript of proceedings of the <i>State of Minnesota v. Michael Smith</i> , an alias (sealed)-----	14	(1)
2. Letter dated Aug. 22, 1978, from Philip B. Heymann, Assistant Attorney General, Criminal Division, U.S. Department of Justice, to Senator Charles Percy re Angelo Monachino-----	43	43
3. Affidavit of Angelo Monachino (sealed)-----	44	(1)
4. Report dated Sept. 21, 1973, from Alcohol, Tobacco and Firearms Bureau (sealed)-----	74	(1)
5. Judgment by the State of Minnesota against Dr. Louis Graca, June 9, 1977-----	146	147
6. New York City Division of Fire Investigation Reports dated Feb. 23, 1977, and May 5, 1978-----	161	162
7. Affidavit of Rosetta Elizabeth Boyd-----	161	166
8. Chart—"Houston Incendiary Dollar Loss"-----	181	181
9. Chart—"Houston Incendiaries"-----	181	182
10. A report by the Illinois Legislative Investigating Commission entitled "Arsons"-----	203	(2)
11. Letter dated Aug. 29, 1978, from Patricia Roberts Harris, Secretary of Housing and Urban Development, to Senator Charles H. Percy, with attachments-----	221	222
12. Letter dated Aug. 29, 1978, from Patricia Roberts Harris, Secretary of Housing and Urban Development, to Senator Abraham Ribicoff, re GAO report entitled "Arson for Profit: More Could Be Done To Reduce It"-----	221	249
13. Letter dated Sept. 12, 1978, from Ted V. Rodgers, Federal affairs officer, Nationwide Insurance Co., to Senator John Glenn, re arson-----	267	268
14. Memorandum dated Aug. 2, 1978, from Office of the Directors, Federal Bureau of Investigation, re investigation of arson matters-----	339	340
15. Catalog of publications and articles relating to arson and other crimes, compiled by the National Justice Reference Service-----	342	(2)
16. Publication entitled "Arson and Arson Investigation, Survey and Assessment" from the National Institute of Law Enforcement and Criminal Justice-----	342	(2)
17. Report entitled "Arson Control—A Review of the State of the Art with Emphasis on Research Topics" by Stephen J. Tauber, dated May 1978, prepared for the National Institute of Law Enforcement and Criminal Justice-----	342	(2)
18. Report on Arson Workshop July 25, 1978, conducted by the National Institute of Law Enforcement and Criminal Justice-----	342	(2)
19. Computer printout listing more than 100 LEAA arson-related projects-----	342	(2)
20. Report by the FBI entitled "Assaults on Federal Officers 1977"-----	350	(2)
21. Report by the FBI entitled "Bomb Summary 1977"-----	350	(2)
22. Article entitled "Getting Arson Under Control" by Neal R. Peircce, from the Washington Post, July 23, 1978-----	353	353
23. News release by the Law Enforcement Assistance Administration, June 4, 1978, re release of study on arson-----	368	368
24. GAO report dated Apr. 5, 1978, re arson-for-profit-----	381	398
25. GAO report dated Apr. 24, 1978, entitled "Are Federal Programs Adequate to Deal With Arson Problems?"-----	381	407
26. GAO report dated May 31, 1978, entitled "Arson-for-Profit: More Could Be Done To Reduce It"-----	381	421
Proceedings of—		Page
August 23, 1978-----		1
August 24, 1978-----		63
September 13, 1978-----		139
September 14, 1978-----		211

<sup>1</sup> Sealed exhibit.

<sup>2</sup> May be found in the file of the subcommittee.

# ARSON-FOR-HIRE

WEDNESDAY, AUGUST 23, 1978

U.S. SENATE,  
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,  
*Washington, D.C.*

The subcommittee met at 10 a.m., pursuant to call, in room 1114, Dirksen Senate Office Building, under the authority of S. Res. 370, agreed to March 6, 1978, Hon. Sam Nunn (acting chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; Senator Lawton Chiles, Democrat, Florida; Senator John Glenn, Democrat, Ohio; Senator James R. Sasser, Democrat Tennessee; and Senator Charles H. Percy, Republican, Illinois.

Members of the professional staff present: Owen J. Malone, chief counsel; David P. Vienna, investigator; Stuart M. Statler, chief counsel to the minority; Joseph G. Block, general counsel to the minority; Jonathan Cottin, investigator to the minority; Ruth Y. Watt, chief clerk; Rosemary Steward, assistant clerk; and Stephanie Grill, secretary to the minority.

Senator NUNN. The subcommittee will come to order.

(Members of the subcommittee present at time of reconvening: Senators Nunn, Glenn, and Percy.)

## OPENING STATEMENT OF SENATOR NUNN

Senator NUNN. Today we begin hearings into "Arson-for-Profit," the fastest growing crime in the country.

It is also our costliest crime with losses estimated at \$2 billion a year and rising at a rate of 25 percent annually.

An estimated 1,000 people die each year in purposely set fires. Another 10,000 are injured. Clearly, the cost in human suffering is quite high.

Arson has an extraordinary economic effect. It causes insurance premiums to rise. And it removes buildings from the tax roles of our cities.

Arson is on the rise because it is, perhaps, the easiest crime to commit. Incendiary materials can be purchased anywhere. Matches are given away. Candles can also serve as timers.

In short, it is a crime that is difficult to detect. Prosecutions are few—only 1 in 100 accused arsonists is ever convicted.

There have been some successful law enforcement efforts in this area. Arson-for-profit rings have recently been broken up in Boston, Tampa, Chicago, Detroit, and other cities. But the crime is on the rise.

Recently we took testimony from Gary Bowdach, who confessed to his role in a number of arsons both for profit and for revenge. From his testimony and from that which we will take in these hearings, we will learn that organized crime figures are involved in arsons.

The difficulty in detection and the sparse convictions combined with the profit involved make arson an attractive crime to commit.

Insurance companies are bound to pay off, unless it can be proven that the insured was either directly or indirectly involved in the arson. The payoff is tax free in most cases.

By tradition and present practice, the insurance industry relies on trust. The companies trust their brokers to write policies that cover structures for their actual values—not amounts in excess of value. The companies trust adjusters.

Finally, and most importantly, the companies trust their customers. Arson makes policyholders and insurance companies the victims of their trust.

These hearings will demonstrate the widespread nature of arson for profit as a present and growing problem. As we begin our review, we have a number of questions:

1. What is the role of the insurance company in responding to arson?
2. What is the role of local law enforcement and fire protection efforts? Are they coordinating their efforts?
3. What is the role of the Federal Government? And what are its agencies doing about the problem?
4. Are present laws appropriate to meet the needs of law enforcement?

Therefore, the purpose of these hearings will be to determine the nature and extent of arson for profit, the effectiveness of our Federal, State, and local law enforcement efforts; the coordination of those efforts with fire prevention specialists; and the appropriateness of our laws.

Today, we will hear from three men who have set fires for profit. Tomorrow, we will hear from Government attorneys who successfully prosecuted a large arson conspiracy ring in Tampa. In addition, we will hear from a man convicted as a part of that conspiracy. We will also hear tomorrow from representatives of the insurance industry.

We had planned 2 days of hearings next week but they will be postponed because of the Senate recess. Those hearings will be rescheduled for another time when we will take testimony from persons who lost their apartments to fires that were apparently purposely set.

Also, we will hear from Illinois State officials, the chief of police of San Jose, Calif., and representatives of Federal agencies.

In opening these hearings, I want to note that the subcommittee inquiry into arson for profit was initiated by Senator Percy over 1 year ago.

The investigation has been carried forward principally by the minority staff under Senator Percy's very able direction with full support and cooperation from Senator Jackson, the chairman of the committee, myself as vice chairman, and our majority staff.

In other words, this set of hearings I think reflects the leadership of Senator Percy in taking a very vigorous lead in this very important area that has been neglected so long.

So I want to commend Senator Percy for his initiative and for his leadership in this investigation and I want to commend the minority staff, particularly Mr. Jonathan Cottin, principal investigator, and Mr. Stuart Statler, chief counsel to the minority, for their fine work in developing this investigation.

In view of Senator Percy's special interest in these hearings, in view of the fact that I will not be able to attend all of them all the time because of other conflicts, I will ask him to chair the hearings in my absence.

I won't be able to be here all of the time. I will be here as much as possible.

I want to commend Senator Glenn for his interest in this area. He has displayed an interest in it for a long time, has been very diligent on this problem, and I know Senator Glenn will participate to the maximum extent that his time permits.

Senator Percy.

### OPENING STATEMENT OF SENATOR PERCY

Senator Percy. Mr. Chairman, I want to thank you, first of all, and the other members of the subcommittee for the very strong support that you have provided to the entire investigative process and indicate to you my own deep personal interest in this matter.

We are all affected by personal experiences in our lives. Probably I have found this investigation, these particular hearings, of more deep significance and meaning to me than almost any others.

So many of the hearings that we have don't directly relate to our lives but I know my two young children in the middle of the night were routed out of our home with a fire that started in the air-conditioning system and filled the house with smoke. In another 5 minutes, we would not have gotten out.

We go through the concern then that we have had about the safety of the family. I couldn't help but think of that every single time as a member of the Banking and Urban Affairs Committee of the Senate when I had gone through areas in the South and West Side and some parts of the North Side of Chicago-Newark-Detroit, certainly in Watts, in Los Angeles and seen building after building gutted by fire, how it was always my impression in years past that most of these fires were simply caused through carelessness or poor building construction or something of that type.

But as our investigative staff worked for several months in this area, as investigators from this staff have gone into New York, into Florida, Chicago, Minnesota, and California, as they have gone to low-income areas, depressed areas, some of the investigators have indicated to me that it is an infrequent visit that they will make that they do not see smoke rising from some part of the ghetto.

Some building has been set on fire and we now start to see the pattern that it is not just a matter of carelessness, it is not just a matter of building construction or faulty wiring. But it is the conscious effort of someone to put a torch to those buildings and burn them down for the profit they can make out of it.

When you talk to the residents, as we will in these hearings later, in September; talk to the people who have actually been burned out, you get a deep feeling of the fear and the concern.

This also probably affects every American family and every one of the 90 million dwellings in this country because we all know the experience, increasing, escalating inflationary costs in insurance coverage.

Many times it is extraordinarily difficult for someone to even be covered by insurance in certain areas of very high risk. So today when the subcommittee begins 4 days of hearings on the subject of arson for profit, it is a problem of immense proportions and it has drastic consequences of two sorts.

First, arson for profit engulfs thousands of urban businesses and residences each year—laying waste to the social and economic framework of inner-city life.

In 1976, arson losses cost insurance companies \$2 billion and claimed 1,000 lives. It is increasing at the astounding rate of 25 percent a year, according to experts.

Second, arson for profit drives up insurance premiums, a cost we all bear. Each time an arsonist gets away with insurance fraud, he robs every American fire insurance policyholder just as surely as if he had stolen money on the street at gunpoint.

The alarming arson loss statistics tell us something else: If the increases continue, billions of dollars in property tax revenues—now taken for granted by our major cities for funding essential services—may be lost in the rubble.

These hearings will focus public attention on this problem. Unless steps are taken soon to remove the incentive from arson, a wave of big city mayors will be trooping through Washington, seeking Federal handouts to make up the diminishing property tax bases brought about by the all-too efficient work of professional torches.

When we see the hard-pressed conditions of many cities and we realize that every time we see an abandoned building after a fire, that building is off the tax rolls. And the burden is shifted to the other property owners.

The subcommittee's inquiry into arson for profit began more than 1 year ago. At that time, we asked the General Accounting Office to conduct a comprehensive review of current Federal programs dealing with the prevention, detection, and prosecution of arson crimes.

Federal law enforcement agencies have done almost nothing to determine the severity of the problem or to lay down a coordinated strategy to cope with it.

The Federal Government has also been woefully deficient in providing assistance to worthwhile State and local antiarson programs. Despite the growing need for such programs, the Law Enforcement Assistance Administration has chosen to ignore requests for funding assistance, while putting out press releases announcing its concern.

We felt it best to send our concerns to GAO, that particularly independent investigative branch of the Congress to verify the suspicions that we had developed ourselves.

The GAO reported that only one-tenth of 1 percent of LEAA's \$2 billion in local assistance funds have gone to arson control in the

past 3 years. This response is ludicrous in light of the frightening human and financial losses resulting from arson each year.

Furthermore, the GAO study indicates that State-operated FAIR plans, which the Federal Government oversees, may actually encourage arson for profit and consequent urban decay.

This is not a record to be proud of. While the Federal Government has been twiddling its thumbs, greedy arsonists have been setting fires, and whole neighborhoods and communities in some of our major cities have been ravaged.

And those that are hit the hardest--the inner-city poor--cry out for relief from ever-mounting insurance premiums. Some can't get insurance at all. Some of the victims are left without their lifelong possessions, homeless, and spiritless.

Over the next few days, witnesses will help us gain a better understanding of the lucrative business of arson for profit. Experienced arsonists will tell us how a torch practices his craft, and how he learned that craft.

[At this point Senator Chiles entered the hearing room.]

Senator Percy, Federal prosecutors and participants will tell us how arson conspiracies actually operate, with the paid assistance of insurance adjusters, real estate agents, businessmen, and even fire department officials.

Other witnesses will demonstrate how this terrifying crime can be committed over and over again by the same group of people, in brazen contempt of helpless law enforcement officials. Getting away with arson is as easy as striking a match.

Most alarming is the involvement of organized crime. Although some arsons are the work of loners, a great many result from the furtive and clever scheming of well-run criminal conspiracies.

In the course of the subcommittee's hearings earlier this month on organized crime in south Florida, the key witness Gary Bowdach, told of his participation in several arsons authorized by national crime syndicate figures.

Mr. Bowdach's testimony confirms suspicions that syndicated crime families, viewing arson as a low-budget, low-risk enterprise, have taken up the torch with a vengeance.

But syndicate involvement is not the only source of organized arson for profit. We also find speculators, landlords, and insurance and fire officials who band together to form local arson rings.

These rings are every bit as greedy, unscrupulous, and downright vicious as their crime syndicate counterparts.

Too often, arson is viewed merely as a financial and property crime. Little attention is paid to the fright, physical injury, and long-lasting emotional scars suffered by its innocent victims.

In these hearings, we will hear the stories of some arson victims, all driven from their homes in panic by intentionally set fires. They will give us some idea of the human devastation which arson wreaks, and some feeling of the fear people have in areas that have been designated as target areas by arsonists.

The hearings will also focus on the failure of the Federal Government to spearhead a concerted nationwide effort against arson.

Further neglect by Federal agencies would be a slap in the face of the American people. And, simply continuing to overlook the prob-

lem will not make it vanish. We will want the heads of the major Federal agencies responsible for dealing with arson to tell us what actions are currently underway to attack this national menace.

Hopefully, these hearings will result in more vigorous Federal attention to a problem that has been overlooked and underestimated far too long. Unless the Federal Government takes command of this situation with all possible haste, the fate of our inner cities may soon be beyond our control.

I certainly want to express deep appreciation to Senator Nunn and to Senator Jackson and to my distinguished colleagues for their assistance in arranging these hearings and the full support they have provided and the full support that has been provided by majority staff to the minority staff that has carried a large part of the work of this investigation.

Senator Glenn, who last December chaired hearings which did much to illuminate the impact of arson on local communities throughout the Nation, is due for a special commendation.

I want also to express my deep appreciation to Senator Nunn, majority staff, whose support has been essential. Particularly, I want to mention Owen Malone, majority chief counsel; Keith Adkinson, assistant counsel; and David Vienna, for their outstanding professional contributions.

On the minority staff, under leadership of its chief counsel, Stuart Statler, I want to especially single out Jonathan Cottin, investigator to the minority, who has over a year's period been the person primarily responsible for organizing and giving focus to these important hearings.

I wish to extend special thanks to Stephanie Grill, Adele Linkenhoker, Mark Hager, and Richard Shapiro, all of whose efforts have been invaluable.

The General Accounting Office, whose three reports and the lack of Federal interest in arson for profit led to the investigation, has also made, Mr. Chairman, a major contribution to these hearings.

Senator NUNN. Thank you very much, Senator Percy.

Senator CHILES?

Senator CURTIS. I have no opening statement.

Senator NUNN. Senator Glenn?

#### OPENING STATEMENT OF SENATOR GLENN

Senator GLENN. Thank you, Mr. Chairman, these hearings represent great progress in what has been a difficult struggle to alert the American public in the Federal bureaucracy to the fact that we have a raging criminal epidemic on our hands that is taking lives and it is causing injuries and it is costing every homeowner higher and higher insurance premiums and undermining every housing and community development effort that we undertake.

Insurance companies have testified before us that up to 25 percent of every person's home insurance bill goes to pay for arson. They admit that those figures are speculative.

They don't know what the actual figures are. I am deeply perplexed and troubled that the Federal Government, our Federal law enforcement apparatus is unwilling and apparently unable to recog-

nize and effectively deal with the fact that arson for profit is the Nation's fastest growing crime. The attitude that some of our Government officials have taken with regard to this is simply intolerable and disgraceful.

This morning, and over the next several days, the Nation will hear and see flagrant practitioners of what is tragically now known as the easiest crime. Yet, at the very moment we are receiving this testimony, Federal and local agencies are compiling major crime statistics that do not even include arson.

Let me be even more specific. Arson is not even classified as a major crime by the FBI. Since it is not, its frequency and growth, rate of arrest and conviction, and so on, have never even appeared in the quarterly national crime reports that are used as the national monitors of criminal activity.

I think it is important that these FBI crime reports do include these because they have become the social indicators for the American public of what is going on with regard to crime. They help us determine our crime fighting priorities and the deployment of our anticrime resources.

Let me give a couple of examples. If someone steals a car, drives it out into Maryland out of the District, that is carried as a part 1 crime. But if someone torches this building, while we are in it this morning right now, and burns it right down to the ground with us in it, you know what it is classified as? Along with curfew violations, it is classified as though they picked up a "wino" across the street for public drunkenness. That is how arson is classified by the FBI at the present time.

I would submit the first step in successful crime fighting is not to hide this fastest growing crime from the American public. This is one of many reasons why arson for profit thrives as an easy crime. It is hidden from our crime reports. Victims in the past were often poor people with no voice, while practitioners and conspirators were often so-called well-connected prominent citizens and respected public officials.

You will see I think from testimony that will be given while these hearings are in progress of some of those prominent citizens, respected public officials, who have been caught and have participated in arson.

So arson should not be hidden anymore. It is spreading to the comfortable suburbs and rural areas, and now the public is demanding action while the Federal Government, according to GAO and my own hearings, does not even have adequate arson statistics.

Mr. Chairman, we made up our minds, sometime ago, last summer as a matter of fact, to try to rip this phony facade of respectability from this whole area. The FBI's criminal activity statistic system must be changed to reflect arson. LEAA must improve its disgraceful lack of support for local antiarson efforts, some of which have been very successful at the local level. They must support training for improved investigative and prosecutorial skills for local officials. These must be stepped up and insurance practices must be reviewed and tightened.

Over the past year, I have introduced legislation or made legislative comment in each one of these areas and we are working now on the possibility of improved legislation for the next session of Congress.

I have made a list of these efforts part of the record, as well as a copy of a letter that I sent yesterday to Attorney General Griffin Bell, requesting prompt and aggressive efforts on his part to revise the FBI's criminal statistics gathering to reflect arson as a major crime.

Mr. Chairman, it comes as a shock to most people to learn that we have about 10,000 injuries per year, 1,000 deaths due to arson, insurance losses that we can't even estimate for sure, but are estimated at somewhere around \$3 billion a year.

In the south Bronx of New York; 3,000 buildings destroyed by arson, 3,000 fires per year intentionally set, that is 250 a month, about 7 or 8 a day. In my home State of Ohio, our arson people estimate it has gone up over the last few years to over 50 percent. This is a general pattern across this country.

Mr. Chairman, we intend to further pursue several lines of questioning with our witnesses during these hearings which were developed at the December hearings we held on this same subject and in those hearings we learned that arson for profit is not only growing rapidly in volume and frequency, but developing sophisticated criminal spinoffs also.

For example, in New York City, there is a practice called "mango hunting" where buildings are torched and fire resistant fixtures, pipes, tubs, basins, are removed and sold to building contractors.

Similarly, in Detroit a ring was uncovered where property owners arranged for fires, then shared both inflated private insurance proceeds and Federal renovation funds with so-called repair and renovation companies.

In other inner cities arson has been used to drive out competing supermarkets and retail stores, leaving a poor-quality, high-priced monopoly business or simply nothing at all.

Mr. Chairman, there is a battle that must be fought and I look forward to our next 4 days with great anticipation. Perhaps we could put tongue in cheek and say what we develop here may light a fire under our Federal law enforcement agencies, too.

Thank you.

Senator NUNN. Thank you very much, Senator Glenn, for all of the work you have done in this area.

Our first witness this morning will be Mr. Michael Smith. This name is an alias. Senator Percy and I have agreed with the witness' request that he be permitted to use an alias, but I do think we have an obligation to tell you that it is an alias.

Our witness has requested that no pictures of any kind be taken of his face or profile. So have the other two witnesses who will testify about arson this morning.

The rules of procedure of the Permanent Subcommittee on Investigations provide:

A witness may request on the grounds of distraction, harassment or physical discomfort that during his testimony television, motion pictures, other cameras and lights should not be directed at him, such request to be ruled on by the subcommittee members present at the hearing.

My own view of this is that this is a reasonable request under the circumstances. The witnesses are concerned about harassment, concerned about their future, and in view of the fact they will be testifying about specific events in which some of the participants have not

been brought to justice, these witnesses could well be targets of retribution if their faces are shown. Wide dissemination of their pictures would increase the risk they face as cooperating witnesses.

So my view is that these requests should be granted. I will ask if there are any objections by anyone on the subcommittee to the request being granted under the Senate rule. If not, by unanimous consent, all three witnesses this morning will be accorded that privilege.

The news media were very cooperative in the Gary Bowdach hearings in complying with this rule. We are going to try the same method and hopefully we will have your full cooperation. Captain Jenkins will make sure that there are no cameras turned toward the witnesses as they enter the room. There will be no pictures taken by anyone in the room, not just the media, and before we bring our witness in, I will ask you, Captain Jenkins, to let me know when all the cameras are turned in the position that will comply with this ruling.

We will bring the first witness in. Mr. Smith is accompanied by his attorney, Mr. Gordon Nesvig.

I am going to ask the witness to take the oath before the cameras are turned to their position. Mr. Smith, would you please stand? Do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SMITH. Yes, sir.

Senator NUNN. Mr. Nesvig, will you have occasion to testify, or will you simply be in an advisory role?

Mr. NESVIG. Mr. Chairman, it is my understanding from talking to Mr. Cottin that there would possibly be some questioning of me as part of this.

Senator NUNN. You don't object to taking the oath? You understand it applies only to your formal testimony.

Mr. NESVIG. I have no objection.

Senator NUNN. Do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. NESVIG. I do.

#### TESTIMONY OF MICHAEL SMITH AND GORDON NESVIG

Senator NUNN. Thank you. The cameras can resume.

Mr. Smith, before testifying, if you will pull that microphone up. I think if our staff could get his microphone in front of him, it would help.

Mr. MALONE. We have a little problem here, Mr. Chairman.

Senator NUNN. Why don't you just slide the chair over? You are going to have the problem with the cameras on this side.

Are you satisfied, Captain Jenkins?

Before we begin your testimony, Mr. Smith, we want you to understand your rights as a witness and your obligations as a witness before this subcommittee. You have sworn to testify truthfully before this subcommittee, and you understand that you have an obligation to tell the truth and to in every way be frank and candid with the subcommittee. Is that your understanding, Mr. Smith?

Mr. SMITH. Yes, sir.

Senator NUNN. You also understand that anything you say here that could incriminate you, you have the right not to testify on that subject and you have the right to invoke your constitutional rights? You understand that right as a witness?

Mr. SMITH. Yes, sir.

Senator NUNN. You also understand you have a right to have an attorney with you this morning. You do have an attorney with you. Is this attorney representing you here this morning?

Mr. SMITH. Yes, sir.

Senator NUNN. You understand before you answer any question, if you would like to, you have the right to consult with your attorney?

Mr. SMITH. Yes, sir.

Senator NUNN. And you understand your obligations as a witness to tell the truth, the whole truth, and nothing but the truth before this subcommittee?

Mr. SMITH. Yes, sir.

Senator NUNN. Do you understand your rights and obligations as a witness?

Mr. SMITH. Yes.

Senator NUNN. Does counsel have any question?

Mr. NESVIG. None at this time, Mr. Chairman.

Senator NUNN. I want to make it clear that during the course of this as the counsel is advising his client, that is a legal capacity, we will make it very clear and I think anyone asking questions should make it clear when you are testifying as a witness.

Mr. NESVIG. Yes.

Senator NUNN. These informal questions on procedure are not questions to you as a witness, but questions to you as an attorney.

Mr. NESVIG. Yes.

Senator NUNN. We also want to thank both Mr. Smith and his attorney for their cooperation with the subcommittee.

At this point I am going to defer to Senator Percy for the opening round of questions.

Senator PERCY. I think it would be well for Mr. Smith to give an opening statement at this time, but because of the situation that occurred with Mr. Bowdach, I would like particularly the attention of the members of the press.

We have no doubt that what occurs today will be reported accurately. We have an extremely high regard for the relationship the working press has had with this committee and the rules under which we operate, but I would like to, in behalf of the members of the subcommittee and the Chair, make a request of you and your editors across the country. We ask that you do not increase the risk of these witnesses, each of whom has specifically asked this committee under the rules of the subcommittee that they be protected in regard to pictures of themselves.

We ask you not to increase that risk by running old photographs of our witnesses on the air or in newspapers. By doing that, as Senator Nunn said on August 3, you make our job more difficult and you add to the danger of cooperative witnesses. The faces of these witnesses are not known to people throughout the country.

The purpose of the rule prohibiting photographs of witnesses was intended to protect witnesses who are cooperating with this subcom-

mittee so that they could continue their lives with some degree of security. We do not seek to tell you what to publish or broadcast. All we can ask is that you consider the request carefully.

Senator NUNN. I would like to echo that. I think it is a point well taken. Of course, we can control the cameras in this subcommittee. We are doing the best we can on that. We cannot control old files, and I think the fact that some members of the media ran pictures of Mr. Bowdach that they got out of old files has resulted inevitably in the witnesses here today requesting to be known as aliases.

We have two of them that are doing that. So the result of that is less information, not more information. I think it is inevitable. But we do very much appreciate the cooperation of the news media, and I think Senator Percy's request is reasonable and I think it will result in the long run in more information being available to the American public, not less.

Senator Percy. Thank you, Mr. Chairman.

Mr. Smith, if you would proceed to identify yourself and tell us what you can about your life, what got you into this business and then members of the subcommittee will question you. Could you speak directly into the microphone? It is going to be a little hard to hear you.

[At this point, Senator Sasser entered the hearing room.]

Mr. SMITH. Mr. Chairman, I am from Minneapolis, Minn. In May of 1977, I pled guilty to a charge of attempted conspiracy to commit theft by trick. This charge was brought as a result of a building I burned for a fee in 1973. I am testifying today to advise the subcommittee about the reasons why paid arsonists exist, and why a good arsonist can operate free of detection, able to set as many fires as he wants without being caught unless he is very careless.

A professional arsonist today is in a seller's market. Many businessmen and speculators who know their way around can call an arsonist to provide instant liquidity of their property the way the average person telephones a reservation to a restaurant. It is just that easy.

Senator Percy. If I could ask if members of the media or audience cannot hear, if you will raise your hand, I will so indicate to our witness. Virtually everyone in the back of the room is having great difficulty hearing. So let's try to adjust the seating so we speak right into that microphone.

Those of us in the Senate have to speak up so everyone can hear us in the back of the Senate, and if you would try to do that, we would appreciate it.

Mr. SMITH. I became an arsonist almost by happenstance. In 1965, I was employed by a contractor, then rebuilding the Nicollet Mall, a downtown shopping district in Minneapolis. I had had a fairly active nightlife and was evicted several times from apartments I rented for rowdiness. Tired of eviction notices, and being able to afford it, I began looking for a small frame home to buy. I met a realtor in Minneapolis. I discussed with him the possibility of his selling me a small house. But he suggested an alternative, under which I would live in one of the houses he owned, rent-free, and use my experience in construction to refurbish the house for future sale by the realtor.

He agreed to pay me for my time and for the material used. For a period of time, I would move into a house owned by him, fix it up while living there, then he would sell it and I would be paid for the

time and materials I used to repair the house. I lived in these houses rent-free all the while. Through my association with him, I began to meet other real estate brokers in the Minneapolis area.

My first arson job resulted from a conversation with a real estate broker who was complaining to me that he had made a mistake in the purchase of a small home. I told him that doctors bury their mistakes and suggested that a broker could burn his mistake. I was not thinking of myself. However, this broker offered me \$500 if I would do the job and I did it.

The building burned to the ground. My abilities in this field were quickly recognized by other businessmen and speculators who hired me to burn down homes and offices throughout the Minneapolis area.

I established two requirements before I would go set a fire. One was that I would get a down payment of 50 percent of my fee for the arson before it took place. Generally, my fees were between \$500 and \$1,500, depending on the size of the home or business. I always insisted in being paid in cash, in small bills, none of which could be numbered consecutively. Generally, the payoffs would be made in bars and coffee shops.

My second requirement was that no person could be living in the structure at the time it was to be burned. To my knowledge, no one was every hurt from any fires set by me.

In one case, my requirement that no one be living in a house when it was to go up caused a problem for the landlord of a 26-unit apartment house. When he identified the building to me before I was to burn it down, I looked through it and found that people were living in it. I told him that I wouldn't burn it down. Subsequently, he told me that everyone had moved out of the building. I went back and checked it out and found that he was right. During my tour of the basement, I found a rubber tire, which he had apparently burned. The black smoke from the fire apparently billowed through the building, scaring the tenants out. I discovered the charred tire when I was about to set the apartment on fire. While I did not approve of the landlord's tactic, I nevertheless set the apartment house on fire. It burned to the ground.

My standard operating procedure, once I had received a down payment from the landlord, was to obtain a key to the structure to be burned and then drive to the building in the afternoon. To avoid suspicion as I entered the structure, I would carry a dropcord over one shoulder and perhaps a tool case in my hand so that neighbors would not be suspicious of anything. I would appear to be simply a construction worker doing some refurbishing.

Once inside the building, I would check the location of heat vents and ducts, and where the furnace and hot water heater was. I would also note where space heaters, if any, were located. Having cased the place, I would leave after about 10 minutes, turning over in my mind the best way to burn it to the ground.

One of the procedures I used was to remove the safety switch from the gas hot water heater, then turn the water heat as high as it would go. I would snuff out the pilot light. This would force a continual flow of unlighted gas to move throughout the building. When the gas reached the pilot light on the kitchen stove or in the furnace, an explosion would occur that would level the building.

Another method I used was to pour flammable liquids into the heat ducts of buildings. This liquid, which did not evaporate, would ignite the building, thoroughly destroying it.

These were the methods that I would employ when I would return at night to set the fires, having figured out after my afternoon visit the best way to set the fire. I was able to time the fires to go off hours after I had left the building. In this way, I would never be caught. I was able, by roughly measuring the cubic feet in the structure, to estimate how long it would take for the leaking gas to reach a fire point.

There are numerous torches in Minneapolis. They operate almost at will to this day. Some assignments come from real estate brokers who are the owners of many small duplex and fourplex apartment houses. They generally approach the arsonist directly and employ them for the torch jobs.

The burning of industrial-type buildings and buildings with low investment-high insurance policies is a little more involved. Here, the owners go through middlemen who contact the arsonist. In this way, it is harder to link the building owner with the fire. However, some owners do not seem to worry if they have numerous fires. They simply say that they own so many buildings that it is not unusual to have several fires in a short time. These people are generally close to, if not connected, with organized crime. I estimate that there are about five middlemen in the Minneapolis area, and I believe these middlemen are still operating.

The principal reason businessmen gave me for wanting their structures burned was money. Some claimed they could no longer afford to pay their mortgage loans. Some of these businessmen are marginal operators, who have to pay extremely high interest rates, often dealing with loan sharks. Others were simply selling a bad investment to the insurance company.

Still others, perhaps the most in number, made a business out of it. They would buy a rundown piece of property for almost nothing, create several fictitious contracts for deed on it, obtain a high insurance policy supported by the last contract for deed, and burn it.

One of the reasons I was able to operate undetected for approximately 7 years in Minneapolis was because I was in the remodeling business, and had the appearance of having a legitimate reason to be in these buildings. Also, these buildings were usually in a part of town where nobody cared.

When I was finally caught in 1975, as I was about to set a fire, I had a long discussion with the Minneapolis Arson Squad. They refused to believe that I was able to set houses afire simply by removing the safety switch on a hot water heater, dousing the pilot, and then turning the gas up as high as it would go. This seemed to me to indicate their lack of sophistication in the arson field. They should learn a great deal more about how fires are set and have much better laboratory equipment. Detecting arson after the fact would probably not catch the arsonist, but it may assist an insurance company if they ever had enough nerve to deny a claim.

During my discussion with the Minneapolis Arson Squad, I was told that I was suspected, but until my apprehension, they did not have enough evidence to arrest me. I had several nicknames, including "the lightning twins," because the fire department didn't think any

one person could move so fast and set as many fires as I did in such a short period of time.

It is not as easy to get away with arson in every city as it is in Minneapolis. I remember on one occasion, swapping stories with another arsonist who worked in Chicago. He told me that arson investigations there were much more sophisticated than they were in Minneapolis. He told me that Chicago arson squad investigators would even be able to tell him what brand of gasoline he had used in a fire. In Minneapolis, this doesn't happen.

I have learned my lesson and will never again go back to a life of crime. However, I want to warn the subcommittee that there are hundreds, possibly thousands of arsonists out around the country who know what I know. They know that insurance companies are quick to pay off on losses, even if arson is suspected.

They know that some greedy businessmen will stop at nothing to get their money out of a failing property and think nothing of hiring a torch to do it. It has also become a big business for some. They know that law enforcement agencies, for the most part, are ill-equipped to detect an arson, much less put together enough circumstantial evidence for an arrest or a conviction.

They know that in many States laws discourage the sharing of information between insurance companies and law enforcement agencies concerning possible arsons. In many States, including Minnesota until I was caught in 1975, and my attorney got the charges dismissed, the arsonist commits no crime.

All of these things combined to make the life of an arsonist an easy and lucrative one.

Unless the Federal Government begins to pay more attention to this growing crime and begins to invest some manpower and expertise in discouraging it, it will become as common as any street crime, with a resulting increase in loss of life and property. It will make insurance on urban core city property very expensive, if not impossible to buy.

Mr. COTTIN. Mr. Chairman, I would like to enter in the record as exhibit No. 1 the transcript of the hearing in which Mr. Smith testified.

Senator NUNN. What State was that in?

Mr. COTTIN. Minnesota.

Senator NUNN. Without objection.

Senator PERCY. That will be a closed file.

Senator NUNN. It will be exhibit No. 1, closed exhibit No. 1.

[The document referred to was marked "Exhibit No. 1" for reference and is retained in the confidential files of the subcommittee.]

Senator NUNN. I think we ought to give a brief reason when we close these exhibits. Would you give us a reason on that? I will ask staff to give a reason for a closed exhibit.

Mr. COTTIN. The transcript of the hearing identifies the witness by his real name and we have granted him the right to testify under an alias.

Senator NUNN. Fine, without objection.

Senator PERCY. Do you want to finish your testimony? You have finished all your testimony?

I would like to go back over a few of the parts of your testimony for clarification and would urge my distinguished colleagues, Mr.

Chairman, and Senator Chiles and Senator Nunn, who are familiar with this process, if they feel that we ought to amplify another point, just break right in.

At the bottom of page 3, you describe a technique that you used. You would remove the safety switch from the gas hot water heater, turn the hot water heater up as high as it would go, then snuff out the pilot light.

This would force the continual flow of unlighted gas to move throughout the building. When the gas reached the pilot light on the kitchen stove or in the furnace, an explosion would occur that would level the building.

Is this a technique that you learned yourself or were you taught this technique by someone else, Mr. Smith?

Mr. SMITH. No one ever taught me anything. I just learned by experience.

Senator PERCY. You learned by experience and your own background, but you had never heard that that technique had been used? What were the particular advantages of it?

Mr. SMITH. If you do it right, you can turn the hot water tank up the day before very hot. When you get back in the building, you can turn it back down to a normal temperature. It will be hours before the thermostat calls for more heat and the gas will start flowing, hours again before the liquid gas or fumes reach flash point.

Senator PERCY. When you went back into the building originally, first to make certain there was no one living in it, second to just case the place, you would make whatever adjustments and determine what adjustments would be necessary. Could you, with reasonable accuracy, determine how long it would take before the explosion would occur and how far you would be able to get away when you returned at night to perform that operation and then left the building?

Mr. SMITH. I come within an hour of setting one off.

Senator PERCY. Pardon?

Mr. SMITH. I come within an hour of setting one off when I wanted it to go.

Senator PERCY. You could come within an hour so far as accuracy, so you would know how far you would be able to get away and about what time the property would explode.

You used the second approach: Poured flammable liquids into the heating ducts of this building and ignite the building, thoroughly destroying it. Is this a technique that you learned from someone else or developed it through your own experience?

Mr. SMITH. Some of the old buildings in the Twin City area don't have natural gas through them. They have been shut off. So you had to figure out something else to make those type work. I learned that myself, figured it out.

Senator PERCY. Are the techniques that you have developed, would you tell others about those techniques and do you think they are in greater, more widespread use now than they were when you entered the field?

Mr. SMITH. If they learned them, they learned them because they figured them out. I didn't talk to anybody. I was a loner.

Senator PERCY. You mentioned on page 5 the Minneapolis Arson Squad. Here is a squad of people devoting their entire lives not only

to firefighting, but to arson and the investigation of arson and yet they refused, as you said, to believe that you were able to set houses afire simply by removing the safety switch on a hot water heater.

In other words, you feel that they were very unsophisticated in the profession they were devoting themselves to; while on the other side of the fence, you had gained a great deal more sophistication in a relatively short period of time.

Are there many cities in this country that have levels of sophistication so low that the arsonist can outwit the so-called arson squads and are there many such cities in this country?

Mr. SMITH. There is a lot of them. You don't have to operate in the big city. There is little towns all around that you can work out; they don't have arson squads.

Senator PECK. At least Minneapolis had one and you say they were dumbfounded at the sophistication of the techniques that you have developed.

You mentioned in Chicago, a leading city in many ways, good and bad, but you mentioned here a high degree of sophistication, a higher degree of sophistication in our arson squad in Chicago and in investigators. We do pride ourselves in having an outstanding fire department.

For what reason in your judgment is Chicago much more sophisticated? Do they have much more practice or is it simply the size of the city; only a city that size can afford the trained, sophisticated arson investigators?

Did you happen to learn why they had such a degree of sophistication in this field?

Mr. SMITH. I really don't know why they can do it. This person that I talked to said they could tell whether it was Texaco, Standard or regular ethyl if you used gasoline.

They are getting pretty sophisticated when you can do that. I don't know whether it is true or not.

Senator PECK. We know we have a great many arsonists in Chicago. As the fire department develops a greater degree of sophistication, a greater ability to apprehend the arsonist, is it possible then that the arsonist will just move to cities where the sophistication is much less, and the risk that they are taking would be less itself?

Mr. SMITH. I think arson probably is just one step ahead of whatever you guys figure out. It is just not that tough.

Senator PECK. Do you happen to know if other cities that might be potential targets—the purpose of a public hearing, of course, is to alert the public officials and tell them as much as we can determine about this particular hazard.

Are there cities that you know of that might well be targets for the future or are targets now for arsonists for one reason or another?

Mr. SMITH. No. Like I said, I was a loner. I never talked to anybody. If somebody asked me, I excused myself.

Senator PECK. What cities can you name that you think, you personally, if you hadn't changed the course of your life, what cities could you, if you determined to stay in the same business, could go into with a degree of freedom and certainty that you could commit arson, get away, not be apprehended or caught?

Mr. SMITH. I probably—Nashville and Memphis, Tenn.

Senator PERCY. You would have no problem there?

Mr. SMITH. Probably not.

Senator PERCY. Plenty of targets. I wonder, because we have heard that in a sense arsonists are a particular breed of person and they get a big thrill out of doing it, they do it for the thrills in it, could you tell us about yourself, Mr. Smith?

Did you get a thrill out of setting fires or was it regarded as simply a business opportunity for you?

Mr. SMITH. I didn't get no thrill of burning somebody's stuff. It was done for business.

Senator PERCY. Strictly business?

Mr. SMITH. If I didn't, somebody else would.

Senator PERCY. Was your motivation purely financial or did you have any other reason?

Mr. SMITH. No; just all financial.

Senator PERCY. Over how many years did you set fires to buildings?

Mr. SMITH. About 7 years.

Senator PERCY. About how much money did you make per year from your arson activities in a good year or average year?

Mr. SMITH. It was a bunch, I didn't keep any records.

Senator PERCY. You didn't keep any records. You didn't pay any income tax, I suppose? [Laughter.]

You wouldn't want to list your profession I suppose.

Mr. SMITH. No, sir.

Senator PERCY. But do you have a feeling? You said it is a bundle or a bunch. Is there any kind of an estimate, rough estimate as to what your annual take was?

Mr. SMITH. I had a new car every year for sure.

Senator PERCY. Could you have made a great deal more without adding risk of getting caught?

Mr. SMITH. I turned a lot of work down that didn't look right to me or I didn't know the people well enough or the right guy didn't refer him. I turned a lot of work down.

Senator PERCY. The number of arsons you committed, could you give us that figure again, roughly in the 7 years that you carried on this operation?

Mr. SMITH. There again, I didn't keep records, but it is probably well over 100.

Senator PERCY. Over 100? How did you originally learn that arson would be a lucrative venture?

Mr. SMITH. I fell into it by mistake the first time and just when I started getting called, I checked it out and found there was no law to stop me. So I just kept on going.

Senator PERCY. Is it the kind of business where when you got into it, you were out looking for clients or were you actually recruited by clients?

Mr. SMITH. They called me. I never asked to do anything.

Senator PERCY. I wonder if you could tell us what mistakes you might have made early on and explain some of those mistakes and how you corrected them.

Mr. SMITH. I never made mistakes. There wasn't a one—

Senator PERCY. You never made a mistake?

Mr. SMITH. Every one went to the basement. I guess that is about as good as you can get.

Senator PERCY. As you have indicated, you received training from no one else. It was not the kind of business where you just sought training on the job.

Mr. SMITH. I don't know of any trade school for that.

Senator PERCY. Could you describe your degree of sophistication, at the time you entered the business until you were apprehended 7 years later? How had your job skills improved during that period of time?

Mr. SMITH. It took less time to walk through the building. I got better at it, like everyone else does with experience. I got more calls.

Senator PERCY. How did you go about improving your techniques?

Mr. SMITH. I normally do a lot of thinking and keep my mouth shut; just learn better that way.

Senator PERCY. You are not a very talkative witness. I will admit that. But you answered the questions and we appreciate it.

Having cased the building, typically how much time would it actually take before you could set up the fire?

Mr. SMITH. It takes 5 to 10 minutes to take the safety valve out of a hot water tank, however amount it takes to unlock the door and lock it back up when you leave.

Senator PERCY. In an average building, how long would you spend in the afternoon prior to setting the fire? Did you always set them at night?

Mr. SMITH. No. There was a couple of times I set them up to go at 2 o'clock in the afternoon. In some areas, nighttime is when everybody is on the street. So you don't want to have a front window hit somebody up alongside the head. There are some areas where they sleep daytime, work nights, party nights.

You have got to look at the area, look at the building. But there have been occasions when I was in Tennessee vacationing when the thing went off. I just did anything I wanted to with them.

Senator PERCY. Were you ever confronted with a situation because you had a standard that you would not set, torch a building if there was anyone living in it?

What if a building was designated for you to torch, there was no one living in that building, but the possibility of explosion and violent fire could cause a spread to other buildings where there were occupants? What did you do about cases like that?

Mr. SMITH. You can control how fast or slow they burn without any trouble at all. In Minneapolis, buildings we worked on were old, run-down tenement buildings and one thing and another and you take the roof off. All you had to do was to make the insurance company pay off total loss. You could set it up, just take the roof off.

Senator PERCY. Out of the more than 100 jobs that you set up, were there any where your concern was such that there may be danger to human life with the fire spreading, that you yourself alerted the fire department to the fire?

Mr. SMITH. I was pretty fussy of the ones I done. I know I never hurt anybody nor did I hurt anybody else's property other than maybe

scorch the fence or something, never intentionally endangered anyone's life.

Senator PERCY. You did indicate you could always, within an hour, determine when the fire would start? Could you describe to us what you did after leaving the building, after setting up for an explosion or fire?

Mr. SMITH. I would go home, go to bed.

Senator PERCY. You would go home, go to bed; a day's work had been completed and did you have any trouble sleeping?

Mr. SMITH. No.

Senator PERCY. No problem?

You said that the use of gas was your most common arson technique. Would the explosion actually release enough energy to almost instantly level the building or would the ensuing fire do most of the damage?

Mr. SMITH. I never used gasoline, not one time; natural gas.

Senator PERCY. This is just from a hot water heater, natural gas?

Mr. SMITH. Yes; natural gas, never used gasoline. That makes a lot of noise.

Senator PERCY. Would the explosion be the primary destructive element or was it the fire that followed the explosion that leveled the building?

Mr. SMITH. No. Usually you open the window, to get a chimney effect on the thing, and the gas would ignite so hot, there was always rubbish in these old houses; they would start burning everywhere at once.

It was never an explosion that would take a roof off or anything. I suppose there was a bang once in a while. Mainly the fire done the damage.

Senator PERCY. You wanted to take no chances, you wanted to be absolutely certain of the job. What is the fastest and surest method of burning a building up?

Mr. SMITH. I think heat with the electric we used worked the best. It was most accurate; you never know about natural gas. It is kind of tricky stuff sometimes.

Senator NUNN. I don't understand that. Would you mind repeating?

Mr. SMITH. The vents with the flammable liquid in them. Natural gas has a tendency to seep through windows, neighbors walk by, smells it, calls the gas department, shuts the gas off before it goes.

A gas company walks in, explodes in their face. I would say if I had my preference, I would use the heat ducts and rafters, insulation, depending on what I had to do.

Senator NUNN. What do you put in the heat ducts?

Mr. SMITH. Nonevaporating, very flammable, burns very hot; liquid.

Senator NUNN. How do you light that?

Mr. SMITH. You string a little bit, closets someplace where you can lock it up, depending on how long you want it to burn before it catches hold.

It burns down to it, traces it over to the heat ducts, a 10½ can is good for about 8½ hours.

Senator PERCY. When we generally think of arson, you generally think of someone running around a building with a can of gasoline, soaking everything, lighting it with a match.

What are the advances, techniques that have been developed over the more common technique of just pouring gasoline throughout a building and striking a match?

Mr. SMITH. I planned two or three of them in the last 2 or 3 years.

Senator PERCY. What?

Mr. SMITH. They planned them. With fumes through the doors, fumes in the basement, cans in his hand, that is very dangerous.

Senator PERCY. A lot safer than the method you used and the risk you might be taking, if you did it the more conventional way?

Mr. SMITH. Yes. You are 20 miles away, sleeping.

Senator PERCY. As I understand from your discussions with members of the staff, in Minneapolis, you burned primarily wood-frame buildings.

Is a brick or stone building much less susceptible to arson? Does that give you a feeling of security if you are in a stone or brick building?

Mr. SMITH. It might if you was living in it, but it wouldn't to me, because I can still get it. It has got to have some wood in it, wood roof, inner walls, whatever.

I can gut it out, take the roof off of it. The insurance company will not fix it if I do that.

Senator PERCY. Construction was no deterrent to you at all in the techniques that you used? Did you use the same or other techniques on brick-framed buildings?

Mr. SMITH. I can't remember, but the apartment house, that has lots of wood inside, lots of apartments, carpeting, stairways. It got so hot the walls did fall down before the fire department left.

Senator PERCY. Mr. Smith, is there any kind of a building that you couldn't burn to the ground that you have seen as you go around Washington? Do you see any buildings here that you couldn't just level and burn right to the ground?

Mr. SMITH. I couldn't put this building in the basement, but I would make you wish I wasn't in town. It could be gutted out.

Senator CHILES. The people can't hear.

Senator PERCY. Could you repeat that again?

Mr. SMITH. I couldn't put this in the basement, but I could do enough to it where there wouldn't be much left inside.

Senator NUNN. What do you mean by "put it in the basement"?

Mr. SMITH. So there ain't no walls standing; whatever they had, arsonist will fit in the basement.

Senator NUNN. You would cause the whole building to collapse into the basement so there is nothing above ground?

Mr. SMITH. That is a good job, if you do it that way.

Senator PERCY. We are in a marble building right now. This would just present a challenge to you, I am sure, but would it present an insurmountable problem? Would you hesitate for the right price to take this one as a torch job?

Mr. SMITH. It probably would depend on who told me to do it and what the money was, what they really wanted to accomplish out of it. I wouldn't guarantee to put it in the basement.

Senator PERCY. Do you think you could, given enough time to study the setup here, the structure of the building and so forth, that you could level the building?

Mr. SMITH. I would take the whole inside out of it without any trouble.

Senator PERCY. What led you to be apprehended in 1975? What mistake did you make then?

Mr. SMITH. I guess, like everybody else, you think you are good and you get sloppy.

Senator PERCY. Too cocksure, a little too certain that you could get by with it?

Mr. SMITH. There was no plan. I came back from vacation, come through by car, went downtown, had second thoughts; before I left the area I decided to go ahead and do it. Mistake No. 1.

Senator PERCY. When you ended your arson career, was the demand for arson in Minneapolis stabilized, or was the demand increasing or decreasing?

Mr. SMITH. It is worse today than it was 2 years ago; a lot more is happening today than 2 years ago.

Senator PERCY. In other words, it is a growing business. Has the number of paid arsonists in Minneapolis been on the increase or decrease, the number of people actually engaged in the business?

Mr. SMITH. I really don't know but what I read in the papers, but there are a lot more fires now that the arson squad claims was arson than there was when I was there. The jobs are getting sloppier, but they are still calling them arson.

Senator PERCY. Do you have any idea how many arsons, how many jobs may be set in a city like Minneapolis in a year? We can obviously, statistically, show how many fires there have been, but of those, how many would you estimate, have you any basis for estimating how many might be the job of arsonists?

Mr. SMITH. It would be tough to do because I don't follow that at all any more. I just left everything behind me when I made up my mind; I was tired of looking over my shoulder.

Senator PERCY. Were you a lone operator, entrepreneur, self-employed, so to speak, in this business, or did you have a syndicate behind you, or were you at any time a member of organized crime?

Mr. SMITH. I was a loner. I have always been a loner.

Senator PERCY. Always a loner?

Mr. SMITH. Always.

Senator PERCY. Do you know whether other arsonists in Minneapolis are as technically sophisticated and skilled in the crime of arson as you were—were there others that you would say would be peers with you in your profession, or would you say that you would be one of the better ones?

Mr. SMITH. I suppose I got to say I am one of the better ones. I am not proud of it.

Senator PERCY. In your statement, you said that you always received 50 percent of your fee in advance and the remainder of the fee after the fire. Is this sort of a standard procedure for arsonists, or is this simply a standard that you established for yourself?

Mr. SMITH. I kind of kept to myself, because I figure you can't go in the hole if the guy don't pay you. So you get what you can to start with. If they don't pay, you ain't out that much.

Senator PERCY. So that I can yield to my chairman, our distinguished colleagues, I just have one final question.

What kind of businessman would you set fires for? Were they affluent, well-respected businessmen in the community, or were they debt-ridden, hard-pressed business people, struggling property owners, perhaps on the verge of bankruptcy, or did you deal with both types?

Mr. SMITH. It was just both types; probably add another 10 or 12 to that, too—just everybody, they were just all walks of life.

Senator PERCY. In other words, it may be that presumed self-respecting business people saw it as a very lucrative way of making money for themselves and they did so, or it may have been an act of desperation on the part of someone who might have faced bankruptcy or otherwise?

Mr. SMITH. The way insurance companies operate, it just was lucrative to everybody.

Senator PERCY. Thank you very much.

Senator NUNN. Thank you, Senator Percy.

Mr. Smith, you mentioned you made a mistake in 1975 when you got caught. I wasn't sure about your answer. What mistake did you make?

Mr. SMITH. I made the mistake of going in the wrong neighborhood too late at night. That neighborhood don't sleep at night, they sit on the front porch, try to keep cool. There is no air-conditioning.

The other thing, when I was detected, I run. I should have stopped and told them.

Senator NUNN. What time of night was that?

Mr. SMITH. It was about 12 o'clock at night, hot, summer night.

Senator NUNN. Where was it?

Mr. SMITH. Minneapolis.

Senator NUNN. What kind of neighborhood?

Mr. SMITH. It was a rough neighborhood.

Senator NUNN. Who contracted you to do that job?

Mr. SMITH. I can't answer that.

Senator NUNN. You would rather not answer that?

Mr. SMITH. No. I won't answer that.

Senator NUNN. You were paid to burn down what kind of building?

Mr. SMITH. I think originally it started out to be a duplex, but it was converted into a single-family.

Senator NUNN. Why is it you are reluctant to tell us who paid you to do that job? You never told the law enforcement officials? Have you ever told law enforcement officials who paid you to do that job?

Mr. SMITH. I can't answer that. I don't remember if I told the law enforcement officers or not. But I am not here to mention any names today.

Senator NUNN. In other words, you don't know whether you told the law enforcement officials who paid you to do that job or not?

Mr. SMITH. I don't remember if it is on the record or not.

Senator NUNN. Who caught you? How were you apprehended?

Mr. SMITH. Apparently one of the neighbors seen someone go in this vacant, boarded up building, carrying two 5-gallon cans, and called the police. They come up without any lights on. I see them when they drove up.

Senator NUNN. You saw them when they drove up? Where were you in the building?

Mr. SMITH. I was all done, ready to leave, and I looked out the window to see how clear it was, and seen these two cars go up the street with no lights on. Of course, I bailed out the back way. That was a mistake.

Senator NUNN. In other words, you were in the building when you saw the car roll up?

Mr. SMITH. Yes.

Senator NUNN. You were about to go out the front door, or how were you going to exit before you saw the car?

Mr. SMITH. I was going out the front door. What I should have done was step out the front door, standing there working on the lock or something, because I could have covered up by being there without any trouble at all.

Senator NUNN. What you did instead was run?

Mr. SMITH. Yes.

Senator NUNN. Did you go out the back door?

Mr. SMITH. I think I bailed out a back window. The door was locked.

Senator NUNN. How did the police catch you?

Mr. SMITH. They chased me about a block. I am an old man. I can't run like they can.

Senator NUNN. They ran you down on foot?

Mr. SMITH. Yes.

Senator NUNN. So you actually were caught in the act of committing arson?

Mr. SMITH. No, I got caught setting it up. There was no fire that night.

Senator NUNN. Did you take the police back inside and show them what you had done?

Mr. SMITH. I didn't have to. They already knew what I was doing there.

Senator NUNN. How had you set that particular fire?

Mr. SMITH. Heat ducts were all set up.

Senator NUNN. What was going to ignite the fire? Did you have a candle?

Mr. SMITH. No; I walked to the front window to make sure things was kosher, because at that point I knew I hadn't done anything wrong. But once the candle is set, then the attempt was. Besides that, once it is set, I can't do anything about it unless I tell them.

Senator NUNN. In other words, you saw the police car coming up before you ever set the candle?

Mr. SMITH. Yes.

Senator NUNN. You decided not to set the candle?

Mr. SMITH. Yes.

Senator NUNN. But you had already poured flammable liquid into the heat ducts?

Mr. SMITH. Yes.

Senator NUNN. Did the police officers know that? Did they go in and investigate that?

Mr. SMITH. They walked in. They knew it was set up. They had run through some of it. The smell was there.

Senator NUNN. Did you confess?

Mr. SMITH. Didn't have to. They just hauled me downtown.

Senator NUNN. You pled guilty, did you not? I will ask the attorney a couple of questions.

You pleaded guilty to theft by trick. Is that right?

Mr. NESVIG. Mr. Chairman, if I could interrupt, for clarification, my client did not plead guilty to this charge. This charge was dismissed. The reference to the guilty plea in 1977 at the beginning of his statement relates to an offense that occurred prior to this offense where a building actually did get burned and an insurance company actually paid off on a policy.

Senator NUNN. Let me ask you a couple of questions, Mr. Nesvig, and I would ask you to consider yourself a witness on this and, of course, if we get into the area that you think would violate your attorney/client privilege, if you will say so, I will certainly respect that right.

But it is curious to me that a man who committed over 100 arsons would plead guilty to a charge of theft by trick. You are a criminal lawyer. Is that right?

Mr. NESVIG. Part of my practice involves criminal work.

Senator NUNN. You do it in what State?

Mr. NESVIG. In Minnesota.

Senator NUNN. What city?

Mr. NESVIG. Minneapolis.

Senator NUNN. What is the reason that Mr. Smith pleaded guilty to theft by trick when it was actually a crime of arson?

Mr. NESVIG. If I might elaborate a little bit, Mr. Chairman, when my client was arrested for this particular offense in 1975, he had made my job particularly easy by also confining his activities to buildings that were not occupied as homes. It may have been intended for homes, but they were either vacant buildings or business or commercial buildings, and the law in Minnesota at that time which covered arson of property other than a dwelling house where someone was actually living made the lack of consent of the owner a necessary element for the prosecution to prove.

In other words, to obtain a conviction for arson, the prosecution would have to prove beyond a reasonable doubt that my client burned this building without the consent of the owner.

In this particular case, I could look the prosecutor right in the eye and tell him my client torched that building but he did not commit arson, and the prosecutor knew I was right because the police investigation, they were suspicious of my client. They knew he was not a pyromaniac. They knew he was in it for business. They knew he not only had the consent of the owner but was paid to do it. And as a result, that particular charge was dismissed.

Senator NUNN. What you are saying in effect is that there was no arson under the statutes of Minnesota as they existed at that time, unless the prosecution could prove that the consent of the owner was not obtained by the torch?

Mr. NESVIG. That is right.

Senator NUNN. You are saying that you could have established that the owner actually not only gave his permission but was paying to have the building burned?

Mr. NESVIG. Mr. Chairman, criminal law, burden of proof beyond a reasonable doubt is upon the State and in order to prove lack of consent the State would have called the owner of the building in, have them testify under oath that they had not given the consent to have that building burned. He knew in his heart that that was not the situation. It would have resulted in the confrontation, I suppose, between the owner and my client, but the other factors involved in the case, he would not have been able to obtain a conviction. He would not have been able to prove that we did not have consent.

Senator NUNN. Was there any crime on the books of Minnesota at that time for an owner contracting someone to burn his own building for insurance proceeds or for profit?

In other words, had the owner committed a crime under the laws of Minnesota at that stage?

Mr. NESVIG. I am not sure. I believe possibly the owner may have committed a crime of defrauding an insurer, but in this particular building my client was apprehended in setting up. No claim had been made for insurance because it didn't get far enough.

He was simply caught in the building after some fuel oil or flammable liquid had been poured around.

Senator NUNN. So at that stage nobody had really committed a crime?

Mr. NESVIG. That is correct.

Senator NUNN. What about the building that was actually torched by your client on which he pleaded guilty to theft by trick? Was the owner of that particular building also involved in the contractual relationship?

Mr. NESVIG. The owner of that building was involved I believe through a middle man in a contractual relationship with my client. The owner in that situation was charged with an offense.

Senator NUNN. The owner was charged but the torch was not?

Mr. NESVIG. My client was also charged in connection with that event, but through various negotiations and some cooperation we entered a negotiated plea to attempted theft by trick which is the one you referred to.

Senator NUNN. So really as far as the arson is concerned, the prosecution under the law of Minnesota at that time had to make a choice between prosecuting the owner and the torch, there wasn't any way they could make a case against both of them. Is that basically correct?

Mr. NESVIG. It would get awfully thin against the torch, depending on their contractual relationship. My client got paid irrespective of what the owner's relationship might have been with the insurance company or reasons the owner might have had for wanting to destroy the property.

Senator NUNN. Has that law been changed?

Mr. NESVIG. Mr. Chairman, the law has been changed to remove the lack of consent as a requirement to prove arson. However, as with any activity that is high paying, low risk, but frequently even if the arson

squad determines it was arson, the arsonist has long since left by the time that determination is made.

Any situation or activity which involves high profit, low risk, it still blossoms. The activity is going, as you have heard, at least as strong as it was at that time.

Senator NUNN. The particular loophole enabled your client to not be charged in that particular case, that has been changed now?

Mr. NESVIG. Yes. In Minnesota it has.

Senator NUNN. No longer does the prosecution have to prove that the torch did not have consent of the owner?

Mr. NESVIG. That is right. If they catch the torch, at this point the torch has committed arson.

Senator NUNN. Mr. Smith, let me ask you one other question. You have established yourself here in your testimony as being a professional in the field of arson and you testified you committed at least 100 arsons.

Do you have any suggestions now that you have in your own words turned the corner or changed your style of life? Do you have any suggestions as to what law enforcement can do, and what fire departments can do to curb the kind of arsons that you have participated in?

Mr. SMITH. Part of the biggest factors is the insurance companies own fault, because you can't buy the amount of insurance you want on these buildings. They stuff it down your throat, replacement costs, and you buy them for \$5,000, you spend \$2,000, you got \$7,000 in them.

You try to buy \$10,000 worth of insurance, they stuff you with \$25,000. It just makes it very profitable.

Senator NUNN. In other words, you are saying the incentive here is because insurance companies are overinsuring the buildings?

Mr. SMITH. That is part of it. It looks pretty good. You sell the building for 14 when you spent 7 on the thing, it is pretty good profit. But it is a lot better when you can sell it for \$25,000. They pay cash, no closing fees, no nothing.

Senator NUNN. You are saying that is one of the big factors, there is a profit in it because the building is insured for more than the owner has in it. Is that right?

Mr. SMITH. You can't insure a building for what you got in it. They want replacement costs in all cases, and it is really you have to buy insurance for what you want in the Twin City area.

Senator NUNN. In other words, the insurance companies require you to insure for replacement value rather than cost?

Mr. SMITH. Yes.

Senator NUNN. What can law enforcement or fire departments do to improve their capability to apprehend, convict people in occasions of similar activities?

Mr. SMITH. I thought they already did it by putting teeth in the law, but apparently they didn't put enough teeth in the law.

Senator NUNN. What kind of teeth?

Mr. SMITH. There are people not getting prosecuted for doing it that are getting caught. There are still loopholes along the way, somewhere along the line.

Senator NUNN. Can you give any suggestions to this committee, Mr. Nesvig? You are a lawyer. Looking to changes in the law, particularly at the State and also Federal level, what can be done in terms of governmental effort in this country to curb the growing crime of arson?

Mr. NESVIG. I think, as my client indicates, insurance companies ought to be encouraged to insure more at market value rather than replacement costs.

As far as methods of obtaining an arrest of an arsonist, it is very difficult. These people generally have a good reason to be in the building. It can be set up a long time in advance. The arsonist is usually not there when the fire occurs. I really don't know what to tell you, as far as how to make detecting or apprehending an arsonist more easier.

We have got a lot of laws that provide very severe penalties. That doesn't stop the criminal activity, particularly when the profits are high.

Senator CHILDS. What about the insurance companies paying the claims? In these situations where, as you say the prosecutor knew that the owner obviously was paying, you know it is a torch job; buildings just don't burn accidentally to the basement usually unless drafts have been created, certain things.

What if the insurance companies just said we are not going to pay this claim? Then the owner has to come sue the insurance company. Then he exposes himself to being deposed and questioned and cross-examined, and a jury has to make that determination.

Why don't the insurance companies refuse to pay? I would like to hear that, Mr. Smith, too.

Mr. NESVIG. Senator, first of all, when a fire occurs in a building, why, the owner claims to not know anything about it. Even if the arson squad were to determine that the fire were set, the owner would simply say, I don't know why it was set. Either somebody did it as a vindictive act or kids were playing in the building and wanted to watch one go. I have no idea, but my policy says if that building burns, unless you can prove I had something to do with it, the insurance company has to pay him.

So arson, this is what I was saying earlier, the simple fact an arson squad can determine that arson was involved in setting up a fire, that doesn't negate the insurance policy and it doesn't, they can suspect a crime was committed, but they don't have anybody that did it. And the insurance companies, it is a competitive business, and they are balancing a lot of publicity from a trial as being a hard collector, hard company to—because companies don't want to pay its claims against revenues from selling a lot of insurance and a lot of premiums. So it is a case where insurance companies, unless they can be pretty sure they have got some evidence that the owner set something like that up, it is pretty hard pressed not to pay the claim.

Senator CHILDS. Mr. Smith, in the jobs that you were doing, do you know whether most of those jobs were called arson by the fire department afterward? In other words, in the accident or the fire report, would it say arson or would they be listed as some other cause?

Mr. SMITH. I would suppose that they were all called arson, although there was everything that I had done wasn't in my file. Even though they—my file was thick even though they had only caught me on one or two. They just suspected me, looked like my work. So I really don't know.

Senator CHILDS. But you think most of them were probably called arson?

Mr. SMITH. They were probably all called arson, whether they figured they were intentionally set or whether the kids accidentally dropped a cigarette or what. I can't answer that.

Senator CHILES. Again, from what you knew about and the jobs that you set, do you know of any cases where the insurance company refused to pay, or did they pay in all of those jobs?

Mr. SMITH. I believe they refused to pay on one, and to this day I don't believe it has ever been paid.

Senator CHILES. On one job?

Mr. SMITH. One job that I did.

Senator CHILES. Why did they refuse to pay in that one?

Mr. SMITH. It was about three contracts to bring the value up higher, changed hands, a few days before that and it was a binder on the insurance, the insurance man hadn't gone out to look at the building, to verify the value, one thing and the other. The whole deal just smelled bad.

Senator CHILES. In a lot of the jobs that you did, do you know whether the owners took out additional insurance just before you would do the job, or took out insurance to start with, or took out additional insurance just before?

Mr. SMITH. That area could be bounced all over. A lot of people had buildings a couple of years. When the tenant moved out, left a mess, they would just give me a call, take care of it.

Sometimes they buy it, load it up with a bunch of junk, paint cans, to look like work was being done on it, so the insurance company would think the guy bought it for \$5,000. He has already started these old material cans. They are just dumped all over the place.

Senator NUNN. Senator Glenn?

Senator GLENN. Thank you, Mr. Chairman.

Mr. NESVIG. I would like to add one additional thing to Senator Chiles' question with regard to insurance companies paying.

Another method that is used by someone seeking to make a profit in this field is to put a lot of financing. In other words, borrow money against building with loss, take out the insurance. There has to be a loss payable clause to these various financial institutions.

The owner has got his money already and whether or not the insurance company pays him any additional over the financing on the building, he really doesn't care.

Of course, the banks and contract holders, assuming they are all legitimate, would get their money regardless.

Senator GLENN. Mr. Smith, why are you testifying today? What is your motivation?

Mr. SMITH. I got subpoenaed to come here.

Senator GLENN. Subpoenaed to come here?

Mr. SMITH. Yes, sir.

Senator GLENN. Let me drop that for a minute.

Do you know any arsonists that operate as a group; in other words, as a business together where there would be several people in the same arson committing firm so to speak?

Mr. SMITH. People that own buildings or people that actually burn?

Senator GLENN. No; the actual arsonist himself, the people in the same business that you are in. Do any of them operate as groups?

Mr. SMITH. It is hard to answer. It would be a mistake if they did. There may be, I don't know.

Not to my knowledge, no.

Senator GLENN. You think most people operate singly?

Mr. SMITH. That is the right way.

Senator GLENN. Why were the owners of these buildings never called in? I don't understand that. Either one of you can answer that. Where there was suspicion of arson, why were the holders of the insurance policies never brought in?

Mr. SMITH. I would suppose that insurance companies didn't want the publicity, or maybe they just really believed some kid got in there, burned it accidentally. I don't know.

Mr. NESVIG. Senator Glenn, from what I have seen in the arson investigation files, they generally did obtain a statement from the owner of the building and he usually came off pretty clean. So they tried to investigate it, but like I say, it is awful tough after the fact to come along and get the owner to admit something that would imply he had any prior knowledge that the fire was going to take place.

Senator GLENN. Did you ever fail to burn a building that you contracted for?

Mr. SMITH. If I contracted it, got down payment, I never missed. Except for the one that I was caught at that never went off.

Senator GLENN. Did you pay the man back on that one?

Mr. SMITH. He didn't ask.

Senator GLENN. Do you think it is possible to predict in certain communities the numbers of fires that would be set in a particular area?

Mr. SMITH. In a rundown area, there is an awful lot of setting, an awful lot of honest people out there doing it, can't afford to fix them, move into a high-rise with their brother-in-laws, whatever. That would really be tough to go down the neighborhood and say that is going to burn. That would be tough.

Senator GLENN. One reason I wanted to follow this line of questioning a little bit is because you mentioned changing of deeds, property changing ownership, and so on, that went ahead of arson. We have had testimony prior to this from a group in Boston, the Symphony Tenants Organization. They came in from up there and they set up sort of a pattern where they could see insurance being changed, titles being changed, set up a little mathematical analysis of this thing and were actually able to predict with fair accuracy the very areas or particular blocks where buildings were going to be torched.

In your experience, do you think it would be possible to follow up on that?

Mr. SMITH. Pretty well experienced in the real estate business and I know in Minnesota, anyway, you don't have to record a contract for deed or sale. You can run right down the line. He is a nice contact, with the buyer.

Senator GLENN. Once you got into this business, you have done 100 or so of them, as you say. How were you contacted on these? Would real estate people tell each other about this? How does word get around you are in business?

Mr. SMITH. I do a job, word of mouth.

Senator GLENN. Word of mouth? You think they are open enough about this in the real estate business, that real estate brokers would actually tell each other, "I have got a good arsonist over here for you"?

Mr. SMITH. The guy wouldn't call me. The guy I worked for before would have to call. I didn't trust anybody.

Senator GLENN. Did you always deal with one man?

Mr. SMITH. No. You get to know who you can trust after you have been around 7, 8 years. You just know the people that are on the street, and the guys that are trying to set you up.

Senator GLENN. You think word is spread from one of your clients to another, that they actually passed word along that it was that well organized in the real estate business in Minneapolis?

Mr. SMITH. I know it is.

Senator GLENN. They pass the word along from one real estate man to another, if you want a building burned, here is a good man to do it?

Mr. SMITH. Oh, sure.

Senator GLENN. What is the maximum time delay you could set up, say, with your hot water heater deal where you took the safety thermostat off of it?

Mr. SMITH. I remember one occasion that I set one up about 1 o'clock in the afternoon. It went 2 o'clock the next day, and I was in Nashville, Tenn., and had been there since 7 o'clock that morning.

Senator GLENN. So you were 500, 600 miles away; you could have been on the west coast, you could have been anywhere in the country?

Mr. SMITH. I drove. If I had flown, I could have been anywhere, in the world.

Senator GLENN. What is the maximum you think you could set one up, if you fired up the hot water tank, as hot as it would go, it was well insulated?

Mr. SMITH. In the basement, windows are actually tight, everything else, the hot water tank was in good shape, where it didn't call for heat too fast, you could just about be indefinite. I suppose hot water tank, if it is in good shape, wouldn't call for heat for 1½ days or so.

Senator GLENN. It could be a couple of days later?

Mr. SMITH. Oh, yes. You don't want to do it that long because you don't know who will move in or out.

Senator GLENN. You are in effect, by answering this subpoena here of the committee, sort of on the other side of the law now. If you were setting up a program of how to combat arson, what steps would you take? What do you think would be the most effective things we could do to combat arson, local communities, Federal law; or could you give us any suggestions as to, let's say you were given the job of combating arson on a national level or even at a State or city level? What steps would you take to combat arson?

Mr. SMITH. I suppose you would have to get some laws to back you up, work harder to catch one, just make an example out of him. I don't know. There is no way to combat it because it is so easy to do, 5 years in the pokey ain't going to stop it. It is going to have to have some teeth or they will keep on going. There is too much money involved.

Senator GLENN. How about the different detection? It is very hard to detect once the fire has occurred. Do we need a lot more in that area?

Mr. SMITH. I am not there when it happens. That is the problem. It don't make no difference to figure out how it happened. You have got to catch the guy that happened. I can be anywhere in the world when it happens. You have to catch the guy doing it, regardless of figuring out how it happened.

Senator GLENN. Thank you, Mr. Chairman.

Senator NUNN. Thank you, Senator Glenn. Senator Sasser?

Senator SASSER. Thank you, Mr. Chairman.

I have a statement, Mr. Chairman, which I would like to read for record.

Senator NUNN. Go right ahead.

#### STATEMENT OF SENATOR SASSER

Senator SASSER. First, I want to congratulate the distinguished vice chairman, Senator Nunn, for convening these important hearings.

Arson for profit, as a lucrative and almost risk free occupation, has been spreading across the country even faster than the fires set by the "torches" involved. It is disturbing to realize that this newest criminal trade is by no means limited to any one section of the country or the largest metropolitan areas. It is a profession easily learned and practiced from Rochester to Tampa and Minneapolis to Philadelphia.

I am quite concerned about the work of Federal agencies with responsibilities in this area. Reports made to the Permanent Subcommittee on Investigations by the General Accounting Office certainly suggest that the Federal Government should be responding more aggressively to the challenge of reducing the incidence of arson for profit.

Arson today results in the loss of 1,000 lives each year and, reportedly, a \$2 billion cost to insurance companies annually. Arson costs, in terms of human lives, increased insurance premiums, and lost property taxes, must be reduced.

I look forward to participating in these hearings. I hope they will form the basis for proposals to strengthen enforcement and for improved efforts to limit this difficult problem.

Mr. Smith, I have two or three questions which I would like to ask you this morning. You have testified that those who contacted you about securing your services as a torcher or as an arsonist were primarily persons in the real estate business.

Did you think these individuals were operating solely for themselves—that is, to get their own property burned—and not in concert with others?

Mr. SMITH. The people who were in the real estate business, as you call the real estate business, probably is different than what it really is. Anybody in the real estate business means that you can be buying one house a year and burn it once a year, you could be buying 300. You could be legitimate and just make a mistake once in a while.

Senator SASSER. I guess my question is, the people who are contacting you to secure your services to burn their property, would you say these were small operators?

Mr. SMITH. For the most case, I would say yes.

Senator SASSER. One real estate individual then might own three, four, or one or two pieces of property?

Mr. SMITH. True.

Senator SASSER. Did you ever suspect that perhaps your ultimate employer, or the person who might be ultimately paying for your services, was several rungs up the ladder or might be connected in some way with organized crime?

Mr. SMITH. It is hard to answer. I have been offered some really good jobs out of State, that I wouldn't be the only one working on the thing. I refused them. I don't know where they come from. I really didn't care because I wasn't interested. I wanted to stay small time, put my money in my front pocket, go home every night and sleep. I just didn't want to run around the country, taking a lot of chances. I am not familiar with Chicago law, I am not familiar with Tampa law or anything else. I just didn't want to get spread out where I would wind up in the pokey.

Senator SASSER. You did receive contracts to do jobs outside of Minneapolis?

Mr. SMITH. Yes.

Senator SASSER. Did these contacts come from strangers or did they come from individuals for whom you had worked before?

Mr. SMITH. They come from people that I knew in the Twin Cities area that I worked for before.

Senator SASSER. Did these particular individuals, to your knowledge, own property outside of Minneapolis?

Mr. SMITH. In a couple of cases, I am sure they do.

Senator SASSER. Were they asking you to burn their property or the property of others? Were they acting for others?

Mr. SMITH. It is hard to answer because I never know who is the middle man and the owner. You really didn't care as long as the money was up there, up front, when the trucks rolled, I got paid again. You really didn't ask all them questions.

Senator SASSER. How much money could a skilled arsonist make in the city of Minneapolis in a year?

Mr. SMITH. It is just unlimited. If you want to work, you could probably work 100 nights a year without any trouble at all. I don't know, I could.

Senator SASSER. At anywhere from \$500 to \$1,500 a job, you would make quite a bit of money?

Mr. SMITH. It makes the numbers roll pretty good.

Senator SASSER. You mentioned, Mr. Smith, that there were cities where it was easier for arsonists to operate than others. You indicated it was easy to operate in Minneapolis, I think, because the arson squad there was not very effective. You indicated that it was tougher to operate in Chicago and you also indicated it was probably easier to operate in Nashville or Memphis, Tenn. That is my native State and I have an interest in that.

Why would you say it is easier to operate in Nashville and Memphis?

Mr. SMITH. I know Nashville pretty well. I know about two-thirds of that town ought to be burned down to start with. [Laughter.] So I would imagine if you went there, you would find plenty of work.

Senator SASSER. Needless to say, I don't accept this witness' value judgment on that.

Have you ever had any contact with an arson squad in either Nashville or Memphis?

Mr. SMITH. No, sir, I haven't.

Senator SASSER. Do they have an arson squad in either one of those cities, to your knowledge?

Mr. SMITH. I don't know.

Senator SASSER. Did you ever have contact with arsonists in either one of those cities?

Mr. SMITH. I had a chance to go to work there one time.

Senator SASSER. Did you discuss modes of operation of arsonists in either one of those cities with individuals who would know the mode of operation?

Mr. SMITH. I never talk to any arsonists in either one of those cities.

Senator SASSER. I am just curious as to why you think it would be easy to operate?

Mr. SMITH. A lot of downtown areas, a lot of areas in Nashville that I know of personally if there was someone around to do the job right, you would probably get plenty of work. Whichever big city, I just happened to like Nashville.

Senator SASSER. The Chamber of Commerce will be delighted to hear that. [Laughter.]

Mr. Chairman, thank you.

Senator NUNN. We will note, Senator Sasser, that you do not agree with the witness' assessment in all respects. [Laughter.]

Do we have any other questions of this witness?

Senator GLENN. Mr. Chairman, I have one.

Senator PERCY. I have additional questions of this witness and we have two other witnesses. I see Senator Glenn has one.

Senator NUNN. Senator Glenn?

Senator GLENN. Mr. Smith, following up on why you are here today, you got a subpoena, of course, from this committee. You could have refused that, of course. Do you have any other motivation in being here today? What do you hope to gain out of this type of testimony?

Mr. SMITH. I didn't want to be here today. I didn't know I had a choice. I wouldn't have been here.

Senator GLENN. As I understand it, even though you have admitted to all of these arsons, 100 different arsons, all the things happened surrounding this, you have never yet served any time in jail for all of these crimes. Is that correct?

Mr. SMITH. Yes, sir. The statute of limitations run out on all of them, sir.

Senator GLENN. You had nothing but a suspended sentence out of this whole thing. Is that correct?

Mr. SMITH. Yes, sir.

Senator GLENN. No more questions, Mr. Chairman.

Senator PERCY. I have just a few more.

Could you tell us what the average price was for an arson job?

Mr. SMITH. Two-bedroom duplex, probably \$750, \$500.

Senator PERCY. What was the largest single amount you ever made for a single job?

Mr. SMITH. I hate to answer that.

Senator PERCY. Pardon?

Mr. SMITH. I would hate to answer that.

Senator PERCY. Is there any reason you couldn't answer it?

Mr. SMITH. I am not sure that the arson squad knows I did it.

Senator PERCY. What?

Mr. SMITH. I am not sure that the arson squad knows I did it.

Senator PERCY. We are not going into any particular case at all. I won't ask you any questions about a particular case.

Mr. SMITH. \$4,500.

Senator PERCY. Just give us the largest amount you were ever paid for one job.

Mr. SMITH. \$4,500.

Senator PERCY. \$4,500?

Mr. SMITH. Yes.

Senator PERCY. That was for a couple of hours work?

Mr. SMITH. I had to drive a few hundred miles on top of it.

Senator PERCY. You have said that you were not proud of your work, but were you pleased with the work?

Mr. SMITH. Not really, but I had a following, that I knew I could work. It paid good.

Senator PERCY. Did you have sort of job satisfaction that this is your business, you were doing it extremely well for the most part?

Mr. SMITH. I wasn't happy with it. That is why I quit on my own accord.

Senator PERCY. Would you tell us a little about the life-style you were able to lead, make bundles of money? How were you able to use that? Did you lead an affluent lifestyle, automobiles, recreation?

Mr. SMITH. Cars, boats, airplanes, trips to Las Vegas, two or three wives, couple of houses.

Senator PERCY. In other words, you lived fairly high on the hog?

Mr. SMITH. I had a good time.

Senator PERCY. You were able to do so, you weren't bothered too much by the income tax thing.

If you had not been apprehended, Mr. Smith, would you still be committing arson in Minneapolis?

Mr. SMITH. I don't believe so. I talked to my attorney before that and he thought it was a good idea for me to get out.

Senator PERCY. What sort of a business would you have gotten into or did you have, had you reached what you considered retirement level, when you were able to be financially independent without further occupation?

Mr. SMITH. If I had stayed in arson, what would I have done, if I retired? Is that what you are asking?

Senator PERCY. Yes.

Mr. SMITH. I would probably got in my Bonanza and went to Florida for breakfast and Las Vegas for lunch.

Senator PERCY. Is there any kind of profession you might have gone into, did you have a desire to work and have a normal life?

Mr. SMITH. I was a very good contractor before I went into this.

Senator PERCY. If you had not been apprehended, might you have gone into contracting anyway?

Mr. SMITH. I never got out of it. I was a contractor at all times, even through my arson days.

Senator PERCY. In your statement you said the middleman used to contact arsonists for torching industrial-type buildings. How much money would these middlemen receive?

Mr. SMITH. It is tough to tell. Normally, the normal thing is the owner will spend 25 percent of the insurance policy and the middleman tries to contract the work as cheaply as he can so he gets the business.

Senator PERCY. When you were committing these arsons, were you ever concerned about getting caught or were you sufficiently confident of your ability to get away, that you weren't really concerned?

Mr. SMITH. I was scared on the first one. After that, I checked out the law, I wasn't really too concerned.

Senator PERCY. What caused you to be so shocked about the Minneapolis arson squad and the degree of unsophistication that they had?

Mr. SMITH. I just figured all them people down there with all them degrees, and everything else, ought to be smarter.

Senator PERCY. Do you suppose the sloppy job indicated that you could have gotten by with a much less sophisticated job, gotten by the most sophisticated fire departments and arson squads?

Mr. SMITH. They are doing sloppy jobs down there every day and not getting caught.

Senator PERCY. Do you feel that major cities at least ought to have strengthened fire departments?

Mr. SMITH. They have got a real tough job. You have to catch the guy coming out with the match in his hand in order to prove he did it. It is tough. It is no doubt about it.

Senator PERCY. Was it common knowledge among the businessmen who contracted for your services that the arson squads were unsophisticated, the danger of getting caught was really low?

Mr. SMITH. That wasn't really my concern, because I knew it wasn't against the law for me to do it. You don't care how smart anybody is if you don't get in trouble for doing it.

Senator PERCY. Do you think their own lack of respect for the expertise of arson squads is one of the reasons they were so willing to burn their own businesses?

Mr. SMITH. I am not even sure they know how smart the arson squad was or wasn't. They probably knew the law as well as I do. It is written for everybody to read.

Senator PERCY. Following up Senator Glenn's questions about the insurance thing, how easy is it in your judgment to insure a building for much more than it is worth?

Mr. SMITH. They won't even talk to you. You go down to buy \$15,000 worth of insurance on an 800- or 900-square foot duplex, and they just won't do it. They don't want to talk to you. They insure it for what they tell you, or don't insure it.

Senator PERCY. Mr. Smith, I realize and you realize and your counsel realizes you could have taken the fifth amendment and refused to testify. We appreciate the willingness to take additional risk in this area and, certainly, we will do everything we can to minimize that risk as much as possible.

Mr. Chairman, no further questions. I think we are ready for our next witness.

Senator GLENN. Mr. Chairman, if I might have 1 more minute here. Did you ever pay income tax on any of this?

Mr. SMITH. I can't answer that.

Senator GLENN. You mentioned your attorney advised you out of this. Was you attorney aware of the business you were in and what you were doing at the time you were doing it?

Mr. SMITH. No. I would have to say he was innocent of that, did not know.

Senator GLENN. What business are you in now, or are you living off past profits?

Mr. SMITH. No, sir. I am working every day.

Senator GLENN. What business are you in now?

Mr. SMITH. I still am contracting.

Senator GLENN. Thank you, Mr. Chairman.

Senator NUNN. Thank you, very much.

I want to express my appreciation to you, Mr. Smith, for being here and also your attorney, Mr. Nesvig. We appreciate your cooperation with this subcommittee.

At this point, I will ask the cameras to please turn away. I will ask Captain Jenkins to make sure they are turned away and give us a signal when the witness has left the room. We will also bring in the next witness while they are turned.

Mr. Smith, you can leave at this point, with your attorney.

Senator NUNN. Our next witness is Angelo Monachino, of Rochester, N. Y.

Mr. Monachino has also asked we invoke the rule against photographs of his face or profile. He is not an alias. He has not made this request. He is in the protection of the U.S. Marshals Service.

Captain Jenkins, can we bring in the next witness at this stage?

You are with the U.S. Marshals Service and you will be handling this witness. You tell us when to bring this witness in.

Bring the witness in.

I will ask the witness to please stand and let me give you the oath before we turn the cameras.

Do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MONACHINO. Yes, sir.

#### TESTIMONY OF ANGELO MONACHINO

Senator NUNN. The cameras can resume their normal positions.

Mr. Monachino, before we begin your testimony today, I want to advise you of your rights and obligations as a witness before this subcommittee.

First, you have the right not to provide any testimony or information which may tend to incriminate you. You understand that right?

Mr. MONACHINO. Would you repeat that?

Senator NUNN. You have a right not to provide any information which may tend to incriminate you.

Mr. MONACHINO. Yes, sir.

Senator NUNN. If you so desire.

Second, you have the right to consult with an attorney before you answer any questions. You do not have an attorney with you this morning?

Mr. MONACHINO. No.

Senator NUNN. Do you waive the right to have an attorney with you.

Mr. MONACHINO. Yes.

Senator NUNN. You understand you have that right?

Mr. MONACHINO. Yes, sir.

Senator NUNN. You have sworn to testify truthfully. You understand you are under oath here this morning?

Mr. MONACHINO. That is correct.

Senator NUNN. You understand that you are obligated to testify truthfully before the subcommittee?

Mr. MONACHINO. Yes, sir.

Senator NUNN. You understand your rights and your obligations as a witness before the subcommittee?

Mr. MONACHINO. Yes, sir.

[At this point Senator Chiles withdrew from the hearing room.]

Senator NUNN. I will defer to Senator Percy for the questions. I believe you have a statement this morning, don't you?

Mr. MONACHINO. That is correct, sir.

Senator NUNN. If you want to go ahead and give your statement, I will defer to Senator Percy for the leadoff questions.

If you will pull that mike up as close as you can, lean forward; it is awfully hard to hear unless you talk right into the mike.

Senator PERCY. I am going to ask if people in the audience, members of the media, cannot hear. If you would just raise your hand, I will so indicate so you can speak up a little louder.

The room is a little difficult to hear in; if you could speak up quite clearly, it would help a great deal.

Mr. MONACHINO. Mr. Chairman, I am Angelo Monachino, and I am presently in the protection of the Witness Security Division of the U.S. Marshals Service. I was made a sworn member of La Cosa Nostra in Rochester, N.Y., in 1971, and until 1975, participated in numerous criminal acts for the Rochester Mafia.

I am under the marshal's protection because of my cooperation with the Federal Organized Crime Strike Force in Rochester. My assistance led to prosecutions against major figures in the Rochester mob.

In 1968, when I began associating with members of the Rochester mob, I was operating my own construction business, serving many communities in western New York State. Always on the lookout for new business, I sought the acquaintance of numerous businessmen in the Rochester area. One of the businessmen whom I met and became friends with was Patrick Marrocco, the operator of El Morrocco, a restaurant and nightclub in Rochester. I would go to the spot regularly for drinks and dinner and grew to know Marrocco quite well. He would frequently mention contacts he hoped to have with businessmen seeking to hire a building contractor. It was through Marrocco that I met Eugene DiFrancesco, who told me he was a business associate of Frank Valenti, whom I knew from the newspapers to be head of the Rochester mob.

DiFrancesco and I also became quite friendly. He would often mention the possibility that Valenti or his contacts could possibly use my services on construction projects.

Since I knew that Valenti was influential, I continued to associate with DiFrancesco, and eventually met Valenti.

Senator PERCY. Could you pull up closer to the mike, please?

Mr. MONACHINO. After performing numerous jobs for Valenti, including several arsons, I was sworn into the mob in February 1971.

Even before I was sworn in, DiFrancesco approached me and said it would be helpful to me as well as to the organization if I were to join. He told me that it was in my best interest to join. They told me that if I joined, it would help me in the construction business. I also knew that not joining would hurt me in other ways.

I was sworn in during a gathering at Valenti's farm. By that time, I knew all of the people in the Rochester mob who worked for Valenti.

The first arson fire I was aware of the mob being involved in occurred at Marrocco's restaurant in late January of 1970. I knew that Pat Marrocco was having trouble meeting his bills and that he had borrowed money from many people.

DiFrancesco told me that he and Marrocco discussed the possibility of burning the place down. DiFrancesco told me that Valenti had asked to see Marrocco's insurance policy before agreeing to direct that the place be burned down.

DiFrancesco told me that one of the policies on the restaurant had been canceled and Marrocco was told to pay up his policy before any fire was set. This was done.

I later learned that DiFrancesco always told the building owners whose properties were to be burned that they should get as much insurance coverage as they could so that the payoffs would be substantial.

As a rule, none of the property owners we dealt with ever had any trouble getting as much insurance coverage as they wanted. And our experience was that adjustments on the losses were generally fairly high. That was because we never relied on company adjusters to handle our claims. We would always instruct the property owners to get a private adjusting company to represent the interests of the owner of the building which had burned. These adjusters would get a percentage of the settlement under an agreement with the building owner.

It was first planned for the fire to occur at El Morrocco around Christmas time. However, it took a month after Christmas before all the policies went into effect on the property.

The night before the fire, I went to El Morrocco. Marrocco came over to me at the bar and asked me to come upstairs, that he wanted to show me some remodeling he was having done. We went upstairs and he showed me how the entire second floor had been ripped apart.

The walls had been torn open. One wall had been knocked out, the moldings had been stripped away and the baseboards were ripped out and arranged like a teepee. The second floor had been set up so that the fire would draft up and through the roof.

The following morning, I heard on the radio that El Morrocco was burning. Also, Marrocco had called me that morning to ask me to board up the windows after the fire was put out so there would be no vandalism.

The system that was used by the mob to get paid off for the fires it set was pretty simple. If a businessman wanted his place burned by us,

we would demand 25 percent of the final insurance payment for the loss, with 25 percent of that up front.

In other words, we would take 61 $\frac{1}{4}$  percent of the insurance value of the property in cash before we did anything. This payment was a way to test the owner's good faith. Then, after the fire and the insurance was paid, we would require the building owner to make up the difference between what he paid us in advance and the amount needed to satisfy 25 percent of that payment. The mob split the payment with 25 percent to the people who did the fire and 25 percent to the man who brought the assignment in. The rest would go to Valenti who paid out other expenses. That was how it was supposed to happen. However, the torches were almost never paid.

I got about \$700 for the fires I helped to set up. Valenti kept most of the money from these insurance jobs. I never complained about not being paid.

One of the mob members frequently involved in arsons was Vincent "Jimmy" Massarro. Massarro worked for me at my construction company. I knew from DiFrancesco or Valenti when an arson was planned and I would let Massarro off work to help set up the fire. I always paid him a full day's salary, even if he was gone for a day or so to work a fire for the mob.

In most of the fires that we set, we would take battery acid carriers, which were square cardboard boxes with plastic containers inside, and pour flammable liquids, such as gasoline, paint thinner, kerosene or alcohol into them. Then we would take some twine and make a handle for the battery acid carriers and cover them. Then, even during daylight, we could walk into a building with no one being suspicious, since nobody could tell that we were carrying liquids into the building.

We would also carry in filament paper, measuring 8 by 11 that was used for development of photographs. We would cut them in 2-inch strips and lead them from one jug of flammable liquid to others placed at various points in the building. We would also sometimes use toilet paper as streamers, running the paper from one jug to another. We would use 1 by 2 strips of wood, to help kindle the fire. We would also strip the plaster off the walls so that a good draft could be developed through the 2 by 4 beams supporting the walls. We would open certain doors or close certain doors to draft the fire upward through the building. Some windows would be blocked off. Sometimes we would cut holes in the floor to help the fire move through the building more quickly. To get the fire going, we would use a couple of peach baskets full of excelsior and place the excelsior near a candle that we would place on the floor.

Whenever we bought a batch of candles, we would time them to see how long it would take to burn down to the floor. Once we knew that, we would be able to figure how long it would take before the fire would go off. When the candle burned down to where the excelsior and filament paper were, the fire would start, moving through the streamers of toilet paper and filament paper, to the flammable liquids, igniting the floors, the walls, and finally bringing down the entire structure.

I was selected to work with DiFrancesco and Massarro on fires for the mob because of my construction background. I think Valenti fig-

ured that if I knew how to put a building up, I would know where its weak points were so that I would know how best to set it off.

Most of the time we would set the buildings afire at 2 or 3 in the morning. The reason for this was that there was very little traffic along the roads at that time so that the fire usually had more of a chance to get started since there would be no one on the road to see it until it was too late to stop it.

Early morning was a good time for a fire because there were fewer firemen on duty during those hours. In rural communities, where we sometimes set fires, there were only volunteer firemen available, and they were asleep when our fires started. It therefore took longer for them to get to the scene.

But even if everybody in the fire department was awake, it would not have mattered much, since a high official in the fire department was on our side. I had been assured by DiFrancesco that the official was one of us. He would often show up at the fire scene after we had taken down a building and arrange to have the cause of the fire written off as something other than being suspicious or incendiary. I was also told later that this official arranged for the best arson squad investigators to be assigned to fires other than ones that we set.

Many of the buildings that the mob set fire to had been vacant for some time and there were housing code violations on them.

We also tried to set buildings afire in bad weather. Snow, rain, and freezing weather made it harder for firemen to get to the blaze. When it was freezing, the hoses would sometimes freeze up and the water spraying the fire would freeze before it did much good in putting out the fire.

Often in freezing weather, fire hydrants would be inoperative. A windy night was a good time to set fires, because, once the fire moved through the roof, the wind would accelerate the speed of the fire.

We were never concerned about rain or snow putting out a fire because we set them so well that there was no chance that the water would ever put them out.

The biggest fire I was ever involved in was at the Select Tire Co. in Rochester. We were told that the operator of the tire company was in financial trouble and wanted the place burned. Valenti told us that he wanted some of the new tires in the tire company transferred to his farm. DiFrancesco, Massarro, and I got a large truck and brought two loads of these new tires, with the approval of the owner of the tire company, out to Valenti's farm. Meanwhile, the owners of the tire company moved some of the rest of the new tires into their trailer. This left almost no tires in the building. We located some old tires and brought them into the tire company.

Then, we got two 55-gallon drums of rubber tube sealant and set up the fire similar to ones we had set in other structures. The fire destroyed almost the entire building. All that was left of the tires were pieces of melted wire.

In this way, the insurance company would not know if they were new or old tires and had to pay for replacement of the stock. In this way, the owners of the tire company were able to sell the new tires, but still pick up an insurance payment for their destruction, when in fact they had not been destroyed. The owners of the tire company also

collected on the insurance losses involved in the destruction of the building.

The fire company fire was also the first time I learned firsthand that the fire official was one of us. On one occasion, he was present and heard us discussing plans for the fire while we were in the building.

Piccarretti, the official, DiFrancesco, and I walked to the back of the building, to a storage room where the furnace was located. The fire official told us that the best place to set up a fire was right by the furnace. We were going to set it up there anyhow, but it was helpful to have the advice of an expert. The origin of that fire was listed as unknown with the Rochester Fire Department, I later learned.

DiFrancesco, Massarro, and I were also the torches on a barn fire in Hamlin, N.Y. This job was brought to us by Vincent Rallo, an insurance agent. Valenti told us one day at his farm that we had to burn down a barn.

DiFrancesco and I went to look at the barn and set it up. Valenti said that Rallo knew the owner, who wanted it leveled so he could develop the land for something else. The barn was L-shaped, about 300 feet long. We drove right by the farmer's house to get to the barn.

The farmer was at his front steps and waved to us as we drove by. There was some hay and we moved it into a corner. We also brought in two containers of gasoline and put them on an upper ledge in the barn.

After dark, we returned in DiFrancesco's wife's car with Massarro. Massarro drove. DiFrancesco and I went into the barn and lit a candle near where we had set the flammable liquids and the hay. Then we drove off. Unfortunately, the candle blew out. We drove back to the farm 1½ hours later and pulled up to the barn. DiFrancesco told Massarro and I to go into the barn. I didn't want to, but we went in. I kicked over one of the containers of gasoline that we had left near the hay.

After I did that, Massarro threw a lighted match on the gasoline and everything started to blow. We couldn't see the car, which was 300 feet down the road. We raced over broken glass and tin cans, making a lot of noise. The lights went on in the farmhouse and the dog started barking. I ran right over Massarro, knocking him down. We finally found the car and got away. The next morning the barn was leveled.

On one occasion, in November 1972, DiFrancesco came over to my shop because he needed some materials for an arson. I loaded excelsior and market baskets in my car. Then we met Nippy Arena, another member of the organization, at a shopping center and loaded everything in his car.

We then drove to a hardware store across from a coin operated laundry on Lake Avenue in Rochester. We bought paint thinner and carried everything into the laundry during the afternoon. There was nobody in the laundry, but it was open for business. I padlocked the door while Arena and DiFrancesco set up the flammable liquids in the back room. I stayed out front as a lookout. While they were setting it up, somebody came up to the door of the laundry and told me through the window that he wanted to come in. At that time, the smell of the paint thinner was very strong in the room. Without opening the door, I told the man that we were having trouble with the washing

machines. I told him to go down the street to another laundry to wash his clothes. Later that night, the laundry burned down. That was one fire that I was paid for. I got about \$200 from DiFrancesco.

One fire that I didn't get paid for, but at least knew in advance that I wouldn't, was the one that DiFrancesco, Massarro and I did for Joseph "Spike" Lanovara in Henrietta, N.Y., outside Rochester.

In April 1972, Valenti told us that Lanovara, a mob member, owed too much on his ranchhouse. Lanovara had gone to Valenti and said he wanted to build a new house on a farm site he owned about 50 miles away. He told Valenti that he wanted to get some cash back to finance the new house and the way to do that was to burn down the old house and collect on the insurance.

[At this point Senator Chiles entered the hearing room; Senator Glenn withdrew from the hearing room.]

Mr. MONACHINO. We set that one up like we had several other buildings, using excelsior and flammable liquids. We were a little put out with Lanovara who had arranged to be out of town on the night that the fire was to go off.

He had taken everything out of the house but the furniture. Even the beds had been stripped of sheets and blankets. He took all his clothing; just about everything that was movable was out of that house.

DiFrancesco and I knew that this would make the fire department people more suspicious that arson was committed. But we went ahead and set up the fire anyhow. We made a mistake, though, because we left the door to the kitchen open and when the fire went off late one night, instead of going through the roof because of a proper draft, it went out through the kitchen, destroying the appliances.

A couple of days later, Lanovara got in touch with us and bawled us out because the whole house hadn't gone up. He eventually collected about \$30,000; but he wanted more. We weren't too happy with him either. We told him that he hadn't even left a toothbrush in the bathroom and that this was not going to help speed up collection on the insurance claim. We had set up the fire in the afternoon and had gone back to Valenti to tell him that Lanovara had taken almost everything out of the house but the furniture. Valenti told us not to worry about it and that we should burn the house down anyhow. That was why we went back that night and burned it down. I knew that the insurance company gave Lanovara a hard time before they finally paid off on the claim, but they did pay off. It just helped to prove to me how easy it was for some people to make money from arson, even though I never actually earned much for all the work we did for the organization on burning down buildings.

Mr. CORRIN. Mr. Chairman, before we go to questions, I would like to enter two exhibits in the record: first a letter from Mr. John C. Keeney, Deputy Assistant Attorney General in the Criminal Division of the Justice Department, which establishes Mr. Monachino's reliability.

The letter describes Mr. Monachino's assistance to the Rochester Federal task force in both Federal cases and also a local matter involving members of the organization in that city.

Senator NUNN. That will be exhibit No. 2.

[The document referred to was marked "Exhibit No. 2" for reference and follows:]

## EXHIBIT No. 2

DEPARTMENT OF JUSTICE,  
Washington, August 23, 1978.

HON. CHARLES H. PERCY,  
*Ranking Minority Member, U.S. Senate, Committee on Governmental Affairs,  
Senate Permanent Subcommittee on Investigations, Washington, D.C.*

DEAR SENATOR PERCY: This is in response to your letter of August 16, 1978, to Deputy Attorney General Benjamin R. Civiletti concerning Angelo Monachino.

Mr. Monachino, previously known to law enforcement personnel in the Rochester area, became the subject of heightened interest when, in 1974, information was developed that he had been involved in an arson in December 1972, at the Selzer Tire Company in Rochester, New York. Mr. Monachino, while in custody of the Monroe County Sheriff's Department on this arson charge, was advised by personnel of that department that there were other charges which could and would be placed against him. Mr. Monachino, concerned that the local organized crime element would attempt to kill him in the fear that he might provide information as to their activities, agreed to cooperate in organized crime investigations. In this regard, it should be noted that, earlier in 1974, Mr. Monachino's brother, Charles, had agreed to cooperate with State and Federal officials and ultimately testified in successful State and Federal prosecutions.

When Mr. Monachino agreed to cooperate, the Sheriff's Department contacted Strike Force attorneys in Rochester who discussed with Mr. Monachino Federal immunity and Federal protection. Mr. Monachino had already agreed to testify, under immunity, in State grand jury investigations being conducted by the Monroe County District Attorney's Office. The initial discussions between Mr. Monachino and the Strike Force attorneys led to an agreement that authorization to compel his testimony, under immunity, would be requested regarding his involvement in an arson-for-hire scheme and also for a series of bombings that had taken place on Columbus Day, 1970. His anticipated testimony was considered very valuable and the recommendation to compel that testimony, under immunity, was made because of the excellent opportunity it would afford to penetrate the Rochester organized crime structure. The agreement specifically excluded, however, a pending indictment previously filed by the United States Attorney in Rochester charging misdemeanor tax violations. Additionally, it was agreed that the Strike Force would make application to have Mr. Monachino relocated by the United States Marshals Service. Pending a decision on relocation, Mr. Monachino was protected by detectives from the Monroe County Sheriff's Department. Following these discussions Mr. Monachino was interviewed by numerous representatives of Federal and local law enforcement agencies. Mr. Monachino admitted that he was a sworn member of the Rochester organized crime syndicate. He described in detail the initiation ceremony at which he was inducted into the syndicate and named approximately 45 individuals as members of that same group, including those members holding the ranks of boss, under-boss, counselor and captain. This was the first time that law enforcement authorities in the Rochester area had received such detailed, first-hand information concerning the membership of the syndicate and the positions and functions of each individual in the hierarchy. Mr. Monachino testified on a number of occasions before Federal and State grand juries.

Following Mr. Monachino's testimony and consideration of other evidence, a series of indictments was returned by a Federal grand jury in Rochester. Those cases, together with disposition are set forth below.

1. *United States v. Piccarreto*: an indictment charging a series of eight arsons and insurance frauds committed in the Rochester area between 1970 and 1973 which netted over \$180,000 in insurance proceeds. These arsons were charged as acts of racketeering in the conduct of the affairs of an enterprise through a pattern of racketeering activity in violation of Title 18 United States Code, Section 1962. Disposition of the eight named defendants was as follows: Rene Piccarreto, acquitted; Frank Valenti, severed for health reasons; Eugene Di-Francesco, convicted, ten-year sentence; Vince Rallo, convicted, three-year suspended sentence; Joseph Naloro, acquitted; Richard Marino, acquitted; Anthony Arena, acquitted, and Joseph LaNovara, convicted.

2. *United States v. Valenti*: an indictment arising out of bombing incidents which occurred on October 12, 1970, in violation of Title 18 United States Code, Section 1361. Disposition of the six named defendants was as follows: Gene DiFrancesco, convicted, nine-year sentence; Rene Piccarreto, acquitted; Salvatore Gingello, acquitted (later killed in a mob war); Thomas Didio, dismissed by the Government (later killed in a mob war); Dominick Celestino, dismissed by the Government; Angelo Vaccaro, acquitted; and Anthony Gingello, acquitted.

3. *United States v. Marrocco and DiFrancesco, United States v. Giordina and DiFrancesco* and *United States v. Roncone and DiFrancesco*: these three separate mail fraud indictments charged violation of Title 18 United States Code, Section 1342 and involved owners of buildings which had been burned by the arson-for-hire enterprise. Disposition of the defendants was as follows: Patrick Roncone, convicted, sentenced to five years' suspended except for 150 days to be spent in jail; Anthony Giordina, pled guilty and was sentenced to three years' suspended, and Patrick Marrocco, received a suspended sentence on a superseding indictment charging violations of the postal statutes. The charges against Eugene DiFrancesco in these three indictments were dismissed as he had already been convicted and sentenced to ten years' on the indictment described in paragraph one, above, which had included the same arsons.

Mr. Monachino testified before a State grand jury and again at the trial of top-ranking members of the Rochester organized crime syndicate for the murder and conspiracy to murder and conspiracy to murder Vincent "Jimmy the Hammer" Massaro. The defendants included: Frank Valenti, presently serving a twenty-year sentence for extortion after conviction in 1973 in a matter handled by the Buffalo Strike Force; Samuel "Red" Russotti; Rene Piccarreto; Salvatore Gingello; Thomas Marriotta; Eugene DiFrancesco and Sam Campanella, each of whom was named by Mr. Monachino as a member or ranking member in the Rochester syndicate. Each of these defendants, with the exception of Valenti, who was severed because of health factors and Samuel Campanella, who was dismissed during trial were convicted and were sentenced to substantial terms. Those convictions were inter set aside upon a finding that perjured testimony as to a corroborative surveillance had been introduced at the State trial.

I am advised by the Strike Force attorneys with whom Mr. Monachino has worked that they believe he has been honest in his testimony and in his dealings with the Government. They report that virtually all the information which he initially provided concerning the arson business in Rochester was ultimately corroborated by other witnesses, documents and by the convictions of a number of the defendants.

I trust that this brief review will be of some assistance to you and the Subcommittee.

Very truly yours,

PHILIP B. HEYMANN,  
*Assistant Attorney General,  
Criminal Division.*

By JOHN C. KEENEY,  
*Deputy Assistant Attorney General,  
Criminal Division.*

Mr. COTTIN. This is an open exhibit. Mr. Kenney writes:

I am advised by the Strike Force attorneys with whom Mr. Monachino has worked that they believe he has been honest in his testimony and in dealings with the government. They report that virtually all the information which he initially provided concerning the arson business in Rochester was ultimately corroborated by other witnesses, documents and by the convictions of a number of the defendants.

Senator NUNN. Thank you.

Mr. COTTIN. Exhibit No. 3, is a lengthy affidavit provided by the witness to subcommittee staff approximately 1 month ago which will go in the closed file as information that needs additional checking.

Senator NUNN. Thank you. Without objection.

[The document referred to was marked "Exhibit No. 3" for reference and is retained in the confidential files of the subcommittee.]

Senator PERCY. Senator Nunn, I believe it might be well with that second exhibit to also read in open session here the following cover-

ing statement, that Mr. Monachino is concerned that the local organized crime element would attempt to kill him and information that he might provide information as to their activities agreed to cooperate in the organized crime investigation.

To give you some extent of the size of some of these insurance payments, which all insurance policyholders are paying, indictment charging a series of eight arsons and insurance frauds committed in the Rochester area between 1970 and 1973 netted over \$480,000 in insurance proceeds. That just happened to be in those particular cases taken up.

Finally, Mr. Monachino testified before a State grand jury and again at the trial implicating members of the Rochester organized crime syndicate for murder and conspiracy to murder Vincent "Jimmy the Hammer" Massarro.

I think the reassurance we have from the Criminal Division of the Justice Department of the credibility of Mr. Monachino's testimony today reinforces our feeling that he should be brought into public testimony.

Again, we appreciate the risk that you are taking. We will certainly cooperate in every respect to not increase that risk.

First, I would like to clear up a couple of parts of your testimony, to give you a chance to amplify a little bit. On page 2, you indicated that none of the property owners you dealt with had any trouble getting as much insurance coverage as they wanted.

Why is this? Why such loose practices as you have alleged in an industry in the private sector? Why in this particular area are they able to get even with a pattern of arsons as much insurance as they want on the building?

Mr. MONACHINO. Yes. There was no problem doing that because a lot of the buildings were empty and they would still be insured.

Senator PERCY. Why did you also instruct property owners to get a private adjusting company to represent the interests of the owner of the building? Did they press for earlier payment and higher payments?

Mr. MONACHINO. It was a combination of both. Actually, they were setting fires and they would help the owner get as much as they could.

Senator PERCY. You had an interest in seeing they got paid promptly because part of it was not paid to you until such time as the insurance proceeds were paid to the owners?

Mr. MONACHINO. That is correct, sir.

[At this point Senator Nunn withdrew from the hearing room.]

Senator PERCY. You indicated that on page 3 at the top, however, the torches were almost never paid. You also indicated that you never complained about not being paid.

If you were in this for business, and in it to make a profit on your efforts, why did you not complain about being paid and why so frequently were the torches who had the greatest risk not paid?

[At this point Senator Nunn entered the hearing room.]

Mr. MONACHINO. They belonged to the organization. It is not very advisable to complain. Some of the people that did complain aren't here anymore.

Senator PERCY. Some of them what?

Mr. MONACHINO. Some are not here anymore.

Senator PERCY. On page 4, you mentioned in rural communities where you set fires, there were only volunteers. How frequent in your judgment is arson in rural communities as against urban communities and why?

Is it very frequent in rural communities because fire protection is not readily available?

Mr. MONACHINO. It is even a better area to do it in because of the possibilities of not getting firemen there on time and everything else connected with it.

Senator PERCY. Is there a good deal of arson, do you think, in rural communities?

Mr. MONACHINO. Very definitely.

Senator PERCY. Is it spreading?

Mr. MONACHINO. Yes; more and more all the time.

Senator PERCY. You mentioned a high official in the fire department who was on your side. When we thoroughly investigated among securities, we found the increasing frequency as organized crime moved into it that they wanted to have someone inside where the securities were to give them a pattern and they really had in committing those crimes a great deal of intelligence available to them because of insiders.

Is it fairly frequent now that there will be cooperating with the mob or cooperating with the sole operator someone in the fire department that has to be reached through money or can be reached through money?

Mr. MONACHINO. Yes, sir. The reason that is because we try to cover ourselves as much as we can.

Senator PERCY. Did you have difficulty finding and getting the services of someone inside a fire department?

Mr. MONACHINO. No, sir.

[At this point Senator Sasser withdrew from the hearing room.]

Senator PERCY. You mentioned a windy night was a good time to set fires, that also spreads fire. On windy nights did you ever have occasion when fire spread to other surrounding buildings that you hadn't intended to torch or where lives were endangered with the people in those other buildings?

Mr. MONACHINO. No, sir. We never had that problem, starting fires in other buildings.

Another thing, we made it a practice that we would only do certain buildings that didn't have people in them.

Senator PERCY. Did you have the same standards as our previous witness—though you were not in the room at the time—did you have a standard whereby you would refuse to torch a building if anyone was occupying or living in it?

Mr. MONACHINO. That is correct.

Senator PERCY. You did?

Mr. MONACHINO. Yes, sir.

Senator PERCY. At no time did you violate that?

Mr. MONACHINO. No, sir.

Senator PERCY. You stated you were in the construction business at the time you first began associating with the Rochester mob. Could you describe to us something about the construction company, how many

employees you had? Give us some idea as to the income you earned from this legitimate operation.

Mr. MONACHINO. That would vary at different times from the amount of work we were doing and the type of work I did was installing water lines, sewers, roads, tunnels, and development work and stuff like that. It was general contracting.

Senator PERCY. What was the highest annual earnings that you had in your construction company?

Mr. MONACHINO. Grosswise?

Senator PERCY. Yes. What did you gross as personal income, not your gross business but the personal income that you had?

It was 100 percent owned by you?

Mr. MONACHINO. Yes.

Senator PERCY. What was your highest earnings in any 1 year?

Mr. MONACHINO. It would vary, around \$100,000.

Senator PERCY. \$100,000?

Mr. MONACHINO. \$50,000 to \$100,000, \$125,000. It varied in different years.

Senator PERCY. Why would it then be that someone relatively successful, certainly in the upper income level in this country, in such a successful business would want to associate with people such as DiFrancesco?

Mr. MONACHINO. I don't think it was something that just somebody like me organizes like that. In fact, in that particular one, we had an attorney and a professor from a college in there.

Senator PERCY. Was it this association with other powerful people in Rochester such as Valenti that was also an attraction to you?

Mr. MONACHINO. Would you repeat that?

Senator PERCY. Was it because DiFrancesco was also aligned with such powerful figures as Valenti that attracted you to him?

Mr. MONACHINO. It did for certain reasons, because I was led to believe that they would be helpful in my business.

Senator PERCY. In other words, he would be able to bring business to you?

Mr. MONACHINO. That is correct, sir.

Senator PERCY. Would you describe yourself as a pyromaniac?

Mr. MONACHINO. No, sir.

Senator PERCY. Did you ever gain any pleasure from setting fires to buildings?

Mr. MONACHINO. No, sir.

Senator PERCY. All totaled, how many fires did you personally set? I assume then that by that answer they were set as a business to make money?

Mr. MONACHINO. That is correct, sir.

Senator PERCY. How many did you personally set?

Mr. MONACHINO. About 11.

Senator PERCY. How many fires were you involved in, directly and indirectly?

The number that I asked first was how many you personally set.

Mr. MONACHINO. Five or six.

Senator PERCY. Then directly or indirectly, you were involved in about 11; is that right?

Mr. MONACHINO. Yes, sir.

Senator PERCY. What then was your reason for participating in these arsons?

Mr. MONACHINO. I was directed to do it because I was part of the organization.

Senator PERCY. You were directed by the organization to do it?

Mr. MONACHINO. Yes, sir.

Senator PERCY. How much money did you make altogether for your participation in 11 arsons?

Mr. MONACHINO. Approximately \$700.

Senator PERCY. That is not very much money for a man who had income of \$50,000 to \$100,000 from the contracting business. Why so little for personally setting 6 fires and directly or indirectly engaged in 11?

Mr. MONACHINO. We were supposed to get paid on all of them but sometimes they would say, well, we need the money for other expenses, for attorneys and stuff like that.

It was just plain greed I guess on their part.

Senator PERCY. Were you on occasion not paid for arsons that you had been promised payment for?

Mr. MONACHINO. Yes, sir.

Senator PERCY. Did you ever complain? Did Valenti fail to pay you?

Mr. MONACHINO. Yes, sir.

Senator PERCY. Did you ever complain about his failure to pay you for your arsons, and if not, why not?

Mr. MONACHINO. It wouldn't do much good to complain anyway.

Senator PERCY. What would happen to you if you did complain?

Mr. MONACHINO. For different reasons, Jimmy complained and he was involved in other stuff, he was killed.

Senator PERCY. He was killed?

Mr. MONACHINO. Yes.

Senator PERCY. In other words, if you complained, that was the answer?

Mr. MONACHINO. That could be one of the ways out; yes.

Senator PERCY. Did any of the other torches ever complain, beyond the one that you have mentioned, about Valenti hoarding the profits?

Mr. MONACHINO. Not to my knowledge, sir.

Senator PERCY. Did Massarro's complaint lead to Valenti paying him for the work he had done?

Mr. MONACHINO. He did not get paid on some of the cases of arson.

Senator PERCY. He did?

Mr. MONACHINO. He got paid on some.

Senator PERCY. He paid the ultimate price.

What did Valenti do when he did continue to complain for a job that he wasn't paid for? What did the organization do?

Mr. MONACHINO. After Valenti was dethroned, other people took the organization over and Jimmy was complaining plus he was doing other things on the side, and he wound up being killed.

Senator PERCY. You mentioned a murder. Were you actually involved in any way in that?

Mr. MONACHINO. Yes, sir.

Senator PERCY. Would you care to describe how Massarro was killed?

Mr. MONACHINO. Actually, it was given to two other fellows, which were Gene and Spike, and after a couple of weeks they couldn't do it. There was a meeting called. I had to attend, and I was ordered to do it with Jimmy, or with Gene and Spike.

Senator PERCY. What happened to Massarro's body?

Mr. MONACHINO. After he was shot, he was put in the trunk of his car; took his car into the city and just left it.

Senator PERCY. Was the car just abandoned, left someplace?

Mr. MONACHINO. Yes. We abandoned it. It wasn't found for, it was abandoned right on the street and it wasn't found for 5 days.

Senator PERCY. Was Massarro an actual member of the organization or was he only an associate?

Mr. MONACHINO. He was a member of the organization.

Senator PERCY. What was your own relationship with Massarro?

Mr. MONACHINO. Being members of the organization, he worked for me.

Senator PERCY. You worked for him?

Mr. MONACHINO. He worked for me.

Senator PERCY. What sort of a title did he have?

Mr. MONACHINO. He started out on a work crew and he eventually became a foreman, running the crew.

Senator PERCY. Did you ever have any difficulty in carrying out an order which required you to, by the nature of that order to kill a friend or a trusted employee of yours?

What was the sense of discipline that you had in your organization?

Mr. MONACHINO. If you didn't do it, you would probably go with him.

Senator PERCY. In other words, there is no appeal? When ordered to do something, you couldn't say, look, this guy is a friend of mine, he is employed, we are associated together, find someone else to make this hit, not me? But discipline is such that you are given an order, and you had better carry it out?

Mr. MONACHINO. That is right, sir. No ifs, ands, or buts about it.

Senator PERCY. Could you tell us, Mr. Monachino, how you learned to burn down a building? Is this a trade, a profession that you were trained for, or did you just develop enough experience on your own to be able to know how to go about it?

Mr. MONACHINO. Working with DiFrancesco, also being in the construction business, I was aware of how buildings were built and how to take them down, too.

Senator PERCY. You have assisted the staff in setting up a teepee on the table in front of you. Would you just remain seated where you are?

Could you tell us, instruct, as to what the structure is all about, the nature of it, how it was used in your business?

Mr. MONACHINO. It was set up like that, is one of the ways we would do it. And it would be set up against the wall that we tore plaster off and stuff like that. And we would use that to start to kindle the fire.

Once you light the candle, we had an idea how long it would take to burn down to a point where it was going to ignite whatever we

had in the basket and then burn the streamers to the containers of flammable materials.

Senator PERCY. How long would it take you to prepare a building for an arson?

Mr. MONACHINO. Sometimes just a day, other times 2 days. It all depended on the building.

Senator PERCY. What is the best method you have developed for burning down buildings?

Mr. MONACHINO. It all depends what type of building it was, what it was being used for. That is what we try to use, whatever materials were actually part of the building for the simple reason is that if they were in the building before it burned, it would not be suspected as an actual arson.

Senator PERCY. How successful were you as an arsonist? Did most or all of the jobs that you set destroy their targets?

Mr. MONACHINO. Yes, sir.

Senator PERCY. Without exception?

Mr. MONACHINO. Yes, sir.

Senator PERCY. How long would it take for instance on this teepee for—how much time did you know that you had once you set this up for the fire to start spreading?

Mr. MONACHINO. What we would do, is we would take a candle and we would buy extra ones. And we would light a candle, let it burn down, and we could tell just about how long it took to burn the candle down, how long before the fire would go off.

Sometimes we would shorten the candle. Sometimes we would leave it longer. It actually depended on the time we wanted it to go off.

Senator PERCY. Could you tell us where the teepee was placed in the building and why it was placed in that particular area?

Mr. MONACHINO. It was put at a strategic point where we wanted a fire to originate, and also it would go from there to other streamers which would start other containers and it depended on how we set it up for the draft on the buildings and stuff like that.

Senator PERCY. I have just a few more questions. Are there any kinds of buildings that are much harder to burn than others?

Mr. MONACHINO. Yes. It actually depends on the structure of the building, the materials the building is built out of. We even burned buildings that were concrete block and actually burned some of the block.

Senator PERCY. Are there any kinds of buildings that you believe are incapable of successfully destroying by means of fire? What kind of building would you go into and say you can't do it, this building is fireproof?

Mr. MONACHINO. There is no such building that is fireproof.

Senator PERCY. No such?

Mr. MONACHINO. Not to my knowledge.

Senator PERCY. In other words, it just takes a little more ingenuity, little more set up, little more preparation, but you can burn any building down.

Mr. MONACHINO. If you make up your mind to, yes, you can.

Senator PERCY. When you were committing these arsons for the

organization, were you ever concerned about getting caught or was it something that you were really never worried about?

Mr. MONACHINO. The likelihood of getting caught was very unlikely because when the fire started you weren't there to begin with.

Senator PERCY. Do you feel that the lack of concern on being apprehended, the lack of coordination of law enforcement, firefighting officials, the lack of real concentration on this program and this problem, this \$2 billion business, is one of the contributing factors toward the increase and the frequency of arson for profit?

Mr. MONACHINO. Yes, sir. Actually, there was no problem there for the simple reason a lot of the counties never had arson squads and stuff like that. When they did have, it was never actually, you might say, looked into well enough to actually say they were arsons.

Senator PERCY. Thank you, Mr. Monachino.

Mr. Chairman, I will turn the questioning over to you.

Senator NUNN. Thank you, Mr. Monachino.

Going into a few more details on the murder, what was his name, Massarro?

Mr. MONACHINO. Vincent Massarro.

Senator NUNN. What was your relationship with Massarro?

Mr. MONACHINO. One of my employees.

Senator NUNN. In your contracting firm?

Mr. MONACHINO. That is correct.

Senator NUNN. He also helped you carry out arson; is that correct?

Mr. MONACHINO. That is correct.

Senator NUNN. Under whose direction were you and Mr. Massarro carrying out these arsons?

Mr. MONACHINO. Under the direction of the organization.

Senator NUNN. When you say organization, who is at the top of the organization?

Mr. MONACHINO. At one time, Valenti was and after that, in 1972 he was dethroned, and other people took it over.

Senator NUNN. Other people took it over?

Mr. MONACHINO. Yes, sir.

Senator NUNN. Who was at the head of the organization when Massarro was murdered?

Mr. MONACHINO. Russotti.

Senator NUNN. What year was this?

Mr. MONACHINO. In 1973.

Senator NUNN. In 1973?

Mr. MONACHINO. November of 1973.

Senator NUNN. So Valenti was not the one who gave the orders on the murder of Massarro?

Mr. MONACHINO. No.

Senator NUNN. What was the name of the man who did?

Mr. MONACHINO. Red Russotti and Renne Piccarreto.

Senator NUNN. How do you spell that last name?

Mr. MONACHINO. P-i-c-c-a-r-r-e-t-o.

Senator NUNN. Did you get orders directly from them or did someone give you orders in between?

Mr. MONACHINO. No. We got the orders directly from them. They ordered us to do it.

Senator NUNN. How were the orders given?

Mr. MONACHINO. They called a meeting and there was myself, Spike, and there was Red Russotti, Piccarreto, Tony Marotto, and Sam Gingella.

Senator NUNN. Seven or eight people were there?

Mr. MONACHINO. Yes.

Senator NUNN. Who actually gave the order to murder Massarro?

Mr. MONACHINO. Russotti and Piccarreto.

Senator NUNN. Have they been prosecuted for this murder?

Mr. MONACHINO. Yes.

Senator NUNN. Were they convicted?

Mr. MONACHINO. Yes.

Senator NUNN. Did you testify?

Mr. MONACHINO. Yes, sir.

Senator NUNN. What about the ones who actually carried out the murder? You were there when the murder was carried out?

Mr. MONACHINO. Yes.

Senator NUNN. Who else was there?

Mr. MONACHINO. Myself, DiFrancesco, and Spike Lanovara.

Senator NUNN. What happened to them?

Mr. MONACHINO. DiFrancesco is still in jail and Lanovara is in the witness protection program.

Senator NUNN. They have also been prosecuted or are cooperating witnesses?

Mr. MONACHINO. Yes.

Senator NUNN. The murder occurred in 1973?

Mr. MONACHINO. Yes.

Senator NUNN. How was Massarro killed?

Mr. MONACHINO. He was shot.

Senator NUNN. By whom?

Mr. MONACHINO. DiFrancesco.

Senator NUNN. Where?

Mr. MONACHINO. In my place of business, my shop.

Senator NUNN. Your place of business?

Mr. MONACHINO. Yes.

Senator NUNN. Where was that place of business?

Mr. MONACHINO. It was in the town of Brighton, Western Drive.

Senator NUNN. What was the name of the business you operated under?

Mr. MONACHINO. Barmon Construction Co.

Senator NUNN. Who actually asked Massarro to come there?

Mr. MONACHINO. I called him on the phone, and he came down to the shop.

Senator NUNN. Did he come into the shop, inside?

Mr. MONACHINO. He came in the side door, into the shop.

Senator NUNN. All three of you carried out this murder?

Mr. MONACHINO. I was talking to him, and Gene came out from the office and shot him.

Senator NUNN. You were talking to him with his back to the door?

Mr. MONACHINO. Back, his back was to the office and Gene came out and shot him.

Senator NUNN. Gene who?

Mr. MONACHINO. Gene DiFrancesco.

Senator NUNN. Who else was there when that occurred?

Mr. MONACHINO. Myself and Spike Lanovara.

Senator NUNN. Where was Spike when the shooting occurred?

Mr. MONACHINO. In back of Gene.

Senator NUNN. So neither Gene nor Spike was seen by Massarro?

Mr. MONACHINO. No.

Senator NUNN. Did he come up behind him, pull the gun to the head and shoot him?

Mr. MONACHINO. He wasn't that close. He shot him, then he fell backward, Gene emptied his gun on him.

Senator NUNN. Gene emptied his gun on him?

Mr. MONACHINO. Yes.

Senator NUNN. Who shot him first?

Mr. MONACHINO. Gene did.

Senator NUNN. How many times did he shoot him?

Mr. MONACHINO. He emptied a .25 automatic, which had about seven shells in it.

Senator NUNN. Where were you when this was happening?

Mr. MONACHINO. Standing away from them.

Senator NUNN. How far away?

Mr. MONACHINO. About 6 feet, 8 feet.

Senator NUNN. Were they shooting toward you?

Mr. MONACHINO. No.

Senator NUNN. They were shooting from an angle?

Mr. MONACHINO. Yes, sir.

Senator NUNN. Did Massarro know what hit him?

Mr. MONACHINO. I doubt it.

Senator NUNN. Did he ever see him actually with the guns?

Mr. MONACHINO. No.

Senator NUNN. What happened after Massarro was shot?

Mr. MONACHINO. He was placed in the trunk of his car, taken into the city.

Senator NUNN. Taken where?

Mr. MONACHINO. Into the city.

Senator NUNN. He was placed in the trunk of his own car?

Mr. MONACHINO. That is correct.

Senator NUNN. What was done with the car?

Mr. MONACHINO. It was taken, abandoned in the city.

Senator NUNN. Just abandoned with his body in it?

Mr. MONACHINO. That is correct.

Senator NUNN. When was his body discovered?

Mr. MONACHINO. About 5 days later.

Senator NUNN. Were you just an employer of Massarro, or also a friend of his?

Mr. MONACHINO. Both.

Senator NUNN. Did you like him?

Mr. MONACHINO. He was a good worker, as far as I was concerned. Yes.

Senator NUNN. Did you have a close relationship with him?

Mr. MONACHINO. Yes.

Senator NUNN. What were your basic feelings when you were ordered to kill him?

Mr. MONACHINO. You don't have any choice. You were told to do it.

Senator NUNN. Were you concerned about it?

Mr. MONACHINO. Anybody would be concerned about killing somebody.

Senator NUNN. So you were ordered to kill your own friend, and employee?

Mr. MONACHINO. That is correct.

Senator NUNN. Did you have any bitterness toward those giving orders?

Mr. MONACHINO. I didn't like it. That is for sure.

Senator NUNN. How many children did he have?

Mr. MONACHINO. Four or five.

Senator NUNN. You knew them, you knew his wife?

Mr. MONACHINO. Yes.

Senator PERCY. Did you raise any voice of objection at all at that time or is the discipline such that you just didn't dare object for fear that they would question your loyalty and you would be going against your oath to the organization?

Mr. MONACHINO. I did. I asked Renne, "Why me?" He says, "If you don't like it, you can go with him."

Senator NUNN. At the time of the murder, were you already a "made" man?

Mr. MONACHINO. Yes. So was Jimmy.

Senator NUNN. Was Jimmy—Jimmy being Massarro?

Mr. MONACHINO. Yes.

Senator NUNN. So both of you were actually members of the mob, as you call it?

Mr. MONACHINO. That is correct.

Senator NUNN. When did you become a "made" man?

Mr. MONACHINO. February 1971.

Senator NUNN. February 1971?

Mr. MONACHINO. That is correct.

Senator NUNN. When did this murder occur?

Mr. MONACHINO. November 1973.

Senator NUNN. When was Jimmy Massarro, when did he become a "made" man?

Mr. MONACHINO. Same day I did.

Senator NUNN. So both of you became "made" men at the same time. Nevertheless, you were ordered to kill him?

Mr. MONACHINO. That is correct.

Senator NUNN. You used several terms here and I think it is important to establish what these terms mean to you. You have used the word mob. You used the word organization. You have used the word La Cosa Nostra. You have used the word Mafia. Are all of those terms synonymous?

Mr. MONACHINO. They are all in one, one in the same.

Senator NUNN. So you mean by the word mob, the same thing you mean by the word organization?

Mr. MONACHINO. That is correct.

Senator NUNN. You mean by the words mob and organization the same thing you mean by La Cosa Nostra?

Mr. MONACHINO. That is correct.

Senator NUNN. You mean by the La Cosa Nostra, the same thing as you mean by Mafia?

Mr. MONACHINO. That is correct.

Senator NUNN. Would you give us your definition of those terms?

Mr. MONACHINO. Actually, it is an organization of men that are sworn to do whatever has to be done to make, illicit money, you know, illegal moneys.

Senator NUNN. It is a group of people banding together for an illegal purpose?

Mr. MONACHINO. That is correct.

Senator NUNN. When you use these terms, this is something that causes a great deal of concern because people talk about organized crime and many times the word Mafia, La Cosa Nostra is used synonymously with the word organized crime. Do you use those terms like organized crime and Mafia as the same term?

Mr. MONACHINO. That is correct, sir.

Senator NUNN. So when you say organized crime, you mean Mafia?

Mr. MONACHINO. That is correct.

Senator NUNN. Is there any kind of ethnic connotation to these terms?

Mr. MONACHINO. I am not following you. No.

Senator NUNN. Are the black people included? Is there any group of people included, Latinos included, or is there an ethnic connotation or does this apply to all races?

Mr. MONACHINO. No; just an ethnic group.

Senator NUNN. Which ethnic group?

Mr. MONACHINO. Italian people.

Senator NUNN. Are you Italian?

Mr. MONACHINO. Yes.

Senator NUNN. All the people you have named were?

Mr. MONACHINO. Yes, sir.

Senator NUNN. What does La Cosa Nostra mean in Italian?

Mr. MONACHINO. It means our thing.

Senator NUNN. It means what?

Mr. MONACHINO. Our thing.

Senator NUNN. Our thing?

Mr. MONACHINO. Our thing; yes, sir.

Senator NUNN. When you mentioned the fire chief being one of us, or one of the firemen being one of us a little while ago, do you mean by that he was also a "made" man, or just on the inside?

Mr. MONACHINO. He was just on the inside, not a member.

Senator NUNN. How would you describe your position in the chain of command of the mob in Rochester? Where were you on the totem pole?

Mr. MONACHINO. Just a soldier.

Senator NUNN. You were a soldier?

Mr. MONACHINO. That is correct.

Senator NUNN. Is the soldier at the bottom of the totem pole?

Mr. MONACHINO. Yes.

Senator NUNN. You weren't in charge of anyone else then?

Mr. MONACHINO. No, sir.

Senator NUNN. Just give us the rank, in terms of your description of the mob. What was above the soldier?

Mr. MONACHINO. There was a captain, then there was an underboss. There was the boss, and there was a counsel.

Senator NUNN. So it goes from soldier to captain?

Mr. MONACHINO. Yes.

Senator NUNN. What is above captain?

Mr. MONACHINO. Underboss and the boss.

Senator NUNN. The underboss?

Mr. MONACHINO. Yes.

Senator NUNN. Then the boss?

Mr. MONACHINO. Yes, sir.

Senator NUNN. So it goes from soldier to captain to underboss to boss?

Mr. MONACHINO. Yes.

Senator NUNN. That is the chain of command?

Mr. MONACHINO. Yes, sir.

Senator NUNN. What happened with Frank Valenti?

Mr. MONACHINO. He was dethroned in approximately August 1972.

Senator NUNN. What happened in terms of how he was dethroned?

Mr. MONACHINO. He was dethroned for having his fingers in the till and using moneys that he wasn't supposed to be using.

Senator NUNN. Who dethroned him?

Mr. MONACHINO. Actually, the membership did.

Senator NUNN. The membership?

Mr. MONACHINO. Yes.

Senator NUNN. You mean the people beneath him?

Mr. MONACHINO. Yes.

Senator NUNN. Is this unusual in the mob?

Mr. MONACHINO. Yes, sir.

Senator NUNN. How did they go about dethroning him?

Mr. MONACHINO. Most of them just turned around, he had a meeting, he was brought into it, and he was actually told to leave or else.

Senator NUNN. So they had a meeting?

Mr. MONACHINO. Yes.

Senator NUNN. Were you present at the meeting?

Mr. MONACHINO. No, sir.

Senator NUNN. Were the other soldiers present at the meeting?

Mr. MONACHINO. I can't tell you who was there.

Senator NUNN. You really don't know?

Mr. MONACHINO. No, sir.

Senator NUNN. You just found out about it?

Mr. MONACHINO. Yes.

Senator NUNN. They did not try to kill him or anything of that nature?

Mr. MONACHINO. No. They actually just asked him to leave, him and his two brothers.

Senator NUNN. Asked him?

Mr. MONACHINO. Him and his two brothers to leave.

Senator NUNN. They left voluntarily?

Mr. MONACHINO. Yes. It was best they did.

Senator NUNN. Did they leave the area or just leave the mob?

Mr. MONACHINO. Frank left the area. He moved his family to Phoenix, and his brothers are still locally there.

Senator NUNN. His brothers are still there?

Mr. MONACHINO. Yes.

Senator NUNN. In Rochester?

Mr. MONACHINO. In the area, yes.

Senator NUNN. Is it your understanding they are no longer part of the mob?

Mr. MONACHINO. Yes, sir.

Senator NUNN. We will recall you at some point in time and go into further details about some of the activities of organized crime; but at the present time, I will defer questions on that subject in order to get back to arson.

To the best of your knowledge, how many arsons would the Rochester mob have committed annually? Do you have any reasonable way of estimating that?

Mr. MONACHINO. I can't tell you that, sir.

Senator NUNN. How many would you participate in?

Mr. MONACHINO. How many did I participate in? I actually set up 6 and I participated in at least 11.

Senator NUNN. Did you have any competitors in this business, or was your mob the only one operating in that area?

Mr. MONACHINO. There was probably some individuals doing it on their own.

Senator NUNN. Not anything else organized that you knew of?

Mr. MONACHINO. Not to my knowledge.

Mr. MONACHINO. So your operation was the only organized effort in this regard?

Mr. MONACHINO. Yes, sir.

Senator NUNN. Was there a large demand for arsonists?

Mr. MONACHINO. Yes, sir.

Senator NUNN. You have all the work in terms of your understanding, you have all the work that you could do?

Mr. MONACHINO. Well, you can always do more. You just put more people to work.

Senator NUNN. How long has the Rochester mob been actively engaged in the arson-for-hire business, to the best of your knowledge? Does it go back several decades or something in recent years?

Mr. MONACHINO. It went back for a long period of time, I can't actually tell you how long.

Senator NUNN. You don't really know how long?

Mr. MONACHINO. No.

Senator NUNN. Would you consider this arson for hire a major activity of the mob in Rochester area or a minor part of their operation?

Mr. MONACHINO. It was one of their operations.

Senator NUNN. It was one of their operations?

Mr. MONACHINO. Yes, sir.

Senator NUNN. What other operations did the mob carry out in the Rochester area?

Mr. MONACHINO. Gambling, loansharking, extortion.

Senator NUNN. Gambling, loansharking, and extortion?

Mr. MONACHINO. Yes, sir.

Senator NUNN. Was arson at the top of the list or would you say it was just one of several activities?

Mr. MONACHINO. It was just one of several.

Senator NUNN. What was the major activity that you knew about as far as the mob activity in the Rochester area?

Mr. MONACHINO. Principally gambling.

Senator NUNN. Did you get engaged in that?

Mr. MONACHINO. No, sir.

Senator NUNN. Did the mob get involved in the narcotics traffic?

Mr. MONACHINO. No, sir. That is one thing they never got involved in. Frank would never have anything to do with anything like that.

Senator NUNN. Valenti would have nothing to do with it. Why?

Mr. MONACHINO. He just didn't feel it was right. He had children and he didn't believe in that.

Senator NUNN. He didn't think it was right to make the children that way?

Mr. MONACHINO. That is correct.

Senator NUNN. What about the people who took over and unseated him in 1973, did they get involved in narcotics?

Mr. MONACHINO. No.

Senator NUNN. They followed the same theory?

Mr. MONACHINO. That is correct.

Senator NUNN. Do you know who was involved in narcotics in the Rochester area?

Mr. MONACHINO. No, sir.

Senator NUNN. Were there any other kinds of organized crime activity that the mob refrained from getting involved in in Rochester that you knew of?

Mr. MONACHINO. Prostitution.

Senator NUNN. Prostitution?

Mr. MONACHINO. Yes.

Senator NUNN. Why did they refrain from getting involved in prostitution?

Mr. MONACHINO. Frank never liked that because he wouldn't want, he always felt that nobody should make a living off a woman.

Senator NUNN. He didn't think anyone should make a living off women?

Mr. MONACHINO. That is correct.

Senator NUNN. Were there any other kinds of criminal activities that the mob didn't get involved with?

Mr. MONACHINO. No, sir. Them two principal ones.

Senator NUNN. Do you have any firsthand knowledge of other organized crime mobs in other cities getting involved in arson for hire?

Mr. MONACHINO. I actually had never had any contact with them.

Senator NUNN. So you don't have any firsthand knowledge of that?

Mr. MONACHINO. No, sir.

Senator NUNN. Mr. Monachino, are you now cooperating with the Marshals Service and Justice Department? Is that right?

Mr. MONACHINO. That is correct, sir.

Senator NUNN. You are a protected witness?

Mr. MONACHINO. Yes, sir.

Senator NUNN. You have been given immunity?

Mr. MONACHINO. Yes, sir.

Senator NUNN. When was this immunity given?

Mr. MONACHINO. I don't remember the date, sir, but I know it was.

Mr. COTTIN. I believe it was 1975 that the witness was given immunity.

Senator NUNN. When was the last time that you engaged in any kind of illegal activity, in what year?

Mr. MONACHINO. 1974, early part of 1975.

Senator NUNN. 1974 and 1975?

Mr. MONACHINO. Yes, sir.

Senator NUNN. Have you been concerned about your safety since you have cooperated with law enforcement?

Mr. MONACHINO. Yes, sir.

Senator NUNN. Have there been any threats on your life?

Mr. MONACHINO. Yes, sir.

Senator NUNN. A lot of them, several? How do you know about them?

Mr. MONACHINO. I know that there is.

Senator NUNN. How do you know?

Mr. MONACHINO. There is actually, you might say, a contract out.

Senator NUNN. There is a contract out?

Mr. MONACHINO. Yes.

Senator NUNN. How do you know that?

Mr. MONACHINO. From good sources.

Senator NUNN. Who put the contract out? Do you know that?

Mr. MONACHINO. The organization.

Senator NUNN. So you think the organization has put out a contract on your life?

Mr. MONACHINO. Yes, sir.

Senator NUNN. One of the things we are concerned about in terms of organized crime is the effectiveness of the witness protection program. Do you have any general comments that you would like to share with us on that?

Mr. MONACHINO. In what respect, sir?

Senator NUNN. Have you felt that you have been adequately protected by the Justice Department and the witness protection program?

Mr. MONACHINO. I would say that it is unfair to ask me that question, sir.

Senator NUNN. You would rather not go into that?

Mr. MONACHINO. That is correct.

Senator NUNN. I will defer that.

Senator PERCY. I would like to finish up with two other areas to better understand organized crime. Then I would like to go over the teepee to better understand how that operates.

We have used the term, you have used the term "mafia." We have used the terms "mob," "organized crime," "syndicate."

I wouldn't want to leave the impression that any one ethnic group has a monopoly in organized crime. That the mafia is a part of a total pattern of organized crime, the syndicate, the mob, in those areas which we term the mob, the syndicate, or organized crime.

Is it not true that you find ethnics across the board, probably no nationality group that is not somehow involved in organized crime or in the syndicate or in the mob? Isn't that correct?

Mr. MONACHINO. If they were involved, they weren't actually part of the membership, because just the one group, the one nationality was actually the members.

Senator PERCY. So what you are talking about in the mafia is just a part of the total overall complexion of organized crime and that is a particular part identified by nationality, ethnic background, and you

can only become a true member of that by having identified your association with that ethnic group?

Mr. MONACHINO. That is correct, sir.

Senator PERCY. Why do you think that organized crime has become so interested in arson for profit? Is that a more recent phenomena?

Mr. MONACHINO. They have probably always been involved in it.

Senator PERCY. Why the increasing interest today, though?

Mr. MONACHINO. Because actually the chances of getting caught and the profit that can be gotten from it, are great.

Senator PERCY. In other words, it would be called a growing business. It is a high yield business with a high profit and low risk. Is that right?

Mr. MONACHINO. That is correct.

Senator PERCY. There is no reason not to move in. Nationwide do you think that organized crime is becoming increasingly involved in arson for profit?

Mr. MONACHINO. It is my belief, yes, sir.

Senator PERCY. The reason is the ease with which they can get away with it. Is that correct?

Mr. MONACHINO. That is correct, sir.

Senator PERCY. How easy is it to get away with arson in your judgment? Would you also when you answer this, address the proficiency of the various fire departments whose activities you know about?

Do you look upon the fire departments and arson squads as highly sophisticated, to be cause for concern by an arsonist?

Mr. MONACHINO. Actually, the arson squads actually aren't, some of them really aren't qualified to be arson squads.

Senator PERCY. They are what?

Mr. MONACHINO. Some of them aren't qualified to be arson squads to begin with. Some of them aren't; no.

Senator PERCY. In other words, are some of them such, so lacking in qualifications you wouldn't even hire them to be an assistant to you as an arsonist?

Mr. MONACHINO. No, sir.

Senator PERCY. You have no problem then in feeling that you can outwit them?

Mr. MONACHINO. It is no problem at all. It is being done all the time.

Senator PERCY. Are some cities more sophisticated than others, however? From what you know, would the city of Chicago be more sophisticated in their arson squad than, say, Rochester?

Mr. MONACHINO. Yes, sir. There are other cities that probably are more capable.

Senator PERCY. But do you have any feeling that this is a problem that the law enforcement officials at the Federal level--FBI, LEAA, Justice Department--are giving much attention to, or do you feel it is an area of relative neglect, say, in contrast with narcotics?

Mr. MONACHINO. Yes, sir. It has been neglected very badly. That is why it is so profitable.

Senator PERCY. Do you think if the Federal Government put a higher priority on this, put greater emphasis on it, did a coordinating job and a training job in helping medium-sized and smaller cities to become more sophisticated, do you think it would make the job of an arsonist somewhat more dangerous then?

Mr. MONACHINO. That is correct, sir.

Senator PERCY. How easy is it today, right today, for you to set a job and get away without fear of being apprehended?

Mr. MONACHINO. No problem at all.

Senator PERCY. No problem whatsoever.

How did you happen to come to cooperate with Federal law enforcement agencies?

Mr. MONACHINO. Because I was involved in some things that I had got caught for.

Senator PERCY. I would like to have you further expand on an explanation for this teepee. Would you usually place the teepee in the middle of the room or someplace else in the room?

Mr. MONACHINO. You put it up against the wall, you know, where you want the fire actually to originate.

Senator PERCY. Why would you place it against the wall?

Mr. MONACHINO. So it would start a fire.

Senator PERCY. So it would spread right up the wall?

Mr. MONACHINO. Yes.

Senator PERCY. Did you peel away the plaster or wall covering to help the fire burn faster, or can you count on it igniting even with painted walls?

Mr. MONACHINO. Many times you would strip the plaster off because plaster doesn't like to burn too well.

Senator PERCY. Could I ask you, what is the purpose of arranging this now in a teepee fashion? What purpose does that serve?

Mr. MONACHINO. Actually, when the candle burns down to the bottom, it would ignite the excelsior, the basket, the kindling, the dried material that we have got there. Also, it would run from there to the streamers and start burning our flammable materials.

Senator PERCY. I don't know, Senator Nunn, whether you can see this or not, but as I see it now, I had not noticed, the basket is filled with shavings and the paper streamers.

Is this just an example of how they are set, or are those paper streamers actually extended much farther in the building?

Mr. MONACHINO. You can extend them much farther.

Senator PERCY. How far can you carry, extend those around to spread that fire around?

Mr. MONACHINO. From room to room.

Senator PERCY. They would be carried around to every flashpoint that you could reach then?

Mr. MONACHINO. That is correct.

Senator PERCY. What kind of flammables did you actually use?

Mr. MONACHINO. It actually depended on the building, what it had in it. Like the fire company, we used materials that would be used to repair tubes. We had plastic nozzles on it, we had laid the drums down and we had plastic petcocks on it so the fire would start to burn, burn the petcocks off and the material would run out.

Senator PERCY. The basket is filled with shavings.

Mr. MONACHINO. Actually, it would be excelsior.

Senator PERCY. You did mention before that you controlled the timing by the length of the candle?

Mr. MONACHINO. Yes. That is correct.

Senator PERCY. With a candle, you can figure out pretty well how long it is going to take, but it is easy to see here that as that candle burns down, it will quickly be ignited by—what are those—shavings?

Mr. MONACHINO. Those are shavings. We would use excelsior, stuff like that.

Senator PERCY. The final thing that possibly can't be seen is the fact that this container of flammables is wrapped in paper, but also tied with string. What is the purpose of that?

Mr. MONACHINO. It is wrapped for one reason, so actually if he was carrying it in, people wouldn't know what was in there and the twine on there would be used as a handle to carry it.

Senator PERCY. Is this the technique you developed yourself, or was it taught you by someone else?

Mr. MONACHINO. We actually developed stuff ourselves as a group. As a group we did.

Senator PERCY. Mr. Chairman, I have no further questions. I wish to thank our witness very much indeed, and I will join with you in suggesting that Mr. Monachino return to this committee so that we can get a better understanding from him of how the mob actually operated in Rochester.

We haven't had time to go into that in detail today. I think you can give us information well beyond just arson.

Today we have kept the focus on the arson issue, but I think when you do come back for further testimony, when we resume hearings with you after the Labor Day recess, we will get into other areas which you have discussed with the staff that I think should be in the public sector, and we very much appreciate your willingness to share that knowledge and information with the subcommittee.

Thank you, Mr. Chairman.

Senator NUNN. Thank you very much, Senator Percy.

Mr. Monachino, we appreciate very much your being here and your cooperation. Our next witness was scheduled to testify today, Mr. Joe Willis, and that is an alias. Because of the strong likelihood we are going to be having votes pretty much from now on, and be interrupted frequently, we will postpone that witness and, Senator Percy, do you prefer to have that witness tomorrow morning as the leadoff witness?

Senator PERCY. I would think that would be a good procedure at 10 o'clock tomorrow morning.

Senator NUNN. We will meet in this room tomorrow morning at 10 o'clock.

I will ask all the photographers to please comply with the committee rule regarding their cameras while the witness leaves the room. I will ask the Marshals Service to please notify me when the cameras are all in their proper places.

The witness can leave the room.

The subcommittee is adjourned.

[Whereupon, at 1:10 p.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, August 24, 1978.]

(Members present at time of recess: Senators Nunn and Percy.)

# ARSON-FOR-HIRE

THURSDAY, AUGUST 24, 1978

U.S. SENATE,  
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,  
*Washington, D.C.*

The subcommittee met at 10 a.m., pursuant to recess, in room 1114, Dirksen Senate Office Building, under the authority of S. Res. 370, agreed to March 6, 1978, Hon. Sam Nunn (acting chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; Senator Lawton Chiles, Democrat, Florida; Senator John Glenn, Democrat, Ohio; and Senator Charles H. Percy, Republican, Illinois.

Members of the professional staff present: Owen J. Malone, chief counsel; David P. Vienna, investigator; Stuart M. Statler, chief counsel to the minority; Joseph G. Bleck, general counsel to the minority; Jonathan Cottin, investigator to the minority; Ruth Y. Watt, chief clerk; Rosemary Steward, assistant clerk; and Stephanie Grill, secretary to the minority.

Senator NUNN. The subcommittee will come to order.

(Members of the subcommittee present at time of reconvening: Senators Nunn, Chiles, Glenn, and Percy.)

## OPENING STATEMENT OF SENATOR NUNN

Senator NUNN. This is the second day of hearings on the subject that is of very great importance to law enforcement efforts in the country, the subject of arson.

We had two witnesses yesterday. Today, we will have a total of five witnesses. The first witness we will have was scheduled here yesterday. His name is "Joe Willis" an alias.

As I explained yesterday, the alias was given at the request of the witness and I think it is reasonable for the subcommittee to comply with that request.

I will waive any further opening statement in favor of Senator Chiles this morning, who, I understand, has one.

## OPENING STATEMENT OF SENATOR CHILES

Senator CHILES. Mr. Chairman, I look forward to the testimony of witnesses today which will include a statement of Eleanor Hill and Eades Hogue, who are Justice Department organized crime strike force attorneys from Tampa.

Earlier this year a jury in Tampa returned guilty verdicts against 16 defendants on Federal charges of conspiracy, racketeering, and mail fraud. The convictions were the result of a 2-year coordinated effort led by the Department of Justice and involving the Tampa Police Department. The investigation uncovered an arson-for-profit ring and led to a conclusion that Tampa was suffering from one of the Nation's most extensive and expensive outbreaks of fires for profit, which was the result of an organized group of conspirators.

It really wasn't that long ago when Florida was a quiet State with some tourists and some industry, but mostly a place where the towns were fairly small, and most people recognized everyone or almost everyone.

Today is obviously a different time. Today, we are talking about arson for profit and we are not talking about the South Bronx neighborhood; we are talking about the South and a place in Tampa, Fla.

Thus far in these hearings we have heard that arson is one of the most difficult crimes to detect and prosecute. We have been told that it is easy—indeed the easiest—crime to commit.

Michael Smith told us yesterday that law enforcement can begin to reduce the number of arsons by successful investigations and prosecutions. The Tampa arson conspiracy case confirms that complicated and elusive cases can be successfully brought, but that such cases require a great deal of work.

As we begin the second day of these hearings, it is becoming quite clear to me that our focus should be on two sectors.

First, we should consider the ability of law enforcement and its perseverance of arson cases. We must determine the extent to which law enforcement and fire prevention specialists coordinate their activities and what their training is.

Second, we must look to the role of the insurance company. We must ask whether they are exercising good judgment in policies they write in their practices following reports of losses.

Finally, I would like to commend Senator Percy and his staff for their fine work in the development of this investigation. I am hopeful that as a result of these hearings, we will at the very least, begin to focus the attention of law enforcement at all levels on the seriousness and the extraordinary cost of this crime.

Senator NUNN. Thank you, Senator Chiles. Senator Percy.

#### OPENING STATEMENT OF SENATOR PERCY

Senator PERCY. I think we have already had some effect with these hearings and the hearings that Senator Nunn conducted and your deep interest, Senator Nunn and Senator Glenn.

I am addressing a patrolmen's association this weekend in Chicago and already I have got a call asking me to emphasize arson and tell what I know about arson. So I will look forward to being the semi-expert in this field.

Yesterday, we heard very disturbing testimony from two arsonists. Each told us in detail how he carried out his crimes. Until they practically landed in the arms of startled law enforcement officials, these men routinely hoodwinked the authorities. With police, fire, and insurance officials so easily bypassed, it is little wonder that arson crimes have skyrocketed so much lately.

Today, we will hear from a third arsonist in addition to receiving compelling testimony from two Federal Strike Force attorneys from

Tampa responsible for winning virtually the only major successful arson case ever prosecuted by the Federal Government. Through them, we will see what can be done when skilled prosecutors target and destroy a tightly organized arson ring. We will hear how the ring practiced its subversive trade and how the prosecutors, using existing Federal law, mopped up this cozy band, winning convictions against nearly all of them.

This morning we will also explore the relationship between insurance companies and arson-for-profit. The insurance industry itself may help make arson profitable. I am convinced that insurance companies must be much more diligent in checking the backgrounds of their applicants, in inspecting the properties, and in contesting suspicious claims. It would seem to be a suspicious claim if an insurance policy is taken out for twice the value of that property and a few days later it is burned to the ground and totally destroyed.

I think insurance companies, which obviously have to pass the cost of insurance on to their other policyholders, if they pay a claim like that without a thorough investigation, it is almost unbelievable.

One of the witnesses here this morning participated in the Tampa arson conspiracy. He was an insurance adjuster who knowingly settled fraudulent claims in favor of the conspirators, taking a substantial cut in return for his favors. He will tell not only about his role in that conspiracy, but also about the insurance adjusting business. Can we trust our adjusters and State insurance officials to be honest and root out law-breaking misconduct?

Are insurance companies themselves largely indifferent to the corruption and bribery occurring daily in claims settlement? I just don't see how they possibly could be indifferent to this problem. Maybe there is an area here that by public exposure of what is going on will cause insurance companies to intensify their activities in this area, I hope, bringing down insurance costs.

The insurance industry has been quick to cite arson loss statistics. But the evidence suggests it may not be doing everything it could do to keep them down. It is time for the industry to step up its own efforts to head off arson profiteers before they set properties aflame, and collar them before they can collect.

Certainly I think all of us would prefer rather than passing more laws, building up a bureaucracy down here, it is far better for us to say to the industry, here is a problem, we would like to see what you can do about it.

For that reason we will want to talk and consult with responsible executives in the insurance industry to see what can be done within the industry itself to correct their own problems.

Thank you, Mr. Chairman.

Senator NIXON. Thank you, Senator Percy.

Senator Glenn?

#### OPENING STATEMENT BY SENATOR GLENN

Senator GLENN. Thank you very much.

For over a year I have pressed for specific legislation to have the crime of arson treated not as a minor crime but as a major crime in

our national crime reports and to strengthen and improve State and local governments' capacities for arson fighting.

Yesterday we had the spectacle here of professional torches—who receive high arson-for-profit incomes, and pay no income taxes on them; who admitted in a free and open manner that arson really is the easiest crime.

These witnesses admit openly that organized crime is heavily involved and that arson-for-profit is spreading rapidly from the inner city to smaller towns and rural areas.

We heard that certain elements of the real estate profession can refer you to a reliable professional torch in some areas faster probably than to a professional plumber or an electrician.

Today, we further explore the arson epidemic, and that is what it is. While this exploration goes on, so does the Federal law enforcement apparatus, which has still not recognized the growth of this crime. That Federal law enforcement apparatus has taken no leadership in combating it, and it continues to act in the complacent and uncoordinated manner with respect to it.

We have no meaningful national crime statistics on arson. We have no large-scale crash investigative and prosecutorial skills training programs in this area. We have only minimal technological research efforts underway.

I really am looking forward to, and anxiously awaiting the reply of the Attorney General to my letter of Tuesday requesting his immediate effort to treat arson as a major crime. In the FBI criminal statistics gathering, and I gave some details on that yesterday in my opening statement, this would at least be a constructive start that would signal a new and vigorous Federal effort and commitment to bring this crime under control.

I might add that we would like to find out if it is true that the FBI doesn't want to upset the stable crime rates by adding a new and disturbing element to it that would make them look bad.

Crime statistics should reflect the problems in our society, not just the hopes of certain people in government as to what they wish the situation would be.

Should a satisfactory response to my letter not be forthcoming and should this overall pattern of Federal inaction and lack of concern continue, I want to serve notice this morning that I will attempt to attach tougher and tougher antiarson language to every single authorization and appropriation bill for Federal law enforcement agencies. I think we can get their attention on it by that way, if by no other.

I had certainly hoped that the hearings I held last December, my five previous legislative initiatives, the GAO report, and this series of hearings, on which I compliment Senator Percy and his minority staff for instigating, might have awakened some of the Federal agencies. But apparently not.

I do know that it is not tolerable to sit here and hear arson flouted and, in effect, yesterday almost bragged about while the Federal Government sits on its hands so far mumbling bureaucratic nonsense concerning outdated procedures, competing fire and police interests, and so on.

Mr. Chairman, I think we cannot tolerate it any longer. I don't think it will be permitted to continue, and I am glad these hearings are being held because I think they very properly focus attention on what is not being done on this fastest growing crime.

Senator NUNN. Thank you very much, Senator Glenn, for all of your work in this regard. Would you like for your letter and the reply to be part of the record at some point in time?

Senator GLENN. Yes. That will be fine. I submitted the letter yesterday.

Senator NUNN. We will leave the record open for the reply.

At this stage our first witness—does anyone else have any comments before we bring in our witness?

The first witness has requested that the committee not allow cameras to take pictures of his face. All of you, I think, were here at the meeting yesterday when we voted on this subject in accordance with our subcommittee rule.

So before we bring in our first witness, I will ask that all cameras be turned away from the front of the room. I will ask all spectators to also abide by this rule with no pictures being taken as the witness comes into the room, until he is seated, and until the marshals have given us their go-ahead.

Will the marshals tell me when to go ahead?

Thank you. Bring in the witness, please.

Before you seat the witness and before we get the cameras back, let me give him the oath.

Will you hold up your right hand?

Do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WILLIS. I do.

#### TESTIMONY OF JOE WILLIS

Senator NUNN. Thank you.

Captain, are you ready for the cameras? The cameras can resume their position.

Mr. Willis, we have in accordance with your request permitted you to be here today as an alias. We are using the name Joe Willis. So when we use that name, we are directing our remarks and question to you. Do you understand that?

Mr. WILLIS. Yes; I do.

Senator NUNN. Mr. Willis, we have a certain set of rules and regulations before this subcommittee and you have requested that cameras not be on your face, and we have accorded you that request. The subcommittee has granted that.

Before we start asking you questions and before we have your statement, we want to explain to you very briefly the rules of our subcommittee and your rights and your obligations as a witness.

First of all, you have a right not to testify before this subcommittee. If you choose not to, you have a right to invoke your rights against self-incrimination. Do you understand that right?

Mr. WILLIS. Yes. I do.

Senator NUNN. You also have a right to be represented by a lawyer here this morning. You have a right to consult with that lawyer before answering any questions. Do you understand that right?

Mr. WILLIS. Yes, I do.

Senator NUNN. Do you waive your right to have a lawyer with you this morning?

Mr. WILLIS. Yes, I do.

Senator NUNN. You do not have one representing you?

Mr. WILLIS. Right.

Senator NUNN. We also want to explain to you not only your rights as a witness before this subcommittee but also your obligations.

You have sworn to testify truthfully. You are under oath before this subcommittee and we expect you to testify truthfully, frankly, and candidly. Do you understand your obligation to testify truthfully before this subcommittee?

Mr. WILLIS. Yes, I do.

Senator NUNN. Do you understand your rights and your obligations as a witness before the subcommittee?

Mr. WILLIS. Yes, I do.

Senator NUNN. We appreciate your being here this morning.

It is my understanding that you have a statement you would like to lead off with. Is that correct?

Mr. WILLIS. Yes.

Senator NUNN. Sir, if you will go ahead, I would encourage you to use the microphone, hold it as close to you as you can comfortably. Take your time.

You have some water there in front of you; if you would like to stop at any point in time and rest a minute or take a swallow of water, you go right ahead. We want you to be comfortable.

You go ahead with your statement whenever you are ready.

Mr. WILLIS. Good morning. My name is Joe Willis, and I live in Philadelphia.

I am presently on probation for a period of 5 years in my connection with setting numerous fires to apartment buildings in Philadelphia. The person who commissioned me to set these fires was also the landlord and owner of these properties. He pleaded guilty in Federal court for mail fraud, and was sentenced to 9 months and 3 years probation.

My association with this landlord started back about 10 years ago when my father was going to work for him and he introduced me to him. I did begin to do odd jobs for him, emptying trash baskets, washing his cars, so on like that.

Around about this time, when I was about 16, I quit school to start working for him full time, signed papers and so on. Shortly after that, I rented an apartment because I had family problems and I had to have a house.

I rented this apartment from him and I started, you know, getting behind in my rent. Like I say, I was doing odd jobs for him and sometimes, like, I would work a whole week and sometimes I couldn't. So I wouldn't have money to pay him with in some cases.

When I did have the money to pay the rent with, and I would offer it to him, he would suggest that he not take it then, or he can put it on the tab, pay him later, you know.

It was around about this time I started realizing that if I wanted a certain amount of money for doing a job for him, such as painting an apartment, that I would have to put a bid in higher than I really wanted. If I wanted \$100, I would have to ask for like maybe \$125, you know, bringing me down to \$100 which I wanted to begin with.

Senator PERCY. If you added two zeros to it, to the 6 or 9 that same procedure might be the same procedure we use here in the Senate with authorizations going before the Appropriations Committees. [Laughter.]

We are familiar with the technique.

Mr. WILLIS. Like I said I started falling behind in my rent and he was threatening me because I owed him about, like, \$600 for the rent. Like I say, I wasn't doing too much work for him because like, you know, even the materials and stuff that he could buy would be so cheap that where you can open up a can of paint, right, and you can turn, take the lid off, and turn it upside down and then the paint would come out. You know, because that is how cheap the paint would be.

Mainly, I did these odd jobs because of the houses that were in code violations—the houses in violation.

We set—covers being off, stuff like that—ceilings falling down, so on. All right, it was around about like then, I was evicted, you know, from this property. I was evicted and I wasn't doing any work for some time.

Senator NUNN. What happened after you were evicted from the apartment? Go ahead with your statement.

Mr. WILLIS. Nothing happened, like, you know, I owed him \$600 and he said he wouldn't take any more of that, you know, and I didn't have any work and he knew it, because he was the only person I was working for. OK?

When like he evicted me, it was really no surprise. About a year and a half later I began seeing very little, you know, of him, you know. Like, we just didn't, you know, have any kind of association.

Now, like I said, I owed him some money, like about \$600, right? What he did was, like, he would let me pay him off, like, let's say whatever I can. Like when I had it, you know. And like, being as young as I was, like, I really didn't know if I was paying, you know, if I had paid it off or like I was just taking his word for it. I wasn't really taking, keeping track of it, you know.

Like I was paying him in a sum equal to the amount of that, and I would take his word about what I owed him. Eventually, I fell so far behind, you know, that, so far behind that I think I owed him about—

Senator NUNN. I understand you were first in debt to him in about 1976. You owed him \$200, and that was the point in time where he asked you to do something for him.

Why don't you take up right there?

Senator PERCY. I think, Mr. Willis, if you would just like to read your statement, it is perfectly all right.

Mr. WILLIS. One day in 1976 when I was in this debt to him for about \$200 he asked me how I would feel about doing a job. When I asked him what kind of job he wanted me to do, he told me, he was not able to tell me then, you know, exactly what it was.

He told me that it was not, that he was not able to rent out his apartments and that it had been boarded up for a long time because no one wanted it. He said he wanted to burn it down.

He said he didn't want, he said he didn't want it anymore, and in exchange for burning the house down he would cancel out my \$200 debt.

I agreed to do it. My landlord told me to burn the building with some gasoline. I purchased some gasoline in a gas can, and late one night went back to the house to which I gained access through an alley.

I climbed on the roof, through this alley—the back roof was like over a shed, kitchen, you know. I climbed onto that roof and I gained access to the building through an upstairs rear bedroom which was timed up.

I pulled the tin back, and I entered the building that way. I then took the gas inside and went downstairs into like the back kitchen area. I spread gas throughout the kitchen area down through the downstairs into like the living room, back up the steps, and into the front bedroom, and back into the bedroom that I came in through.

I then struck a match, ignited the gas, and left.

The next day he gave me \$150 in cash. He said I had done a good job.

During this time, I did not realize I was breaking the law. I simply figured that the building was his, he could do anything he wanted to it. You can do what you want to. If you wanted to fix it up, fix it up. If you wanted to tear it down, tear it down. That is the way I was thinking then.

For some time after that, I did no more fires. However, I also did very little legitimate work for him either. I was falling behind in my utility bills, and again I went to the landlord to ask him for \$150 to repay my bill.

He told me to bring my bills in and he will pay. But like I needed some extra money anyway. So I continued to press him, and he gave me about \$200; \$150 on that day and I was to return later that week to receive another \$50.

In return for that, I began doing like little patchup work for him, and doing receptacles and putting plates on electrical work, something like that.

This arrangement went on for a while and I was even with him. I was even with him again when he asked me to become the manager of an auto parts store, which I did, you know.

At this time, me and my girlfriend, we were having our problems and we were about to break up, and I needed a place to stay and everything. So I again went to him, and he let me rent an apartment from him.

The apartment I was renting from him at that time was \$150 a month.

Senator NUNN. At that time, did he ask you to do anything in particular for him?

Mr. WILLIS. He told me of a woman that was living in a house, that she was behind in rent about \$1,500. And the house was like really, it would take a lot of money to repair the house to make it livable again, because the ceiling and stuff was falling in. He told me that he wanted to do was have the house burned down because the woman was so far

behind, and for him to put additional money into it wouldn't be worth it to him.

Senator PERCY. He did explain to you though the reasoning why he wanted the house burned down? Just because she was \$1,500 behind in rent?

Mr. WILLIS. At that time he told me she was behind in rent and it wouldn't pay him to remodel the house.

Senator PERCY. Before in the previous incident you indicated that you did not realize at your young age that you were really breaking the law. You figured he owned the house, he has got a right to burn it down if he doesn't want it. You at that time did not understand that a house could have been insured and that he was collecting insurance for that. That never occurred to you at the time?

(At this point Senator Glenn withdrew from the hearing room.)

Mr. WILLIS. No, I didn't.

Senator PERCY. You just thought what he was doing was right, it is his property, let him burn it down if he wants?

Mr. WILLIS. Yes.

Senator PERCY. Go right ahead.

Mr. WILLIS. He told me he wanted the house burned down, but like he didn't want to do it while the lady was in the property.

It was also a lady that lived next door to that property that he owned; she was behind in the rent, too, and he really wanted to get her out, too. So what I could do, is I could see the house he was talking about if I just looked out the store front door. I could look down the streets, I could see the house.

This particular day I seen her moving. Like I seen a truck, moving furniture out of her house. And I called him up and told him, or asked him if he knew she was moving that day. He told me no, but like he also would like to see the house burned the same day that she moved, to make it seem if she was mad at him and did it when she left.

I was then instructed to close the store and make preparations in the house to be burned. I then closed the store and I went down to the house, went in the front door and to see, to remove the baseboards and the trim off the windows, take up the steps leading to the up-stairs and pile them in the center of the floor.

After I did that, I went and got two 5-gallon containers from the store and went to the gas station and got one filled at one gas station, and went to another gas station and got the other one filled.

And I returned to the house and I spread the gas throughout the upstairs, what was left of the steps, the steps and down the front on the first floor, the front living room. I then went back to the store and called him, told him what I did and he told me that he would like to see the property be torched around about 4:30.

When I asked him why around that time, he said because of the traffic. It would be like very busy around that time and the fire engines would have a problem getting to the fire. So, like, I set the fire around about 4:30, around about that time.

I went back through the alleyway, and gained access to the building through the back of this property. I struck a match and ignited the gas and I then left.

Senator NUNN. I think you are now at the point where you are going to tell us about the amount of money that you were paid for that job. I think you are at the middle of page 4 of your statement.

Mr. WILLIS. He told me that he would give me about a \$1,000 for the job and cancel out a \$600 debt that I was into him for, you know.

Even though at that time like—even though I knew by that time that what I was doing was illegal, I went ahead and set the first because I needed the money and wanted to get out of debt. After the firemen arrived, I notified him and told him, I notified the landlord who said that he was going to come over and I told him not to because the people in the neighborhood, they were already thinking that he had, what was happening, was the first set, and it was only a matter of time.

Like I was saying to myself, I can hear the people outside, he got another one, you know. He has done it again, you know, like that. So I told him not to come down at that time.

The next morning he brought me about \$300 in cash. Shortly after he told me that he had another property which he had recently evicted a tenant for nonpayment of rent and he wanted that burned down, too.

He offered me \$300 to burn that particular property down. I guess a couple of days went by. I went down to the property to set the fire the same way I did the other two, with the gas and spreading it throughout the house like that.

Like I said, the apartment was costing about \$150 a month and like it wasn't no regular work, like I could just get a job from him whenever he said he had something. Sometimes it would be for weeks, you know. Sometimes I would go down and I would ask him for money when I didn't have any and he would give it to me.

It was then about this time that he told me I was in debt to him about \$750. He also started to complain because, like, I wasn't able to give him any money because I wasn't working and I was continuing to live in his apartment.

Senator NUNN. Did you go on welfare?

Mr. WILLIS. Yes; I did. I was on welfare. I was trying to give him about \$50 a week which I continued to do for a short period of time. He would come to the house and, you know, at this time, like when he told me about owing him so much money and I was seeing the way he was acting, I had thoughts in my mind of how or what can I do to just, you know, demolish our relationship.

Like, if I had had some place to go, I would have went, but I had no other place to go.

Senator NUNN. So you felt you were under severe pressure and he really had you in a bind. Is that right?

Mr. WILLIS. Yes; I did.

Senator NUNN. I believe at the top of page 5 of your statement you state that the landlord really had me in a bind at that time.

Mr. WILLIS. Yes.

Senator NUNN. Why don't you pick up there?

Senator PERCY. At that point had you figured out in your own mind that this was a technique of his, he was not a friend of yours, he was trying to keep you in debt so you would always be obligated to him? Had you figured that out?

Mr. WILLIS. Yes; I did.

Senator PERCY. You had at that point. Could I ask one other question?

You went on welfare, yet you had a skill. You could work with your hands, you could do repair. Did you really make a conscientious effort to find a job? You just couldn't get a job? Did you have a union card?

Mr. WILLIS. I didn't have a union card because the work that I did for him, it was just between me and him. I did hold other jobs, but like it was just a day, maybe 2 days a week, you know. This is how, while on welfare, I was able to pay him like \$50 a week.

Senator NUNN. I believe you are right at the top of page 5.

Mr. WILLIS. All right. The landlord really had me in a bind and one day he explained to me how I could cancel out my debt by arranging, by an arrangement, by which I would purchase a house from him.

What he did was he offered to give me a house for about \$1,400 and after I had signed papers putting the house in my name, he told me that what I could do was—or that the house would be insured for about \$5,000 and that the cost of the house for me to him would be like \$1,400.

What I could do after I signed papers or put the house in my name, what I could do was burn the house down and receive the insurance money, which would be about \$5,000, pay him, and the rest would be mine.

It was around about this time that I—we really didn't do that because like something happened. I think he got mad at me and he wasn't speaking for a couple of weeks and it just didn't happen, you know, like it wasn't no work.

It was around about this time that I realized that he really just wanted me out of his apartment and he wanted to just get rid of me. I guess he felt the same way I felt, we just wore each other out, you know. Like, it was that, you know.

Senator NUNN. Did you take out the insurance policy on the house?

Mr. WILLIS. No; I did not.

Senator NUNN. Did you actually buy the house from him?

Mr. WILLIS. I really wouldn't have had to buy the house from him; it would just have been a matter of changing the titles or whatever.

Senator NUNN. Just a paper transaction? You wouldn't have had to pay anything?

Mr. WILLIS. Right.

Senator NUNN. You just were going to sign them, take out the insurance policy, burn the house, collect the insurance, then pay him and keep the rest?

Mr. WILLIS. Right.

Senator NUNN. That didn't take place though?

Mr. WILLIS. Right. Like I said, I was really desperate to pay him back. When he proposed another building to be set afire, which was one of his properties, I was willing to do it in order to cancel out the debt that I owed.

This was to be a \$300 job and he gave me \$140 up front to get whatever I needed to do it. I planned to set up an electric hotplate on a timer with a container of gasoline on top of the burner to burn this particular building down. I set it, I set it up, you know, like I would have, but I was ready to set the hotplate up, plug it into the wall, and I heard noises from the outside like kids and stuff playing.

This particular house was next to a lot and like I heard the noise and I just decided to leave. This was another house that he said he would like to be burned around 4:30 because of the fire engines getting there, through the traffic.

Senator NUNN. Was this the same general neighborhood where you burned the other houses?

Mr. WILLIS. No. It wasn't.

Senator NUNN. A different area?

Mr. WILLIS. Yes. It was.

When I returned to my apartment, the landlord was calling. He wanted to know what had happened, you know. He was very unhappy because he didn't hear of his property being on fire. Nobody called him and told him or anything, you know.

So he was like very upset with me. He didn't want to talk to me. In fact, we didn't see each other for about a week. Later he kept pressing me to burn other properties, but I was getting a afraid of being caught. But my need for money kept me at it.

Finally, I was caught in the act of setting up one of his buildings to be burned. I was caught by the police who must have been alerted by neighbors.

From that point on, I began cooperating with the police officials, who later turned me over to the Alcohol, Tobacco and Firearms Bureau. Through normal investigation, including monitoring of telephone calls and using of body recording devices while talking to the landlord, I was able to demonstrate to the law enforcement authorities that the landlord was the moving force behind these fires.

Senator NUNN. Thank you very much, Mr. Willis.

Senator Percy, I will defer to you.

Mr. CORRIN. I would like to enter for the closed file as exhibit 4. Mr. Chairman, the memorandum concerning the events to which our witness has testified this morning.

Senator NUNN. What is the label of that memorandum?

[At this point Senator Glenn entered the hearing room.]

Mr. CORRIN. It is a memorandum to the U.S. attorney in the judicial district in Philadelphia, Pa., from the Alcohol, Tobacco and Firearms Bureau.

Senator NUNN. That needs to be a sealed exhibit?

Mr. CORRIN. Yes, sir.

Senator NUNN. Without objection, it will be sealed exhibit No. 4.

[The document referred to was marked "Exhibit No. 4" for reference and will be retained in the confidential files of the subcommittee.]

Senator NUNN. Senator Percy.

Senator PERCY. Mr. Willis, I would like to first say to you that, when you were not present yesterday, we had two arsonists, both of whom were real professionals, one a member of organized crime, the other one a lone operator; always operated alone but they went into it as a business.

They did it on their own initiative, without any question. No one induced them to do it or trained them for the job. They were self-employed, entrepreneurs, you might say, businessmen in business for themselves in a sense, but one of them from the mob performing jobs for organized crime.

The value of your testimony is that it could happen to almost anyone. You were just a young kid 16 years old when you started to get into the problem, and the pattern of exploitation could happen to anyone.

The technique wasn't apparent to you at the beginning. You began to get, as I listened to your testimony, aware of what was happening to you, that you were getting deeper into debt; the whole plan was to keep you in debt. You were desperate to pay it off, but also you began to get fearful that you might get caught and you wondered how you could get out of this thing, but you just couldn't get out of it.

And you indicated that you were nervous and fearful at the end. Were you usually nervous or frightened when you set these fires?

Mr. WILLIS. Yes, I was.

Senator PERCY. You weren't cool about it at all?

Mr. WILLIS. No, I wasn't.

Senator PERCY. You were agitated, excited; did perspiration break out? You were mentally upset about it. Did you ever take a drink to get your nerve up?

Mr. WILLIS. Yes, I have. Yes, I did.

Senator PERCY. Did alcohol—what was the drug that you used, alcohol?

Mr. WILLIS. Excuse me?

Senator PERCY. You used alcohol, did you?

Mr. WILLIS. Yes.

Senator PERCY. What alcohol? How strong?

Mr. WILLIS. About 80 proof.

Senator PERCY. Pardon?

Mr. WILLIS. About 80 proof.

Senator PERCY. How much would you take in order to get your nerve up?

Mr. WILLIS. Maybe two drinks.

Senator PERCY. If you hadn't done that, if you hadn't taken those drinks, might you have been scared enough to not have performed the arson acts?

Mr. WILLIS. Probably.

Senator PERCY. So alcohol—in a sense got your nerve up to keep going on this thing? How much would you drink, for instance, of 80 proof?

Mr. WILLIS. How do you mean that?

Senator PERCY. One or two shots or what?

Mr. WILLIS. I would get, let's say, about half a pint and I might take about two swigs out of it.

Senator PERCY. You weren't drunk at all?

Mr. WILLIS. No.

Senator PERCY. Just enough to get your nerve up. Did you use drugs or narcotics at all?

Mr. WILLIS. No.

Senator PERCY. You never did?

Mr. WILLIS. No.

Senator PERCY. You did not because of what, too expensive or you realized it was a dead-end street or what?

Mr. WILLIS. I just didn't care for it.

Senator PERCY. Did you ever have any training before you—when you started setting fires in buildings on your own? Did anyone give you a course in arson or teach you how to do it?

Mr. WILLIS. No.

Senator PERCY. From start to finish, what was the procedure you used? What was the first procedure you used when you first started doing this, and then what was the procedure you used at the end, and had you developed techniques that were more sophisticated or complicated or more effective?

Mr. WILLIS. In the beginning, what I did was like, just walk, gain access to the house and walk in and just throw gas wherever I could, ignite it, and leave.

In the end, I was hoping that this would be my last fire; I thought maybe I might have got a little sophisticated by using the timer. I thought this was something new.

Senator PERCY. Using the timer?

Mr. WILLIS. Yes.

Senator PERCY. To give you time to get away?

Mr. WILLIS. To leave the area.

Senator PERCY. What did you do at the beginning, Mr. Willis, to make it more difficult for firemen to get in? Did you do anything at all other than just pour gasoline around?

Mr. WILLIS. No; I did not.

Senator PERCY. How about, for instance, in a stairway; did you ever do anything to seal off the stairway to make it more difficult for the firemen to get at the fire?

Mr. WILLIS. At the landlord's instruction, after I think maybe about the second fire, he instructed me to take up the stairs so it would be hard for the firemen.

Senator PERCY. So the first fire, you didn't do anything to make it more difficult?

Mr. WILLIS. Right.

Senator PERCY. Later you realized that if they could get up there rapidly, they could put it out, so you made it more difficult?

Mr. WILLIS. The landlord realized that.

Senator PERCY. Did he advise you to do that?

Mr. WILLIS. Yes; he did.

Senator PERCY. He told you to tear up the stairs?

Mr. WILLIS. Tear up the stairs, take the trim off around the baseboard, around the windows, and doors, like that.

Senator PERCY. When that was done, wouldn't it seem obvious to anyone if they moved into the building and the stairway was torn up, it was difficult to get in; were they occupied buildings that had been occupied recently or were they abandoned long since?

Mr. WILLIS. In some cases there were tenants who were just evicted from there and in other cases where they might have been boarded up for a couple of months and maybe the vandals had ripped stuff out, something like that.

Senator PERCY. Would it seem to you that the fire department might have felt there was a suspicion that someone had done something to make it difficult for them to get in, if the stairway was torn up and yet people had previously lived in the building?

Mr. WILLIS. It hadn't occurred to me.

Senator PERCY. It didn't occur to you?

Mr. WILLIS. No.

Senator PERCY. But wouldn't a normal average inspection make a point, look on that as a suspicious element in that fire, that it was difficult for the firemen to get up to the fire?

Mr. WILLIS. It should. But like the way that he put it to me, was like you know, they would walk in there, they would see they couldn't get upstairs, so they would just say, I am not going up there.

Senator PERCY. What was the purpose? You mentioned that you had peeled away the baseboard and the trim in the apartments and was this done at the instruction of the landlord?

Mr. WILLIS. Yes; it was.

Senator PERCY. What was the purpose of that?

Mr. WILLIS. To make the property seem like, if the fire did not do enough damage to the property, when the insurance adjuster would come out to look at the property, he would see that it would be damaged, let's say, beyond the repair or value of the house, you know.

Senator PERCY. When I questioned you earlier, you indicated that you had felt that it was nothing illegal; the landlord owned this property and if he wanted to burn it down, that is his business, and now we are talking about insurance adjusters. This comes later in your experience?

Mr. WILLIS. Right.

Senator PERCY. You realized when you were instructed to make it look damaged so the insurance adjusters would find that, that probably something illegal was being done?

Mr. WILLIS. Yes; I did.

Senator PERCY. But at that time did it occur to you that it is illegal, I had better not do it, was there more fear in your mind?

Mr. WILLIS. It was a matter of paying my debt off and having a place to stay. It was either—well, the way he would, the way the landlord would put it, he would put it like in a sense of either do it or leave.

Senator PERCY. In other words, when you first got into it, you couldn't put your hat on and walk away from it; everything was done to allay your suspicions. After all, this is my property, I want to burn it down, I don't want it.

Later when you were deeper in debt, more obligated, impossible to just put your hat on and walk away, by then the landlord himself was taking you in and telling you, this is what you should do so that I can get more insurance, and so forth?

Mr. WILLIS. Right.

Senator PERCY. Did any of your fires fail to burn properly?

Mr. WILLIS. Yes.

Senator PERCY. Why did they fail to burn?

Mr. WILLIS. I didn't buy enough gas, didn't spread it; you know, didn't spread it right, I just didn't do it right.

Senator PERCY. Would he eat you out if you hadn't done a good job?

Mr. WILLIS. Yes; he would.

Senator PERCY. Would he tell you why the job had not been properly—did he question you as to how much gasoline you had used, where you had spread it, and give you more instructions as to how to do a better job the next time, to go back and do that one over?

Mr. WILLIS. He would instruct me to use more gas and I would have to go back and do the job over because, like I said, he would give me sometimes, in some cases, half the money up front.

So, therefore, I had already took the money to do the job. Therefore, I had to do the job. when the job didn't, you know, burn—the house didn't burn right—he wouldn't pay me the other half and therefore I already would be in debt to him more because I had just gotten more money from him.

So then I would have to go, you know, by his instructions, go back and do the fire again.

Senator PERCY. What method did you use to transport the gasoline from the gasoline stations to the buildings that you intended to burn?

Mr. WILLIS. At first, like I said, I was doing painting, stuff for him. What I would do is gather empty paint cans and paint thinner cans, in some cases they might be like a 2-gallon or 3-gallon containers and I would go down to one gas station and get one container filled and I would go to the other gas station, get the other container filled, in some cases I would be walking and up until the time you bought my car, after I bought my car I used the car to transport it.

Senator PERCY. You used the car to transport them. Did you ever put them in paper bags to carry them through the streets?

Mr. WILLIS. Yes. I put them in trashbags, green trashbags.

Senator PERCY. How many fires did you set, Mr. Willis, in your period of arson?

Mr. WILLIS. Five.

Senator PERCY. Over how long a period of time?

Mr. WILLIS. I would say about 8 years.

Senator PERCY. Only five fires in 8 years?

Mr. WILLIS. Yes.

Senator PERCY. Was there any suspicion on the part of gasoline station attendants as to what you were doing with this gasoline when you went and bought it?

[At this point Senator Chiles withdrew from the hearing room.]

Senator PERCY. Did you do anything to allay their suspicions?

Mr. WILLIS. I wouldn't buy large amounts. I would just get a couple of gallons for here and there.

Senator PERCY. Did you buy small amounts from several different stations?

Mr. WILLIS. Yes.

Senator PERCY. Who paid for the gasoline?

Mr. WILLIS. He would give me the money up front and I would pay for it.

Senator PERCY. He would advance the money to you?

Mr. WILLIS. Right.

Senator PERCY. Mr. Willis, it has been said that some people who set fires to buildings do so because of the thrill-seeking instinct—to get a thrill out of it.

Did you ever get a thrill out of setting fires? Did that motivate you at all, or was it just your need for money?

Mr. WILLIS. Need for money.

Senator PERCY. You got no real thrill out of it?

Mr. WILLIS. No; I didn't.

Senator PERCY. What kind of houses were you burning essentially?

Mr. WILLIS. They were generally houses that needed repairs, to be livable again. Sometimes the tenants would tear the house up before they would leave. In some cases, that would be what would be happen-

ing. They would take the water pipes and stuff out, and he just wouldn't want to put that kind of stuff back into it.

Senator PERCY. I want to ask you about your feelings about possibility of doing damage to anything. Did you have any standards or code of ethics of your own as to whether or not you burned a building that might possibly have human beings in it that would cause injury or death?

Mr. WILLIS. The buildings were vacated.

Senator PERCY. You made sure they were vacant?

Mr. WILLIS. Yes; I did.

Senator PERCY. Did you make sure that they wouldn't spread the fire—spread the fire to other buildings that were occupied?

Mr. WILLIS. I had no control over it. Like I said, I just went in there, threw gas wherever I could, struck the match, and left.

Senator PERCY. Did you ever set a fire in the neighborhood where any relatives of yours were living, where you had any personal feelings about the building or the neighborhood?

Mr. WILLIS. Yes; I did.

Senator PERCY. Who was the relative?

Mr. WILLIS. My mom.

Senator PERCY. Did that cause you to feel differently about setting a fire in that particular neighborhood where your mother lived?

Mr. WILLIS. Yes; it did. It was on the same block.

Senator PERCY. That personalized the damage that was done in that particular neighborhood? Did you ever have concern that the areas in which you lived that burned-out buildings left as scars made life and quality of life in that neighborhood—I have been through them all over the country, with burned-out, abandoned buildings, that it left a ghetto that was in disrepair, in bad shape, even much worse for all the people living there, even though people were not injured in the fire itself?

Did that bother you at all?

Mr. WILLIS. Yes; it did.

Senator PERCY. Finally, were you given instructions as to whether or not you should set fire to buildings where people were in them? Were you ever instructed on that particular point?

You said you made sure that there were not people in them. Did the landlord want to make sure of that also?

Mr. WILLIS. Yes; he did.

Senator PERCY. So he was interested strictly for money.

[At this point Senator Chiles entered the hearing room.]

Senator PERCY. Was anyone ever injured in any of the fires that you set at all that you know of?

Mr. WILLIS. No.

Senator PERCY. Not at all? The element of fear I mentioned yesterday in my opening statement, having experienced fire in the middle of the night in my own home with my three small children and it didn't leave me for a long time, the concern about it.

I never thought about an arsonist. I just thought, mechanical, electrical problems as we had in the air-conditioning system that caused that fire. But it caused deep concern on my part, for the safety of my children after that.

Were you ever concerned that fires set in buildings, in neighborhoods, heavily congested with population, in any of your own people, black

people, that would cause fear to the people living in those neighborhoods and what it would do to them even though they weren't in a building that was torched? What it would do to them about their concern about their personal safety?

Mr. WILLIS. Did it occur to me?

Senator PERCY. Yes.

Mr. WILLIS. Yes.

Senator PERCY. You were very young. I want to point that out.

Mr. WILLIS. Yes; it did.

Senator PERCY. What thoughts went through your mind about that, and did that bother you?

Mr. WILLIS. Yes; it did. It bothered me.

Senator PERCY. Yes, as I understand your problem, you were getting in debt, deeper in debt; you had concern and fear as a human being for other human beings' concerns but the most immediate thing was this debt, you were being pressed; you were going to be thrown out, and that overcame concern and fear, that plus a couple of shots of 80-proof alcohol?

Mr. WILLIS. Yes.

Senator PERCY. Does that accurately depict the problem that you had?

Mr. WILLIS. Yes.

Senator PERCY. Did the fire that you set in your mother's neighborhood cause you to take any action? You were more deeply concerned.

Did it cause you to then make a decision right then and there that you would do something different than you had been doing?

Mr. WILLIS. Yes.

Senator PERCY. What was that decision?

Mr. WILLIS. I was trying to find a way that I can expose what was happening to someone and not, you know, be personally injured. I know I would probably be in some type of trouble, but to try to make it as easy as I could.

I spoke to a couple of people about it and they told me this would get back to me. But I think, say about the money, I was asked to do another job and it was like an either/or thing, either do the job or leave.

Senator PERCY. You said you would not do it then?

Mr. WILLIS. I told him, you know, that I would do it. But like I didn't want to do it and this was like to be the last job. In other words, after I did the job, he was—

Senator PERCY. That was it?

Mr. WILLIS. That was it.

Senator PERCY. You made your mind up. Did your mother have any knowledge you were engaged in this activity?

Mr. WILLIS. No; she didn't.

Senator PERCY. Did she know about the fire in her neighborhood?

Mr. WILLIS. Yes.

Senator PERCY. Did she personally express her concern to you about that fire?

Mr. WILLIS. Yes; she did.

Senator PERCY. Was it your mother saying to you, here is a fire, possibly saying this could happen to us, and it is causing fear in our neighborhood; is that what finally reached you?

Mr. WILLIS. Yes; it did.

Senator PERCY. If that personal experience had not happened to you, probably you wouldn't have made that decision I am going to do one more and get out of this?

Mr. WILLIS. No; I would have left anyway.

Senator PERCY. Thank you very much, indeed, Mr. Willis.

Senator NUNN. Mr. Willis, just a couple of questions. Did you serve any time in jail for setting these fires?

Mr. WILLIS. No; I did not.

Senator NUNN. Did you plead guilty to arson charges?

Mr. WILLIS. Yes; I did.

Senator NUNN. Where was that? In Pennsylvania?

Mr. WILLIS. Yes; it was.

Senator NUNN. Philadelphia?

Mr. WILLIS. Yes.

Senator NUNN. How many arsons were you charged with?

Mr. WILLIS. Five.

Senator NUNN. And you confessed to setting all those; is that right?

Mr. WILLIS. Yes.

Senator NUNN. What was your sentence?

Mr. WILLIS. I got 5 years' probation before cooperating.

Senator NUNN. You haven't served any time in jail?

Mr. WILLIS. No; I haven't.

Senator NUNN. What about your landlord? Did he get charged with a crime?

Mr. WILLIS. Yes; he did.

Senator NUNN. What was the crime he was charged with?

Mr. WILLIS. I believe mail fraud.

Senator NUNN. Was he convicted?

Mr. WILLIS. Yes; he was.

Senator NUNN. Did you testify in that case?

Mr. WILLIS. Yes; I did.

Senator NUNN. Do you know what his sentence was on the mail fraud charge?

Mr. WILLIS. I believe it was 3 to 9 months and 3 years' probation.

Senator NUNN. Are there other charges still pending against him like arson charges?

Mr. WILLIS. Yes; there is.

Senator NUNN. Where would that be? In Pennsylvania?

Mr. WILLIS. Yes.

Senator NUNN. When you got caught, was it in the daytime or at night?

Mr. WILLIS. It was at night.

Senator NUNN. What time of night?

Mr. WILLIS. Around 12 or 1 o'clock in the morning.

Senator NUNN. Where were you—were you in a residential area?

Mr. WILLIS. Yes; I was.

Senator NUNN. Were you in the process of burning down a home or apartment?

Mr. WILLIS. A vacant home.

Senator NUNN. Was the home joined to other homes, or was it isolated by itself?

Mr. WILLIS. It was a rowhouse.

Senator NUNN. So there was a home right next to it?

Mr. WILLIS. Right.

Senator NUNN. What had you done that night in terms of beginning to prepare for the fire?

Mr. WILLIS. I was instructed to return to his property to burn it down during that weekend.

Senator NUNN. During the weekend?

Mr. WILLIS. Right. What I did was I went out to a party, had a couple drinks, so on, and I was saying to myself, this would be the last one, get it over with, and like that.

Senator NUNN. So you went out, had a couple of drinks, and you were determined this was going to be the last fire?

Mr. WILLIS. Yes.

Senator NUNN. What did you do then?

Mr. WILLIS. I owned a car then and I went to the gas station, purchased some gas, returned to the property, entered the property with a key which was provided by the landlord.

Senator NUNN. You had a key? You didn't have to break open the door?

Mr. WILLIS. Right. Entered the property, spread the gas throughout the upstairs, down the steps, in the back kitchen, and toward the front door. I don't know what happened or what; just like for some reason or another, I just said I wasn't going to do it.

Senator NUNN. You said to yourself you weren't going to do it?

Mr. WILLIS. Right. I started to leave the property. But just as I put my hand on the doorknob, I felt tension on the other side as if somebody had their hand on the knob, too. So what I did, like my hand locked on the knob and I could feel someone jiggling it trying to turn it.

But I had so much pressure holding the knob that I didn't feel whoever was on the other side release the knob. Therefore, when the cops arrived, I was still holding the knob.

Senator NUNN. How long were you holding that knob?

Mr. WILLIS. For a long time.

Senator NUNN. Would you say 5, 10 minutes?

Mr. WILLIS. About 5 minutes.

Senator NUNN. You were standing there gripping that doorknob thinking somebody was going to come in on you and you never knew they turned loose the doorknob?

Mr. WILLIS. Right.

Senator NUNN. Who was that person?

Mr. WILLIS. Neighbor.

Senator NUNN. Did they go get the police?

Mr. WILLIS. Like I said, I didn't know he had left. So when I heard a car pulled up, I poked through the window, it was a cop. I left and went into, try to hide.

Senator NUNN. In the building?

Mr. WILLIS. In the building.

Senator NUNN. The policeman came and found you?

Mr. WILLIS. Yes; he did.

Senator NUNN. Senator Glenn.

Senator GLENN. Where did the landlord live? Did he live in the area where the fires were occurring?

Mr. WILLIS. No; his offices were.

Senator GLENN. He was an absentee landlord, he lived in another part of the city?

Mr. WILLIS. Right.

Senator GLENN. Was he in the city or another town?

Mr. WILLIS. In the city. He lived outside the city limits, in like another township like. But it was like a matter of crossing the street.

Senator GLENN. Were you ever at his home?

Mr. WILLIS. No; I wasn't.

Senator GLENN. Did any of the other people that were your friends, young people, know you were involved in these activities?

Mr. WILLIS. I would think that they had suspicions, but they weren't sure.

Senator GLENN. You never discussed it with them?

Mr. WILLIS. No; I didn't.

Senator GLENN. What would have been their general attitude, do you think? Would they have just accepted this, or was it so commonplace in the area they wouldn't have thought that much about it?

Mr. WILLIS. What they was, what the community was trying to do was get together to find out who was actually setting these fires, but I was like right in with them, talking about it. So, like, it was a little hatred toward the landlord, you know, because they knew that like all of these fires that was happening to his property, only his property, you know, and the way he would evict the tenants and shortly after the property would be set afire.

Senator GLENN. Were there other fires going on all the time besides the ones that you set?

Mr. WILLIS. Not that I know of, or if there was, they were very small.

Senator GLENN. To your knowledge, among your friends or the people that you would run around with there, were any of them supporting drug habits, for instance, by being torches or by setting fires themselves?

Mr. WILLIS. Excuse me? I didn't quite hear that.

Senator GLENN. Among your friends that you knew there, did any of them have drug habits that they were supporting by setting fires?

Mr. WILLIS. No; not that I know of.

Senator GLENN. Was anyone ever hurt in any of the fires that you set?

Mr. WILLIS. No.

Senator GLENN. Were any of the firemen that came and responded, were any of them hurt?

Mr. WILLIS. No.

Senator GLENN. I mentioned yesterday this thing in New York, at least, that has been called mango hunting. Are you familiar with that term at all?

Mr. WILLIS. No.

Senator GLENN. Mango hunting occurs after a fire is out. People go in and scavenge out the fixtures that are not damaged, like a bathtub, pipes or some of the permanent porcelain fixtures, and sell them to a contractor as used plumbing equipment. Was that ever done in any of the fires that you set?

Mr. WILLIS. Not that I know of. I didn't return to the property.

Senator GLENN. You didn't go back and take out any fixtures for the landlord or anything like that?

Mr. WILLIS. No.

Senator GLENN. I noted in your statement that the landlord is now in Federal prison for mail fraud. Was that mail fraud connected with the arson?

Mr. WILLIS. As far as I know; yes, I believe so.

Senator GLENN. Do you know how that worked? How was he in on mail fraud for arson? Do you know?

Mr. WILLIS. I believe his insurance transactions were being handled through the mail.

Senator GLENN. So they got him indirectly; they didn't get him directly for hiring you to set the fire?

Mr. WILLIS. Right.

Senator GLENN. Thank you, Mr. Chairman.

Senator NUNN. Thank you, Senator Glenn.

Are there any other questions of this witness?

Senator PERCY. Mr. Chairman, I would like to thank Mr. Willis. I know this isn't an everyday occurrence for you. I think you have done extraordinarily well and told the story like you saw it.

We want to express appreciation for the fact that we understand this is a hard thing for you to do but you have done it very well indeed and I think you have done a great public service. Thank you.

We thank you for that and I hope your story will deter a number of those who might unsuspectingly fall into this same kind of trap that you fell into at a very, very young age. I have seen it. I have seen it in the west and south sides of Chicago, young kids just like you who just didn't know what they were getting into and some guy up there manipulating, working them like a puppet on a string.

Your story, I hope, will get wide enough attention to deter others unsuspectingly falling into that same trap. Thank you.

Senator NUNN. I share Senator Percy's sentiments. We appreciate very much your being here Mr. Willis. We thank you for cooperating with our subcommittee and we think the service that you have rendered will be a great benefit to us and to the country.

I will ask all photographers to comply with the subcommittee rule before the witness leaves the room. The witness can leave.

If the cameras will stay in that position, we will bring the next witness in before you set back up and let him take the oath. Bring the next witness in. Are we ready for the next witness? Bring in the next witness.

Our next witness is Joseph Carter, formerly of Tampa, Fla. He is now in the protection of the U.S. Marshals Service.

He has also asked us to invoke the rule of the subcommittee against photographs of his face or profile and, of course, yesterday we voted on all of the witnesses who made that request.

Mr. Carter, before you are seated, I would like to give you the oath, please. If you will hold up your right hand. Do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help, you God?

Mr. CARTER. I do.

## TESTIMONY OF JOSEPH CARTER

Senator NUNN. Thank you, Mr. Carter; if you will have a seat.

The cameras can resume their position.

Mr. Carter, you have got some water there in front of you and the microphones. Just make yourself comfortable, be as relaxed as possible. I want to explain to you your rights and obligations as a witness before this subcommittee.

First of all, you have the right not to testify before this subcommittee. You have the right to invoke your constitutional rights of the fifth amendment on any answer that might tend to incriminate you. You understand you have the right?

Mr. CARTER. Yes.

Senator NUNN. You also have the right to have a lawyer present with you this morning. Do you understand that you are entitled to have a lawyer with you?

Mr. CARTER. Yes; I do.

Senator NUNN. You understand if you have a lawyer with you, you would be able to consult with him and ask him any questions before you give answers.

Mr. CARTER. Yes; I am aware of that.

Senator NUNN. Do you waive the right to have a lawyer with you?

Mr. CARTER. Yes; I do.

Senator NUNN. You don't have anyone representing you this morning?

Mr. CARTER. No; I do not.

Senator NUNN. In addition to your rights as a witness before this subcommittee, you also have certain obligations. You have sworn to testify truthfully. You understand the nature of that oath?

Mr. CARTER. Yes; I do.

Senator NUNN. You understand you are under oath to testify truthfully and frankly to any answer that we may ask you?

Mr. CARTER. Yes; I am.

Senator NUNN. All right, sir.

I believe you have a statement this morning. Would you like to lead off with that statement?

Mr. CARTER. Yes, sir.

Senator NUNN. Just take your time. If you want to stop for a minute, take a drink of water, make sure you do that.

Mr. CARTER. Thank you.

Mr. Chairman, I am Joseph Carter and I am presently incarcerated at a Federal correctional facility as a result of pleading guilty to taking part in a conspiracy to defraud insurance companies through an arson-for-profit scheme in Tampa, Fla. I am 53 years old, married, and the father of three children.

I grew up in Massachusetts, working in the construction industry for several years with my father before attending college in Iowa. In 1951, I began a career in the insurance business, selling for numerous companies and later moving into claims adjustment.

Most of the claims adjustment experience before 1964 was with storm loss damage and automobile accident claims. In 1966, I moved

from Massachusetts to Tampa, Fla., to work for the Allstate Insurance Co. as a staff representative. After some time there, I moved back to Massachusetts for a while and then returned permanently to Tampa, where I was employed by the Joseph E. Neblett Co. in Tampa.

I had long known that there was always the possibility that adjusters could make extra money by giving claimants the benefit of the doubt in insurance settlements. Many times during my career in New England, claimants would approach me with offers to make it worth my while to approve a payment equaling the value of the maximum coverage under the policy.

I would always refuse any such temptation, and I believe that I had a reputation for being a very fair but tough adjuster. Each time that I would be offered a gratuity for adjusting a claim so as to favor the insured person, I would write up a report of such offers to my superiors. However, nothing was ever done about these reports and I was eventually directed to stop reporting such offers. I drew the impression from this that adjusters for some insurance companies are frequently approached by claimants to award them more insurance money than is actually deserved. I was to learn in Tampa that there were other ways to defraud insurance companies besides arranging for them to pay off more than they needed to.

The longer I stayed in Tampa, the more I felt the insurance adjustment business was a dirty business. Many of the buildings that were covered were substandard dwellings. Often there were numerous city housing code violations involving fire hazards.

In addition, many properties were overinsured and insurance agents were not above adding \$1,000 or \$2,000 to a policy, since they received additional premium commissions. I didn't think that insurance companies should cover properties with code violations but they did it all the time. To be sure, not all companies did this, but a number of them had what appeared to me to be loose underwriting procedures.

It was clear to me that the owners of these properties had no intention of improving them. Companies frequently did not require physical examination of the structures that they covered. As a result, building owners would routinely tell the insurer that their buildings, while in fact vacant, were tenant-occupied.

I was so disturbed about the manner in which insurance companies overinsured buildings that I once showed a street map of the city to officials of a company who had come to Tampa. To give them an idea of what the company's exposure was, I went through the map with different colored pencils, showing them where poor and substandard dwellings were located and where safer dwellings were located. I told them to insure more in the safer areas and I believe that my advice helped the company considerably.

However, insurance agents, who are in many cases the companies' field underwriters, are not as likely to be so prudent. Often, the way it works is that a building owner will come into an agent's office, give him the address of the structure, how large it is, and what kind of coverage he wants. The agent will then tell him how much the premium is, the building owner will give him a check, and the property owner is immediately covered under a binder until the company issues a policy. Thus, the agent in many cases does not inspect the property. In my experience as an adjuster in Tampa, I was appalled at the num-

ber of buildings on which I adjusted fire and other types of loss which were unbelievably overinsured.

It was apparent to me, from my first few experiences adjusting fire losses in Tampa, that many of the losses were caused by arsonists. In fact, one of the first fire losses that I adjusted in Tampa was on a building owned by Paul Guarino. I suspected that the fire in the building owned by Guarino was an arson, but because we could not prove it, the company had to pay off. Guarino was the owner of many properties on which fire insurance claims were filed and paid.

I recall when I first met Guarino on one of his early fire claims, I told him I wasn't going to pay it. He answered that he would take the matter to the local office of the State insurance commission. I told him to go ahead. I felt certain that they would protect me. But I was wrong.

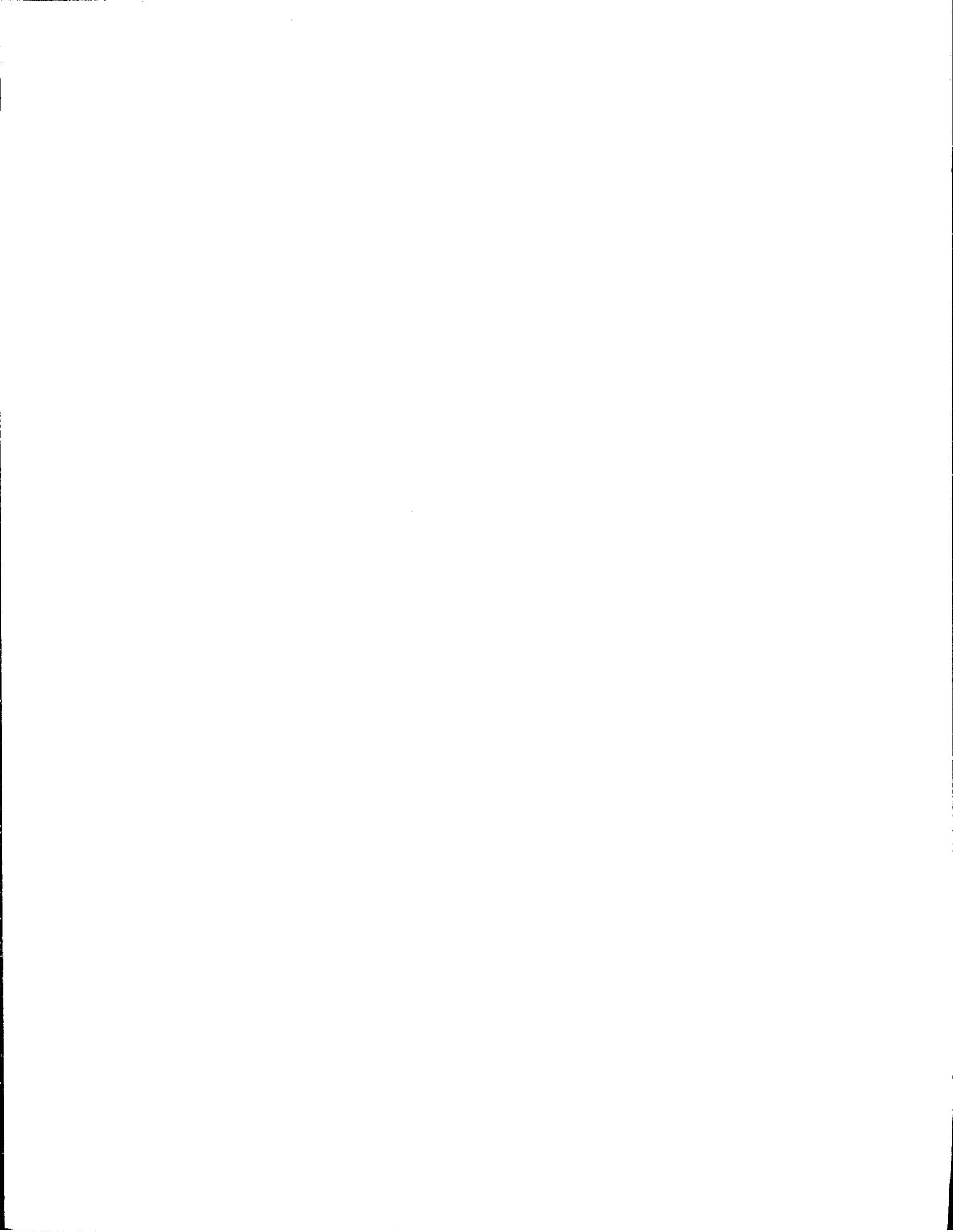
Shortly after my meeting with Mr. Guarino, I was called by that office and told to settle with Mr. Guarino. When I explained that it looked like arson, I was asked if I could prove it. I said I couldn't, and was told to compromise in Mr. Guarino's favor.

I knew that, in order for an insurance company to deny coverage, even if arson was the cause of the fire, it must be proved that the owner of the property directed that the arson be done. This was very difficult to do unless you had an effective fire department with professional staff and equipment. However, the Tampa Fire Department wrote reports that were very inadequate. All they did was write up a 1-page summary of the name of the insured, the owner of the building, the location of the property, the date of the fire, the time the fire department responded, and a notation that it might be of suspicious origin. That would leave the adjuster right up a tree. As a result, the insured property owner, when you told him you thought that it was arson, would simply call the State insurance office, which would in turn call me up and ask me if I had anything definitive against the property owner. When I said I did not, because the fire department was not really working the case, I would be directed to pay off. And since I didn't want to lose my license, I paid off.

From 1969 to 1973, claims from Guarino and others who were eventually involved in the indictments and convictions, were coming in at two or three a month.

During that period, Mr. Guarino would come to my office two or three times a week and ask me if I was handling certain claims. Neblett, the owner of the adjustment bureau for which I worked, asked me what I had in common with people like Mr. Guarino. I told him I had no connection with him. Mr. Neblett was obviously suspicious of Mr. Guarino.

Because there were so many arsons, and Mr. Guarino seemed to know a lot about them, I began to cultivate him in the early 1970's. I used him as a sort of stool pigeon, telling him I had a fire claim and wanted to avoid paying the total. This made me look good to the insurance companies, which wanted to settle claims quickly at the least amount of cost. I used to ask Mr. Guarino, "Is this your child," meaning that I knew he did a fire. And then he would tell me if he did it or someone else had burned it. Then I would feel free to go to the insured, whom I had reason to believe hired an arsonist to burn the building. Then I would meet the owner alone and tell him that I knew there was



**CONTINUED**

**1 OF 6**

an arson and insist that he accept a lower payment. This happened many times. By this method I saved thousands of dollars for the companies.

It was on one occasion when I needed some information about a fire from Guarino that I first met Willie Noriega. I had made arrangements to meet Guarino at a department store parking lot, and he introduced me to Noriega there. I think one of Guarino's motives was for Noriega to scare me. I knew from the time I met him that Noriega was involved in the effort to burn down buildings in Tampa and was one of the principal torches.

In 1973, I got into the habit of gambling heavily at the dog tracks, often betting as much as \$900 a night. I went deeply into debt as a result of my gambling losses and had a real need for additional cash above what my normal adjusting fees were. I was therefore quite vulnerable as Guarino in particular and Noriega tried to convince me to take money from them in exchange for advantageous settlements on fire loss claims that they filed.

I finally got involved with the conspirators in November 1973 when they asked me to help them on a fire loss of about \$4,200. In desperation, having suffered substantial reverses in my gambling, I told them that I would no longer work for nothing; that I wanted a piece of the action. I settled the claim involved for less than it was worth, but guided them through the preparation of the proof of loss, amount of insurance on the building, and the contents, even though I knew it was arson.

I met Noriega in a parking lot after the claim had been filed, and he told me he needed more money on the settlement. I told him that it was all I was going to do for them. I told him that he and his associates had been burning down buildings through arson and putting money in their pockets. I told him I wanted my money up front. That was the beginning of my reluctant association with the group.

After a while, we developed something of a system. They would ask me what companies would be the best ones to approach about getting higher coverage on buildings they owned and wanted to torch. I would steer them to the companies with the most liberal claims payment policies, companies which also paid in a hurry. These were companies which had trust in me because I usually settle claims for less than the face amount of the policies.

During the time that I was associated with it, our group had all the elements participating which would have allowed the conspiracy to continue forever, if it had not been broken up by the strike force. We had the insurance adjuster, and important figure because everything has got to be handled through him; we had accommodating insurance agents, the torches, and the fire department all apparently working to defraud the insurance companies. While our group was working smoothly, we had an arson empire.

As my association with these people became more frequent, they began to tell me about buildings that they were going to burn, and I would tell them which agency to go to and how much in insurance coverage they could get on their buildings.

Senator NUNN. Let me ask you just one question here. Why is it that a man can own buildings that will burn over and over again as you have described here and insurance companies continue to insure that particular individual?

Mr. CARTER. There apparently is no system which might be referred to as an index system, per se, where insurance companies would have access to information.

Senator PERCY. No clearinghouse at all for insurance companies that pool their information?

Mr. CARTER. No; I often felt that there should be such a system to protect the company, but to my knowledge, there is no such system.

Senator NUNN. What about automobile claims? They have some kind of system on automobiles.

Mr. CARTER. I understand that they do in connection with automobile claims.

Senator NUNN. You can get canceled out just like that on automobile insurance.

Mr. CARTER. Yes.

Senator CHILES. They all seem to know, if you get canceled by one company, you can't get insurance from someone else. They pass that information all the time; they don't pass anything on proof of losses. You were saying this fellow was in two or three times a week?

Mr. CARTER. Two or three times a month. But it was not always a case where the property targeted was in his name. It might be in his sister's name or his brother's name or another relative or another coconspirator.

But specifically to answer again that portion of your question, to my knowledge, there is no index system having to do with fire insurance claims, but there is in connection with automobile liability claims.

Senator CHILES. Could you give any estimate about how many fires that you know of would have been in his name, Guarino's name?

Mr. CARTER. Directly in his name?

Senator CHILES. Directly in his name.

Mr. CARTER. I know of two that I handled in the period of 4 years. There were several others in the Guarino name directly related to him, a sister, a brother, and a mother. So that would make a total of five that were in the Guarino name that I am aware of.

Senator NUNN. Just one other question. If the insurance companies had this kind of cross index system and when someone frequently popped up as collecting insurance claims, if they sent in a special arson squad or something of that nature, would not this have some deterrent effect?

Mr. CARTER. It certainly would. It would be of tremendous value to the insurance companies and to the general public.

Senator NUNN. Thank you. Go ahead.

Senator CHILES. Also, there was no place where you as an adjuster, prior to the time you decided you would join them, could just submit a name and say, I think this fellow is burning buildings, or I would not insure with him; even though we settled this claim, I think it was arson and he is going to have other fires, so you shouldn't deal with him on that basis? There was no report like that which you actually submitted or a place to submit that report?

Mr. CARTER. The only such report, Senator, was the list of names which I compiled personally and submitted this list to my companies and to my agents with the promise that it would be held in secret.

Otherwise, I could have gotten into some sort of legal problems if these people knew that I was causing discrimination to be brought

against them. That was in the initial stages of my career before I became involved with these people.

Senator NUNN. When you say legal problems, there is something we have been getting into. What kind of legal problems? Would you have run into the Freedom of Information Act, Right of Privacy Act; would they know about that kind of disparaging remark that was on their record?

Mr. CARTER. I am not that knowledgeable of the law, but I felt if they knew I had submitted their names to some sources indicating that they were undesirable insureds, it might have some repercussions.

Senator NUNN. You are talking about legally, not from a threat or murder; you were thinking about the legal consequences?

Mr. CARTER. Primarily.

Senator CHILES. What about rating? In addition to the structure of a building, I know you rate on whether it is brick, whether it is wood. Would there be any kind of rating on the basis of whether this guy has had two or three losses?

Mr. CARTER. None to my knowledge. There is no such system.

Senator CHILES. No additional premium based on the fact that you are just a little fire prone?

Mr. CARTER. No. The only additional premium would be as to the classification of the dwelling, but not on the individual, per se, being what might be considered a poor risk as determined in connection with liability or automobile claims.

Senator GLENN. Could I ask one other thing? Why haven't insurance companies set up a cross indexing system? All insurance companies aren't all crooked or all dumb. They know the value of this thing. Why haven't they set this up? Do you know? In the days of computers, and so on, the ability to use data retrieval information, that would be a very simple thing to set up.

Mr. CARTER. I think it would be a relatively simple thing and certainly it would be an advantageous system. I toyed with the idea in my mind; in fact, I talked to several people to help me organize it, get financial support to do it, to implement such a system.

Senator CHILES. They just underwrite these losses, the losses are there, they just add to the premium. That has been the easy way for them to do it.

Mr. CARTER. It would be a system that could be devised. The only protection the company had in trying to avoid certain undesirables would be usually word of mouth from one underwriter to another. That is not quite that effective.

Senator NUNN. I think there may be some legal problems. I am interested in hearing from the insurance companies on this subject. I would like to know what they say about it. I think it is a very important point.

We have a vote on. I am informed we are going to have two more votes after this one. Perhaps we could go ahead and get as much of your testimony as we can and then we will have to take about a 20-minute break.

Senator PERCY. Mr. Chairman, we will get into this entire area because of the American Insurance Association establishing a property loss register and we do plan on moving right into that. It is a very good question, a perfectly obvious question.

But at least there is now something underway that will satisfy some of the questions which Senator Glenn and Senator Chiles have asked. What was your suggestion?

Senator NUNN, I suggest we go until the 5-minute bell and then we take about a 20-minute break because I think we are going to have three straight rollcalls.

Go ahead, Mr. Carter.

Mr. CARTER. Thank you.

Senator NUNN. Perhaps we can finish your testimony. We will go as far as we can. We will come back, take a break, and have questions. So you go ahead.

Mr. CARTER. The method of payment was that I would usually get 10 percent of what I thought I'd pay them in an insurance adjustment on the arson. But I made one demand and that was that they pay me first, before they even got the claim through. They did not like this idea, but they knew they could not avoid me on some insurance claims because I was an adjuster for so many companies in the Tampa area.

I understand that they preferred to avoid doing business with me as I demanded money up front. In effect, it was a reluctant marriage, since they would not get as much as they wanted, but they would at least get something from me, plus they would have to pay me 10 percent up front.

One of the buildings targeted for arson by Noriega was a frame-house in Tampa formerly owned by a black woman who was quite old. Noriega came up to me one day and told me he had a real good property. Subsequently that building was involved in a fire. I received the case.

When I went to check the ownership, I found that Noriega had bought the house for \$50. There was a \$38,000 fire insurance policy on the property held by Noriega. He burned it down. I really felt very sorry for this poor woman. I told Sam Martino, a real estate agent involved in some of our activities, that if he could get buildings for \$50 and insure them for \$38,000, I wanted some.

Senator NUNN. How long before he bought the building for \$50, how long did that precede his insuring the building for \$38,000.

Mr. CARTER. He immediately upon acquiring ownership of the building proceeded to procure insurance on it, and within 45 days, I believe, fire ensued.

Senator NUNN. So it was a short time sequence?

Mr. CARTER. Very short time.

Senator NUNN. Whoever wrote that policy had to be almost grossly negligent or in on the fraud, one or the other, didn't they?

Mr. CARTER. I would say it was gross negligence because I was familiar with the agencies and the persons within the agencies who wrote the policies, and I am certain that there was no conspiracy.

Senator NUNN. Negligence, not fraud?

Mr. CARTER. Absolutely.

Senator CHILES. How in the world could you buy a building for \$50 and insure it for \$38,000?

Mr. CARTER. Because they did not inspect the building. Senators, I am going to be covering that in my statement. That really is a very flagrant practice.

Senator CHILES. Did they ever check any property records? You could determine what stamps were put on the deed.

Mr. CARTER. To my knowledge, no. The practice was extremely loose.

Senator CHILES. It was kind of an appraisal, tax appraisal, always on the property.

Senator NUNN. Go ahead. Finish that paragraph.

I hope Senator Percy can get back and we can continue the testimony. What I am going to do is ask that the witness stay here, that the marshals keep in place; Senator Percy is coming right back.

We will finish the testimony within the next 10 minutes, and then we will take our break, at which time we will have all cameras turned away. The witness will leave the room, and when we come back, we will resume.

Go ahead.

Mr. CARTER. It was clear to me that they had taken advantage of this woman; she could barely read or write.

[At this point Senator Glenn withdrew from the hearing room.]

Mr. CARTER. She had been moved out of the house after Noriega bought it. I settled the fire loss with Noriega for \$17,000. The building wasn't completely leveled. After the settlement, I advised the two companies holding the risks on the building to stop coverage.

Only one, however, followed my advice. The other company continued covering the partially burned building, and it burned all the way down on his second try. It was then that I realized that this thing was totally out of hand. I received \$2,000 for the first fire on that building. Noriega told me he was going to give me \$5,000 on the second fire, but I never received it.

Senator NUNN. Let's stop at this point. We will take a brief recess until Senator Percy gets back. I will ask the witness to remain in his seat and ask the marshals to make sure that that is done.

I would ask the cameras if they would just for security turn away until we start the hearing again when Senator Percy resumes it. After we get into the statement, as soon as the next votes come, the Senators have to leave. We will then have the marshals take the witness out of the room, the cameras will be turned away, and we will resume the hearings as soon as we can get back, probably in the neighborhood of 12:15 or 12:20.

[A brief recess was taken with the following members present: Senators Nunn and Chiles.]

Senator PERCY [presiding]. The subcommittee will come to order.

[Members of the subcommittee present at time of reconvening: Senator Percy.]

[The letter of authority follows:]

U.S. SENATE,  
COMMITTEE ON GOVERNMENTAL AFFAIRS,  
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,  
Washington, D.C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct open hearings without a quorum of two members for the administration of oaths and taking testimony in connection with Arson for Profit on Thursday, August 24, 1978.

HENRY M. JACKSON,  
*Chairman.*  
CHARLES H. PERCY,  
*Ranking Minority Member.*

Senator PERCY. Mr. Carter, would you care to continue with your testimony, please?

Mr. CARTER. Thank you, Senator Percy.

Continuing with my prepared statement, on another occasion, Joseph Russello who had a large building in Tampa on which he wanted the facade reconstructed, commissioned Noriega to burn that part of the building down. His plan was to level the front so that he would have a parking lot for people coming in, and he would be able to install more offices in the large building.

Unfortunately, the fire destroyed more of the building than Russello intended. Russello complained to me and others, including Noriega, that the unanticipated extent of the damage was bad for his business. Russello asked me why Noriega was trying to destroy him. Russello told me shortly after the fire that he had hired Noriega to just destroy part of the building. Mr. Russello's admission was the first knowledge I received that this fire was another arson-for-profit case. I adjusted that loss for \$340,000 after my discussions with Mr. Russello.

On more than one occasion, since I knew that Noriega had torched buildings on which I handled the claims adjustment, I would give the settlement check to him, rather than the registered owner. It was almost a regular practice for me to call Noriega when claims checks came in, since I knew that he would share in the proceeds of the arsons anyhow.

One of the ways I learned that arson for profit was involved was by searching the ownership of properties that had been burned. I found that there had been rapid changeovers in ownership, often between the coconspirators later indicted and convicted in Tampa by the Federal strike force. Each time that the property changed hands between them, for a higher price on paper, the insurance coverage would be jacked up accordingly. The purpose of spreading ownership of the properties out among each of them was to divert suspicion from any single one of them.

I was continually concerned during the period when I was working with Noriega, Guarino, and the others, that the fire department never followed up on arsons. I didn't quite know what the reason was, although some firemen were indicted and convicted in the conspiracy case.

At the time that these followups were not going forward, I suspected it was either because they were intimidated by Guarino and Noriega, or they were simply incapable of doing a good and thorough investigation. It would be impossible for us to have gotten away with as many arsons as we did before being caught, if not for the fact that the fire department was involved openly or as a silent coconspirator.

I do recall that on one occasion, in reporting on a fire which I believed to be an arson, I wrote in my report to the company that as the embers of the fire cooled, so do the investigative efforts of the fire department.

Senator PERCY. Could you expand a little bit on what you mean by the fire department being openly involved or, at least, a silent co-conspirator? How were they openly involved?

Mr. CARTER. I would mean to say by that statement that it was later revealed and became a public fact that certain personages connected with the fire marshal's office in Tampa were involved by the reason of the fact they were indicted and several of them were convicted.

Senator PERCY. When you say openly involved, you mean not out in the public in the front page of the newspaper, but among those in the business, it was known that certain people in the fire department were approachable and involved?

Mr. CARTER. Yes. They were known to me and to the coconspirators openly.

Senator PERCY. So it was possible to know who they were and be able to work with them?

Mr. CARTER. Yes.

Senator PERCY. Go right ahead.

Mr. CARTER. The statement which I had made in one of my reports to the insurance carrier, to the effect as the embers of the fire cooled, so do the investigative efforts of the fire department, subsequently caused me to lose that assignment.

It seems to me that a number of things could be done to reduce the incidence of arson for profit in the United States. For one thing, the insurance agent, if he is truly running a reputable agency, should be much more selective in choosing which properties are covered by his company. It is incumbent upon him to go out and inspect each and every risk, for not only is he protecting his own agency, he is also protecting the company for which he works, and he needs that company to be financially successful if he is to prosper as well.

Second, I believe that State laws should be written so as to allow coverage on properties at no more than the fair market value. This would mean that slum buildings, if they are covered at all, would be insured at no more than their real value. This would eliminate the overinsurance that I knew existed to a great deal in Tampa.

Third, I think that adjusters must be trained in much more detail in how to spot an arson. I never received any training when I began fire adjustment, except what I learned on the job.

Moreover, insurance companies, through their adjusters, should be much more willing to hire outside, independent investigators to do a full-scale inquiry into suspected arsons. I think this would be money well spent, because it would get the word out on the street that the companies are beginning to be much more conservative in paying out on fire claims.

Unfortunately, this is not the way it is now. Many companies, particularly those writing standard risks at high premiums, cannot afford detailed investigations and are more willing to pay off. Their general feeling is that if they can get out for less than the face value of the policy and they don't have to hire an attorney to handle the claim in court, which costs them more money, they are willing to settle without any big hassle.

Finally, I believe that firemen need much more training in arson detection. Unless they know what to look for and how to investigate, arson rings like ours will continue to prosper.

That concludes my statement, Senator Percy.

Senator PERCY. Thank you, Mr. Carter.

I would like clarification on page 1 in which you do mention two insurance companies, first being Allstate Insurance Co., subsidiary of Sears, Roebuck & Co.

As I understand it, while you worked for them you engaged in no fraudulent or illegal practices. Is that correct?

Mr. CARTER. Correct.

Senator PERCY. It only began subsequently and your activities on behalf of Allstate were all in accordance with the specifications of your job and perfectly legal?

Mr. CARTER. Yes.

Senator PERCY. Thank you, very much.

You also mentioned right on that page that, "I had long known that there was always the possibility that adjusters could make extra money by giving claimants the benefit of the doubt on insurance settlements." How would that knowledge come to you? How widespread was that knowledge?

Mr. CARTER. Many times in the handling of claims, actually every type of insurance loss under a fire policy, not necessarily a fire claim, per se, an insured would seek to offer me favors or gratuities in return for a greater settlement, much more than he was entitled to.

Senator PERCY. I would like to question you about some of the recommendations that you have made, but first to establish really what the responsibility of an insurance company is when we discuss arson. Must an insurance company pay off if it is proved that a fire was caused by arson?

Mr. CARTER. I would say yes, they must pay off unless they can prove that the insured was directly responsible or connected in some way with the perpetration of. Then that would be established to be a fraudulent crime.

Senator PERCY. In other words, if there is a conspiracy with the owners of the property who would receive the insurance proceeds, and settlement in the case, if there was fraud, then that is a defense for the insurance companies against payment?

Mr. CARTER. Yes.

Senator PERCY. Not required to pay under those circumstances?

Mr. CARTER. Yes. That is the only defense.

Senator PERCY. In fact, they have a duty to their own policyholders who pay the premiums not to pay off, if there is fraud or if there is arson, where the owner has been involved?

Mr. CARTER. Exactly.

Senator PERCY. Could you describe the difference between an adjuster and an agent in the insurance industry?

Mr. CARTER. Yes, sir. An agent, whether he is directly licensed and employed by an insurance company or whether he is a State licensed, independent agent, is a field representative for a particular carrier or a number of carriers to underwrite in the field.

In other words, he will take an order for an insurance policy covering a certain risk, submit the application to the insurance company, with all of the pertinent information required, request the insurance, and subsequently it would be issued.

Senator PERCY. An adjuster?

Mr. CARTER. An adjuster is one who comes into the picture only when a claim on that insurance which had been requested insuring a specific property has presented itself, a claim for one of the perils insured against under the policy.

Senator PERCY. As a rule in the insurance industry, then, there is no mixing of the two skills here. If the person is an agent, he sells a policy. At arms length is the adjuster, who goes in to do the adjusting, but he is not a salesman for the policy?

Mr. CARTER. Exactly. There should be no connection between the two.

Senator PERCY. And it is important that there not be?

Mr. CARTER. Exactly.

Senator PERCY. Can an insurance agent write any amount of coverage he wants on the property?

Mr. CARTER. Only up to the limits the company specifies and places upon him on a particular type risk.

Senator PERCY. In other words, he has general authority for certain types of risks to write policies up to a certain level and so long as the property, be it a house or an industrial building, does not exceed his limits, he can then write an insurance policy for that coverage, up to that level, using his own discretion to a great extent as to how much coverage is provided?

Mr. CARTER. Yes. He can write up to the limits that he has on the field and above those limits, he would submit an application to the company to be taken under consideration, and the company chooses, if they will, to increase to whatever limits they want.

Senator PERCY. Does the company ever spot check to just determine what the agent's judgment is, whether the agent's judgment is proper and right? Do they audit his figures, go out and actually inspect the property to make certain that the amount of insurance that has been written on the property is consistent with, say, the replacement costs, the fair market value of that property?

Mr. CARTER. Occasionally, they do. Senator, mostly by means of their established office of one who is called a State agent, or some companies call them by other names. I might not be familiar with them; but for the most part, the popular phrase, term for that job is State agent. In other words, he is a service representative for the insurance company.

He will go in service the agent, check with him, be sure things are all right and, occasionally he will go out with the agent to check a particular risk or just make, carries a reinspection of the type of business he might be writing in an area.

Senator PERCY. Is this very frequently done, in your experience in Tampa, or would you say properties were rarely examined for issuing fire coverage policies?

Mr. CARTER. Very rarely examined; if at all.

Senator PERCY. So that the chances are the agent assumes that he had the authority to go ahead and cover that property for whatever he wanted to cover it, the company generally accepted it. Is that right?

Mr. CARTER. Exactly.

Senator PERCY. How prevalent is the overinsurance due to failure to examine properties to determine appropriate coverage levels?

Mr. CARTER. Extremely prevalent. It was so in Tampa.

Senator PERCY. What percentage in Tampa would you say, cases that you have personal knowledge of, would be underinsured, would be insured for fair market or replacement value, or would be overinsured?

Mr. CARTER. I think to accurately respond to that Senator, I would have to categorize the various types of risks. Primarily, the ones that were involved in this arson-for-profit scheme was substandard type of dwellings, both in the mercantile and residential type classifications. I found that these, for the most part, were grossly overinsured, even in cases of the mercantile, where a company insured factors would apply. These were grossly overinsured.

Senator PERCY. So that arson is not as prevalent in affluent suburbs as it is in the inner city ghettos, low-income areas where there are dilapidated homes that should be rehabilitated, and those are the kinds of target properties that arson for profit will concentrate on. Is that correct?

Mr. CARTER. It would appear that that was the pattern in Tampa, but not quite so, Senator, because large mercantile structures are often an arson setup. Many times in Tampa, too, I came across cases in the middle-class residential area where a building was substantially overinsured and with the type of policies that they write on these buildings, a homeowner policy, this company told me that the agent must have missed the ball somewhere because when I make an appraisal on the building to fix its replacement cost at, say, \$30,000 and I find that building is carrying an insurance policy of \$50,000, this tells me something.

Senator PERCY. I want to establish who really pays the cost of properties being overinsured and then a torch put to them and claims larger than would be paid otherwise are paid. Does this come out of the hide of the company or does this really ultimately come out of the hide of every single consumer who buys insurance on their property? Is it passed on to them ultimately?

Mr. CARTER. It comes out of the hide of the consumer.

Senator PERCY. Does this contribute then to high insurance rates?

Mr. CARTER. Exactly.

Senator PERCY. Does also arson, in a given area, sometimes contribute to the fact that people are unable to get insurance on that property?

Mr. CARTER. Unfortunately, that is often the case.

Senator PERCY. Or get it only at extraordinarily high cost?

Mr. CARTER. Exactly. The insurance companies never lose any money. They need only to raise their premiums as approved by the State insurance commissioner and I have found, and I don't suggest to be critical against any particular carrier, but he could care less how high the premiums go because they are going to be safe anyway. It comes out of the consumers' pocket.

[At this point, Senator Nunn entered the hearing room.]

Senator PERCY. Does the size of the agent's commission depend on the size of the policy that he writes? Is there a direct relationship there?

Mr. CARTER. Yes.

Senator PERCY. So do most agents seek to write policies for as much coverage as possible because they have a profit incentive in this regard?

Mr. CARTER. It is an incentive because they will get a greater commission.

Senator PERCY. Doesn't that then raise a conflict of interest, a contradiction between agent's financial interest and his expected role of guarding against overinsurance which causes increased costs to the consumer?

Mr. CARTER. Yes; to those unscrupulous agents, it definitely is to their advantage.

Senator PERCY. Should agents or the companies they represent inspect a large proportion of new risks, or have sufficient inspection so as to cause the agent to think twice about the overvaluing of a particular property without the feeling that the agent, the company is going to audit what he has done and verify the acceptability of the risk and a correct coverage level? Should they do more of that, in your judgment?

Mr. CARTER. Inspecting?

Senator PERCY. Yes.

Mr. CARTER. Yes. I think they should inspect every single property that they insure.

Senator PERCY. Do you think that actually the cost on their part would be cost effective as an investment, not only for the company, but also on behalf of the insured, the customers of that insurance company?

Mr. CARTER. It would be an extremely wise investment and if they were really concerned in protecting the customers, this is money that they should spend.

Senator PERCY. Who do you think would be the best persons to perform such inspection? Who would you trust to know, the agents or companies or independent investigators hired by the companies?

Mr. CARTER. Unfortunately, Senator, I have seen various agencies at work. I have seen many instances where the agent failed to do the job in making their report on an inspection that was inadequate, even if he did take the time to inspect it.

I have seen cases where the underwriter employed by the company would call for an outside inspection, and the report which he receives was very poor quality and I think the only way that something there could be done in a serious nature would be for the company to work out an inspection system through their own facilities. In that way, they would control.

Senator PERCY. Why is it, though, companies have not really done this? Has the incident of arson gone up, the incentive for an agent to overinsure? Why haven't they done it up to this point?

Mr. CARTER. Putting it simply, I think they are pennywise and pound foolish.

Senator PERCY. Can you give us any blatant examples of over-insured properties of which you have personal knowledge?

Mr. CARTER. Oh, yes. There were many, many in Tampa. In one particular case that I was involved in, a person in an indictment, he had a mercantile structure that should not have been insured for over \$35,000. But at the time the claim presented itself, there was \$70,000 on the building.

Another one in particular, I know of an instance where these people whom I long suspected as being involved in irregularities on

insurance matters purchased a building from the Salvation Army in Tampa, for \$30,000. It was then reinsured for \$290,000, targeted for a fire, and they collected almost \$200,000 settlement.

Senator PERCY. Thank you, very much.

Senator NUNN?

[At this point, Senator Percy withdrew from the hearing room.]

Senator NUNN. Basically, what you are saying, as I understand it—I missed part of your testimony—is that the insurance companies don't have the proper incentives, basically, to implement policies of rigid inspection, policies of more careful overall insurance in terms of amount?

Mr. CARTER. I don't want to be critical, Senator, by suggesting they don't have the proper incentive. Perhaps the higher echelon management of the companies have the proper attitude, but whether or not they are following through is another matter. Somewhere along the line in the chain, someone is losing the balance. They are not doing the job.

Senator NUNN. Do most insurance companies have arson experts or arson teams working for them?

Mr. CARTER. I don't know of any arson team, per se, that any insurance company has. I understand that some national organization has put together some sort of arson investigation group, working out of New York.

Senator NUNN. Would this be beneficial?

Mr. CARTER. Just how effective they are, I don't know. I feel that in order to really be effective, an arson investigation team should be formulated by the Federal Government arson strike force, and in this way, insurance companies who have been victimized by a series of arsons in a given area would be privileged to call in this well-trained Federal agency to give them assistance.

Senator NUNN. Where would you draw the line on that kind of proposition? Once you got into it, would not insurance companies be calling the Federal Government on virtually every fire in the United States?

Mr. CARTER. Some control could be placed on it by perhaps a number of insurance claims in a given area by a number of companies, or a number of claims experienced by one particular company. Statistics would have to come into the picture to justify the appearance of that investigative force in that particular locale.

Senator NUNN. A little while ago you described the group of people you participated in arson with down in Florida as an arson empire. Do you think that your group of people—torches, insurance adjusters, owners, et cetera—were better organized than law enforcement in terms of the capabilities?

Mr. CARTER. In this case, I would have to say no, Senator, because there was a rather loose arrangement. As I mentioned in my statement, my desperation came from losses in gambling and I was forced into a marriage there.

But if a group of unscrupulous people with these particular elements which I have mentioned here—the insurance adjuster, the agent, officials, torches, and owners of buildings—did, in fact, get together under the present investigative system that fire departments

and locales of various communities have, I don't think that they could possibly prevail against an organized system.

It is my opinion that organized crime in this country, syndicates, are becoming well acquainted with the vast amount of moneys that could be made out of arson-for-profit cases.

Senator NUNN. Is this something organized crime has been involved in for a number of years, or is this an area where they are emerging now?

Mr. CARTER. I don't think that it has gone unknown to them, but I think now, in recent years, they are becoming well aware of the fact that there is a tremendous amount of money in it, and they are going to become more active in it.

Senator NUNN. This group that you participated in that you label "arson empire," was organized crime involved in that in the sense you are using the worlds "organized crime"?

Mr. CARTER. To my knowledge, there was no organized crime involved in it.

Senator NUNN. This was just a group of people that got together that had mutual interests?

Mr. CARTER. We had mutual interests, yes, got together; I was going to put it a little looser, kind of driven together; but it is neither here nor there.

Senator NUNN. Was one man calling the shots?

Mr. CARTER. No; not really. One would purchase a building, like Martino, he was the torch and the owner of a number of buildings. Willie Noriega had connections with real estate people. They had a working association with fire officials. It wasn't really a tight knit organization, per se, but as I mentioned, if it was, we were successful; but if it was really an organized type of thing, it would have been disastrous to the community.

Senator NUNN. You are saying that even though you weren't highly organized, you were so successful that if organized crime on a methodical basis put together this kind of operation, it would be devastating?

Mr. CARTER. Extremely devastating.

Senator NUNN. You are saying law enforcement could not cope with it today, in most cases?

Mr. CARTER. Today, I think we would have quite a challenge and they might not be successful, but if an arson strike force or something of this type, a definitely organized effort by the Government was put together, it could definitely meet the challenge and overcome it.

Senator NUNN. You mentioned Willie Noriega. Was he a torch in your operation? Did he burn buildings?

Mr. CARTER. Oh, yes.

Senator NUNN. We have heard testimony about a week or two ago from Gary Bowdach about a man by the name of Willie the Torch. He didn't know his last name and he was from the Tampa area. Have you ever heard of Noriega being referred to as Willie the Torch?

Mr. CARTER. In Tampa, yes. I have heard that.

Senator NUNN. So this is the same person?

Mr. CARTER. I couldn't definitely say that it was as he would know him.

Senator NUNN. You didn't know him as Willie the Torch, though?

Mr. CARTER. I just simply know him as Willie and know he was a torch.

Senator NUNN. He wasn't called that, though?

Mr. CARTER. He was called that from time to time. Whether or not it is the same person, I don't know, Senator.

Senator NUNN. Did he do jobs elsewhere? Did he specialize strictly in the Tampa area?

Mr. CARTER. Yes. I have firsthand knowledge that he did jobs elsewhere, and I understand he was active in Miami, too, at times. I believe he was indicted for a case in which he torched in Miami.

Senator NUNN. Is he in jail now?

Mr. CARTER. I believe he is, and I hope he is.

Senator NUNN. He has been convicted?

Mr. CARTER. Yes.

Senator NUNN. When you first began working as a claims adjuster, you say you were frequently offered bribes as an incentive to favor settlements?

Mr. CARTER. Yes.

Senator NUNN. Just by individuals, not by an organized ring, just by people who were owners of buildings, they would offer you bribes?

Mr. CARTER. I was rather sharp and the very, very first claim I handled, the man approached me and asked me to give him \$200, for the damages on his roof by wind-storm. I estimated the damages to be about \$78 at the time. He took me by the arm, led me into his garage and he says, "Look, I will give you as much as you want if you will give me all that I want." I just couldn't believe it, my very first claim.

Senator NUNN. The first claim you were offered a bribe?

Mr. CARTER. I turned it down, gave the man \$78, take it or leave it, and besides that, you have got \$50 deductible. So you have got \$28 coming.

Senator NUNN. Did you report to the insurance company that you have been offered a bribe?

Mr. CARTER. Yes; like a dimwitted novice, I did. After awhile, my supervisor said, "Who are you trying to impress? We get this all the time. Forget about it. Don't keep putting garbage in our reports."

Senator NUNN. They weren't interested in commonplace?

Mr. CARTER. Yes.

Senator NUNN. Is it your understanding of the law that offering a bribe to an insurance adjuster is a violation of the law, though you are not a lawyer?

Mr. CARTER. I am not aware that it is a violation of the law.

Senator NUNN. You are not aware of any legal violation?

Mr. CARTER. No; in most cases it would come down to a situation of his word against mine.

Senator NUNN. So your view of it is that offering bribes to insurance adjusters is a very common practice. Is that a fair summary?

Mr. CARTER. I would say that in my cases they were and being an average adjuster, perhaps they are exposed to the same temptations as I was.

Senator NUNN. Did you ever have any formal training in terms of detecting arson?

Mr. CARTER. Only what I managed to develop on my own, which I humbly say is probably far more extensive than what the average adjuster has at his disposal today.

Senator NUNN. Did the companies that you worked for offer any kind of training for you in terms of detecting arson or dealing with arson?

Mr. CARTER. No type of formal training or seminars or schooling, per se.

Senator NUNN. Would this kind of instruction be helpful to insurance adjusters having to deal with this all the time?

Mr. CARTER. Definitely.

Senator NUNN. I haven't been here during all of your testimony, when Senator Percy was asking you questions, but what other suggestions do you have for either Federal or State governments in trying to deal and cope with this growing crime of arson?

Mr. CARTER. I believe something should be arranged with the insurance companies to spend a reasonable amount of money to change the verbiage in the insurance policies. I believe that something could be incorporated within the contract to the effect that where a preponderance of evidence reveals that arson was committed per se, which caused the origination of the claim, and that opinion is supported by at least two experts, a claim could and should be successfully denied.

I believe that the burden of the proof should be placed upon the insured, that he did not in fact originate a fraudulent claims, was not in any way involved, and that he is not going to be gaining by the claim.

Senator NUNN. So you are saying that once there is, in your opinion, an initial detection of arson, that the burden of proof ought to shift from the company instead of them having to prove that the owner participated in arson, require the owner to prove that he did not?

Mr. CARTER. I believe something of that nature should be.

Senator NUNN. It is a hard burden to prove. I would assume, either way. It would be very difficult for an owner to prove he didn't commit an arson.

Suppose somebody came in your house at night, torched your house, your building, but you didn't know anything about it, and we would call on him to prove that you didn't do it. That would be a very difficult burden, wouldn't it?

Mr. CARTER. I never had any difficulty in determining which were the legitimate fires and which were the arson fires. A building which has been destroyed through an act of arson has a certain pattern of burning. The buildings, as I inspected them in Tampa, revealed constantly to me that a building could not burn the way it had been destroyed by the fire without help.

If one, as in the case such as you point out, a burglar or some vindictive person comes in and torches a house, one of the things first that I look for is the evidence of occupancy.

Invariably, I also found in these torch cases that the things that one looks for in a normal household were not there. Certain paintings hanging on the walls, family pictures, portraits in the bureau drawers, there were no photographs of the children, the better items of clothing in closets were not there.

There were numerous metal hangers or the hooks for wooden hangers lying on the floor in the debris, but even when you burn almost to complete cinders, items hanging on a metal hanger, there is also threads of the clothing that should be hanging or clinging to the hangers.

I found later when I became involved with these people that they would put metal hangers in the closets, just make it look like somebody lived there.

So things one would suspect, a prudent adjuster making a thorough investigation would expect to find they were not there.

Senator NUNN. So usually they were abandoned buildings or buildings that had been stripped of any kind of valuables before they were burned?

Mr. CARTER. Right. Even tenant occupied buildings, regular middle-class dwelling that was a target for a fraudulent arson-for-profit scheme, these things which an adjuster should look for were not there. I would know it was arson.

Senator NUNN. You mentioned in your statement that there was some involvement by the fire department. Was there any kind of direct involvement in your operation by the fire departments in Tampa?

Mr. CARTER. I didn't quite get that.

Senator NUNN. The fire department.

Mr. CARTER. Were they involved? Is that what you are asking?

Senator NUNN. Yes.

Mr. CARTER. While it was, none proven of the cases that were involved.

Senator NUNN. Do you know of personal involvement in that area?

Mr. CARTER. A particular fireperson involved in a fire?

Senator NUNN. Yes.

Mr. CARTER. Yes.

Senator NUNN. You did?

Mr. CARTER. Yes.

Senator NUNN. Were some people in the fire department convicted of participating in arson?

Mr. CARTER. If my memory serves me, I believe there were four people connected with the fire department convicted and two were acquitted.

Senator NUNN. What was the degree of participation of those who were convicted? What did they do? What was their role? Do you know?

Mr. CARTER. I should have said four were indicted and two were acquitted. The whole of the people that were involved, one particular individual of high official standing, I had firsthand information that he was involved in mercantile structures.

Senator NUNN. What did they do? Did they just look the other way or did they actually participate in the torching of the buildings? What role did these people play in the fire department?

Mr. CARTER. That particular person I was referring to told me firsthand that he had \$2,000 interest in the building. In fact, he turned over \$2,000 to Willie Noriega. Willie and Mr. Guarino accepted it.

On a subsequent day he told me he took his money back because he didn't want anything to do with it. But this was one specific incident that he admitted he was participating in.

Senator NUNN. That he was an owner of the building?

Mr. CARTER. A silent owner.

Senator NUNN. He was saying he was really involved in the arson itself, the planning for it and the profit from it?

Mr. CARTER. Definitely.

Senator NUNN. Did you ever think about going to the police, before you started cooperating with the police and before you were convicted?

Mr. CARTER. Yes. I gave it some thought. I found that after I had developed all of this information, more or less as a self-appointed undercover man for the benefit of serving my companies and doing a better job for them by having that information, I also learned from the people that were supplying the information, like Noriega or Guarino, a number of other people in Tampa, that I had no recourse to bring any law enforcement down upon them.

They made it quite clear they weren't afraid of the local police, and my experience in all of my adjusting career, almost 25 years, has been that law enforcement on a local level is not interested in arson cases. They don't want to handle them. They don't know how to handle them.

If they get any dirt, they will just sweep it under the rug.

At the particular time I was in Tampa, there were a lot of questions being raised about the quality and integrity of some of the law enforcement people. There was an investigation being carried on. So I didn't turn to them.

I couldn't turn to the fire department because I knew what was going on there. And I didn't know who to trust or when to trust them.

At a point, I had talked to the assistant fire marshal, and I later lost my trust for this person. During a point in time, I suggested he get in touch with the FBI. I said, now we have a conspiracy going on here and as such you can call in the FBI.

Senator NUNN. Who told you that?

Mr. CARTER. I told the deputy fire marshal that.

Senator NUNN. You told the deputy fire marshal that before you got involved in the conspiracy?

Mr. CARTER. Oddly enough, it was even at the time that I was still involved, or had become involved. It seems strange that even during the period I was still involved, I was still trying to do the job.

Senator NUNN. So you had mixed feelings? You were really moving in two opposite directions at the same time?

Mr. CARTER. Yes. Unfortunately, not being criminal in mind and heart, I let my greed take over and committed a felonious act at the wrong time.

[At this point Senator Percy entered the hearing room.]

Senator NUNN. Did anyone call in the FBI as a result of your suggestion?

Mr. CARTER. Subsequently, perhaps more than a year and a half later, the deputy fire marshal or someone connected with his office did get in touch with the FBI, as I learned later. And I guess the strike force came in along with them and the case was investigated, and indictments obtained, and subsequent convictions.

[At this point Senator Nunn withdrew from the hearing room.]

Senator PERCY. I possibly would overlap a little bit, but if so, if you would be good enough to just say, Senator Nunn might have touched that area, we won't try to duplicate then.

Just continuing on where I left off, can the insured get the policy value increased on his verbal say so? Could a person call his agent, just tell him to put in \$20,000 of improvements and that policy increases by that amount?

I just ask the question because I just did that, had no problem getting it done. I don't know if anyone came out to inspect.

Mr. CARTER. They could do that quite easily, Senator. In most cases, they probably would not go out and inspect it. In Tampa, they never did to my knowledge.

Senator PERCY. There is really not a check on that practice?

Mr. CARTER. No.

Senator PERCY. How much authority does an insurance adjuster have? Could you tell us how much weight he carries with the company. If he suspects arson, can he get an investigation underway?

How much clout does he have?

Mr. CARTER. An insurance adjuster can only give the company the benefit of his findings, because he is, in effect, the eyes and ears of the company in the field. He can only make suggestions.

But an adjuster who is trusted and has a representation, he can pretty much depend that the company is going to do as he directs.

But in the final analysis, even the proof of loss which he would take from an insured must be approved by the company. They have the last word of whether they would pay it or whether they would deny it.

Senator PERCY. Is it a real cost problem in conducting investigations by insurance companies? Do they raise this as one of the reasons that they don't want to do too much investigating, that it is just too costly?

Mr. CARTER. Yes. They are cost conscious and in many fields where I feel they are being very, very—

Senator PERCY. If an adjuster trims the claim down, is it possible for him in so doing to both satisfy the company and the claimant who may be involved in arson because the claimant might tend to feel: well, I got a problem if they look deeply into it, I may not get anything; I had better get what I can get. A company sees an adjustment made for less than face value of the policy, the full coverage, they are somewhat satisfied?

Mr. CARTER. This is an area where I was successful, because I worked on the guilty conscience of many people, and they were willing to accept what at times was a ridiculous settlement. And the companies were very happy to get those types of settlements.

This is one of the ways that I built a reputation with the companies.

Senator PERCY. Is it possible to ingratiate yourself with the company, at the same time that you are accomplishing your own purpose?

Mr. CARTER. Oh, yes.

Senator PERCY. How much does the average adjuster make in salary? Is it a highly paid position, considering the amounts of money that he is involved with, considering the discretion that he has, and the power that he has?

Mr. CARTER. No. He is not I would say overly paid.

Senator PERCY. What would an adjuster who is considered good in his profession, on the job enough years to have satisfactory experience, what would his salary be? Do you have any idea?

Mr. CARTER. I would reply to that question by giving you my pay scale at the time that I terminated with a national company. I had 23 years plus experience, and my salary as a supervisor and organizer of the offices—several I opened, developed, and trained men as well as adjusting claims—my salary was only \$1,400 a month.

Senator PERCY. Was how much?

Mr. CARTER. \$1,400 a month plus a company vehicle. Three years earlier, I started with that company at \$1,000 a month.

Senator PERCY. That is \$12,000 a year, which right in this building you have clerical personnel that are earning that amount.

If that was earned as—you earned \$1,400 a month as a supervisor, how much did the adjusters make whom you supervised? Were they down at the \$1,000 a month level?

Mr. CARTER. My average adjuster, when I hired them, I would start them out at about \$900 a month and quickly tried to get them up to \$1,000.

I had one adjuster that had 20 years experience, and I had a time trying to get him up to \$1,100. They are underpaid.

Senator PERCY. What year was this?

Mr. CARTER. 1974.

Senator PERCY. 1974?

Mr. CARTER. Yes.

Senator PERCY. So it was not that long ago?

Mr. CARTER. Very poor wage scale for that time.

Senator PERCY. Considering the power that an adjuster had, the decisionmaking ability not frequently appealed, and considering the amounts of money involved, did you feel they were underpaid as a profession?

Mr. CARTER. Grossly underpaid.

Senator PERCY. Do you think that that underpayment, dealing in large sums, making decisions involving considerable amounts of money, do you think that situation created fear of them and temptation of them?

Mr. CARTER. Decidedly so.

Senator PERCY. Are offers frequently made to adjusters that would tempt them? Are they subjected to temptation or do they have to initiate it themselves, or does someone in some subtle way suggest it?

Mr. CARTER. I would say that it is equally sophisticated in a subtle manner by some adjusters and equally offered by insureds in as many cases.

Senator PERCY. I recall in Chicago, we recently had a bar that was set up by the Better Government Association, hidden cameras behind it where they showed the city inspectors and others coming in, shaking down the bar owner, presumed manager, and various techniques were used: envelopes, hidden language.

What was the way in which an adjuster would be approached? How subtle was it, or was it just open?

Mr. CARTER. Frankly, I felt in my case they were anything but subtle. I have had outright offers of favors from, I don't mean to offend anyone, female personages, and money pushed in my hand when they shake hands with me, a case of booze sent to the house, and I don't drink. So I sent it back, Just bold, really bold.

Senator PERCY. How common is the acceptance of bribes on the part of adjusters?

Mr. CARTER. I don't wish to be critical of any man's integrity, but in my personal opinion, I feel that it is quite prevalent.

Senator PERCY. It is quite prevalent. Are the payments made by check or cash?

Mr. CARTER. It has to be cash.

Senator PERCY. It has to be cash?

Mr. CARTER. Yes.

Senator PERCY. That is the rule? Would you say that income taxes are paid on this?

Mr. CARTER. I doubt it, very much, Senator.

Senator PERCY. So that at least, it is tax-free income for the most part, equivalent to considerably more than taxable income in buying power. Suppose insurance companies require physical inspections of properties prior to issuing policies? In the long run, what financial results would the insurance companies expect? Would they save money or lose money?

Mr. CARTER. They would definitely save a good sum of money.

Senator PERCY. In your judgment, they would save money?

Mr. CARTER. In my opinion.

Senator PERCY. This is an area there are a lot of loopholes in, a lot of leakage of the companies' gross income and expansion of expenses, and they ought to tighten up in this area?

Mr. CARTER. Yes. I might add, Senator, if I may, particularly in the States where they have a value policy in effect, a value policy is simply one where regardless of the value or the real estate value of a given property, the amount of insurance on that building at the time of the fire must be paid. If that building has been rented, a total loss, per se, by one of the parties insured against the policy.

So, in Florida, if you have a building, a substandard worth \$10,000, and it has got \$38,000 on it, you have to pay that. In effect, I set myself up above the law by avoiding the payment. Once I had the insured's signature on the proof of loss, agreeing to a settlement, this covered me under the law.

But under the value policy law, where that prevails, the companies are at their mercy and they are foolish not to have inspections.

Senator PERCY. We discovered in this subcommittee loose practices in investment banking business, and practices affecting the inspection practices at airports. When it became so well-known that it was a lucrative, profitable business, organized crime moved into it.

How do the noninspection practices of the insurance industry, how do the overinsurance practices of the insurance industry affect arson-for-profit? Do arsonists rely on that fact in planning their crimes? Does it induce this area of crime to become a growing business?

Mr. CARTER. It certainly is an inducement. Once they find out where the weak spots are, they are going to keep working on them, and it is going to make it much easier for them. But tightening up will not completely eliminate the criminal from pursuing his interest, but it certainly is going to curtail it substantially.

Senator PERCY. In other words, if there was an area of participation, let's just say an urban area, high area of crime, number of burned

out and abandoned buildings, if people who purchased those properties knew that the chance of an inspection in those areas would probably be greater when they are buying dilapidated property than in some other area, would it cause them to slow down, stop, look, and listen, and possibly not even purchase the property to be torched later?

Mr. CARTER. I think so, if they would go to an area where they would make a better deal out of the whole scheme that they have.

Senator PERCY. What criteria should be used by an insurance agent to determine the proper level of insurance on property?

Mr. CARTER. I think they should coordinate their activities and evaluate the buildings in accordance with the present market value.

Senator PERCY. In other words, as you testified, an old dilapidated frame house can be purchased for \$50 and insured for many, many times that. The fair market value is what a person is able to buy it for. It shouldn't be insurable beyond the \$50 which it was acquired at?

Mr. CARTER. Exactly, even if he bought the building for \$50, the scheme he perpetrated there was some control over the amount of insurance. That building would have not been insured for perhaps more than \$6,000 and, at least, the company would not have been hurt and the consumer in the final analysis hurt by the overpayment.

Senator PERCY. If fair market value is a reasonable criteria to use, what other standards are used? Are there other standards and, if so, could you explain what they are, why they are less reliable and more conducive to abuse.

Mr. CARTER. Well, in my particular case, Senator, I had established a format providing the companies with what I called an adjuster's risk report. It is a form which I drafted and the companies found it extremely beneficial. I would physically go out and measure a building and determine the replacement cost, apply a reasonable depreciation factor, consider the wear and tear, condition of the building, and I would come up with what I thought was the real value of that structure. And in most cases, I found out that my appraisal of the building was pretty much in line with what the property would actually sell for on the market at that given time.

So it was a system of adjusters, too, should be given a working knowledge of how to establish values of a particular property. And if they cannot coordinate their reference with competent and licensed real estate people, they should be competent to establish the value of a building.

Senator PERCY. While working as a fire claims adjuster, did you engage in a practice known as buying out a claim? How does that practice work?

Mr. CARTER. It was a little device which I had worked into when I realized what the principals I was representing were up against.

As I mentioned in my statement, I finally came to a point of using Willie and Guarino, kind of my stool pigeons—kind of who, what, when, and where on a fire. When I realized that the fire was another arson scheme, I would take the insured off alone, either into a car, or an enclosed room, where I had no witnesses, and I would let him know "I know how you did it, where you did it, who did it, arson." Some are bold enough to say, "I did it; prove it." He knew I couldn't prove it. Sometimes he wouldn't. In either case, I would say, "You have a policy

of, say, \$5,000. You are not going to collect this. If you do, you will have to do it the hard way. It will take you 2 years in court. If you want to settle, I will give you \$3,000. I will issue the money in 60 days, but that is all you are going to get."

I let my principals know my technique. They approved it because I was getting the results for them.

Senator PERCY. For a long time, however, as I understand, you took no money for helping to arrange these quick insurance payoffs. Did others tell you, and did you feel that you were missing an opportunity to cash in on this opportunity?

Mr. CARTER. Well, I was told a number of times during my years by different people that I was going to take care of myself. One particular person that I came to know, that I ultimately held in high regard, said, "You all should take care of yourself." I didn't, but I finally came to that point where, as I mentioned, I got into the gambling fever, unfortunately, and I decided to use that means of augmenting my income.

Senator PERCY. Mr. Carter, on behalf of the subcommittee, we wish to thank you very much indeed for your cooperation with this subcommittee.

In accordance with your request, now, we will excuse you just as soon as the U.S. marshals insure the cameras are turned aside.

Thank you very much, Mr. Carter. You can leave the hearing room now.

Members of the press corps, and particularly cameramen, because there are no restrictions now on any further witnesses that we will have today, you will be free to move your cameras wherever you customarily, normally would have them.

I will give you that time to do that now, and the Chair calls Eleanor Hill and Mr. Hogue, strike force attorneys for the Justice Department.

In the testimony you are about to give, do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HOGUE. I do.

Ms. HILL. I do.

#### TESTIMONY OF ELEANOR HILL AND EADES HOGUE, STRIKE FORCE ATTORNEYS, JUSTICE DEPARTMENT

Senator PERCY. I am sorry that Senator Nunn is detained on the floor, but on behalf of the chairman and our subcommittee, we welcome you.

As you know, we are running into severe time problems now. The previous witnesses took longer because we had one carried over from yesterday.

Without objection, your entire statement will be incorporated in the record. The Chair will appreciate your summarizing that. Copies of that testimony are available to anyone that would want them. And just as quickly as you have made whatever summary comments you wish to make, we would appreciate your subjecting yourselves to questions.

You may begin.

[The statement referred to follows:]

STATEMENT OF ELEANOR HILL, EADES HOGUE, STRIKE FORCE ATTORNEYS, JUSTICE DEPARTMENT

On February 24, 1978, a jury in Tampa, Florida, returned guilty verdicts against sixteen defendants in the case of *United States v. Joseph J. Carter, et al.* on Federal charges of conspiracy, racketeering and mail fraud. Several days later, on February 28, 1978, that same jury returned special verdicts against four of those defendants, declaring certain of their property to be forfeited to the United States, including over \$350,000 and the controlling interests in two separate loan companies. Those verdicts represented the culmination of almost two years of criminal investigation, some three months of trial, and nearly one month of record-setting jury deliberations. The indictment, originally naming twenty-three defendants in thirty-five counts of conspiracy, racketeering and mail fraud, described in detail an "arson-for-hire" enterprise whereby low-cost and often sub-standard property would be overinsured and then burned in order to collect unjustifiably high fire insurance proceeds. This criminal "enterprise" operated successfully for approximately four years in the Tampa area, defrauding major insurance companies of hundreds of thousands of dollars. The indictment alone described twenty-one specific instances of arson. Proof at trial indicated that the enterprise was also responsible for additional fires not listed in the indictment. The list of defendants included several reputable businessmen, four former members of the Tampa Fire Department, a former city building inspector, and a one-time candidate for mayor of Tampa. In addition to the sixteen defendants found guilty by the jury, three others pled guilty prior to trial pursuant to plea agreements and testified as Government witnesses. Four defendants were acquitted.

II

The Federal investigation into this Tampa-based "arson for hire" enterprise began in January 1976, after the Tampa Office of the Federal Bureau of Investigation received information through local police department officials that certain individuals claimed to have direct knowledge of the existence of a Tampa arson ring operating with impunity.

Special Agents of the FBI conducted a preliminary investigation and concluded that the allegation concerning this arson ring warranted Justice Department Organized Crime Strike Force participation. Thereafter, a full scale Federal grand jury inquiry was begun in approximately February 1976, which ultimately resulted in the return in June of 1977, of the indictment setting forth the particulars of this massive arson conspiracy charged to have existed since September 1972.

Initially, the investigation focused on the alleged arson activities or an arsonist or "torch", Willie Noriega, a local fire insurance adjuster, Joseph "Joe" Carter, and several of their close associates.

Federal officials in charge of the investigation were apprised of the arson activities of these subjects by numerous sources including Mr. Bruce Potts, a knowledgeable Atlanta arson investigator. Potts told officials that his investigations of several arson fires in Tampa led him to conclude that the city was presently undergoing one of the nation's worst arson epidemics. He offered valuable insight into how arson rings generally operate as well as suggestions on how the Tampa investigation might proceed.

The FBI was meanwhile accumulating a mass of information on the arson activities of the "torch", Noriega, which allowed Federal officials to conclude that he was the key to exposing a successful arson ring created and nurtured into full bloom by a curious, yet profitable, union of local businessmen, real estate dealers, Tampa fire department officials, persons affiliated with fire insurance industry, home owners and professional arsonists.

III

Numerous associates of Noriega were interviewed and subsequently testified before the grand jury concerning their knowledge of his arson activities. The information provided by these witnesses was corroborated by records subpoenaed from victim fire insurance companies, as well as independent arson investigations conducted by the Tampa fire marshal's office. From this evidence, Federal prosecu-

tors were confident by April of 1976 that a Federal case could be made against Noriega for his activities, but believed that his cooperation was essential if other subjects were to be successfully prosecuted for their participation in the overall arson scheme.

Direct contact was made with Noriega by the FBI during early 1976 with Strike Force approval in hopes that Noriega's knowledge of the FBI's investigation of him would both convince him of the wisdom of admitting his crimes and cooperating with the authorities as well as impede his ongoing arson activities. However, Noriega remained unmoved by the Government's intense interest in him, and continued to pursue his arson career well into the Spring of 1976 with certain co-conspirators subsequently charged with Noriega in the indictment and convicted. By that time, a clear picture of Noriega had emerged: that of an arsonist for profit who was shrewd, brazen, and boastful with a well-earned reputation for being the best arsonist in Tampa.

Ultimately in June 1976, pressures brought to bear on Noriega by the intensive grand jury arson probe coupled with the relentless investigation by the FBI apparently convinced Noriega that he should cooperate fully with the authorities. He expressed a desire to get out of the arson ring before some innocent person was killed in a fire stating "arson is one thing, but a murder rap is bad news."

#### IV

Noriega's decision to cooperate presented law enforcement officials with a wealth of investigative information and a variety of problems. Several questions were immediately apparent to Federal prosecutors: (1) was there sufficient evidence to justify criminal prosecution; (2) if so, who was to be prosecuted—a large number of individuals were apparently implicated; (3) where should charges be initiated—at the state or federal level; and, finally, (4) which particular criminal statutes would provide the best vehicles for presenting the evidence Noriega had revealed.

The criminal arson business in the Tampa area, though apparently thriving, had not previously been pinpointed as a target area by Federal law enforcement agencies, in keeping with the notion that arson was traditionally considered to be a state or local offense, nor by previous state investigations on arson. Little, if any, precedent existed for prosecution of an entire arson "enterprise" of the type outlined by Noriega, encompassing not only the streetlevel arsonist, but also the businessmen and property owners whose finances and realty provided the basic economic incentives for the Willie Noriegas of the arson industry. The federal system offered with the investigative manpower and skills of the Federal Bureau of Investigation. Moreover, Congress, in enacting the Racketeer Influenced and Corrupt Organizations Act of 1970, popularly titled "RICO", Title 18, United States Code, Sections 1961 et seq., provided federal prosecutors with an effective and highly flexible tool for attacking an "enterprise" dealing in habitual criminality at the state level where a sufficient interstate nexus existed. Specifically, Section 1962(c) of that Act makes it unlawful for any person, through a "pattern of racketeering" activity, to knowingly and willfully participate in the conduct of the affairs of an "enterprise" engaged in, or the activities of which affect, interstate commerce. Section 1962(d) makes illegal the act of conspiring to commit the offense proscribed by Section 1962(c). The RICO statute was particularly suitable to the facts Noriega had described in that (1) an enterprise under the statute was not limited to purely legal entities but included "any union or group of individuals associated in fact" and (2) "racketeering activity" under RICO consisted not only of offenses considered criminal under federal law, but also acts traditionally classified as state offenses, specifically including "any act or threat involving \* \* \* arson \* \* \* which is chargeable under state law." 18 U.S.C. § 1961(1). Noriega had described a thriving, ongoing "arson-for-hire" industry in the Tampa area, operated by a loosely but effectively knit group of individuals, functioning in a variety of capacities in order to meet the specific needs of the "business". This "enterprise" depended on and specialized in the successful perpetration of two separate types of crimes: the actual acts of arson, illegal under state law, and the defrauding of major insurance companies, illegal as mail fraud under federal law. The RICO statute enabled prosecutors to effectively prosecute, with the full support of the federal law enforcement network, a large scale ongoing criminal enterprise which had, prior to the date of the federal indictment, successfully evaded prosecution by state agencies.

## V

Of the twenty-three individuals charged in the indictment, twenty proceeded to trial. Three defendants, namely, "torch" Willie Noriega, insurance adjuster Joseph Carter, and part-time arsonist Victor Arrigo (known to fellow conspirators as Vic Rossi), chose to plead guilty prior to trial and to testify as Government witnesses pursuant to formal plea agreements. Noriega pled guilty to all counts of the indictment in which he was named and testified as the chief Government witness in exchange for the recommendation that he be sentenced to not more than five years' imprisonment. His testimony, consuming close to one and one-half weeks of trial, implicated each of the defendants in at least one of the twenty-one arsons described in the indictment. Noriega told the jury how he first learned the arson trade from the defendants Paul Guarino and Frank Scionti, who originally sought him out as a replacement for two arsonists who had died in the Kakeland Bakery fire in 1972. It was at the urging of Guarino and Scionti that Noriega embarked on his career in arson in Tampa.

Under the tutelage of Guarino, Noriega learned his trade rapidly. At trial he described to the jury time and time again how he became adept at the fine art of setting a fire so as to completely avoid detection. His favorite method necessitated the purchase of only a few minor items; specifically, a five gallon plastic steak tenderizer container (or a similar plastic substitute), a sufficient quantity of flammable liquids, (anything from gasoline to lacquer thinner), and a dimenstore hotplate. Noriega would simply switch off the electricity in the house to be burned, fill a plastic container with some of the flammable liquid, set the container on the plugged-in hotplate, douse some more liquid on the entire area, and switch the electricity back on as he and his fellow arsonists exited the building. The beauty of this somewhat simplistic modus operandi lay in the fact that heat from the hotplate required several minutes to melt through the plastic container and eventually ignite the liquid. Those few minutes were all that was necessary for an agile arsonists to hastily depart the scene of the fire and thus completely escape detection or even suspicion. Moreover, a successful fire of any magnitude effectively eliminated any traces of incriminating evidence. It was only when some unforeseen calamity took place, such as the failure of the electrical switch at the November 1975 fire at Highland Avenue, that the method failed and Noriega was faced with the troublesome problem of leaving behind telltale evidence at the scene of an attempted arson. With the failure of the electricity at Highland Avenue, the fire failed to ignite and police and fire officials were able to recover, as originally set, the entire hotplate—container apparatus bearing the fingerprints of both Willie Noriega and Paul Guarino. Those prints were before the jury in the federal case not only as incriminating evidence against Guarino, but as corroboration of Noriega's testimonial portrait of the entire arson conspiracy.

Word of Noriega's early success as the "torch" for Guarino and Scionti spread rapidly and with it the reputation of the Guarino-Noriega arson business became firmly entrenched in the criminal community. Both potential customers and amateur arsonists sought the services and benefits of association with an efficient and profitable arson machine.

As with any successful, self-supporting business enterprise, legitimate or otherwise, much of the attraction of the enterprise lay in its potential for extravagant profit at little or no risk. The ability of the enterprise to offer such results stemmed from its highly specialized yet interdependent infrastructure; every community of interest needed to insure continued success was present. On the most visible level, Noriega's skill in arson were easily transferred to those defendants who reaped profit from the enterprise as street-level arsonists, responsible for setting the fires on which the conspiracy depended. Among these were Guarino, Holt, Rossi, Scionti, and Bacaluso. In addition to those property owners who themselves sought out the services of the enterprise, including Morgado, Rodriguez, Farina, Lazzara, Rusello, Brown, Palermo, and Macaluso, the conspiracy had access to its own group of realtors who provided not only ample tips on locating low-cost and oftentimes substandard housing for burning, but also the financial resources with which to purchase such property. Tampa businessmen Sam Martir and Bert Chase both served in that capacity, helping to legitimize, at least on the surface level, the real estate transactions of the enterprise through a barrage of paperwork. In order to guarantee the highest possible profits for the enterprise, the conspirators had to be able to deal effectively with the insurance industry. On that level, the arson machine was equally well-equipped for success: Joseph Carter, one of Tampa's most well-known and highly

efficient insurance adjusters, came within the ranks of the conspiracy. Carter, who testified at trial in exchange for a Government recommendation that he not receive more than five years' imprisonment, performed several important functions: he directed property owners to those insurance companies where payment on proceeds would be easiest, safest, and most profitable; he insured maximum return by directing the initial overvaluing of property for insurance purposes; and he guaranteed final collection by supervising and directing both the claim process itself and the final payment by the carrier. For his services, Carter was amply compensated from the profits of the enterprise. Lastly, the enterprise was not without its own inner connection to those law enforcement and investigative agencies charged with terminating its very existence. Two of the conspirators, defendants John Lostracco and Jimmy Farina, were simultaneously not only customers of the enterprise, reaping the illegal profits of arson, but also full time and long-standing officers of the Tampa Fire Department. In sum, arson in Tampa was a highly profitable business, supported by a peculiarly specialized network of individuals whose services combined to guarantee the continued successful operation of that business.

The trial testimony of Noriega, Carter, and Rossi detailed the specific facts of some twenty odd arson "jobs" accompanied by the enterprise over a four-year period. Repeatedly, the evidence showed the overvaluing of low income and substandard housing for insurance proceeds. For numerous of the locations burned, notices and/or warnings of minimum housing code violations had been served upon the owners. Noriega testified that to insure high valuation for insurance purposes, the conspirators performed "cosmetic repairs" on the substandard locations, at times consisting of little more than repainting the front exterior of a building. The scheme apparently worked: at one substandard location, 409 E. Oak Street, owner and arsonist Paul Guarino estimated the actual cash value and whole loss of the property as \$74,000 on his insurance claim form—documents before the jury showed that the property, a low-income frame rental unit, had in fact been condemned by the Bureau of Minimum Housing. The conspirators were apparently highly adept in using to their own benefit the insurance industry's lack of diligence in confirming suggested values for insured properties.

The evidence at trial detailed for the jury the peculiar facts of each of the twenty-one fires listed in the indictment—in that respect, the evidence, though telling the story of a single conspiratorial arson enterprise, in fact established proof of twenty-one separate and distinct criminal incidents, all perpetrated by the enterprise.

One of those incidents, the burning of a frame rental unit at 2020 Columbus Drive in April of 1974, is but one example of the methods which the enterprise utilized in order to secure property for burning. Realtor-defendant Sam Martino had for years held the first mortgage on the Columbus Drive property. Martino had experienced trouble in collecting back payments from an elderly blind black lady, Bessie Mae Williams, who had lived there for years but whose business affairs were routinely handled for her by her family. The property itself was in a state of bad disrepair. At Martino's direction, Noriega picked up Mrs. Williams and brought her to Sam Martino's realty office, where Martino informed Mrs. Williams that unless she sold the property to Noriega, it would be condemned and she would be "kicked out." In the presence of only Martino and Noriega, Bessie Mae Williams then proceeded to sign her home over to Noriega, for which she received a mere fifty dollars. Her relatives later testified that they have never seen the fifty dollars, nor has it been deposited in Mrs. Williams' account. In addition to the \$50 sale, Noriega assumed the \$1,900 first mortgage which Martino continued to hold. In addition, a second mortgage in the amount of \$2,500 was taken out to be held by Martino. At the time of this transaction, Noriega and Martino had but a single purpose in mind—to burn the property and collect on the insurance proceeds. Noriega and Guarino subsequently bought out Martino's interest in the first mortgage, although he continued to hold the second mortgage for \$2,500. Fire insurance totalling \$38,000 was secured to cover the residence, in spite of the fact that it had previously been cited for disrepair by the Bureau of Minimum Housing. The house was eventually burned on the second of two attempts by Noriega, Guarino and an arsonist nicknamed "Pinky," on Easter Monday, April 15, 1974, the day after Mrs. Williams' birthday. Insurance proceeds totalling over \$27,000 were paid on the Columbus Drive fire, a small part of which was paid, under threat of civil litigation, to Mrs. Williams. The remainder was split among those conspirators who had actively participated in the Columbus Drive venture, namely Noriega, Martino, Guarino and Carter.

The enterprise was equally successful, in spite of some obstacles, in burning a residence at 1811 Talliaferro Street in September of 1973. The Talliaferro Street residence, owned by the defendants Guarino and Rosario Palermo, had been burned in two earlier arson attempts, neither of which successfully managed to achieve a total loss for insurance purposes. With Noriega's help, some cosmetic repairs to the building and a misrepresentation to the insurance carrier as to previous losses, the conspirators were able to reinsure the building for \$10,000 coverage. The third and final fire in September of 1973 was at last successful and the conspirators received a full payment of \$10,000 from the insurance company.

The Government's case in chief consumed a full six weeks of trial time. By the close of trial nearly three months had elapsed. The jury, in considering the evidence, spent a record-setting period of one month in deliberations before returning unanimous verdicts as to each of the substantive counts in the indictment.

## VI

The jury's work, however, was not yet finished. There remained for their consideration certain "special verdicts" of forfeiture. The RICO statute, in attempting to establish an all-inclusive scheme for the eradication of organized crime, provides in 18 U.S.C. § 1963(a) that anyone who has violated 18 U.S.C. § 1962 shall forfeit to the United States " \* \* \* (1) any interest he has acquired or maintained in violation of Section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of Section 1962."

Under that statute, the indictment included forfeiture counts against five of the convicted defendants: Guarino, Palermo, Rodriguez, Russello and Martino. From the defendants Guarino, Palermo, Rodriguez and Russello, the Government sought forfeiture of insurance proceeds which they had collected by virtue of their arson activities. Those proceeds ranged in amount from the sum of \$2,500 for the defendant Martino to a total of \$340,043.09 for the defendant Russello. In addition, the Government sought forfeiture of any and all interests held by the defendant Martino in two finance companies, specifically Ybor Loan Company and M & S Investment Co. The evidence had shown that Martino had utilized those companies in providing financing from purchases of realty for the enterprise. In a second separate stage of the trial, after additional argument by counsel and instruction from the Court, the jury returned special verdicts forfeiting to the Government all of the listed property, with the exception of the defendant Palermo's interests, as to which the jury failed to reach unanimous agreement.

The successful use of the RICO forfeiture provisions gives added significance to the Tampa arson prosecution, in that those provisions have as yet been effectively utilized in but a handful of cases. The statute theoretically offers prosecutors great latitude in attacking organized crime by seizing a wide range of interests and property, including not only the fruits but also the instrumentalities of the criminal venture. As a practical matter, however, the statute presented the prosecutors in the *Carter* case with a host of previously unanswered questions. For the most part those questions dealt with procedure to be followed in carrying out the jury's verdicts of forfeiture. Congress, in enacting the forfeiture provisions did not set forth a procedural system specifically adapted to the peculiar needs of the criminal RICO statute. Congress chose instead to include by blanket incorporation, the forfeiture procedure previously followed in civil forfeiture under the Customs laws. That decision, though perhaps serving to accelerate the initial enactment of the forfeiture provisions, leaves unsettled many important aspects of the forfeiture procedure. The *Carter* case, and cases like it, provide essentially a "working laboratory" for the courts, from which, over time, a concrete set of forfeiture guidelines will hopefully emerge.

## VII

Well into the trial of the *Carter* case, the Government called as a witness an individual christened as James Earl Wright, but known to his peers simply as "Pinky." "Pinky," then in custody, on State charges, of armed robbery, testified that he had been recruited by the Defendant Paul Guarino to assist Noriega in setting arson fires and that he did, in fact, learn the arsonist trade under

Noriega's guidance and instruction. A portion of "Pinky's" testimony probably most vividly captures the inherent difficulty one encounters in proving any arson case:

\*\*\* as \*\*\* (Willie and I) was in the place, as we was in this--Bobby's apartment, you know, I say, well--you know, like, "what if somebody see me?" (Willie) said, "well, they can't charge you with arson. If somebody see you leaving there, you can just tell 'em you was in there, you know, using the bathroom. If they don't catch you striking the match, you know, they can't charge you with arson." He said, "That's hard"--he say, "That's one of the hardest cases there is to prove."

Testimony of James Earl Wright, December 8, 1977, at 44-45. The relative scarcity of major arson prosecutions indicates not only the accuracy of "Pinky's" statement but also that law enforcement agencies as well as the arsonists themselves are well aware of the obstacles to be faced in proving an arson case.

The self-assurance of Noriega and his apprentice arsonists depended, to a large extent, on the basic evidentiary problem which is perhaps the most obvious of obstacles. A successful arson, by its very nature, eradicates any traces of evidence which would incriminate the arsonist--i.e., fingerprints. In the *Carter* case, the trail of evidence left by Noriega consisted mainly of the charred remains of hotplates, rugs and melted containers, most of which were so damaged as to be useless for identification purposes.

In order to effectively eliminate the entire arson problem as opposed to the successful prosecution of isolated cases, law enforcement officials must overcome another basic difficulty beyond the initial problem of retaining viable evidence. Psychiatrist Daniel J. Sprehe testified as a Government rebuttal witness in the *Carter* case in order to refute defense attacks upon Noriega's mental stability. Dr. Sprehe's psychiatric portrait of Noriega serves to point out an important, but often overlooked, characteristic of the entire problem of criminal arson. Dr. Sprehe testified as follows:

"Mr. Noriega's clinical picture was that of the businessman arsonist. That is much different than the impulsive fire setter. This is a person who plans, who does a great deal of planning, who sees people, who sets up things, who gets materials, who knows all about flash points of various materials, who goes into the investment aspects, the money-making aspects of it."

Testimony of Dr. Daniel J. Sprehe, January 18, 1978 at 58. That description serves to underscore the fact that arson is, at its core, an economic crime. Street-level arsonists such as Noriega do not set fires on impulse or for purely emotional reasons. Rather, like the classic economic man, they do so, above and beyond all else, to make money. Currently, their trade is a highly profitable one. As long as that situation exists, prosecution of street-level arsonists alone will never serve to effectively eliminate arson. There will always be other Willie Noriega's eager to learn the trade so long as businessmen, financiers and property owners like Martino, Chase, Russello, and the others stand ready to pay dearly for their services. Prosecution of such persons is unfortunately a most difficult task as the financiers of arson protect themselves well: at one level by delegating the most obvious risks to the arsonist and at the other by isolating themselves with the facade of apparently legitimate business, good community reputations and legions of legal documents and paperwork. The *Carter* case is significant in that the jury convicted not only the arsonist but the sources of the funds and property supporting those arsonists.

As to the impact of the *Carter* case, figures compiled by the Tampa Fire Marshal's Office show that in the year 1974 there were 137 arson fires in Tampa, accounting for a loss of \$1,226,000. In 1975 there were 133 arson fires in Tampa, accounting for a total loss of \$1,280,900. The arson loss figures were the major figures for any type of fire loss, arson or otherwise, for those years. Significantly, in 1976, the year in which the arson investigation resulting in the *Carter* indictment was actively undertaken by law enforcement agencies, there occurred both a drop in the figure for arson figures to 103 fires and a drop in the resulting fire loss to \$526,000, less than half the previous year. Moreover, in 1977, the year in which the *Carter* indictment was returned, the number of arson fires dropped even further to 71, while the arson loss figure remained at less than half the 1974 and 1975 figures, totalling \$583,000. The *Carter* case thus shows not only that successful prosecution of an entire arson enterprise is possible but also that such prosecutions can and will have a significant effect beyond the walls of the courtroom.

Mr. HOGUE. Thank you, Mr. Chairman. Thank you very much, Senator Percy. We will try to be as brief as possible in summarizing our testimony.

Ms. Hill and I prosecuted the Federal arson case in Tampa, along with Willis James, who was then chief assistant U.S. attorney in Tampa and who worked on that case from its inception.

On February 24, 1978, a jury in Tampa, Fla., returned guilty verdicts against 16 defendants in the case of *United States v. Joseph J. Carter, et al.*, on Federal charges of conspiracy, racketeering, and mail fraud. Several days later, on February 28, 1978, that same jury returned special verdicts against four of those defendants, declaring certain of their property to be forfeited to the United States, including over \$350,000 in money and the controlling interest in two separate loan companies.

These verdicts represented the culmination of almost 2 years of criminal investigation, some 3 months of trial, and nearly 1 month of recordsetting jury deliberations.

The indictment originally naming 23 defendants in the 35 counts of conspiracy, racketeering, and mail fraud, described in detail an arson-for-hire enterprise whereby low-cost and often substandard property would be overinsured and then burned in order to collect unjustifiably high fire insurance proceeds.

This criminal enterprise operated successfully for approximately 4 years in the Tampa area, defrauding major insurance companies of hundreds of thousands of dollars. The indictment alone described 21 specific instances of arson.

Proof at trial indicated that the enterprise was also responsible for additional fires not listed in the indictment. The list of defendants included several reputable or so-called reputable businessmen, four former members of the Tampa Fire Department, a former city building inspector, and a one-time candidate for mayor of Tampa.

In addition to the 16 defendants found guilty by the jury, 3 others pled guilty prior to trial, pursuant to plea agreements, and testified as Government witnesses.

Four defendants were acquitted.

Senator Percy, this investigation—and I will start summing up as much as I can—began approximately in January of 1976, when the Tampa FBI Office received information, as I recall, through the Tampa Police Department, to the effect that there were certain individuals talking to the police department that had firsthand information of the large-scale arson ring operating in Tampa.

From about January or February 1976, the strike force in Tampa became actively involved with the FBI in investigating these allegations. We started a grand jury probe probably about February 1976. And we started off by focusing on the activities of one of the principal torches in the case, a man that Mr. Carter has already commented on, Willie Noriega.

Also at that time, the grand jury investigation was also focusing on Mr. Carter's activities. Federal officials were advised of what was happening in Tampa by several sources. I will mention one gentleman by name. A Mr. Bruce Fotts talked to me several times in Tampa. He was an arson investigator for, I think, one of the national insur-

ance companies. This man told me that he believed that Tampa had one of the worst arson problems that he had seen. Other cities were equally as bad, but Tampa was bad.

Senator PERCY. Would you hold? We have just had a vote called on final passage on this bill, and the long-awaited civil service reform bill will be on the floor and Senator Ribicoff and I are managers of that bill. I would like to interrupt and put some questions to you and get as far as we possibly can. Hopefully, if I have to stay on the floor, we can have Senator Nunn come back, or one of the other Members. Is that all right?

Mr. HOGUE. Yes.

Senator PERCY. Obviously, the entire statement will precede these questions.

I am advised that we will have two tax bills before I have to take over the civil service, so we will have some time. But possibly if we did go into questions at this point, it would probably be best anyway because we will be interrupted.

As to the individuals who originally told authorities of their knowledge of the Tampa arson ring, without naming any confidential sources, could you give us some idea of how the initial connection between informants and the police was established?

Mr. HOGUE. Well, I can think right away of probably two or three individuals that were apparently talking to the local police department for one reason or another, and these individuals were later interviewed by the FBI case agent. These individuals had direct knowledge of the activities of the arson ring. Particularly, as I recall, they had direct knowledge of Noriega's participation. And also, if I am not mistaken, they participated to one degree or another themselves in arson activities with Noriega. So they provided us right away with firsthand information. We felt we could go forward and launch a full-scale investigation.

Senator PERCY. Now, were girlfriends of individuals helpful and used as a means of obtaining information?

Mr. HOGUE. Well, I would rather not directly comment on girlfriends, but there were persons involved who certainly knew, based on personal relationships, what some of these individuals were doing. Senator.

Senator PERCY. Just so that we better understand, now, the materials that were used, we have brought forward materials that were entered into evidence during the trial. Would you identify and describe what these items are so we can mark them as exhibits?

Ms. HILL. It would be easier if we went up to the items.

Senator PERCY. We have burned papers, a can. If you could come identify those, we would appreciate it.

Mr. HOGUE. Incidentally, this was an item of evidence in the case. Ms. Hill introduced this into evidence. This is a type of container they would use to put on top of a hotplate.

Senator PERCY. This is plastic material.

Mr. HOGUE. Yes; it is. They would fill this with gasoline or some other flammable.

Ms. HILL. These came from two different fires, Senator. This one came from a hardware store fire in Tampa, and you can see the hotplate is fused onto it. You can see it inside. And the funny thing about

this particular item—it is almost poetic justice—is that found inside of the fire were insurance program folders, charred.

Mr. HOGUE. This is a hotplate from a Miami fire.

Ms. HILL. It was a laundromat.

Mr. HOGUE. These items would really do two things for the arsonist. They were sort of a timing device in that by setting up a flammable on a hotplate like this, plugging it in, it would take a few minutes for that to catch on fire and explode. Thereby, they would be allowed to get out of the building without risking themselves, and at the same time it would enable them to get out before law enforcement authorities arrived on the scene.

Senator PERCY. Is it an unusual thing that you were able to recover this evidence?

Ms. HILL. No.

Mr. HOGUE. They would find remains like this at practically every fire. Now, this particular item did not, for some reason, catch on fire, fortunately.

[At this point Senators Glenn and Chiles entered the hearing room.]

Senator PERCY. But it is unusual you would be able to get this evidence; you usually just find a hotplate?

Ms. HILL. Well, no, Senator. A lot of people think arson is hard to prove because you don't have any evidence and they seem to think that it is unusual for an arsonist to leave evidence behind. But that is not really true at all. They always leave their evidence behind. The trick is you never know who put it there, and you cannot find who set it up.

Obviously, you have got to find the hotplate. We have in Tampa in the clerk's office where I got this stuff the other day—we introduced a cart this big full of physical evidence, plastic containers which were melted, but you could tell what they are, and what happened. You know there was an arson. The trick is to find who lit the match and who hired the person to light the match.

Mr. HOGUE. To make the case, you have got to have a Willie Noriega to tell you who and how it was done. This alone would not make a Federal conspiracy case.

Senator PERCY. Even less so, the teepee we had yesterday which, by the very nature of the material used, is always consumed in the fire.

Here you have got nonflammable objects that can be recovered as evidence. At least you know there was arson and then you have to prove who set it. That is what you did in this case that is so unusual. But do you feel your case was a terribly unique case? Or could the techniques that you used in prosecuting be more generally applied by prosecutors in other areas of high incidence of arson?

Ms. HILL. I think they could. It is a hard case to prove, obviously. The problem with arson is it is two levels. First, it is hard to even find the arsonists, because you can find this, but you don't know who set the arson. But even harder than that, it is hard to find who hired them. In arson, you can find all the arsonists you like and you won't stop the arson problem. Because as our witness this morning, and as Noriega, in our case, said, it is done for money, and until you find the

people who are filtering in the money to the arsonists, you are not going to stop the arson.

Senator PERCY. May I turn the chair over to you, Senator CHILES?

[At this point Senator Percy withdrew from the hearing room.]

Senator CHILES [presiding]. I am not sure which questions have been asked. Let me know if I cover an area you have already covered.

I want to add my voice of welcome to you from the committee and congratulate you both on the results in the case. It is kind of a landmark case, I think, to make a breakthrough like that in the RICO Act. How did the name of Joseph Carter, the insurance adjuster, originally come to your attention?

Mr. HOGUE. Some of the initial individuals who were providing information to law enforcement mentioned Mr. Carter as being connected, as I recall, with Willie Noriega.

Senator CHILES. Mr. Noriega already made his fall before you got to Carter?

Who was the first breakthrough you had?

Mr. HOGUE. Noriega did cooperate before Carter. Carter didn't cooperate until after he was indicted.

Senator CHILES. So he did not start off being a willing witness?

Mr. HOGUE. No, sir.

Senator CHILES. In fact, he gave you some misinformation at one time, I understand, or did he?

Mr. HOGUE. Well, yes; he might have. My recollection is, in talking to some officials during the course of the conspiracy, he was giving them misleading information. And my recollection is he admitted that at trial, that he was misleading local law enforcement officials to cover the conspiracy.

Ms. HILL. I believe, Senator, his testimony at trial—Mr. Carter was sort of playing a double role in that, obviously, during the conspiracy he knew what was going on, yet he was in the hub of the insurance industry in Tampa. He was probably the best known adjuster in the city. So he would, at the one hand, appear to be cooperating with the insurance company and furnish them clues on obvious arsons or obvious people to avoid, while at the same time protecting others. And in essence he felt that that would avoid suspicion on his part and on a conspiracy in general.

Senator CHILES. Gave him a cover?

Ms. HILL. He was giving them a few primes while covering up the rest.

Senator CHILES. After he was indicted, he decided he wanted to cooperate? I guess he had some idea of the case you had against him and that Noriega was cooperating by then.

Mr. HOGUE. Yes, sir. He saw the light and began cooperating and did testify for the Government at trial.

Senator CHILES. He turned out also to be an important witness with Noriega in helping you?

Ms. HILL. Yes. We had three major witnesses that had been indicted and pled guilty prior to trial and testified. One was Noriega, who was the torch. Mr. Carter testified as the adjuster; and a Victor Arrigo, also known as Vic Rossi, also testified for the Government

pursuant to plea. And he was in essence an assistant to Noriega in torching certain of the properties in the indictment.

Senator CHILES. What did you estimate was the total amount of the volume of money that they were talking about in fires and values, and what they actually fleeced the insurance companies out of?

Mr. HOGUE. Well, roughly we know that they collected in the hundreds of thousands of dollars on the fraudulent claims they filed. I believe the evidence at trial showed that they probably submitted total claims in excess of perhaps \$1 million. They might not have collected all of that, but they were certainly asking for that much money.

Senator CHILES. How useful was the grand jury in the development of the case?

Mr. HOGUE. Very, very useful. It is my personal opinion, Senator, that we could not have made that case in Tampa, Fla., without extensive use of the Federal grand jury.

Senator CHILES. What if we had a new bill that at that time allowed the defense counsel to be present in the grand jury? Do you think it would have had any effect on that case? I would just like your opinion. I know this is a judgment call.

Mr. HOGUE. Well, we are going to answer that question, Senator, but I am not speaking for Judge Bell or anybody in the Department. We will just give you a personal opinion. My personal opinion is yes, it would hamper the investigation.

Senator CHILES. It would hamper the investigation?

Mr. HOGUE. Yes; it would. Rule 6(c) of the Federal Rules of Criminal Procedure is all right just like it is.

Senator CHILES. What do you think about that?

Ms. HILL. Senator, this again is a personal opinion. I think that the grand jury is sort of a double-edged thing, and it is a strange animal because it has two functions for us as prosecutors. On the one hand, it is an investigatory tool, and it is an extremely important one, and we needed it in the arson case. We need it in most cases. Without a totally unhampered, unfettered investigation, it is hard to get to the bottom of any case, let alone a fraud case. In that aspect, I agree with Mr. Hogue. I think that letting a defense attorney into the grand jury would hamper an investigation. Of course, at the present time they have access to their attorney outside the grand jury room. But within the room it would be a continuous—it would cloud the investigation. It would hamper the grand jury's function.

On the other hand—and this, I think, is the basic problem with how to hold the grand jury, if you would—the grand jury is also charged with bringing people to indictment stage. And I think in that aspect of it, that is sort of the other side of the dichotomy, if you would. Then you have the considerations which are obviously underlying these proposals to bring in attorneys into the grand jury room.

As far as the investigation, I agree with him, I think it would hamper an investigation.

Senator CHILES. You think there could be a distinction between the grand jury as it meets in its investigatory role, and allowing counsel to be present in the grand jury when it meets as it is sitting to render indictments?

Ms. HILL. I have thought about it. I think that is the problem. I don't know quite what the answer is because I don't really see how you can cut it in half, either.

Senator CHILES. That is what I was going to ask you. How can you determine who is sitting in one role or the other?

Ms. HILL. I don't know that. But I think I can see the policies on both sides there. Obviously I don't think we could have gotten as far as we got in this case, I don't think we could have successfully brought this case had we not used the grand jury in its present form.

Senator CHILES. In this case the three principal witnesses that you used, they had all pled. Is that right? So you did not immunize someone. They had actually pled.

Ms. HILL. They had pled guilty. We did not immunize anyone.

Senator CHILES. You don't have the proposition before this grand jury of immunizing the witness and then requiring him to testify under provisions of contempt if he refused to testify? They were cooperating because of the plea. Is that right?

Mr. HOGUE. Senator, we were involved in several investigations in Tampa. My recollection about this specific investigation is we might have utilized immunity provisions for some individuals who did cooperate with the Government. But my recollection is the three principal witnesses who testified were defendants, who were not immunized, but pled guilty, then testified.

Senator CHILES. What kind of facts or patterns emerged from your grand jury subpoena of the insurance company records, as to the type of houses you were finding here and what the insurance proceeds were?

Mr. HOGUE. We recognized that there was a pattern in that in Tampa, houses in deteriorating neighborhoods were being burned quite frequently. We believe from that information that certain properties were being overly insured. And then for some reason down there they seemed to burn awfully quickly after becoming insured. Those were the kinds of things that the grand jury did find.

Senator CHILES. You were able to see that as a clear pattern in these?

Mr. HOGUE. Well yes. As the investigation progressed, we began to see what was happening.

Senator CHILES. Did you or the grand jury examine records of ownership in the properties torched by the conspiracy?

Mr. HOGUE. Yes.

Senator CHILES. And what facts emerged from that when you made the examination?

Mr. HOGUE. Well, in some instances we noticed that the same individual might have fires at different locations. We found that these properties were not selling for a great amount of money, but in many instances they were being overinsured. And the records also helped us in going to the city housing authority, because we found from their records that many of these properties at the time they were insured or at the time at least they were burned, were under city of Tampa housing code citations for being property unfit for human habitation. And yet these were properties that this group—

Senator CHILES. Any insurance agent could have found that out if he had spent any time on it?

Mr. HOGUE. That is correct.

Senator CHILES. What would he have done to find that out?

Ms. HILL. Go to the bureau of minimum housing in the city of Tampa.

Senator CHILES. Virtually a phone call would have given him that kind of information.

Did these conspirators take any systematic precautions to avoid killing or injuring people in the fires they committed?

Ms. HILL. Senator, we did not discover any that I would term "systematic precautions." In a couple of instances, we have testimony where there had been—well, most of these properties were run-down, low-income neighborhoods. In a few instances, we had testimony where there were some older people living there, had lived there for years or tenants, this sort of thing, in the upstairs of a warehouse and things like that. And at the last minute they would make up excuses and say, "You have to be out of here by such and such a time." Rather than the rule, I would say that was the exception.

In fact, two persons were killed. The arsonist in the first fire in this indictment—one of the arsonists died in the fire. The other arsonist died approximately—

Senator CHILES. How did that happen?

Ms. HILL. It was a bakery fire back in 1972, and it was the very first fire mentioned in our indictment, and the first one that started this tale, if you would. I believe there was a pilot light on or something in the building and they didn't realize it, and through a mistake there was an explosion. One man was killed at the scene, and the fire department found the charred body. The other man was taken to a hospital and died about a month later. Now, they were the arsonists. The fire on West Kennedy, which was probably one of the larger fires, was a three-story combination office-apartment building. And it was not a low-income. It was an exception in that it was not like the rundown tenant places in many of the other cases.

Senator CHILES. Do you know what the proceeds of that fire were, what the valuation of proceeds were?

Ms. HILL. I believe \$340,000 insurance proceeds were paid. The building itself, I think, had a total of \$984,000 insurance on it. That particular fire was set, and testimony by Noriega shows, I believe, he set that fire.

Senator CHILES. What was the address?

Ms. HILL. 4601 West Kennedy Boulevard, the Central Professional Building.

[At this point Senator Percy entered the hearing room.]

Senator CHILES. Did they mean to burn that building to the ground?

Ms. HILL. This was a unique situation in a way. Noriega, I believe, testified that he was hired to burn part of that building. In the building—in the trial there was a model introduced, and the jury saw exactly, and in pictures, how it is—there is a newer portion toward the rear which was three stories. At the front of the building was a one-story older portion of the building. Noriega was hired to burn only the front, which was the older portion. The idea was he was

going to burn that down, the money would go to reconstructing it to make it on a level with the newer half. It was kind of a remodeling—

Senator CHILES. It was to be a surgical fire?

Ms. HILL. Exactly.

Mr. Noriega testified he went to the building and used gas cans and flammable liquids. There was a starwell going up from that first area. Noriega placed the cans, set the fire, and miscalculated. He thought the door was closed, or something; fire would stay in the first half. Well, the air literally drew the fire up the stairs, and in essence the entire structure, back structure and front structure, burned. Because of that, in the back newer structure there were apartments and there were people living there at the time of the fire; because it was a miscalculation, and they had to leave. There was no one seriously injured. I think there was testimony there was smoke, people coughing and had to be treated for excessive smoke.

But that was one case where persons obviously were there when the arson took place and lives were in jeopardy, even though it was by miscalculation.

[At this point Senator Glenn withdrew from the hearing room.]

Senator CHILES. People could be easily hurt in that one.

Ms. HILL. Exactly.

Senator CHILES. Were any firemen injured fighting the fires?

Mr. HOGUE. No serious injuries that I can recall. I am just guessing, but probably there might be minor injuries in a lot of fires, firemen probably hurt every time they go out.

Senator CHILES. What happened to the owner of this building?

Mr. HOGUE. He was convicted.

Senator CHILES. What was his name?

Mr. HOGUE. Joseph Rusello.

Ms. HILL. We have forfeit verdicts against him for the proceeds of that.

Senator CHILES. I want to ask you about those forfeiture verdicts. How successful have you been? Explain that for the record under the legal statute, how that works, what is happening in that regard. I think you covered part of that in your statement, but I would like to go further.

Ms. HILL. Well, the RICO statute is unique and it certainly is very powerful in this aspect, in that it provides not only for criminal penalties for the offense, but also that the Government is entitled to forfeiture of certain interests or items which were acquired or used during the action of this enterprise, this RICO enterprise.

Our indictment not only charges substantive RICO and mail fraud violations, but it also sought forfeiture of certain property under that statute.

It was unique in that the jury, in considering the main part of the case, considered only the substantive part and deliberated for a month and returned guilty verdicts, and then was told by the judge—and this was done in order to protect the interests of defendants and make sure the jury was treating only the substantive accounts and then proceed to forfeiture. The jury was informed after they came back, after a month, that they would consider forfeiture verdicts. We entered then a second stage of trial, so to speak, in that we had additional arguments by counsel on the forfeiture.

Senator CHILES. You did not take any more testimony?

Ms. HILL. No more testimony. The judge instructed the jury separately as to the law under forfeiture statutes. They deliberated approximately a day or half a day and returned forfeiture verdicts. We got special verdicts from the jury as to forfeiture of mainly two types of property—on the one hand, insurance proceeds, the insurance namely being that which was acquired by these defendants through the arson scheme.

Senator CHILES. How much did you get a verdict for on that?

Ms. HILL. I can check. I have the figure.

Mr. HOGUE. Money, we got total forfeitures, I believe, just in excess of \$350,000 total. Then one defendant was declared to forfeit his business interests in these two loan companies. That briefly is the extent of the forfeitures.

Senator CHILES. What were the business interests he was in? Was this Rusello?

[At this point Senator Percy withdrew from the hearing room.]

Mr. HOGUE. No; this was a Sam C. Martino. He was judged and found to forfeit his interest in two small loan companies which the evidence showed had been utilized in furtherance of this particular scheme, this arson scheme.

Ms. HILL. Those companies had been used in effect to finance the purchase of some of these properties. That was the theory under which we sought forfeiture under that.

Mr. HOGUE. The evidence showed there were loans arranged through those small loan companies that were utilized to acquire properties that were later torched.

Senator CHILES. How effective would you estimate the forfeiture provisions of the RICO statute to be in really putting a little damper on arson cases where you can get to not only the proceeds of the insurance, but also businesses that were used in the scheme or other assets?

Ms. HILL. It could be highly effective, and we think it is a very powerful tool. There is a lot to be done with it. And in our case at the present time, since it was rather an unused aspect in this type of a case, the judge requested both the Government and defense, the defendants, those particular defendants that were involved in the forfeiture—not all of them were—to submit briefs on the procedure to be followed after we got the special verdict. That has been done. And since it is a very new procedure and since the statute itself really in essence only grandfathers on the procedure followed under the Customs forfeitures, which is not, at least in my personal opinion, the same type of thing you need under the RICO statute, at this point we have not—

Senator CHILES. You think the statute needs to be amended, then, to provide for a fire?

Ms. HILL. Personally. Again, this is not a departmental statement. But in writing the brief and suggesting to the judge how we thought to proceed, we ran into a lot of problems. Just an example is in our arson case, we sought forfeiture of insurance proceeds.

Obviously, if you are going to be effective, you want to get this money back the people made through the arson. Forfeiture, traditionally, under the customs law, and in legal history, is seeking to, in essence, appropriate some item, concrete item that exists. Well, that

is really not what we are trying to do. We are trying to get the insurance proceeds. Obviously these people no longer have those proceeds around. It seems to me—and I believe Mr. Hogue will agree with me—we met this problem in drafting our brief on this point, that it would almost be more appropriate to have the Government entitled to a judgment for the value of the money or proceeds, because in essence you are not using forfeiture in the traditional method that you use it when Customs goes out and seizes contraband or this sort of thing.

Senator CHILES. Is the case on appeal now? What is the status?

Ms. HILL. It is pending on appeal at present.

Mr. HOGUE. I believe all defendants have appealed their convictions to the fifth circuit.

Senator CHILES. They are also appealing forfeitures, I suppose.

Mr. HOGUE. Yes; I am sure they are.

Senator CHILES. To your knowledge, were any of the arson ring participants connected with organized crime syndicate parties in Florida or elsewhere? And if so, how were they connected?

Mr. HOGUE. Senator, in view of the fact that the defendants are exercising their rights to appeal their convictions, and they are under the appeal presently, we respectfully wish not to respond to that question because we don't want to do anything to jeopardize the case.

Senator CHILES. Well, aside from this specific case—let's set this specific case aside—have you run into organized crime participation in arson in Florida?

Mr. HOGUE. Well, this case itself was certainly an organized crime case in that just looking at the indictment—

Senator CHILES. I am talking about organized crime more in the context that we use not necessarily exclusively the Mafia, but Mafia, Cosa Nostra, Black Mafia, Jewish Mafia, Dixie Mafia, other organized families, crime families as listed normally under the different charts that come out by the Attorney General's Office.

Mr. HOGUE. Honestly, the only case we are really directly familiar with is that case in Tampa. I guess our best answer is they might be.

Senator CHILES. Then you are not involved in any kind of ongoing investigations now as to determining whether there is organized crime involvement in arson-for-profit in Florida?

Mr. HOGUE. Well, we are investigating organized crime in Florida, and we are investigating any violations of Federal law. And that is the purpose of the strike force. So, yes, I know all over the country we are actively trying to enforce the Federal laws.

Senator CHILES. How has the forfeiture in this case actually been implemented so as to get money back that was fraudulently obtained?

Ms. HILL. As I mentioned, the judge requested those briefs. They have been submitted. And as of this point the court has not acted on them other than we have verdicts. We have not received judgments or actually seized any property.

Senator CHILES. I see.

What would you say as to how insurance companies could reduce the profitability of arson and make it harder to get away with? What do you see insurance companies themselves could be doing?

Mr. HOGUE. Well, first of all, they need to inspect the property. They need to go out and look at the property.

Senator CHILES. Elementary.

Mr. HOGUE. Yes, That is what they have got to do. In this particular case, they weren't doing that very often. That is the first thing.

Additionally, the companies are going to screen applicants for fire insurance more closely. They are going to have to insist that they scrutinize who wants fire insurance. They are going to have to better familiarize themselves with particular areas in a city or town where, because of the nature of the neighborhood itself, it is a declining area, they should be very cautious before they insure in that area.

Senator CHILES. Were you able to get readily available sufficient experts who understood all about arson and knew how it would work in the area of law enforcement officials?

Ms. HILL. Do you mean, Senator, referring to the setting of fires?

Senator CHILES. When you started in on the case, when you were starting to look into it, were there skilled investigators readily understandable in all of the ways that arson works?

Mr. HOGUE. No, sir, I wouldn't say that anybody on the Federal level was a skilled arson investigator. I know I certainly was not.

Ms. HILL. The closest we had was the fire marshals.

Mr. HOGUE. The expert we ultimately had was Willie Noriega. He is the one that told us how these were burned. The local fire marshal's office was very cooperative with us and helped us a lot. Bert Fox and Billie Buckley there in Tampa were very instrumental in helping us.

Senator CHILES. But when you really were looking around to start with, the Federal expert was Willie Noriega?

Ms. HILL. See, in the Federal system, they haven't dealt with arson that much.

Senator CHILES. Where do you think arson ought to be in the Federal scheme of things? Again I am asking your personal opinion, and not the Department's. Where should the expertise lie; FBI, Alcohol, Tobacco?

Ms. HILL. Both those agencies, particularly FBI. They are both geared and have talented personnel, and they can handle that problem.

Senator CHILES. Why would you say there haven't been more arson prosecution cases brought? Obviously it is an epidemic crime that is going on.

Ms. HILL. Apparently it is; yes.

Well, for one thing, under the RICO statute itself, giving us jurisdiction to look into arson rings like this, that statute, the RICO statute, was only enacted about 1971, I think, or 1972.

Senator CHILES. Does RICO specifically mention arson or do you have to go into the mail fraud?

Ms. HILL. No, sir. Arson, felony arson, which violates Florida State law, is a predicate crime under the RICO statute.

Senator CHILES. So it is there. You don't have to——

Ms. HILL. Absolutely.

Senator CHILES. You don't have to go through the maze you do in some RICO cases.

Ms. HILL. No. We were able to charge not only State arson, but mail fraud, as well, under the Federal statute.

Senator CHILES. Do you see now any way where RICO would need to be amended, or how it could be benefited by amendment in the arson prosecution area, aside from forfeiture?

I am talking about arson prosecution.

Mr. HOGUE. You mentioned ATF. Now, this is another one of these personal opinions. The limited areas that ATF has investigative jurisdiction on, few of their violations are covered as predicate crime in the existing RICO statute. While they have authority to investigate silencer cases, illegal gun cases, and things like that, my recollection is many of those statutes are not covered in the existing RICO.

Senator CHILES. You bring ATF much more into it if you mention some of those crimes?

Mr. HOGUE. It would. Their predicate violations that they are authorized to investigate, more of those crimes ought to be in that RICO statute.

Mr. MALONE. May I follow up with one question in an area you opened up?

It goes to the forfeiture area. As I understand what you have said, you have verdicts of forfeiture.

Ms. HILL. Special verdicts from the jury.

Mr. MALONE. And you are awaiting judgment?

Ms. HILL. No property has been seized, and the procedure to be followed after receiving those verdicts has not been set yet by the court.

Mr. MALONE. What assurance is there that the assets you are looking for, the approximately \$350,000, will be available at the time a judgment is entered, if one was forthcoming?

Ms. HILL. Well, I strongly suspect that obviously those specific assets are no longer available. We have in effect in our memo to the court interpreted the statute so we would ask the court to give us in effect a judgment for the amounts against those persons.

Now, whether or not that would be done, I do not know. That was one of the problems that we met in dealing with a forfeiture provision that in effect says, use this by the Customs forfeiture, which really applies to a different type of thing, in my opinion.

Mr. MALONE. Is there any procedure available to you, such as might be described as attachment before judgment, a sequestration of assets prior to judgment?

Mr. HOGUE. You can, under the RICO statute, seek temporary injunctions of things of that sort.

Mr. MALONE. Have you endeavored to do that?

Mr. HOGUE. We didn't do that.

Mr. MALONE. Has this process been taken—

Mr. HOGUE. It might have been taken by other strike forces. I believe they might have used injunctions in a case. I am not certain. But no; we didn't use an injunction or seek an injunction in this particular case.

Mr. MALONE. Do you think this is an area that might be usefully explored as we look at possible changes in the law?

Mr. HOGUE. Yes. Quite frankly, I think the framework exists now in the current statute to enable us—the Government, rather—to get injunctions, pending trial, and so forth.

Mr. MALONE. Thank you, Senator.

Senator CHILES. We want to thank you both for your testimony and your work in this area.

Thank you very much.

Our next witness will be Mr. James McMullen.

Ms. HILL. Will we be allowed to return those exhibits with us tonight?

Senator CHILES. Yes.

Senator CHILES. Mr. McMullen, you understand we swear all witnesses before the committee. Would you raise your right hand?

Do you swear the testimony you are about to give before the committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. McMULLEN. Yes, sir.

### TESTIMONY OF JAMES McMULLEN

Senator CHILES. Thank you. I understand you have a short statement. We will take your statement in full and submit it in the record, if we might. That might save us a little time, and we will ask you some questions.

[The statement referred to follows:]

#### STATEMENT OF JAMES McMULLEN

Mr. Chairman, for the past 37 years I have been employed by insurance companies which comprise Farmers Group, Inc. I began that career as a general claim adjuster and progressed through numerous claim management positions until about 10 years ago when I assumed my present position as Director of Security Investigations. My duties are to identify those who steal or attempt to steal from the insurance companies and to seek their criminal prosecution. The scope of my work is nationwide and keeps me in continuing contact with police agencies, fire marshals, federal and state prosecuting agencies and organized crime task forces. In the course of my work, I participate directly in the investigation of numerous claims for loss of property by fire and in which it is determined that the fire was incendiary.

Arson-for-profit, as distinguished from simple vandalism or spite, is becoming an increasingly serious problem for the insurance industry and the public which pays for it. It is reliably estimated that about 30 percent of all fires resulting in building damage or loss is the result of arson. In a study of several hundred building fires in the Detroit area, it was determined that 93 per cent of those fires were set by arsonists. Arson-for-profit will cost somebody between \$1.5 and \$2 billion in 1978.

Detecting arson is easy. But identifying the arsonists is difficult. Less than two of 100 arson cases results in a criminal conviction. That simple fact certainly wouldn't discourage an arsonist and probably is an encouragement to those inclined to commit arson simply to improve their financial position.

Investigation of suspected arson is tedious and lengthy. While these inquiries are being conducted, the insurance company is besieged by demands to settle claims quickly and by threats of legal action for failing to act with good faith in discharging its responsibilities under the insurance contract. Statutory and regulatory pressures often compel a company to pay for the loss of a building or its contents when the insurance company believes that its policyholder deliberately caused the loss. Lack of accessibility to certain essential records, precluded from inspection by various federal and local privacy statutes, deprives insurance companies of circumstantial information necessary to making a fair determination of the policyholder's involvement or noninvolvement in the arson.

In this statement I must refrain from specifically naming persons. But I can provide examples which dramatically illustrate the manner in which a person can very significantly become enriched by one or two "fortuitous" fires. In one case, an unemployed welfare recipient with a history of numerous prior insurance claims of different kinds, all of which in retrospect appear to have been fraudulent, acquired a residence purchased originally for \$30,000. The building was promptly insured for \$60,000 and its contents insured for \$30,000. Forty-four days after the policy became effective, the building was destroyed by fire. The person involved in this case claims to have paid \$5,000 down to a realtor who handled the transaction. It could not be determined whether the \$5,000 was

actually paid. The policyholder furnished no proof of payment. The claim has been denied but the policy holder persists in a civil damage action to recover \$90,000. The defending insurer is confident that it will prevail in the civil action, but it will incur legal expenses of between \$7,000 and \$10,000 to protect its position.

Another example involves the same realtor who "sold" the property in the previously described case. He personally bought another house for \$7,000 promptly insured it for \$25,000, and it burned down a few days later. The property was completely destroyed. The insurance company couldn't prove the owner was the arsonist, so the owner and the company compromised for a settlement of \$14,000.

A third case involves a situation in which a 40-year-old dilapidated house containing only 400 square feet and worth no more than \$4,000 was insured for \$16,000 and its contents for an additional \$7,000. At the same time, a second insurance company insured the same building for \$15,000 and the same contents for \$6,000. Soon thereafter, a fire started in the building but was quickly extinguished by the quick response of the fire department. Less than two hours later, another fire was set in the same structure. This time, the place was destroyed.

The companies' exposures to loss in the illustrated cases easily could have been avoided had the writing insurance agents acted responsibly and refused to accept application for insurance in amounts well in excess of the value of the property.

To the extent that arson often involves groups of persons who repeatedly are involved in or are close to arson situations, it can be said that arson-for-profit is part of the business of organized crime. The Wayne County (Detroit) Organized Crime Task Force in Michigan identified cases in which owners of buildings would prearrange with contractors for the repair of a structure by those contractors after a planned fire. The owner would be paid in advance for signing a blank repair contract after the fire. Then the contract would be filled out for an amount far in excess of the actual damage. As a result, the insurance company would be defrauded.

Detroit offers a classic pattern of arson for profit. In 1974, there were 75 fires in small grocery stores in Detroit, all involving arson. In 1975, there were 90 incendiary fires in small grocery stores in that town. But in May 1976, the Wayne County Organized Crime Task force was formed and it went to work in a hurry. I credit its work for the fact that in 1976, the number of small grocery store fires in Detroit involving arson dropped to 13 cases.

Prior to that time, incendiary fires in small grocery stores in the Detroit area cost the insurance companies approximately \$750,000 annually.

Meanwhile, in San Diego, California, 60 persons involved in the acquisition of small grocery stores were identified as having been involved in the Detroit arson losses. I learned that my company had insured 16 businesses in San Diego, operated by the same persons who were involved in the Detroit fires. Immediate action was taken to either cancel or rescind these insurance policies based on material misrepresentations made by the owners on their application for coverage. I later learned these persons have moved from Detroit to San Diego. Subsequently, 11 of those businesses suffered incendiary losses.

Even if the policyholder is identified as the arsonist, the insurance company still must pay an additional insured under the policy, such as the mortgage holder, for the loss of its collateral. The subsequent assignment of the mortgage to the insurer is usually worthless, since the property is usually worthless.

I could cite dozens of similar examples but I think more important would be a description of ways to prevent the insuring of any property for an amount in excess of its true value. I would recommend and support legal prohibitions against insuring any property for an amount in excess of its reasonably determined value at the time the insurance becomes effective. Obviously, inflationary forces would require periodic reevaluation of the property. But if overinsurance could be prevented at the outset many of these arson cases could not succeed.

How are these arson profiteers able to ply their trade so successfully? First, they are able to secure insurance easily, for amounts in excess of the real value of the insured property. This is because of irresponsible insurance agents who value their sales commissions more than the risk to their companies. By valuing profits above principle, they abrogate their moral if not legal obligation to protect the company against unreasonable risks. Second, arson is regarded by the criminal justice system as less than a serious crime. Law enforcement agencies involved in the investigation of arson and the prosecution of arsonists should get more support mainly from the criminal courts which deal too leniently with arsonists.

Finally, we need uniform standards, perhaps a federal statute, through which investigators and insurance representatives are exempted from civil damage suits or criminal prosecution for disclosing to prosecutors information on which can be based a reasonable suspicion of the identity of the arsonist. Today's privacy statutes frequently discourage revealing such information because of the fear of personal damage suits.

Senator CHILES. I understand that you have got some 37 years in claims adjusting and management. Based on that 37 years, have you noticed any trends in the frequency of arson for profit?

Mr. McMULLEN. Yes, sir.

Senator CHILES. What are those trends?

Mr. McMULLEN. Rather dramatic increase within the last several years.

Senator CHILES. During what time period has arson for profit grown most quickly?

Mr. McMULLEN. I would say within the last 4 to 5, 6 years.

Senator CHILES. What factors do you think account for the phenomenal growth in the arson for profit in the last few years?

Mr. McMULLEN. To begin with, there is an ample supply of dilapidated property. We have problems with property owners confronted with rent control. We have economic recessions in some areas. We have an increasing sophistication on the part of the criminal element, which is becoming more aware of the profit in arson.

I think there has been a relaxation—or perhaps not a relaxation but not sufficient investigative techniques employed. And I think underwriting of the risk at the beginning of the risk has been careless.

Senator CHILES. How about prosecution?

Mr. McMULLEN. Prosecution is disappointing. Arson is easy to find, but identifying the arsonist is difficult. Quite often we get into swearing matches about who did what. Criminal cases against arsonists are hard cases. Even in those cases wherein convictions are obtained, I think sentencing has been too light.

Senator CHILES. Sentencing has been too light?

Mr. McMULLEN. Yes, sir.

Senator CHILES. Is it generally considered the responsibility of an insurance agent to make some verification of the value of the property to be insured?

Mr. McMULLEN. Yes, sir.

Senator CHILES. In your experience, do most agents fulfill that responsibility?

Mr. McMULLEN. No, sir.

Senator CHILES. Why? Why not?

Mr. McMULLEN. I think their profit motive through the sale is placed at a bigger priority than their responsibility toward their insurer.

Senator CHILES. Why don't the insurance companies make some kind of check on that?

Mr. McMULLEN. Well, they do to some extent. But that extent is very limited. It seldom gets into residential property. The inspections they do perform are generally related to high-risk commercial property.

Senator CHILES. There is no rule in the insurance companies that requires something like a Polaroid picture to show the agent was there, shows that he walked through the rooms and did something like that, or does he at least sign some kind of verification he was actually on the property?

Mr. McMULLEN. He signs a verification he was on the property. In my own company we require photographs of the insured property be submitted by the agent. Those photographs are exterior views. They don't properly relate to the value of the property.

Senator CHILES. How costly would it be to make inspections on most or all of the properties, or all properties above a certain insurable value prior to coverage? In other words, do you think that cost would outweigh the ability to reduce some of the fraudulent claims?

Mr. McMULLEN. No. I think the cost would be nominal in relation to the problem that we are talking about here today. I don't have an exact figure, but a recent survey of a similar type of cost in the insuring of certain classes of automobiles indicated that in metropolitan areas where your inspectors didn't have to travel great distances, inspections could be performed for \$25 or less per unit inspected. And considering the size of this arson problem, that is not much money.

Senator CHILES. Describe for me or give me an example of how you would deliberately overinsure property.

Mr. McMULLEN. Well, in my statement, which will become part of the record, I have cited a couple of examples. One is the purchase of a piece of property for \$30,000, immediately thereafter insured for \$60,000 with contents insurance of \$30,000, making the total package of \$90,000 on the building and its contents.

A fire followed very quickly after that. And in going back over the real estate records and tax records, it was determined that the maximum value of that property at the time it was purchased would have been about \$27,000. The purchaser of that property was a welfare recipient with no other known income who claimed to have paid \$5,000 down toward the purchase price but had no evidence of the down payment, or can any evidence of the downpayment be found.

Senator CHILES. What would you estimate was the value of the actual contents.

Mr. McMULLEN. I would say probably less than \$1,000.

Senator CHILES. So we had \$30,000 on contents, \$30,000 on the building, and another \$30,000—

Mr. McMULLEN. \$60,000 on the building and \$30,000 on the contents, a total of \$90,000.

Senator CHILES. What did you have to pay on that?

Mr. McMULLEN. It hasn't been paid. There is litigation on it. The claim will be resisted, I think successfully.

Senator CHILES. Would you say it is usually true that an owner who wants to overinsure his property can simply walk into a broker's office and take out a standard policy for the desired amount with no questions asked?

Mr. McMULLEN. Yes, sir.

Senator CHILES. Could you estimate what percentage of arson-for-profit cases involve deliberate overinsurance of property?

Mr. McMULLEN. I would say nearly all of them.

Senator CHILES. You noted that insurance companies are defrauded through the ineptness or cooperation of their own adjusters sometimes. We heard from one adjuster in the Tampa arson conspiracy who left the impression that the adjustment business was riddled with corruption. How prevalent is the involvement of adjusters in the conspiracy itself?

Mr. McMULLEN. That is a difficult question to answer, but considering my observations in many years in this field, it is my opinion that probably about 25 percent of adjusters would succumb to proposals to participate in a profit through conspiracy of this type.

Senator CHILES. So if I wanted to set up arson rings in major cities and involve myself with insurance agents, real estate people, fire marshals, would I be able to locate an adjuster to fit into the ring in those major cities?

Mr. McMULLEN. I think so.

Senator CHILES. The State insurance officials seem concerned about corruption among the adjusters that they are supposed to be controlling.

Mr. McMULLEN. They are concerned, yes, and they have been concerned.

Senator CHILES. Do you think they are doing anything to really police in the licensing of the adjusters?

Mr. McMULLEN. I think they do to a certain extent. They are critical of insurers who do not police their own organization and permit improper practices among adjusters. They will not tolerate that.

Senator CHILES. Why would adjusters be particularly susceptible to becoming corrupted in arson or other plots against the insurance companies?

Mr. McMULLEN. I think one of the prior witnesses, Mr. Carter, touched on one of the reasons, and that is the pay scale.

Senator CHILES. What does an average adjuster make?

Mr. McMULLEN. I would think right now somewhere less than \$17,000 a year.

Senator CHILES. In some instances he could make that in one contract, adjusting one claim.

Mr. McMULLEN. Very easily, yes.

Senator CHILES. Are you personally aware of any suits brought against insurance companies or their employees for releasing information to authorities?

Mr. McMULLEN. Yes, sir.

Senator CHILES. You are?

Mr. McMULLEN. Yes, my own company has been subject to suits for damages for violation of the fiduciary relationship between policyholder and the companies in situations in which certain information was disclosed to the detriment of the policyholder. One of those suits resulted in a judgment for \$205,000.

Another such suit resulted in a judgment for \$4 million.

All these things cause a little reticence to exchange information.

Senator CHILES. You think there are cases, or you know of these cases in which the Federal Privacy Acts have hampered the flow of information between insurance companies and law enforcement agencies?

Mr. McMULLEN. Yes, sir.

Senator CHILES. What specific kinds of records and information that are barred to insurance company scrutiny by privacy statutes would help insurers to establish the circumstantial evidence of arson for profit?

Mr. McMULLEN. Financial records that would be pertinent to the transactions involving the insured property and relating to the finan-

cial ability of the insured person to purchase the property, police reports, fire marshal's reports, reports of prior claim to prior insurance carriers, things of that nature which are pretty well now barred from discovery.

Senator CHILES. Why don't you keep a file on prior claims?

Mr. McMULLEN. Senator, Mr. Carter said that there was no file on prior claims, and I would like to clarify that. There is such a record. It is called the Fire Marshal's Reporting Service. It is funded by contributions from insurers, and it works on the system of filing a little card, an informational card, into the system on each fire or burglary or other type of claim over, I think, \$200 or \$250. I think Mr. Carter was unaware of that because of the fact he was an independent adjuster as opposed to a company adjuster, and it is the companies themselves that subscribe to this system and support it.

That has been in existence, to my knowledge, for 25 or 30 years. And in many cases it has been very useful to us. However, we are confronted with something new in the criminal element involving insurance fraud, and that is the continual name change people go through. You see a man today under the name of Willie Jones and tomorrow he is Joe Brown; it is the same man. So the index systems, so to speak, are not infallible. They are helpful, but they are not totally fallible.

Senator CHILES. In your experience, what priority has been accorded to arson by law enforcement authorities at the local, State or Federal level?

Mr. McMULLEN. Well, I think the fire departments in the major cities give arson a high priority. I don't think police departments rank it very highly. And in some areas it varies; the sophistication of arson investigations or arson departments varies according to locales.

I would say generally everyone is concerned about it, but everyone is also frustrated because there seems to be little done after the arson is detected.

Senator CHILES. What about at the Federal level?

Mr. McMULLEN. To my knowledge there hasn't been much action at all on the Federal level. I am aware of the RICO statutes. I am aware of the case at Tampa. But other than that I have no knowledge.

Senator CHILES. How can law enforcement improve its arson efforts?

Mr. McMULLEN. First of all, I think arson has to be recognized as a class I crime along with the other series of crimes that are in that category. The subject has to be advertised. I think this inquiry this week is a great step in that direction. I think the insurance companies must be made aware that law enforcement agencies will work with them and that the law enforcement agencies want the insurance companies to work with them. And that comes back to this privacy statute. It has not been uncommon to walk into a fire marshal's office and ask for an exchange of information and be told he can't do it because of the 1974 Federal Privacy Act, and some of the individual States' privacy acts have just about closed the door on a free exchange of information.

The situation has developed to where the criminal is protected, with very little protection for the insurer.

Senator CHILES. We have been running into that in a number of areas.

I want to thank you very much for your testimony and your appearance here today. It is very helpful to this committee.

Our last witness will be George Clark.

Mr. Clark, do you swear the testimony you are about to give this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CLARK. I do.

### TESTIMONY OF GEORGE CLARK

Senator CHILES. Mr. Clark, I understand you have a statement. In the interest of our time and the hour, I am going to put your statement in the record and I would like to ask you several questions.

Mr. CLARK. Fine.

[The statement referred to follows:]

#### STATEMENT OF GEORGE CLARK

Mr. Chairman, I am Pacific Coast Vice President for Claims for Cravens, Dargan & Company. We provide managing general agency services for insurance companies. Our services include underwriting, premium collection, policy issuance and claims payment for insurance companies. Most of our business is with major commercial risk enterprises such as aircraft companies, saw mills, markets and restaurants. I direct the operation of nine branch offices in five Pacific Coast states with a claims staff of 125 people. In addition to other duties, I am responsible for review of fire claims at \$15,000 and above.

I appreciate your invitation—extended by Messrs. Coffin and Vienna—to express my concern with the increasing incidents of fires of incendiary origin—arson—over the past 5 years.

Insurance companies are bound, under contract with the policyholder, to pay for fire losses, unless it can be shown that the beneficiary set the fire either directly or indirectly.

Unfortunately, it is most difficult to prove a crime in which the evidence is destroyed or distorted by the blaze. As stated in a recent U.S. Court of Appeals decision: "The chance that there will be a motion picture of the arsonist in the act of setting the fire is most unlikely. The probability is that the evidence will be circumstantial, a sit is here. We have in the case at bar, (1) arson unquestionably; (2) ample motive; and (3) unexplained surrounding inculpatory circumstances which are relatively strong."

Developing evidence against those who set fires for profit is an almost impossible task. Arson is one of the easiest crimes to commit but the hardest to prevent or prove. It is no wonder then that criminals would chose to engage in this activity.

An illustration might be useful at this point. Not long ago, a fire occurred in a bar in Northern California. Investigators knew it was incendiary in origin the moment they began their inquiry. They identified a melted brass striker plate from the door. It takes about 1,400 degrees and fire accelerants to melt brass; gasoline samples were taken from the carpet.

My company resisted payment of the fire claim on the basis that the policyholder had intentionally set fire to his property. We took the case to court. However, the jury allowed the claim. I spoke to some of the jurors after trial and asked them if this meant that they condoned arson. Jurors, after the verdict, told me that since we had not shown the owner with the match in his hand, we did not prove it was the owner who set the fire. Even though these jurors thought it was arson, we lost the case.

As shown in this example, there is an important distinction between the two broad motives for fires that are intentionally set. Most fires are set by individuals with no financial interest in the property—juveniles who burn school build-

ings or disgruntled employees who set fire to factories and business establishments. Less numerous but equally insidious are the fires set for profit, usually with the indirect involvement of the owners or managers of businesses.

No matter what the reason for the fire, or who did it, the impact is felt by the insurance companies, the consumers who buy products and services, and the taxpayers.

Fires that are incendiary in origin present difficulties in the Civil Court. For example, in some states, insurance companies are subject to punitive damages alleged by the policyholders who are denied payment. At civil trial, the other attorney may argue that the insurance company should be "punished" for not promptly paying his client. After all, if the District Attorney did not convict the insured of arson, why should he not be paid? That kind of thinking by jurors frequently prevails.

Unfortunately, in California and in other states the companies are often precluded from supplying law enforcement agencies with information indicating a fire was intentionally set. If we instruct cause-of-loss investigators to send copies of their reports to District Attorneys, it looks as if the big insurance companies with unlimited funds for investigation are trying to put the policyholder in jail. If we voluntarily share the material and the District Attorney dismisses the case, we are wide open for a civil suit. Punitive damages in some states will be the price we pay for sharing this valuable information with law enforcement authorities. Thus, it becomes necessary for the prosecutor to subpoena data before we may release any of our investigation materials.

The methods Cravens, Dargan employs to determine whether fires are set intentionally are not standardized industrywide. However, it might be helpful to explain our procedure. When a fire exceeds \$70,000 in damages, we send a general adjuster from our staff to the fire scene. His job is to establish the cause and value of loss but in the course of talking to fire department officials he asks whether there is any evidence or suspicion of an intentionally-set fire. If we or the fire department question the cause of the loss, we will retain one of a number of "cause-of-loss" investigating firms around the country. These companies employ engineers who are specialists in determining the causes of fires. Based on their findings we decide whether subrogation claims should be filed against responsible parties for failure of electrical, heating, lighting equipment or malfunction of gas-fired heating equipment. Accounting records and real estate transfers are examined. If we see a decline in sales of the company over a period of time before the fire, we take note of that. If the records indicate late payments to suppliers, we will factor that into the arson equation. All of this is strong circumstantial evidence that the business had been slipping and naturally makes us suspicious.

Sometimes we are lucky enough to have a witness come forward whose testimony makes it impossible for a jury to award anything. For example, a restaurant and bar on the first floor of an apartment house recently burst into flames in the dead of night. The witness, driving by, saw the shower of flames and glass explode into the street in front of the witnesses' car. He wheeled around and saw persons running to another vehicle and took down the license number. Police identified the car as being registered to the leaseholder of the property. The witness who alerted authorities said he responded because he feared for the people who were sleeping in the apartments above.

We refused payment and filed a civil suit, stating that the fire was a willful act. One of the persons later identified as leaving the fire and entering the car had signed a loan application for improvements to the leasehold.

The jury disallowed payment of the claim. However, our costs exceeded \$50,000 for investigation and trial. Why did we resist? Because it was such a flagrant violation of the insurance contract.

We sued in Federal Court, rather than locally, because our attorneys believe that the line of Federal decisions on arson matters is stronger against the arsonist than those in State Courts.

I do not want to give the impression that all fires in businesses are arson-related. I believe most businessmen in this country are honest and decent. Even the large majority of businessmen facing failure in their enterprises would not, in my view, resort to arson as a solution. However, there are a few that will and do. When we encounter a fire loss that does not raise arson questions, we are quick to respond with claim dollars to make our clients whole.

In my opinion, the cost of determining fire causes, particularly in large losses, is money well-spent. Insurance industry investigations of fires, using the expert resources available to us, can be of benefit to law enforcement. However, I believe other things must be done to reduce the growing incidence of arson and should be done soon. Among the changes I, as a working manager, need to resist on arson cases are as follows:

Arson must be declared a major crime. Recovery limits should be established by law so that they do not exceed the actual physical damages to the property or exceed the policy limits. This would permit companies to develop the facts of incendiary origin without the risk of being penalized should the company fail to prove its defense.

Immunity laws should be passed so that insurance companies would be *required* to release factual information or evidence to law enforcement authorities. Companies should be given immunity from liability for civil or punitive damages for release of such information.

Law enforcement agencies should establish hot lines everywhere for confidential arson information.

Mr. Chairman, the insurance industry is committed to protect the people it insures against fire losses. As a group, insurance company customers pay premiums that provide the reserves against which insurance companies draw to pay loss claims. My industry pays claims to rebuild homes and industries destroyed by hurricanes in the Southeast, tornadoes in the Midwest, fires in the West, and natural disasters of all kinds.

But arson is a special kind of crime, which destroys more than just a building. It kills people and threatens lives. It puts people out of work. And it seriously affects the tax basis of our cities. It must be stopped!

Senator CHILES. In meetings with subcommittee staff, you indicate that if you were a criminal, you would be an arsonist. Would you tell us why you said that?

Mr. CLARK. Yes, Senator, I would like first to qualify myself and my position. I am not an employee of an insurance company. Cravens, Dargan & Co. is a managing agency on the Pacific coast that manages affairs for insurance companies. Therefore, it is a little bit different than company personnel.

No. 2, to answer the question, it seems to me that my experience with arson cases or suspected arson cases recently has been that the arsonist is not pursued by law enforcement.

Senator CHILES. Why not?

Mr. CLARK. There seems to be a lack of interest as far as law enforcement is concerned. If the loss is insured and if the property owner is made whole, they seem to lose some interest in pursuing the criminal, one.

Two, it seems that it is a terribly difficult crime to prove against the arsonist. The evidence is destroyed in the fire. The arsonist is very skilled, and it is most difficult for law enforcement to identify that person, pursue, and make the arrest.

We have run into some situations, and one in particular, where a very large complex was burned. The young man was apprehended. It was not arson for profit. He had been arrested approximately 20 times. He was out on bail at the time that he started the fire, and the bail on this fire was set rather low. And he was apprehended again, about to start another fire. This time the bail was set so high that he could not move around any more. He now is in jail.

Senator CHILES. He is a pyromaniac.

Mr. CLARK. He was a pyromaniac; yes.

Senator CHILES. And he had a pretty good record of fires before that?

Mr. CLARK. Yes; he did. However, he was not in arson for profit. And, Senator, our people who engaged in arson for profit are very skilled.

Senator CHILES. For the last 2 days we have been hearing from torches and arsonists who report to us they make certain a building they are going to torch is vacant so there is no loss of life. In your experience, dealing with fire claims, are all arson-type fires simply property losses? Or are there sometimes human life losses involved?

Mr. CLARK. There are human lives lost in these cases. My company deals in business enterprise primarily, and we have had motel fires where tragic loss of life has occurred.

Senator CHILES. Arson fires in motels?

Mr. CLARK. Yes.

Senator CHILES. Can you give me a specific example?

Mr. CLARK. Yes; I will. A specific out of Alaska where a fairly new structure was involved. And the arsonist rented a room on the second floor and put the accelerants in that room.

The cocktail lounge was being secured for the night, so it was about 5 after 2. The employees were present, the deskman was there. A rolling ball of fire came down the stairway, past the desk. People started running to rooms, pounding on the doors to get people out. There were a number of employees there. Yet, they were unsuccessful in getting everyone awakened and aroused to the extent they could escape, and there were three very tragic deaths that occurred as a result of that fire. And the arsonist had simply strung a line of accelerants from the room that contained all the accelerants right down the carpet and out the back door and in the parking lot, put the match to it.

Senator CHILES. What was the motive of that case?

Mr. CLARK. It was undetermined as what the motive was. I was satisfied it was not an arson for profit. It had to be a vengeance of some sort against the owner of this new motel.

Senator CHILES. What is the dollar range of the losses from the arson-for-profit fires that you have experienced?

Mr. CLARK. We have seen rather high dollar levels in the commercial side.

Senator CHILES. Anything as high as \$1 million?

Mr. CLARK. Yes.

Senator CHILES. Are you aware of involvement of organized crime in arson-for-profit operations?

Mr. CLARK. There has been an indication to us within the past 1½ to 2 years that we are seeing some organized crime involvement. My personal experience indicates that it is coming from competitors. We have one situation where a lodge was burned and the owner of the lodge was shooting at the responsible people at the airport. It was a very messy situation. He had been threatened by organized crime prior to the time his lodge was burned.

We have another commercial building where there had been certain threats made against the owner of a business in northern California.

He had an old, respectable restaurant business, and he had threats made, and suddenly his place was burned to the ground. Accelerants were involved. It was a bursting into flame and gone.

Senator CHILES. You heard Mr. McMullen in his testimony. Was there anything he said that you would like to elaborate on or that you disagree with?

Mr. CLARK. I don't think I would like to comment.

Senator CHILES. We thank you very much for your appearance here and your statement. It will be very helpful in the record.

We will recess our hearings until the call of the Chair.

[Whereupon, at 2:15 p.m., the subcommittee recessed, to reconvene subject to the call of the Chair.]

[Members of the subcommittee present at time of recess: Senator Chiles.]

## ARSON-FOR-HIRE

WEDNESDAY, SEPTEMBER 13, 1978

U.S. SENATE.  
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,  
*Washington, D.C.*

The subcommittee met at 10 a.m., pursuant to recess, in room 3302, Dirksen Senate Office Building, under the authority of Senate Resolution 370, agreed to March 6, 1978, Hon. Sam Nunn (acting chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; Senator John Glenn, Democrat, Ohio; and Senator Charles H. Percy, Republican, Illinois.

Members of the professional staff present: Owen J. Malone, chief counsel; Stuart M. Statler, chief counsel to the minority; Jonathan Cottin, investigator to the minority; Ruth Y. Watt, chief clerk; Rosemary Steward, assistant clerk; and Stephanie Grill, secretary to the minority.

Senator NUNN. The subcommittee will come to order.

[Members of the subcommittee present at time of reconvening: Senators Nunn, Glenn, and Percy.]

### OPENING STATEMENT OF SENATOR NUNN

Senator NUNN. This morning the subcommittee begins 2 additional days of hearings into arson for profit. In our previous hearings on August 23 and 24, we received firsthand accounts from three admitted arsonists describing how they "torched" dwellings and commercial properties for profit at the request of unscrupulous landlords and businessmen.

We received highly pertinent testimony from a fire insurance adjuster who was part of a major arson-for-profit conspiracy in Tampa, Fla.

We also heard from Department of Justice lawyers who successfully prosecuted the Tampa arson conspiracy, earlier this year, and from a witness with long experience in the fire insurance business who provided some important insights into insurance industry practices.

The record made to date justifies the concerns raised by Senator Percy that led to these hearings. Some 1,000 people die each year in deliberately set fires. Another 10,000 are injured. The property loss is measured at some \$2 billion a year. And arson now appears to be one of the fastest growing crimes across the country.

According to the testimony to date—

Arson for profit is lucrative.

It is one of the easiest crimes to commit and one of the most difficult to prove.

Prosecutions are few and far between.

There is far too little coordination between fire and police officials.

Many insurance carriers do not inspect properties before they are insured--and many properties are insured for more than their fair market value.

Of course, overinsurance can only provide an incentive for arson.

Today we will hear testimony from several arson victims. Innocent people who have been driven from their homes by arson. Property losses are one thing we can measure, but it is hard to put a price tag on the misery and disruption of the lives of people who live through an arson experience.

Today's witnesses will tell us how they were burned out and how they have been affected.

We will also be hearing from the chief arson investigator for Houston, Tex.; the chief of police of San Jose, Calif.; and representatives of the Illinois Legislative Investigating Commission, which has given special attention to arson problems in Illinois.

We want the views of these experts. Is arson as easy to commit and difficult to detect and prosecute as the arsonists say it is?

Do our State and local authorities have the investigative manpower and the skills and facilities needed to combat the problem? If not, what is needed?

Are investigative efforts fragmented? If they are, how serious is the situation, and what can be done about it?

These are some of the questions our subcommittee will have for these witnesses and others in the future.

Tomorrow the subcommittee will hear from representatives of a number of Federal departments that administer Federal insurance programs or have enforcement responsibilities in the arson area, which is so serious for our Nation.

I am looking forward to today's testimony and want, again, to commend Senator Percy for the work he has done to focus attention on this problem.

Senator Percy.

#### OPENING STATEMENT OF SENATOR PERCY

Senator Percy. I want to express appreciation to you, Senator Numm, and also to Senator Glenn for the fine support and backup that has been provided by you and the committee and the staff on both sides of the aisle in connection with these hearings; to indicate that progress has already been made and Judge Webster has advised us that the FBI has now moved arson for profit from, you might say, the back burner to the front burner and has sent a directive to all 59 offices of the FBI to place this in a matter of high priority; and as indicated, they will monitor it from Washington.

So we are very gratified indeed. We have the finest law enforcement agency in the world working cooperatively with local enforcement officials and with all of those who have the responsibility at the local level plus the home office to insure that this is a matter of high attention.

Today, the subcommittee resumes its hearings on arson for profit. Late last month, 2 days of eye-opening testimony described for us how arsonists and their coconspirators practice a nefarious trade in

fires and insurance fraud. Federal prosecutors related how they exposed and eradicated a major successful arson ring. The hearings also revealed some disturbing facts concerning the insurance industry, where widespread reluctance to diligently challenge suspicious fire claims may contribute substantially to the growth of arson for profit.

This morning's testimony will focus on the peculiar difficulties encountered in arson law enforcement. Effective response to this unique crime demands a linkup between traditionally separated police and fire departments. Unless these local agencies can now put aside what often amounts to bickering and learn to work together, no headway will be made against the national arson disgrace.

Federal law enforcement too, must bear down harder. Organized arson for profit is unmistakably a growth enterprise and syndicated crime families are riding the wave. Federal officials must begin with all possible haste to design and put into place synchronized, no-nonsense antiarson programs in conjunction with local authorities.

We will also hear today from people we have heard little about so far, namely the innocent victims of arson for profit—people cruelly burned out of their homes by malicious arsonists. They will describe their panic and dislocation. Arson is not and never has been merely a financial and property crime. No amount of money could repay these victims for the loss of their homes and emotional security, and for their struggles following the fires to reestablish their own well-being and that of their families.

At the outset of these hearings I described the reaction and feeling of this on our three children when in the middle of the night we were roused one night by a fire. That instance was by faulty wiring in the air-conditioning system, but we never will forget the feeling we had and what might have happened to us if that had not been detected early enough.

When we consider the terror that exists in a neighborhood, when building after building is purposely and willfully set afire and when knowingly people realize that this could happen to them and just as it has happened to their neighbors, I think that is the background in which we look forward to the testimony from our victims today.

My hope is that when we complete these hearings, Americans will better realize the enormity of this problem and that every private insurer, every local, State, and Federal agency will have a better sense of the total commitment and resources needed to drive these torches from our midst. The offense they commit against our society is heinous, in terms of ruined lives, ravaged property, whole neighborhoods reduced to rubble, and nightmarish remembrances of things that could have been but will be no more.

In other words, a \$2 billion industry, by estimates of insurance companies, claiming last year 1,000 lives.

As a government and as a society we must root out this evil.

Mr. Chairman, as we all know, the gas deregulation bill and I will have to leave for a meeting at the White House, to be there by 11, but I will return just as quickly as possible, and express my regret to our witnesses for any of the testimony that I will have missed. But I have read all of the testimony carefully, and I think we have an extraor-

dinarily fine group of witnesses who at considerable sacrifice have come here this morning.

Rosetta Boyd, another innocent victim of arson in New York, was to have testified this morning. For personal reasons, it may be that she will be unable to come. I ask unanimous consent that if she is not able to be here, her complete affidavit be incorporated in the record in the appropriate place.

Senator NUNN. Without objection.

#### OPENING STATEMENT OF SENATOR GLENN

Senator GLENN. Thank you, Mr. Chairman.

I am very pleased to begin these final 2 days of hearings on arson for profit. It was over a year ago that I introduced the Arson Control Assistance Act in an attempt to alert the American public and the Federal bureaucracy to the fact that this Nation is in the midst of a growing arson epidemic.

Less than a year ago arson for profit was still being glibly dismissed as a "nonpriority" and as a "cost of doing business" in the inner city. Through five separate legislative initiatives and 2 days of hearings last December, we have succeeded in ripping away some of the protective mantle of white-collar respectability that arson had gotten. Subsequent major indictments in Boston and other cities have helped as has a growing awareness among the media, the insurance industry, and the general public.

These hearings and the efforts of Senators Nunn and Percy have already contributed significantly in further exposing what a devastating criminal epidemic we have involving organized crime as well as unscrupulous landlords and businessmen, apparently our message is starting to get through.

As Senator Percy has indicated, the FBI has sent out a letter indicating some priority now to be given to arson. I am told tomorrow the FBI will reveal that it now considers arson a major problem and that it will act more aggressively to help combat it.

Obviously, I have more than a passing interest in this development since I've fought over the past year to get the FBI to classify arson as a major crime and to stop equating it with vagrancy and curfew violations in its crime reporting. Perhaps by tomorrow the LEAA and the Federal Insurance Administration will also have given some fresh thought concerning their attitudes toward arson.

I might add to my statement, Mr. Chairman, I think this has been atrocious over the past year and I hope the FBI, whoever is representing them here today, carries a message back that we are really looking for some answers tomorrow when they come over here.

We just say a wino over here in the park someplace gets picked up is a more serious crime and gets a record on the FBI crime stats, and you can burn down the Capitol next door to it, if it would burn, and it wouldn't even be considered on the FBI major crime stats. To me, we have got our priorities all backward somehow. We have been unable to get the FBI to move on this despite repeated letters and repeated talks. I can tell the FBI right now as much as I admire them and as much as I have supported them through the past years, that we are going to push on arson until it gets the proper attention that it should have had a long time ago.

Crime statistics are collected and submitted to the FBI and they determine our priorities for crime fighting in our country. For the past 20 years we've let the National Association of Chiefs of Police say what will be on the crime statistics, and for the past 28 years there hasn't been a single change in those statistics. This tells me something is wrong. We have to change those priorities some way or bring them out of the days of prohibition and into the 1978 era.

Today, we will hear from two of this vicious crime's many victims. I would like to quote a portion of the testimony delivered at last December's hearings by representatives of Boston Tenant Association. I believe that this quotation places today's testimony in a very clear perspective:

We are dealing with the problem \* \* \* that when people make a decision 35 years before a fire occurs to begin to milk that building, when local governments refuse to enforce State and local building and sanitary codes, when that deterioration and milking of the property continues for a long period of time, as tenants begin to move out and other tenants move in who are poorer because wealthier people will not live there any more, as that process continues, the inevitable, absolutely inevitable result of that will be bankruptcy, condemnation, buildings that literally cave in, or buildings which are burned down.

So, Mr. Chairman, the record should show that we are not only dealing with a crime problem and an insurance problem. In many ways, arson for profit is symptomatic of some long-neglected social problems. Today's testimony will illustrate this point and I look forward to hearing it.

We are all saddled with multiple committees and hearings this morning. I have to leave shortly for a period of time to go to the Foreign Relations on some Nicaragua executive session meeting testimony we are having there. But I will be back just as soon as I possibly can this morning.

Thank you.

Senator NUNN. Thank you, Senator Glenn. We appreciate your longstanding interest and your leadership in this important area.

Our first witnesses this morning were listed as Mrs. Boyd, Mrs. Byrd, and Miss Peterson. I understand Mrs. Boyd is not here at the moment; and Mrs. Byrd, Miss Peterson, we will ask both of you to come forward, and I will give you the oath at the same time.

Before you are seated, let me give you the oath. If you will both hold up your right hand, do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. BYRD. I do.

Miss PETERSON. I do.

Senator NUNN. Let the record show they answered affirmatively.

#### TESTIMONY OF HEDY BYRD AND ELSA PETERSON

Senator NUNN. Miss Peterson, Senator Percy has suggested to me you might start off this morning. I believe you have a prepared statement. We would be delighted for you to give that. I might just tell both of you we swear in all witnesses before this subcommittee. That is one of our standard rules. I wanted you to understand that that is normal procedure.

Senator PERCY. We do want to welcome both of you. Just feel very comfortable. You are among friends now. We just want to draw from your personal experience, and we won't go beyond that.

Senator NUNN. Miss Peterson, if you would like to lead off.

Miss PETERSON. Mr. Chairman, I am Elsa Peterson, and I reside at 3846 Thomas Avenue North, Minneapolis, Minn.

I have lived in that house for about 30 years. My aunt, Esther Peterson, has lived with me for most of that time. It is a two-story frame-house, with five rooms downstairs and two large bedrooms upstairs. Our home was cozy and comfortable.

I have always had good health, but my aunt, who is elderly, has some minor physical ailments. She broke her hip several years ago and walks with a cane. She is also slightly hard of hearing.

[At this point Senator Glenn withdrew from the hearing room.]

Miss PETERSON. About 20 feet to the north of our home, at 3850-52 Thomas Avenue North, was a one-story frame building owned and used as an office by Dr. Louis Graca, a dentist. We knew Dr. Graca slightly and thought he was a decent man. Although he once lived in the bungalow himself, he moved out about a dozen years ago, keeping the bungalow for his dentistry practice.

He sometimes rented the back room to tenants, but the last tenant moved out early in July of 1976. To the north of the dentist's bungalow, at 3856 Thomas Avenue North, was another building, operating as a dance studio. There was a redwood fence on the north edge of our lot, between northeast corner of house to the garage located on northeast corner of lot. Alley located at back of lot with houses on the other side. There were houses across the street.

We had never had any trouble on our street, except for a few minor incidents. My aunt and I were quite fond of our neighborhood. It was pleasant and quiet, and we were friendly with several of our neighbors.

On July 5, 1976, my illusions about our neighborhood were shattered. I shall remember that night as long as I live. It was a normal, peaceful summer evening—warm with a little breeze blowing.

About 9:45 p.m., my aunt and I were sitting in our living room at the south end of the house, furthest from the dentist's office. I was sitting on the couch, when suddenly we heard the most terrifying noise.

It sounded like the explosion of a powerful bomb. The concussion blew me off the couch and knocked our wall hangings askew. Several plants toppled from the shelves, and a lamp fell from the table, bruising my shoulder.

I had no idea what had happened. When I gathered my wits, I ran to the phone to call for help. Before I could even grab the receiver, a neighbor rushed in, yelling "Fire!" She told us to get out right away. Aunt Esther did not even have time to pick up her cane.

[At this point Senator Percy withdrew from the hearing room.]

[The letter of authority follows:]

U. S. SENATE,  
COMMITTEE ON GOVERNMENTAL AFFAIRS,  
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,  
Washington, D. C.

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, permission is hereby granted for the Chairman, or any member of the Subcommittee as designated by the Chairman, to conduct open hearings without a quorum of two members for the administration of oaths and taking testimony in connection with Arson for Profit on Wednesday, September 13, 1978.

HENRY M. JACKSON,  
*Chairman.*  
CHARLES H. PERCY,  
*Ranking Minority Member.*

Miss PETERSON. The neighbor led us out through the kitchen. A cloud of smoke and dust billowed down the hallway from the north end of the house. When we reached the backyard, we felt an extraordinary blast of heat from next door.

The dentist's building was flattened into rubble, and flames were everywhere. The entire alley was lit up from the blaze, bright as day. Another neighbor got hold of us and rushed us down the alley away from the fire.

We stopped when we reached a safe distance from the fire. I looked back and saw the north side of our house on fire. Flames were shooting high into the sky. The fence in our backyard was ablaze, the flames nearing the garage. I thought the garage would burn down, too, but firemen arrived and put the fire out before it reached the garage.

There was nothing we could do. I felt so helpless and frustrated, I began to cry. I went into shock, I think. It was an awful, disheartening experience. For my aunt, it was even worse. She was in terrible shock for a long time.

Sometimes I think she hasn't quite recovered yet, even though this happened almost 2 years ago. She may never get over it. I came out of shock after about a week, but I did not get a full night's sleep for many long months. Loud noises still make me jump.

It took the firemen quite a while to put the fire out. Our block was in total chaos, with people shouting and running. Debris from the explosion covered the street and littered the yards across from the dentist's office. The roof of the dance studio was damaged from the blast. Police and firemen roused the neighbors out of their houses, thinking that the fire might spread. The wind carried enormous clouds of smoke and ash over the neighborhood. Nothing like this had ever happened on our street.

My aunt was beside herself. She kept saying she wanted to go back into the house to get her things. When they finally extinguished the fire, the firemen were afraid to let us enter the house by ourselves. They thought we might gash ourselves on pieces of glass or be injured by a falling timber.

Finally, they relented. A fireman went into our house with us, so we could get our purses.

Walking through the house that first time after the fire we were nearly overwhelmed with despair. Our home was in ruins. It did not look like we could ever clean it all up. The explosion and fire wrecked almost everything in the north end of the house.

The entire north wall had buckled and part of the roof had caved in. The rooms were layered with shreds of broken glass. The whole house smelled of smoke. Water used by the firemen to put out the fire was all over the floors. The rugs squished like wet sponges when you walked on them. All the furniture in the north end of the house was dripping wet. We had to get rid of nearly all of it. The damage was unbelievable.

The insurance people came later that night and boarded up the house. We went down the street to stay with some neighbors. My cousin came over with his son to watch the house overnight.

The morning after the fire, Dr. Graca walked through the yard, saying: "Boy, this is some mess you have got here." He didn't even inquire whether we were hurt.

We wouldn't move back into our house for 6 months—almost until Christmas. My cousin took responsibility for getting the house fixed up. My aunt and I were lucky to find a vacancy in an apartment across the street.

We stayed there until we could move back into our house. Insurance paid for some of our rent, but we didn't have enough insurance to cover all our losses.

We are still working on our house to this day. Repairs were very costly. The damage came to about \$55,000, but we had only about \$28,500 in insurance coverage. My cousins had to pay for most of the rest. We needed new furniture and new wardrobes.

The walls along the north side of the house had to be replaced, and a large portion of the roof was rebuilt. We put new doors in the rooms and installed new fixtures in the damaged main-floor bathroom. It takes a lot of work to clean a place up, after it has been gutted by fire.

[At this point Senator Percy entered the hearing room.]

Miss PETERSON. We lost many things I am afraid we will never replace. We had family pictures, including one of my great-grandparents, that we can't ever replace. We bought new furniture, but it was different and strange.

We really liked our old furniture. I also lost two braided rugs, treasures to me because my mother made them. These were sentimental, personal things; things that gave us joy just to look at.

Life seems a little sadder without them. We lost a lovely cutglass vase, almost two feet high. My aunt's handmade bedspread burned beyond repair. So many precious things were lost forever.

About 2 weeks after the fire, the arson squad came over to question us. We heard that they had been around, talking to other people in the neighborhood. A few days after the fire, they had sifted through the rubble of the dentist's office next door.

Apparently, they noticed some items missing, as if Dr. Graca had removed some belongings, knowing there was going to be a fire. The notion that he deliberately had the fire set was appalling to us.

But we learned it was true. He was later convicted of aggravated arson and fined \$10,000. He must pay restitution to the victims of his crime, which I think is the least he could do.

It is difficult to fathom the callousness of his act. Today, I live every moment with an inkling of fear in the back of my mind. Dr. Graca was our neighbor for more than 20 years but he didn't seem to care much about the lives of those who lived in the vicinity of his office. I cannot imagine what motivates such a person. I only know that it is very wrong. He could have killed dozens of people. Only moments before the explosion, the lady across the street walked right in front of his place. I cannot understand such disrespect for human life. I am a little more suspicious, a little more distrustful, now than I used to be. An experience like this really shakes your faith in human nature.

Mr. COTTIN. Mr. Chairman, the sentencing report from Minneapolis shows that on the 9th of June 1977, Dr. Graca was given a 10-year sentence to the penitentiary which was stayed on condition that the doctor practice dentistry in Wabasso, Minn., for 10 years.

Senator NUNN. We will make that a part of the record without objection.

[The document referred to was marked "Exhibit No. 5" for reference and follows:]

EXHIBIT 5

HC 2811 Criminal Judgment on Plea

STATE OF MINNESOTA }  
County of Hennepin } ss.

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA  
AGAINST

JUDGMENT  
D.C. FILE 66302

Dr. Louis Henry Graca Defendant June 9th A. D. 19 77

At a General Term of said Court begun and holden on the 8th day of September, A. D. 19 75, a Grand Jury of the aforesaid County for the aforesaid General Term of said Court having been duly selected, sworn and summoned in accordance with law, County Attorney And said Grand Jury, on the 4th day of August A. D. 19, presented information to said Court in open Court, in accordance with law, an indictment against Dr. Louis Henry Graca the defendant above named, charging Him with the crime of Agg. Arson

And the said defendant Dr. Louis Henry Graca on the 4th day of August A. D. 19 76, being then before said Court in open Court in his own proper person gave his true name as Dr. Louis Henry Graca and was then and there duly arraigned upon said indictment and thereupon pleaded no plea. On August 30th 1976 deft. plead not guilty. On May 9th 1977 deft. withdrew not guilty plea and plead guilty as charged, before Judge Oleisky

STATE OF MINNESOTA, COUNTY OF HENNEPIN  
Certified to be true and correct copy of the  
original on file and of record in my office.

Cara Lee Neville for the state  
Steve Doyle for the deft.  
Mark Guresner, clerk  
Jane Powell, reporter

S:P 11-1978

JACK M. PROVO, Dist. Ct. Administrator

Dr. M. C. Pugh

Whereupon, and on the 9th day of June A. D. 19 77, the said defendant Dr. Louis Henry Graca in his own proper person, being then before said Court in open Court—said Court did in accordance with said Last plea, duly adjudge the said defendant Dr. Louis Henry Graca, guilty of the said crime of Agg. Arson

and thereafter and on the 9th day of June A. D. 19 77, pronounced sentence upon the said defendant, Dr. Louis Henry Graca, as follows, to-wit: It is considered and adjudged that you, Dr. Louis Henry Graca as punishment for the crime of Agg. Arson of which you have been convicted in this cause, be committed to the Commissioner of Corrections at Stillwater, Minnesota, for a term not to exceed 10 years, or until you shall have been thence discharged by due course of law or by competent authority. Sentence stayed, deft. placed on probation for 10 years.

JUDGMENT ROLL

Filed June 9th 19 77

JACK M. PROVO, District Court Administrator

By Daniel A. Pugh Deputy

JACK M. PROVO  
Administrator of District Court

By Daniel A. Pugh Deputy

1 STATE OF MINNESOTA  
2 COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

3 -----  
4 State of Minnesota,

Plaintiff,

SENTENCING  
AGGRAVATED ASSAULT

5  
6 -vs-

D.C. File No. 66302  
C.A. File No. 76-1186

7 Dr. Louis Graca,

Defendant.  
8  
9 -----

10 The above-entitled matter came duly on for  
11 hearing before the Honorable Allen Oleisky, one of the Judges  
12 of the above-named Court, on the 9th day of June, 1977, at the  
13 Government Center, Minneapolis, Minnesota.

14 \* \* \*

15 APPEARANCES:

16 Thomas Bauer, Hennepin County Attorney, on behalf of  
17 the State.

18 Steven Doyle, Attorney at Law, on behalf of the  
19 defendant.

20 Joseph Spano, Court Services.  
21  
22  
23  
24  
25

1 WHEREUPON, the following proceedings were had: --

2 MR. BAUER: Your Honor, the matter is the State of  
3 Minnesota vs. Louis Henry Graca, County Attorney File No.  
4 76-1186, District Court File No. 66302. Mr. Graca appeared  
5 in this courtroom on 5/9/77 and entered a straight plea. A  
6 pre-sentence investigation was ordered and the defendant has  
7 returned today and is present in the courtroom with his  
8 attorney, Mr. Steven Doyle, and at this time the State would  
9 move for sentencing.

10 I believe, Your Honor, concerning the sentence, there  
11 have been some discussions and at this time Mr. Spano from  
12 the Department of Court Services would like to make a comment  
13 about the background of the case.

14 THE COURT: Very well, Mr. Spano?

15 MR. SPANO: Thank you, Your Honor. I did, as Mr. Bauer  
16 said, I did the pre-sentence investigation which included  
17 looking into his present situation down in Wabasso, Minnesota.  
18 He is practicing dentistry now successfully, but I think the  
19 important thing is that the town itself has been deprived  
20 without any kind of dental provisions for the last four years,  
21 and probably a little bit more than that actually, and I  
22 found in talking with several of the people down there, six  
23 or seven of the town leaders, as well as the city council  
24 and the mayor, that they are strongly endorsing first of all  
25 his practice, and requested me to insist on the part of the

1 Court to have a sentence that would allow him to continue  
2 practice there serving their community.

3 THE COURT: Very well, Mr. Doyle?

4 MR. DOYLE: Your Honor, we have had a number of dis-  
5 cussions in chambers and the record ought to reflect that as  
6 I have with Mr. Spano, and Mr. Bauer of the county attorney's  
7 office, we all agree that this is a particularly unique  
8 situation; and that is a common remark for defense lawyers  
9 to make, but I think the fact in this one lends itself to  
10 that characterization.

11 The sentence that we discussed with the Court and we  
12 understood the Court is going to impose, I think is a  
13 creative one. It certainly fits the unique situation.

14 The record should show it takes courage for the Court  
15 and Mr. Spano and Mr. Bauer to go along with the plea nego-  
16 tiation, or the sentencing on the straight plea, and I want  
17 to indicate I appreciate those considerations.

18 I think Mr. Graca is doing a service for a number of  
19 thousands in Wabasso, Minnesota. I think the particulars  
20 of this sentence will impose not only his wishes but the  
21 Court's concern that he continue to provide that service,  
22 and I think that the particular remarks I make in chambers  
23 which are not reflected on the record better reflect my  
24 thoughts. I appreciate this and Mr. Graca and his family  
25 appreciate that.

1 THE COURT: Thank you. Dr. Graca, anything you wish to  
2 add?

3 DR. GRACA: I am willing to comply to the best of my  
4 ability to whatever the sentence is imposed.

5 THE COURT: Mr. Bauer, anything the State wants to add?

6 MR. BAUER: Only, Your Honor, that I realize that the  
7 pre-sentence investigation in this case was very detailed and  
8 I was present in chambers when we discussed this matter, and  
9 I realize it is an unusual situation, and that I think it may  
10 be very proper for the State to add that the disposition that  
11 the Court is contemplating in this straight plea matter surely  
12 is within the interest of the State of Minnesota and the  
13 taxpayers and the citizens of the state.

14 THE COURT: Very well, it is an extensive pre-sentence  
15 investigation. I have had long conversations with Mr. Spano  
16 about it and Mr. Doyle, and yourself, Mr. Bauer. I guess on  
17 one hand is the desire that when arson is committed to use it  
18 as a deterrent effect that other people realize that the com-  
19 munity won't tolerate arson and that people who get involved  
20 in it should serve prison terms. That was my first thought.

21 After reading the pre-sentence report and the fact that  
22 Dr. Graca has led a useful life to the community and has been  
23 an asset, has now gone down to Wabasso, Minnesota, which is a  
24 small community and which hasn't had dental service for the  
25 past four years, and he is performing a task down there, and

1 he in providing services to the town of eight thousand  
2 people as being the only dentist in that community, and by  
3 the fact that that community has made known to Mr. Spang  
4 from Court Services that they desperately want him to re-  
5 main there and be an asset to that city, is a mitigating  
6 factor.

7 Based on that, and that alone is the only reason I am  
8 willing not to send you to prison, sir.

9 DEFENDANT: Thank you.

10 THE COURT: My sentence is that I am going to commit  
11 you to ten years in prison at Stillwater Penitentiary, stay  
12 execution of that and put you on probation for that period  
13 of time on the following conditions.

14 One, that you be placed on probation supervision with  
15 the Department of Court Services of Hennepin County.

16 Two, that as an additional condition of probation that  
17 you remain in the practice of dentistry throughout the  
18 period of supervision in the town of Wabasso, Minnesota, in  
19 a full-time basis if physically possible and that you not  
20 practice in this community, Hennepin County.

21 Three, that you pay the Clerk of District Court a fine  
22 of \$5,000.

23 Four, that you make restitution to the home of the  
24 neighbors whose house was damaged above and beyond any  
25 amount that they were compensated by their insurance com-

1 pany, which I understand is around \$7,000. Is that right,  
2 Mr. Spano?

3 MR. SPANO: This is the figure that I have, Your  
4 Honor.

5 THE COURT: And five, that you be on a kind of work  
6 release type program in the city of Wabasco which I under-  
7 stand Mr. Spano has arranged through the city attorney.  
8 That you will be in contact with him to ensure that you are  
9 residing there and practicing.

10 Based on those things, that will be my sentence in  
11 this case, and if you can't comply, it would be grounds  
12 for revocation and you would be brought back and sentenced  
13 to ten years in prison.

14 MR. DOYLE: Two concerns, Your Honor. Could the  
15 record reflect that the payment of the fine and restitu-  
16 tion be coordinated through Mr. Spano's office?

17 THE COURT: Right, the Department of Court Services  
18 will coordinate.

19 MR. DOYLE: Secondly, could the record reflect that  
20 whatever requirements, that that occurrence be required on  
21 working days only and residing in the city of Wabasco?

22 THE COURT: That will be on working days only.

23 MR. VAUER: Further, Your Honor, it is my understand-  
24 ing that Mr. Graca is going to be willing to testify  
25 against any co-defendants in this matter should that situ-

1     ation arise.

2             MR. DOYLE: That is correct, Your Honor.

3             THE COURT: Very well, thank you, gentlemen.

4  
5                             \* \* \*

6  
7     STATE OF MINNESOTA

8             SS.

9     COUNTY OF HENNEPIN

10  
11             I, Jane Keeler Powell, Court Reporter, do hereby  
12 certify that the foregoing is a true and correct transcript  
13 of my original stenograph notes as given at the time and  
14 place indicated.

15  
16   \_\_\_\_\_  
17                             Jane Keeler Powell  
18                             Official Court Reporter  
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Senator PERCY. Miss Peterson, Senator Nunn has graciously yielded to me so I could ask a few questions before I have to leave.

I would like to say, Mr. Chairman, that Mrs. Byrd was not a victim of a professional torch, but the concerns and fears that she had are shared by so many people, that fire is a fire. And her testimony will speak on behalf of many, many people living in areas that are subject to fire.

In the case of Miss Peterson, it was exactly the direct result of a professional arsonist.

I wonder, is it your understanding that the dentist planned this crime before he actually committed it?

Miss PETERSON. Yes.

Senator PERCY. So it was done with malice aforethought. He had plenty of time to think about the consequences of his actions. Is that right?

Miss PETERSON. Yes. That is correct.

Senator PERCY. Is it your understanding that the dentist next door actually "torched" your building solely for the purpose of making a profit?

Miss PETERSON. Yes. That is my understanding.

Senator PERCY. No malice, no hatred against any individuals in the building, it was strictly a question of dollars and cents?

Miss PETERSON. Yes.

Senator PERCY. What did it do to your sense of security to discover that this man was willing to endanger innocent lives and destroy property of others solely for his financial gain?

What kind of personal feelings did you have when you realized that?

Miss PETERSON. It was a very scary feeling. You feel frightened and you are distrustful of other people as well.

Senator PERCY. In your statement you said that the dentist, Dr. Graca, was required to pay restitution payments to you. Has he been prompt about making these payments?

Miss PETERSON. We have never heard from him.

Senator PERCY. You have never heard from him and you have never received a payment?

Miss PETERSON. No.

Senator PERCY. Has there been an attempt to follow up on that?

Miss PETERSON. Yes. I think the attorney has tried. But I don't have any report on how he is getting along.

Senator PERCY. I understand that he was given a 10-year sentence, but given probation under that and he was sentenced instead to practice dentistry in a small town in northern Minnesota.

Do you think that kind of sentence would have been given to a person who wasn't a professional person, who came in, let's say it was a minority, it was a low-income person who might have done it to make \$100, as many times as a drug addict.

Do you think that light a sentence would have been given to them if they weren't dentists?

Miss PETERSON. No.

Senator PERCY. Would you think that the penalty ought to be even greater for a person who wasn't in desperate need of a profit, who had a profession, that is in short supply, that offers services for

which he will charge a good rate, a reasonable rate and make a good living, would you feel that the sentence ought to be even greater for an educated person who, weeks ahead, plans this crime and yet does it for profit, endangers lives, and then the sentence is to move his residence to practice dentistry in a small town in northern Minnesota that might not have a dentist?

Miss PETERSON. Yes.

Senator PERCY. What do you think of the system of justice like that?

Miss PETERSON. I don't think much of it. I think it is bad.

Senator PERCY. Mrs. Byrd, what would you think? Could you answer this question? What would you think would happen to a member of a minority race, a black, who came before a judge and was guilty and deemed guilty of consciously setting fire to a building in order to make money?

If an average person came before a judge, do you think they would get a sentence like that?

Ms. BYRD. No. I don't think they would get any kind of time for doing those things they would be doing, like setting a building on fire. They don't care. I mean, like, they don't even investigate, not in New York City.

I mean would go ahead, let them go on and burn down the neighborhood. Black people have always been in the slums, they will try to keep us there.

Senator PERCY. Miss Peterson, one last question for you.

I believe you did stay several months just across the street from your ravaged home. Could you describe what thoughts ran through your mind when you would go out in the morning and see your home being renovated?

Miss PETERSON. It was still kind of a scary feeling, and we hoped we would be able to move back there and nothing else bad would happen to us.

Senator PERCY. Mrs. Byrd, I would like to ask you just one question before you give your testimony.

You are going to describe your own personal feelings, fear and concern. How universal is this feeling in the neighborhood in which you live? How concerned are other people? How about your neighbors? Are you speaking in a sense just for yourself, or are you speaking for a lot of people that live in your community and can you tell me whether or not they share your concerns before you give your testimony?

Ms. BYRD. I am here to represent most of the mothers in my neighborhood who have young kids and are concerned about our neighborhood going down.

Senator PERCY. We have heard a lot about crime on the street and the great fear that people have, particularly after dark, just walking down the street, and many people just don't even dare go out on the street. Once they are in their home, they shut that door, they feel they have a sense of security from, say, crime on the street which they don't have. They are broken into constantly.

How about the fear of arson? Someone setting a torch to that building, is that a constant fear even though you are in your home and your home is your kingdom, in a sense, when you close that door, do you

still have an inner feeling of fear about your existence there and the safety of yourself and your children?

Ms. BYRD. I think it is more fear inside your home, thinking that someone is going to come to set the place on fire. There is no fear with us walking the street at night. We would rather walk the street, you know at night than go inside to our apartments.

I mean the streets would be safer if they didn't burn down the buildings and have them standing there, where people can actually run up to me, grab me, take me into a building. This is what we have, a lot of crime in the neighborhood, because of the buildings, standing there and people do who knows what in them.

Senator PERCY. Once again you are speaking on behalf probably, what you know of communities in urban areas across the country, you are speaking on behalf of hundreds of thousands, if not millions, of people who share your same concerns and fears?

Ms. BYRD. Yes, I am.

Senator PERCY. I think, Mr. Chairman, it might be well to proceed with Mrs. Byrd's testimony then, and I will be back just as quickly as I can, and thank you.

[At this point Senator Percy withdrew from the hearing room.]

Senator NUNN. Mrs. Byrd, why don't you go ahead and give us your testimony?

Ms. BYRD. Mr. Chairman, my name is Hedy Byrd, and I am the mother of four children and live in Manhattan.

In September 1977, my four children and I moved into an apartment building at 450 West 163d Street in New York City. We moved into that building because we had been forced to vacate our previous apartment building when a gaspipe explosion there made the building unlivable.

We were glad to move into our new home because the building was in much better shape than the other place and the neighborhood was nicer. For the first time in several years, I felt my children were living in safe housing. But, 8 months after we moved in, fire struck us again.

I awoke early in the morning on May 5, 1978, to get my 7-year-old daughter, Lisa, ready for school. The rest of the children were still sleeping, so I went back to sleep after Lisa left. The next thing I heard was the sound of breaking glass.

I jumped out of bed and ran to the window. I saw flames shooting up from the lower floors past my fourth floor window. I ran into my children's bedroom and woke up my 5-year-old daughter, Regina, and my 3-year-old son, Eric. I grabbed Terrence, my 9-month-old baby, tucked him under my arm, and began leading Regina and Eric out of the apartment.

I had to push Regina and Eric up the stairs because everyone in the building was struggling to get to the roof. There was panic on the stairway as it started to burn.

I lost track of Eric, but Regina was with me. I thought in his fright, that Eric ran back to the apartment. I fought my way down the stairs, against the flow of the people running to the roof, back to my apartment, praying that Eric would be there.

Choking on the smoke that filled the fourth floor corridor, I heard Eric crying for help. I made my way to the back of our apartment,

where I found Eric. I was certain that neither of us would be able to get out of the apartment alive. I couldn't see the fire, but I felt its heat.

Senator NUNN. Excuse me. What floor were you on?

Ms. BYRD. I was on the fourth floor.

Senator NUNN. You were trying to go up?

Ms. BYRD. I was trying to go up.

Senator NUNN. Was the passageway blocked going down, or was there so much fire—

Ms. BYRD. We couldn't go down. We had to go up.

Senator NUNN. Because of fire?

Ms. BYRD. Fire.

Senator NUNN. You had to go up to escape the flames?

Ms. BYRD. Yes.

Senator NUNN. Go ahead. Thank you.

Ms. BYRD. I grabbed Eric and crawled the length of the apartment while holding onto him until I felt the stairway with my hand. We climbed the stairs, gagging on the smoke until we reached the roof where all the tenants were now waiting.

Fortunately, there was a lady who knew how to cross over the rooftop to the neighboring building, which was not on fire. We all crossed over and went down to the street. About 45 minutes after the fire started, approximately 10:45 a.m., the fire department arrived. It took an hour to put out the fire in our building.

I went up to my apartment soon after the fire was extinguished to retrieve whatever possessions I could. However, the wooden floors were charred and sagging when I started to walk in. I decided it was not safe to enter the apartment. But one look around was enough to realize that almost everything had been destroyed.

I believe the fire was caused by arson. The day before the fire, a female tenant got into a fight with her boyfriend. It was a loud fight and as he was leaving he shouted at her "I'll get you one way or another." I was told later that the fire has started in that woman's apartment.

My children and I moved into the Regent Arms Hotel on May 8, 3 days after the fire. The hotel is maintained as an emergency shelter by the city. The hotel was 60 blocks from our apartment. My children were separated from all their friends. Except for what we wore, we had no clothing. They had all been destroyed in the fire. Our hotel room was very cramped for five people. All my children had to sleep in the same room.

Regina and Eric still wake up about twice a week in the middle of the night, crying from nightmares about the fire. I am very worried about Eric because he is an epileptic and prone to seizures when he is frightened. I am scared that one of these nightmares will bring on a seizure in the middle of the night and I won't be able to get him to a doctor.

Lisa has also had to cope with problems created by the fire. She couldn't finish the first grade because we couldn't find transportation to her old school and because it was too late in the school year to re-register her in a school close to the hotel. If she does not pass an achievement test she has to take this fall, she will have to start in the

first grade all over again, falling a full year behind the children her age.

As far as the future is concerned, I refused to move into another tenement. My old landlord repaired the building and asked me to move back into the same apartment, but I didn't. My children were petrified that if we live in another tenement, it too will burn. They see all the tenements burning down around town and know that it could happen again. I have moved to a public housing project in Manhattan.

It will take a long time before I will be able to replace the furniture I lost in the fire. I thought it was important that my children sleep on new, comfortable beds. Before the fire I purchased beds on an installment payment plan. I am still making payments on the beds, which were destroyed in the fire.

In addition, I have to buy new clothes for everyone, and, hopefully, I will be able to buy some dressers and living room furniture. But that won't be for a while. The money the city gives will not come close to covering all the expenses I now have.

It is very difficult, if not impossible to explain the trauma my children and I have gone through since being burned out. Our lives have all been affected and I doubt things will ever be the same. But this awful experience did not just happen to us. The other tenants in the building are also without a home, wondering how they are going to replace all the possessions they accumulated, unsure of where they are going to be relocated and if they will be able to piece together their lives.

Mr. MALONE. Thank you, Mrs. Byrd. Mrs. Byrd, in your statement you indicate that you believe this most recent fire you experienced had to have been an arson.

Ms. BYRD. Yes.

Mr. MALONE. Did the police ever contact you to inquire?

Ms. BYRD. No, I haven't seen or heard from no kind of police.

Mr. MALONE. Aside from what you testified about the argument that was heard in the neighboring apartment, do you have any other reason to believe this was an arson job in that apartment?

Ms. BYRD. I seen him when he told her that and plus, she has kids but the fire had to be started. There was no other way it could have happened. It happened in the bedroom. So it had to be started.

Mr. MALONE. Were you interviewed by the fire officials?

Ms. BYRD. No; I wasn't.

Mr. MALONE. In your statement you mentioned that you evacuated your previous apartment, the one before this fire, because of a gas pipe explosion.

Ms. BYRD. That is right.

Mr. MALONE. Do you know what caused that explosion?

Ms. BYRD. I couldn't really say. It is between two things. It was real cold that winter and the pipes started freezing up and plus we had a fire before the pipe exploded. So it could have been the fire damage.

Mr. MALONE. Do you know if anyone was ever charged with arson as a result of that incident?

Ms. BYRD. No.

Mr. MALONE. Mrs. Byrd, you suffered a rather serious loss as a result of that fire. Did you have any insurance coverage to help you replace your belongings?

Ms. BYRD. No; I didn't.

Mr. MALONE. Could you tell us very briefly what kind of help you did receive, if any?

Ms. BYRD. I haven't received no kind of help. The only thing they have done for me is put me in a temporary shelter house. That means I only have 2 months there. In those 2 months you have to find an apartment.

Mr. MALONE. When you say they, you are referring to whom?

Ms. BYRD. Relocation welfare department.

Mr. MALONE. This is the city of New York social services people?

Ms. BYRD. Yes.

Mr. MALONE. Thanks very much.

Mr. COTTIN, do you have anything?

Mr. COTTIN. What happens to a neighborhood? You have been in two neighborhoods now where you have had fires. What happens to a neighborhood where there begins to be an epidemic of arson? Does it deteriorate?

Ms. BYRD. The people start moving out, the landlords abandon the buildings, and all the business move out of the district. It is really terrifying. The people walking around, you know, hanging in the empty, burned out buildings, trying to wait, for someone to rob them. It is really bad.

Mr. COTTIN. Do the businesses stay in these neighborhoods?

Ms. BYRD. No; they move out too.

Mr. COTTIN. So who moves in? Do junkies move in?

Ms. BYRD. Junkies move in and people like myself that can't afford nothing, no better living than we are now.

Senator NUNN. Thank you very much.

Miss PETERSON, I wanted to ask you one question. The dental office, that was next door to your home, was it adjacent to it, was it on the lot next door, or what was the physical location of that dental office?

Miss PETERSON. It was north of our building with a small space in between I suppose 10 feet, something like that. It was a building by itself.

Senator NUNN. Did the fire actually start in the dental office?

Miss PETERSON. Yes.

Senator NUNN. Was that office burned to the ground?

Miss PETERSON. Yes; it blew up and then burned. The explosion sort of shattered it and then the fire did the rest.

Senator NUNN. So the doctor who owned that office was the one who really started the fire and he was convicted of that later on?

Miss PETERSON. Yes.

Senator NUNN. Did he do it to collect the insurance proceeds or do you know the details?

Miss PETERSON. He did it to collect money because he couldn't pay his mortgage or something to that effect.

Senator NUNN. Do you know whether he intended to burn down your building also?

Miss PETERSON. He said no; he did not intend to burn our building. That is what we hear anyway.

Senator NUNN. What caused the explosion?

Miss PETERSON. I don't know.

Senator NUNN. You don't know how he did it?

Miss PETERSON. No.

Senator NUNN. I want to thank both of you for testifying. We certainly regret the experience you have been through and are looking into the overall question of arson in the country. We want to find out what can be done at the Federal level to improve the ability of law enforcement to deal with it.

Your testimony will be very helpful to us. You are examples of the human tragedy involved from the point of view of those who are victims of this very bad crime.

So I thank you, Miss Peterson and Mrs. Byrd, for being here this morning. You have been very helpful to the subcommittee.

Mr. CORRIN. I would like to place in the record, Mr. Chairman, the Fire Department of New York's arson report on these two fires that Mrs. Byrd has described and also with your permission place into the record the affidavit of Mrs. Boyd who could not appear today.

Senator NUNN. Without objection.

[The documents referred to were marked "Exhibits No. 6 and 7," for reference and follow:]



Gregory VELEZ F/H 33 1 year as Super  
APT JR

STATES HE WAS NOT HOME AT TIME OF FIRE  
THAT APT WAS VACANT APPROX 1 WEEK AND  
THERE ARE ABOUT 10 VACANT APTS IN BLDG AND  
PEOPLE ARE MOVING OUT RAPIDLY. DUE TO APT  
TO HIS KNOWLEDGE WAS COCKED. LANDLORD IS CAX.  
ABOUT HEAT AND SERVICES. BUILDING MAY BE  
CRANBURY. TENANTS HAVE PAID RENT FOR OIL ETC.  
EFFORTS TO CONTACT OTHER TENANTS UNSUCCESSFUL

closed /me

10-45-3

FI-101H (3/77)

Report #2

DIVISION OF FIRE INVESTIGATION  
FIRE DEPARTMENT - CITY OF NEW YORK

LOCATION: 150 W. 163 St. BORO: Man. CASE NO. A8-0883  
 DAY: Friday TIME OF: 1015 2-2-1686 CODE: 10-45-3 REASON: Order of flame  
 DATE: 5/5/78 ARRIVAL: 1015 BOX: 2-2-1686 FIRE MARSHAL ASSIGNED: T. Borchick  
 BATT. CHIEF: R. S. Calerno, 13 Batt. FIRE MARSHAL ASSISTING: D. Accardo  
 CLASS OF STRUCTURE: M. D. STORIES: 5 MATERIAL: Brick FAMILIES PER FLOOR: 1  
 OWNER: S. C. Schwartz Co. ADDRESS: 140 Wadsworth Ave. 795-4741  
 OCCUPIED BY: Andrea Miles OCCUPANT PRESENT: YES  
 CAUSE OF FIRE: not ascertained

SYNOPSIS: Heavy volume of fire on arrival of F. L.  
Occupant of fire apt. present at time of breakout of fire.

May 5, 1978

1550 hrs.

RECOMMENDATION: CLOSE II PENDING - SEE LEADS: D

FIRE MARSHAL

SIGNATURE: \_\_\_\_\_

EXAMINATION SHOWED: Fire originated on first floor in apt. 1B in area of living room  
and extended to floor, walls and ceiling and furnishings and via open rear  
apt. door extended to public hallway and to rear stairway and to second, third,  
4th and 5th floor public hallways, further to apt. 2D via auto exposure from  
front first floor windows of apt. 1B. Firewas there confined and extinguished.

LEADS: Occupant of apt. 1B, Andrea Miles, Welfare recipient, #246-8800,  
Princeton Hotel with four children.

DISTRIBUTION:

SUPERVISOR'S SECTION:

SUPV. SIGNATURE: \_\_\_\_\_

CLOSED: \_\_\_\_\_

PENDING: \_\_\_\_\_

FOLLOW-UP: \_\_\_\_\_

DATE: \_\_\_\_\_

B. C. Calerno, 13 Battalion, stated that upon arrival he detected an odor of flammable liquid coming from fire apt. 1B; that he notified dispatcher of 10-41-1 at this time. Further 3 civilians were removed to Columbia Pres. Hospital for smoke inhalation; also that he spoke to the occupant of fire apt., Andrea Miles, who told him she was present in her apt. at the time of fire; that she does not know what caused the fire, but that there were several gallons of paint and varnish present because the apt. was being painted. That at this time due to the statement of occupant that paint being used to paint apt., Jos. Calerno does not feel fire was suspicious at this time, 5/8/78, via telephone communication.

## (INTERVIEW)

FLOR RIAS, DOB: 4/29/37 (41 yrs.) of 448 West 163 St., Apt. 1B, here 4 years (981-5818) stated he is the super of his own building and also of fire building; that he was home in his apt. at time of fire; that he heard the occupant of fire apt., Andrea Miles, yelling of fire; that he could see and hear her from his kitchen window; that he cannot account for fire. That occupant of fire apt., Andrea Miles, has lived here almost two years with her 4 small children, Welfare recipient. Previous fire apt. 1B 2 years ago.

NOTE: Occupant, Andrea Miles, relocated to President Hotel, 48 & 8th, Room 318 and 319; unable to contact on several occasion.

Mr. Johnson, President Hotel Desk Clerk, stated Andrea Miles was here; that she is now gone and he has no idea. Attached is F. M. J. Kelly's Follow-up, which is negative.

61 # 2747 - 30 Pct. Det. Sweeny, 30 Sqd.

Aided #860, 861, 862, Case #596

860 - Birdie Mason, Female/Black, 31 years, apt. 1C, removed to Columbia Pres. - treated and released (smoke inhalation).

861 - Bessie Walker - F/B, 71 yrs., apt. 2B

862 - Thomas Walker - M/B 69 years, apt. 2B, removed to Columbia Pres.

Bessie Walker - treated and released for smoke inhalation.

Thomas Walker still in Intensive Care at Columbia Pres. Hosp. as of 5/6/78

## EXHIBIT 7

## A F F I D A V I T

I, Rosetta Elizabeth Boyd, freely and voluntarily make the following statement to Richard Shapiro and Mark Hager, who have identified themselves to me as members of the staff of the United States Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs. No threats, force, duress, promises, or representations have been used to induce me to make this statement.

I am a citizen of the United States. I am 33 years old and mother of four children ranging in age from 7 to 13 years old. I have been separated from my husband for the past five years. I support my family through the welfare payments I receive monthly from the Department of Social Services of New York City. For the past month, I have been living at the Regent Arms Hotel at 2720 West 104th Street in Manhattan. This hotel is used primarily for the purpose of providing temporary quarters for people who have had to leave their homes due to fire.

I moved to the hotel after an arson fire destroyed my apartment at 2318 Loring Place, North Bronx. It was the second time in three years that I have been the victim of an arsonist. The fire has left the lives of my children and myself in turmoil. Prior to the fire things could not have been much better for us. We were living in one of the nicest apartment buildings in the Bronx. The kids were all in school. That gave me the opportunity to attend cosmetology school and pursue a career as a beautician. At the time of the fire, I had only another month left of school before I would become a certified beautician. I had attended six months of classes. I figured that once I was certified, I could get a job in a beauty parlor and be able to support my family by myself. The opportunity to be able to pursue a career and become financially independent are both important goals in my life. My kids were just as happy as I was. They really enjoyed the school they were attending. The teachers were very good and my children were doing well. It's very hard to find good schools in New York City. In addition, our apartment building was in an ideal location. Both the school and all stores were well within walking distance.

The fire that changed everything took place late at night on June 16. I had put my children to bed by 9 p.m. I watched a little television and went to sleep around midnight. I hadn't been to sleep very long when my son, Bobby, woke me. He said that he heard noises like people fighting in the hallway. I got up and quickly checked my daughter's bedroom. In the corner of the room I saw flames shooting down through the ceiling. I immediately woke up the children and then ran out to the hallway to check out what was going on. Everyone was fleeing the building. I ran back

into my children's bedrooms and as calmly as possible told them to put on their clothes because the building was on fire. As they were dressing, somebody shouted to us from the hall that we had better hurry because the ceiling was about to cave in. Seconds later, we ran down the stairs, the last people to evacuate the building.

The fire department came within minutes. But the fire was so out of control that the building next door was ordered evacuated. My step-father lived next door so I ran up to his apartment to wake him and help him outside. I sent my kids and our dog to relatives for the night. After the fire was extinguished, I went back up to my apartment. The ceiling had caved in and burned everything. The apartment floor was a foot under water. Broken, destroyed and burnt belongings were floating around the room.

I didn't want to stay there but I wanted to sit down because I was exhausted and felt numb. I heard people talking but I couldn't hear what they were saying. I got on the first bus I saw and rode around the Bronx until dawn. I got off the bus at the Bronx Zoo and walked several miles back to my apartment building. I sat down on the steps, wondering what to do next. First, I called my sister to check on the kids and afterward, I called the Red Cross for help. We had no clothes to wear and no food to eat. The Red Cross directed me to the Fox Street Shelter in the Bronx. I took a bus there at 8 a.m. but the shelter wasn't open yet. So I went downtown to the Department of Social Services to get clothes and money. But they told me that because I had had a previous fire three years earlier, I was not entitled to any reimbursements until I had been cleared of any involvement in the arson. Later that day, I returned to the Fox Street Shelter but I was told I should go to the Regent Arms Hotel in Manhattan for temporary shelter.

I lost everything in the fire, including over \$2,000 worth of furniture I had slowly accumulated. I didn't have insurance, so as a consequence, I have no way of recouping my losses. It will be some time before I will be able to replace the living room set, the bedroom sets, and the dinette set. Hopefully, when I finish my training in cosmetology school, I will be able to get a job and bring more money in than I am now provided by welfare. But now, finishing school has become a major problem. Because of my being out so long, I would have to re-enroll, due to the fire and trying to locate a new apartment.

Adjusting my life as a consequence of this fire has been one of the most frustrating experiences of my life. I had worked hard at keeping our building in

good condition. I wanted no trouble and did everything I could to keep the building a safe place to live. Unfortunately, some bad tenants who had little interest in maintaining the building, moved in. After some of these new tenants created some trouble and damage in the building, I got up a petition to evict them. But the petition was ignored.

Finally, on June 8, 1978, we had our first fire in the building. It wasn't a serious fire. It was started after a quarrel between two of the new tenants. One woman set fire to the doorway of another's apartment. I spoke with the woman who admitted to me that she had started the fire. She said that the dispute was far from over. I then called the manager and told him he should come down and settle this dispute before any more damage is done. But he said that he talked to the woman and everything was under control. However, just a week later, the building went up in flames. Supposedly, the fire was started by the same woman who had started the fire the previous week.

I was probably so intent on going out of my way to prevent any trouble from occurring in the building because our previous apartment building had also been set afire by an arsonist. This fire occurred three years ago last summer. We lived at 146 West 168th Street in Manhattan at the time. I was coming home from night school where I was taking some refresher courses. I had felt unable to help my children with some of the homework, like new math, and I thought the courses would allow me an opportunity to provide greater assistance to my four school-age children. I got home at approximately 10:30 p.m. I stopped off at a girlfriend's apartment for a minute. Then, I heard there was a fire upstairs. I rushed to my 6th floor apartment, praying that it wasn't on fire. As soon as I reached my door, I realized that in my haste I had left my keys in my girlfriend's apartment. Shaken with fear and frustration, I ran back down the stairs, grabbed my keys and ran back up the stairs. I unlocked the door and the smoke hit me in the face. I fought my way through the blinding heat and black smoke. My children were lying motionless on their beds. I picked up my two daughters, tucked them under my arms and carried them downstairs, calling for someone to get my sons. A man carried my two boys out of the burning building. The unconscious children were on the sidewalk, where they were given oxygen. They came to after several minutes. The fire marshal who treated them told me if the children have been upstairs for several more minutes they would have died of smoke inhalation. Later another fire marshal told me that the fire had been set by arsonists in the vacant apartment next to mine. The fire spread throughout the entire building,

destroying it. It was this terrifying experience which led me to take such an active interest in preserving my most recent apartment.

The fire was a terrible experience for all of us. Even now, it is very difficult for me to talk about it. The two fires have deeply affected our lives. We all live with the same tension. We know that at any time and without any warning, a total stranger or maybe a disgruntled tenant from next door may decide to burn down our building. It is an unfair burden to place upon young children but after two fires of this type, the fears and tensions are unavoidable. My children refuse to talk about fires, especially the fire which uprooted our family. They are afraid of fire and would like to keep the subject out of conversation even if they cannot put it out of mind.

The fire has forced us to temporarily sacrifice our hopes and goals. Instead of looking to a brighter future, we are now hoping that we can piece together our lives and make the difficult adjustment before us. I know we will not find an apartment and location as nice as the one we left. I know I won't be able to finish my schooling for at least another half year. It is unlikely that the next school my children attend will be as good as the one they left. And, I know that having to live in an apartment that, for the next part, will have to remain largely undisturbed for some time, will make life even more difficult.

I have read, reviewed and initialed each page of this statement and I swear, to the best of my knowledge and belief, that the statements contained herein are true and correct.

*Barbara Elizabeth Boyd*  
BARBARA ELIZABETH BOYD

Sworn to and subscribed before me

this 11th day of July, 1973

at New York, New York

*[Signature]*

*[Signature]*

*[Signature]*

Notary Public

STATE OF NEW YORK  
COUNTY OF NEW YORK  
NOTARY PUBLIC  
COMMISSION EXPIRES 12/31/79

Senator NUNN. Do either of you have anything else you would like to say this morning?

Miss Peterson?

Miss PETERSON. No. I just hope you do something about this terrible problem.

Senator NUNN. Thank you.

Mrs. Byrd, do you have anything else you would like to say?

Ms. BYRD. Yes. I wanted to remind everyone here that people like me in New York, we are waiting to hear from you, to see just how you all can help us. We really need help in New York.

Senator NUNN. Thank you very much. I am hoping that the situation can be improved.

Thank you.

Our next witness is the chief arson investigator of the Houston Fire Department, in Houston, Tex., Mr. Leonard Mikeska.

We appreciate your being here this morning and I would ask you to take the oath before you have a seat.

Do you swear the testimony you will give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. MIKESKA. Yes, sir.

**TESTIMONY OF LEONARD MIKESKA, CHIEF ARSON INVESTIGATOR, HOUSTON FIRE DEPARTMENT, HOUSTON, TEX.**

Senator NUNN. I know you have a prepared statement here this morning. We appreciate very much your appearance and your cooperation. We will be happy for you to proceed with your statement.

Mr. MIKESKA. Thank you, Mr. Chairman.

Mr. Chairman, I am the chief arson investigator for the Houston Fire Department and have served for 12 years as an arson investigator in Houston.

The city of Houston comprises more than 500 square miles and the fire department has approximately 70 station houses.

Arson fires in Houston have increased dramatically in the past 8 years. In 1970, arson fire losses amounted to \$2.3 million, representing 557 incendiary fires. In 1977, arson losses were over \$12 million from 971 fires. In the first 6 months of 1978 alone, arson losses were \$0.3 million.

I have brought charts to illustrate the number of arson fires that we have had since 1970, up through the first half of 1978.

The second chart would illustrate how our incendiary loss has increased since 1970 through the first half of 1978.

Senator NUNN. Do you believe that that is related to more arsons being committed or do you think you are now better equipped to detect the arsons that perhaps have been committed in the past? In other words, do you believe these charts represent a true growth pattern in the crime of arson?

Mr. MIKESKA. Yes, sir. There are two factors that exist here. One is that in 1970, 1971, and 1972, we had approximately 36 investigators investigating fire. Due to retirement, people quitting the department, our investigative force went down to 19 investigators. The incendiary loss began to rise. Then in 1976, from 1975 through the first half of 1978, we started increasing our investigative force. We

gave them extensive training. We sent them to various schools sponsored by the FBI and as a result we have been able to improve scientific investigative procedures, have been able to determine that an awful lot of the fires that we have previously determined as electrical or some other accidental cause were actually incendiary fires.

An awful lot of these fires are being discovered.

We feel like the crime has been there a long time. We are just now getting to the point where we can discover them.

Senator NUNN. Thank you.

Mr. MIKESKA. Houston's arson problem is not unique. Fires of incendiary origin occur in large numbers in cities throughout Texas. Unfortunately, however, many fire departments lack the professional expertise to even determine the cause of the fire. In San Antonio, for example, the fire department reported 69 arson fires in 1970. But this relatively low number was because the city lacked any trained arson investigators. In 1971, a new fire chief, recognizing that arson was a serious problem, assigned trained investigators to determine accurately fire causes. By 1977 San Antonio's fire total had gone to 662, a 1,000 percent increase in 7 years.

In other words, the crime of arson is largely undetected in Texas, and I think the problem of underreporting is nationwide.

Another illustration of just how neglected the crime of arson is can be seen by comparing statistics in two similar cities in west Texas—Amarillo and Lubbock. The economy of both cities is primarily oil and agriculture. In 1977, there were about the same number of fires in each city. Yet the incidence of arson was 15.2 percent in Lubbock—571 incendiary fires of 3,747, and only three-tenths of 1 percent in Amarillo—11 incendiary fires in a total of 3,263. This tells me that the firefighters in Lubbock are better skilled in arson detection than those in Amarillo.

There seems to be no end to the imagination of arsonists in Houston. In my experience, if a torch wants to bring down a building, even against some of the best security, he can succeed. By using elaborate timing devices which set off the fire long after the arsonist has departed the premise, he can effectively establish an alibi by being elsewhere when the fire begins.

In one recent case, a torch, aware that a warehouse was protected by a burglar alarm at all the entry points, began drilling through the wooden outer wall. When he reached a masonry interior wall, he gave up on that approach and went up on the roof. He broke through the skylight, then spread flammable liquid into the building, using a pressurized insecticide sprayer, then dropped a match inside. This building was nearly totally destroyed.

Some arsonists fill large balloons with flammable liquid and tie them to a string nailed to the ceiling in a building they want to level. Then they set up a lighted candle directly under the string and start the balloon swinging, like a pendulum, and depart the building. When the balloon stops swinging, it settles just above the candle and the liquid within it explodes shortly thereafter, setting the structure afire.

One arsonist nearly brought down an apartment house by simply turning on an electric radio and wrapping it tightly in a blanket. After a few hours, the enclosed heat was enough to start a fire in the

blanket. Fortunately, a neighbor smelled smoke and called the fire department in time to avert a major conflagration.

Some years ago, another Houston torch attached a kitchen match to the bell striker on an ordinary telephone so that it would vibrate when the phone rang. He placed a piece of sandpaper close enough to the match so that when the bell rang, the match rubbed the surface of the sandpaper and started a fire. The torch, after setting up the device, drove to a town many miles from his home and then dialed his home number, successfully starting a fire in his own home.

More than one arsonist in Houston has used an electric coffee percolator to burn a building. All he does is turn on the pot, plug it into a clock-radio set to go off at a certain hour, lay it on its side with some crumpled-up newspaper in it, then pour some flammable liquid nearby. When the clock radio alarm goes off, it energizes the pot. When it gets hot enough, the paper bursts into flame, then ignites the flammable liquid, starting a fire in the building. In this case, the perpetrator, by using the timing device, was in Oklahoma by the time the fire started.

You can find an arsonist to burn down anything in Houston at any number of bars around town. Somebody high on narcotics or intoxicated will put the torch to a building for \$100, no questions asked. Some of these people are professionals, and some are amateurs. But whatever their training, Houston has lost a lot of property to the arsonist's torch.

In some cases, the arsonists appear to be working for competing businesses.

For example, over the past few years, there has been an increase in the number of bars featuring female dancers. There are more than 75 of these establishments throughout the city. They are controlled by four or five groups and they compete with each other for business. These groups often try to hire away the women employees of competing bars. Sometimes, when these women are lured from one establishment to another, the bar which acquired the women occasionally is attacked by unknown persons, who throw molotov cocktails through the front window of the establishment. When members of the Houston arson squad attempt to assist the owner of the bombed establishment, they are told that the bar owner needs no help; that he will settle the matter without assistance of law enforcement authorities.

Business competition can often produce extensive arson losses. In 1974, for example, a group of Houston businessmen started a fancy discotheque. The facility quickly became very popular and people would wait in line for hours before being admitted. Another businessman soon started a disco across the street from the successful establishment. Several incidents began occurring as the competition for customers became intense.

One place would park cars of their customers at the lot of the other. The establishments would send persons who became drunk over to the competition to cause trouble. One night, at about 5 a.m., the disco owned by the Houston businessman burned down. The Houston arson squad determined that the building, insured for more than \$500,000, was set afire with flammable liquids. Further investigations followed, and a local grand jury returned an indictment against the owner of

the competing disco for conspiring to have his competition burned down. This person is still at large and has fled the country.

Business competition also appeared to be the motive in the burning of several gay bars in Houston in recent years. Unfortunately, we have not been particularly successful in bringing the perpetrators to justice, although we have proved that the fires at these places were of incendiary origin. Sometimes, our difficulty in making a case is caused by the absence of key witnesses. In one recent case, a crucial witness died, apparently a suicide, 2 days before he was to appear before the grand jury. Another case had to be dropped when our principal witness disappeared.

In my opinion, a major reason that arson is on the increase in Houston is because of the ease with which people can obtain insurance on their properties, frequently at amounts that make it hard, even for the average honest citizen to resist at least contemplating arranging for his place to be burned. It is not at all uncommon for this to happen. Not long ago in Houston, a man bought a home for \$125,000 and insured it for \$500,000. A few months later, the place burned, and he collected the face amount of the policy.

In the past, 80- to 100-acre farms have been sold in the Houston area for \$25,000. They usually had small farmhouses on them, which were really nothing more than shacks. These shacks were insured for \$25,000. These farmhouses were then burned, with the owner collecting what amounts to the cost to him of the entire property including farmhouse and land.

Many homeowners in financial difficulty see arson as a way to get out from under by "selling the house to the insurance company."

It is true that some insurance companies are tougher than others, when it comes to suspicious fires. But most are not very vigilant. It is extremely difficult to convince them to file a complaint against a suspected arson conspirator. It is very seldom that an insurance company representative will appear at a pretrial hearing, even as an observer. I have been told that the companies are afraid of civil suits for failing to pay off on their insurance contract, and that is the main reason so many of them do not resist fire claims, even when the fire is clearly of incendiary origin.

Sometimes, our failure to make arson-for-profit cases is the fault of law enforcement authorities. Arson fraud is an extremely difficult crime to prove. The insurance company is obligated to pay the owner unless it can be demonstrated that the owner himself arranged for the fire.

Arson is not like a murder or a burglary, where all a prosecutor really needs is two competent witnesses to make his case. Arson crime prosecution requires careful development of circumstantial and scientific evidence. This should mean that the prosecutor assigns his most experienced attorneys to arson cases. However, this is rarely the case in Houston. More often than not, the prosecutors assigned to handle our arson cases are too young and inexperienced to win these cases. They try hard, and they devote much time and effort to doing the best that they know how. But what is needed are skilled experienced attorneys.

In Houston, the arson squad could keep two prosecutors busy full time advising on development of arson-for-hire cases and trying them in court. None are assigned to us at present.

Our unit of 41 officers could also benefit from additional training, the availability of a laboratory, and some funds for informants.

In my opinion, the Law Enforcement Assistance Administration should be the place to go to obtain such assistance at the Federal level. However, previous experience with LEAA in Texas leads me to believe that arson is not a crime that the agency cares too much about.

The most irritating experience I had with LEAA involved some statewide arson training seminars sponsored by State LEAA authorities in Austin. The curriculum for that program was developed in large part by members of the Houston arson squad, who also served as instructors there. Nevertheless, while police department employees from all over Texas were able to attend the sessions at LEAA expense, every fire department employee who went, including men from Houston, were required to pay for room and board during the session.

I have also discussed with LEAA authorities the need for obtaining funds for a laboratory to back up our arson investigations. Presently, we must rely on the Houston Police Laboratory for chemical analysis of possibly flammable residue removed from a fire scene. However, the police laboratory, because of the pressure of other work, often takes as much as a year and a half to get around to our samples for analysis. By that time, our case has often been tried. The arson investigator, when it comes time to testify about the nature of the substance he discovered at the fire, is therefore unable to offer laboratory proof that the material was flammable. If he testifies that the substance smelled like gasoline, a smart defense attorney can quickly destroy the investigator's credibility through a series of questions designed to show that, without chemical analysis of the material, it cannot be shown to a certainty that the material was, in fact, gasoline.

We have lost a number of cases in court because of the absence of laboratory reports identifying suspicious substances as flammable.

I understand that LEAA in the past 3 years has spent for arson control programs less than one-tenth of 1 percent of the \$2 billion it has passed out to local law enforcement agencies. Given our experience in Houston, I was not surprised to hear this. In my opinion, Federal performance in dealing with the raging arson problem is abysmal.

Senator NUNN. Thank you very much for very helpful testimony.

Talking about the Federal role, and I don't in any way disagree with what you have said about that, I think everybody here would agree that the Federal Government is not doing a good job in this area—what about State and local governments? Having prosecutors assigned to you basically is a State and local responsibility, is it not?

Mr. MIKESKA. Yes, sir. It is a local responsibility. The problem in our particular area, when we file charges on an individual, we present the case to a district attorney. He will weigh the facts out, determine whether we have sufficient evidence to file on a defendant for the offense of arson. After this is done, the defendant will be arrested, he is taken before a preliminary hearing, where the attorney will hear the facts of the case or present the facts of the case. If it is determined at that point that the case warrants a grand jury investigation, it is bound over to

the grand jury where a third district attorney presents the case. If the individual is indicted, he is heard in a court of law where a fourth prosecutor handles the case.

So our cases actually are handled by four different attorneys before the conclusion. In my opinion, none of them become very familiar with the case.

Senator NUNN. Is this the responsibility of the local district attorney's office?

Mr. MIKESKA. Yes; it is.

Senator NUNN. Have you talked to them about it?

Mr. MIKESKA. Yes. We have talked to the State Association of County and District Attorneys and they promised that they would take it up in their next conference.

Senator NUNN. The other thing you mentioned is the laboratory, access to the laboratory analysis which you feel would be very helpful. Is the State crime laboratory operated at the State level and if so, where is it located?

Mr. MIKESKA. We have one located in Houston and we also have one located in Austin, Tex. However, they are overworked and cannot get to our analysis work. In fact, we visited with both the local and State laboratories and even though the local authorities do assist us, sometimes it is, like I say, a year, a year and a half before we get any type of analytical reports. The State is just so overworked, primarily with criminal and narcotic cases that they just cannot get around to our needs.

Senator NUNN. Has there been any move in the legislature of the State government or the Governor's office, either the executive or legislative branch to try to provide more funds so they can expand the capabilities of the laboratories?

Mr. MIKESKA. I am a member of the attack group, Texas Arson Council, and we have made proposals to increase the facilities for the State fire marshal's office.

At the present time the State fire marshal's office is operating on, I believe, four investigators, and this is for the entire State of Texas. They also have to rely on laboratory equipment from the State.

Senator NUNN. So really both at the State and local level, there is a long way to go before you could basically do a thorough and good job of convicting people that you suspect of arson?

You have got a long way to go?

Mr. MIKESKA. A long way to go with the benefit of the scientific aid. We have asked for laboratory equipment and a lab technician in our budget for this year. This is on the local level.

Senator NUNN. That is through the city of Houston?

Mr. MIKESKA. Yes, sir. It is.

Senator NUNN. You work for the city of Houston?

Mr. MIKESKA. Yes, sir.

Senator NUNN. You mentioned something that several other witnesses have mentioned in the course of these hearings that many arsons are caused because of insurance companies overinsuring the premises. Have you brought this to the attention of the insurance officials?

Mr. MIKESKA. Many times. Many times we have brought this to their attention. The problem that exists, the way that I see it, per-

sonally, is that the insurance policies are sold by agents. It is like an automobile—car salesman. The more cars he sells, the more he sells the automobile for, the more profit he makes. So if he can sell insurance on a house for \$100,000, rather than \$50,000, he is going to make a bigger profit for selling this amount of insurance. I, you, or anyone past my age, if we want to get a life insurance policy, say for \$10,000, we are required to go through a clinic. I recently attempted to get \$10,000 life insurance increased on my life. I was required to go to my doctor to have a complete physical. If I want to increase my insurance on my home by \$40,000 or \$50,000, I get on the telephone, advise my agent I would like to increase my insurance by \$50,000, there is a binder put on it, no questions asked whatsoever. About 3 years ago we had a bar burn in Houston where the policy was put into effect at 12 midnight over a drink. At about 3 o'clock that morning, this particular structure was down on the ground.

Senator NUNN. What do insurance agents say when you propose this to them? Do you ever get any reaction?

Mr. MIKESKA. We don't get too much cooperation. We get cooperation from some, but there is an awful lot of them that we don't get cooperation. In fact, recently we had a warrant on an individual who had insured his house for something like \$18,000. It was just a shack. It took about 2 months to get these charges filed and to do the follow-up investigative work. When we approached the insurance agent and advised him of the charges, that they were being filed on this individual, he advised that it was out of his hands, that the insurance company had sent him a check and he was obligated to give it to the insured, which he did. He gave the check to the insured. Several months later he was convicted and had to make restitution. However, we were just fortunate in that case.

Senator NUNN. How would you describe the major motivation for arson in Houston based on your experience? Would you describe it as being arson for profit or would it be arson for business competition reasons or arson for revenge? How would you break it down?

Mr. MIKESKA. Numberwise, we had, I think, in excess of 900 incendiary fires last year. I would say that about 70 percent of that would be spite-revenge, but these are the type fires, about \$500.

Senator NUNN. About what percent?

Mr. MIKESKA. About 70 percent, I would say, that we investigated would be the spite-revenge or intimidation-type fires. But this accounted for just a small portion of our loss. But then you are talking about \$12 million loss, with the rest of the 30 percent. We are talking about fraud fires, we are talking about fires to eliminate competition. These are the fires that are set by pay torches, either amateur or professional. When they do the job, they are going to do a thorough job. They are going to burn the building down to the ground. You are going to experience a \$500 to \$1 million loss.

Senator NUNN. Would you say that arson for profit is out of control in Houston?

Mr. MIKESKA. Yes; I would. I would say it is at epidemic proportions, condition.

Senator NUNN. Have you gotten very much response from your elected officials there? Do they understand the nature of the problem? Have you been able to communicate the seriousness of it to them?

Mr. MIKESKA. Yes; they are concerned. In fact, we had a new fire chief come into office this particular year. They really feel the need for us to have a laboratory. They have added 16 additional investigators to the budget, and are beginning to give us the equipment that we need. They are concerned about the problem.

Senator NUNN. So you think you have gotten the attention of the elected officials now?

Mr. MIKESKA. Yes, sir, I do. But I don't think that this problem will be controlled anytime in the near future until thorough examinations are made of the buildings that are going to be insured.

It is appetizing for anyone, even honest people, to see that they can triple the value or the amount of their home. If they could sell their home to you or I for \$40,000, why not sell it for \$120,000?

The chances there are a whole lot better than they are in Las Vegas.

Senator NUNN. Are any kind of laws being proposed that would require an insurance company to actually go out and appraise the property or at least give it a physical inspection before the fire insurance is issued. Has anybody been thinking about doing that at the city or State level in Texas?

Mr. MIKESKA. On the State level we are proposing some legislation that would fall into that area. We are also preparing some legislation that would avoid the value policy clause in which if a man insures a \$40,000 home for \$100,000, then the insurance company is only obligated to pay what the value of that home was.

Senator NUNN. Even though it was overinsured?

Mr. MIKESKA. Right, even though it was overinsured. Last year we had that bill up before the legislature and ironically the insurance industry was most in opposition to that particular bill.

Senator NUNN. Why do you believe this is? Do you think it is because the insurance companies, no matter how many losses they take, can simply pass that on by getting rate increases?

Mr. MIKESKA. Right. I don't think they are losing a penny. They are working at a profit. They pay out \$100,000 in this particular city, they take it out of your, my, or somebody else's pocketbook that carries insurance.

Senator NUNN. What office in Texas is responsible for insurance regulation? What do you call that office? In Georgia we call it the comptroller's office.

Mr. MIKESKA. It is the State board of insurance.

Senator NUNN. Are they in favor of this kind of bill?

Mr. MIKESKA. I am sure that they would be.

Senator NUNN. But the insurance companies themselves fought that?

Mr. MIKESKA. Yes; they have.

Senator NUNN. Why do you think that is?

Mr. MIKESKA. I am not sure, other than I believe that insurance companies do not want to get a reputation of not paying the claims. If they have a \$100,000 claim, they pay it. They don't want to get the reputation throughout the country that they will only pay 40 percent or 60 percent of the total value of the policy.

This is my own opinion.

Senator NUNN. You are saying that arson for profit in Houston is out of control and you have been in contact with your counterparts,

arson investigators around the county, have you not? Have you been in seminars with them or have you had contact with them?

Mr. MIKESKA. Yes.

Senator NUNN. Do you think your experience is unusual or unique or do you believe Houston's experiences are representative of the whole country?

Mr. MIKESKA. I think Houston's experience is representative throughout the Nation. I think every city, particularly the size of Houston, is experiencing the same problem. My experience in that problem is that they may be indeed hiding the fact.

In Houston, for instance, I could cut the arson losses in half statistically by knowing, by going to a fire scene, examining the fire scene, determining the fire may be arson, but marking it up as electrical spark, faulty gas leak. It is very easy to hide the crime of arson. It is just like sweeping your house out and sweeping all the dirt under the carpet.

Senator NUNN. In other words, if you were of a mind to, you could just cut that rate way down and pretend that your office has done a lot about it by just reporting fires as not being arson?

Mr. MIKESKA. That is correct. If our men were either not trained or if they didn't feel any obligation to do their job, they could very easily cut the arson rate in half statistically. I feel like that arson is at epidemic proportion throughout the Nation. I feel like a lot of fire departments and police departments are ignoring it and are not investigating it, either due to the fact that they don't have the trained investigators or just don't want to show the bad arson problems in their particular city.

Senator NUNN. Do any of the insurance adjusters that you work with—I assume you come in contact with insurance adjusters quite frequently in your work, don't you?

Mr. MIKESKA. Yes.

Senator NUNN. Do any of them have any proposals? Do they have any access to any professionals that can on behalf of the insurance company detect arson?

Mr. MIKESKA. Oftentimes they hire private investigators that have expertise in the field of arson.

Senator NUNN. Do you have insurance companies that do better jobs than others in this respect?

Mr. MIKESKA. Yes; we do. Some are tougher than others. But they all have a fear of being sued.

Senator NUNN. Sued by the policyholder?

Mr. MIKESKA. Sued by the policyholder.

Senator NUNN. Is there any kind of provision under State law for treble damages or double damages when an insurance refuses to pay off for arson and the insured sues and recovers? What is the penalty of that to the insurance company?

Mr. MIKESKA. I am not qualified to answer that particular question.

Senator NUNN. If you come across any information like that, we would like to have it. There must be some penalty. In my experience in the practice of law if the insurance company is not going to lose any more by going to court than they would by paying off, they have no fear of going to court, but if there is some treble or punitive damages attached because they refuse to pay a claim, that really puts some fear in them.

Mr. MIKESKA. Yes. I am not familiar with the details of it.

Senator NUNN. I wonder if anybody has considered placing a more stringent burden of proof on the plaintiff rather than imposing punitive damages on insurance companies. It seems that might make an awful lot of difference in the insurance company's attitude.

Mr. MIKESKA. I believe so. Yes.

Senator NUNN. Your basic feeling is that the insurance companies are not willing to withhold payment in suspicious circumstances on many cases simply because they do not want to get sued?

Mr. MIKESKA. That is correct. That is my opinion. It is also my opinion that they overinsure.

Senator NUNN. They are overinsuring in Houston?

Mr. MIKESKA. They are overinsuring in Houston.

Senator NUNN. I think you have got with you some exhibits, do you not, that show something about the timing devices of fires? Could you explain what you have there?

Mr. MIKESKA. Yes, sir. This is one of hundreds that we recover annually in fires. When you find a device such as this, primarily it is a professional-type fire, either fraud or to eliminate competition. This device here is a battery-operated device using a standard alarm clock.

Senator NUNN. Why don't you hold it in your hand so the people can see it? You can just sit there, if you want to, and explain it there.

Mr. MIKESKA. This device primarily is used on a detonator or blasting cap. It is used with a 6-volt battery. One of your leg wires running from the negative side of your battery or positive side of your battery is tied to the case of the alarm clock. The negative or the positive side is hooked to one lead of your blasting cap, which is normally engaged into a pipe filled with black powder, and if it is to be used as an incendiary device, it is normally placed in a 5-gallon or 3-gallon can of gasoline. One of your bridge wires is connected to a connector that is arranged so when the minute or the hour hand makes contact with this bridge wire a completed circuit has been made, the same as if you would turn a light switch in the bedroom off and on. When this completed circuit is made, you have detonation, then you have flaming gasoline blowing all over the interior of the structure that you want to destroy. We had three of these in one business in Houston, two of them did ignite, this one failed to detonate.

But this was one of the simpler forms of incendiary devices that are found.

Senator NUNN. The reason you got that one more or less intact was because it never detonated; is that right?

Mr. MIKESKA. That is right.

Senator NUNN. What happens in terms of evidence left behind if one of those does work properly and detonates and the building burns down, do you find remnants of it that you can identify?

Mr. MIKESKA. Very rarely. You would have to have a very well-trained investigator to look for that particular type of item. It is not unusual to find a battery, it is not unusual to find a clock in any type of structure, whether it be a warehouse, your home, or wherever. It is just not unusual to find such items. This is where our laboratories are critical so we could have any of the debris that we remove from these locations analyzed.

Senator NUNN. What you are saying basically is that in terms of law enforcement, as far as arson is concerned, you are not going to go in and catch somebody committing arson if they are a real pro-

fessional, and local and State officials will have to use scientific and technological means if we hope to be successful. Is that what you are saying?

Mr. MIKESKA. That is the only way I believe we will be able to be successful.

Senator NUNN. You are also saying, are you not, that almost no matter what kind of protective system a building may have, a good torch can burn it down if he really wants to?

Mr. MIKESKA. Very easily. Many times we have had protected buildings barn in the city of Houston which were incendiary. There are many ways to ignite a building without making entry.

Senator NUNN. Have you found evidence of organized crime involvement in arson in Houston?

Mr. MIKESKA. We have found indications that organized crime is in the Houston area. Recently we arrested an individual on an arson case, and he named a figure who we determined was involved in organized crime.

Our problem is that oftentimes we are able to convict the torch himself, or receive information from the torch. But unfortunately, we have not been successful in getting to the source of the people that hire that torch.

Senator NUNN. What about your interrelationship with the police department in Houston? Do you have cooperation with them? Do they assist you in your arson investigations? How do you interrelate with the police?

Mr. MIKESKA. We work very closely with the police department. The police department do not investigate any arson fires. In a murder-by-arson case, we normally work jointly with the homicide division. We assign investigators and the homicide division would assign theirs, and we work very closely.

Senator NUNN. So you don't have any complaint about the relationship with the police and fire department?

Mr. MIKESKA. No.

Senator NUNN. Do you know of anything that would improve that relationship? Are there any steps that you would recommend to improve the coordination between the police and the fire?

Mr. MIKESKA. Probably we are at the point of almost being self-sustaining in Houston, arson, as far as fingerprint, composite, and polygraph work. If we were able to get our own laboratory, we many times would give assistance to them due to the heavy workload which they have.

Senator NUNN. Your two main recommendations this morning would be, as I understand it, improved scientific and technological capability to deal with arson at the State and local level?

Mr. MIKESKA. Yes.

Senator NUNN. The second would be to find some way to cut down the practice of overinsuring by insurance companies and by owners of buildings?

Mr. MIKESKA. Yes; definitely.

Senator NUNN. I would assume that you would agree with me that there ought to be a look at the laws that provide great disincentives for insurance companies to fight claims that they suspect are arson-originated? I don't know what those laws are, but I do know that

insurance companies that don't pay a claim can be subjected to very heavy damages. The question is, and it would vary from State to State, what are the disincentives to fighting a claim? I think that is an area that the staff needs to look into. I think we need to get from Texas, Illinois, Georgia, other places, a representative sample of what State laws are involved. I am sure we will probably be able to get a good analysis of that from the insurance industry themselves. They would probably know pretty well what the story is.

Do you have any other particular items you want to point out this morning?

Mr. MIKESKA. No, sir; Mr. Chairman, I believe that is all.

Senator NUNN. Your testimony has been very helpful. Does the staff have any other particular questions? We thank you very much for your cooperation. We look forward to continuing to cooperate with you as we proceed with this investigation.

Mr. MIKESKA. Thank you, Mr. Chairman. We appreciate the assistance we feel like you are giving throughout the United States. Arson investigators are very concerned about the lack of interest that has been given.

Senator NUNN. Thank you very much. If any of your counterparts would like to communicate with our subcommittee about any of the experiences they have had in other States, we would be delighted for you to pass the word on. We would be pleased to hear from them. We will make the charts part of the record.

Without objection that will be exhibits 8 and 9.

[The documents referred to were marked "Exhibits 8 and 9" for reference and follow:]

EXHIBIT NO. 8

HOUSTON  
INCENDIARY DOLLAR LOSS

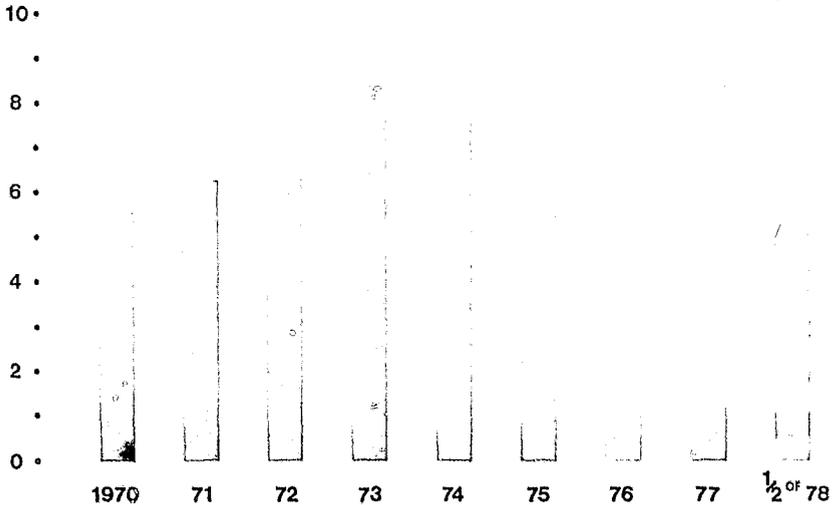
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## EXHIBIT NO. 9

12 • HUNDRED

**HOUSTON  
INCENDIARIES**

Senator NUNN. Our next witness this morning is Mr. Joseph McNamara Chief of Police, San Jose, Calif.

Chief McNamara, before you sit down, I will give you the oath. Do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. McNAMARA. I do.

**TESTIMONY OF JOSEPH D. McNAMARA, CHIEF OF POLICE,  
SAN JOSE, CALIF.**

Senator NUNN. We are delighted to have you here this morning. We appreciate your cooperation. I know you have a prepared statement. I will ask you to go ahead and give that statement, if that is the way you would like to proceed.

Mr. McNAMARA. Thank you, sir.

Mr. Chairman, I would like to discuss with the subcommittee today the topic of arson for profit by placing it in the larger context of organized crime. Arson for profit is carried out either by individuals with no connection to organized crime, for the purpose of defrauding insurance companies, or by organized crime in order to terrorize, sabotage, blackmail, or defraud. When the perpetrator is an individual unrelated to organized crime, the main investigative burden lies with fire departments and insurance companies; local law enforcement agencies do not usually become deeply involved.

However, when arson for profit is linked to organized crime, arson then represents the tip of the iceberg of organized criminal activities,

most of which are obviously covert by nature. It is in this sense, that of surfacing some of the organized crime activities, that arson is of paramount interest to all law enforcement agencies.

#### NEW DANGER FROM NEW ORGANIZED CRIME GROUPS

I stress that organized crime is not limited to any one ethnic or racial group in the United States. Indeed, along with the growing concern I share with colleagues in law enforcement regarding the increasing influence of organized crime, there is a parallel concern that new groups are evolving into the same structures and patterns of behavior that have provided success for organizations such as La Cosa Nostra.

In fact, there is much evidence that the older organized crime groups have evolved into very sophisticated enterprises, with full access to and utilization of the most advanced techniques that money and unprincipled ruthlessness can buy. Older organized crime groups now infiltrate legitimate businesses and transact enormously profitable illegal financial dealings.

As this evolution takes place and older organized crime networks expand into nontraditional quasi-legal activities, traditional organized criminal activities, narcotics, gambling, loan sharking, prostitution, and pornography, are inherited by other population groups which in turn become new organized crime groups.

These new groups, in carrying out the traditional criminal activities, such as arson, are sometimes aided or protected by the older groups, making investigation even more difficult.

#### ARSON AS WARNING

If society, through its law enforcement representatives, is unable to protect itself from overt acts of organized crime violence such as arson, not much hope can be placed on society's ability to protect itself from the more elusive techniques of organized crime.

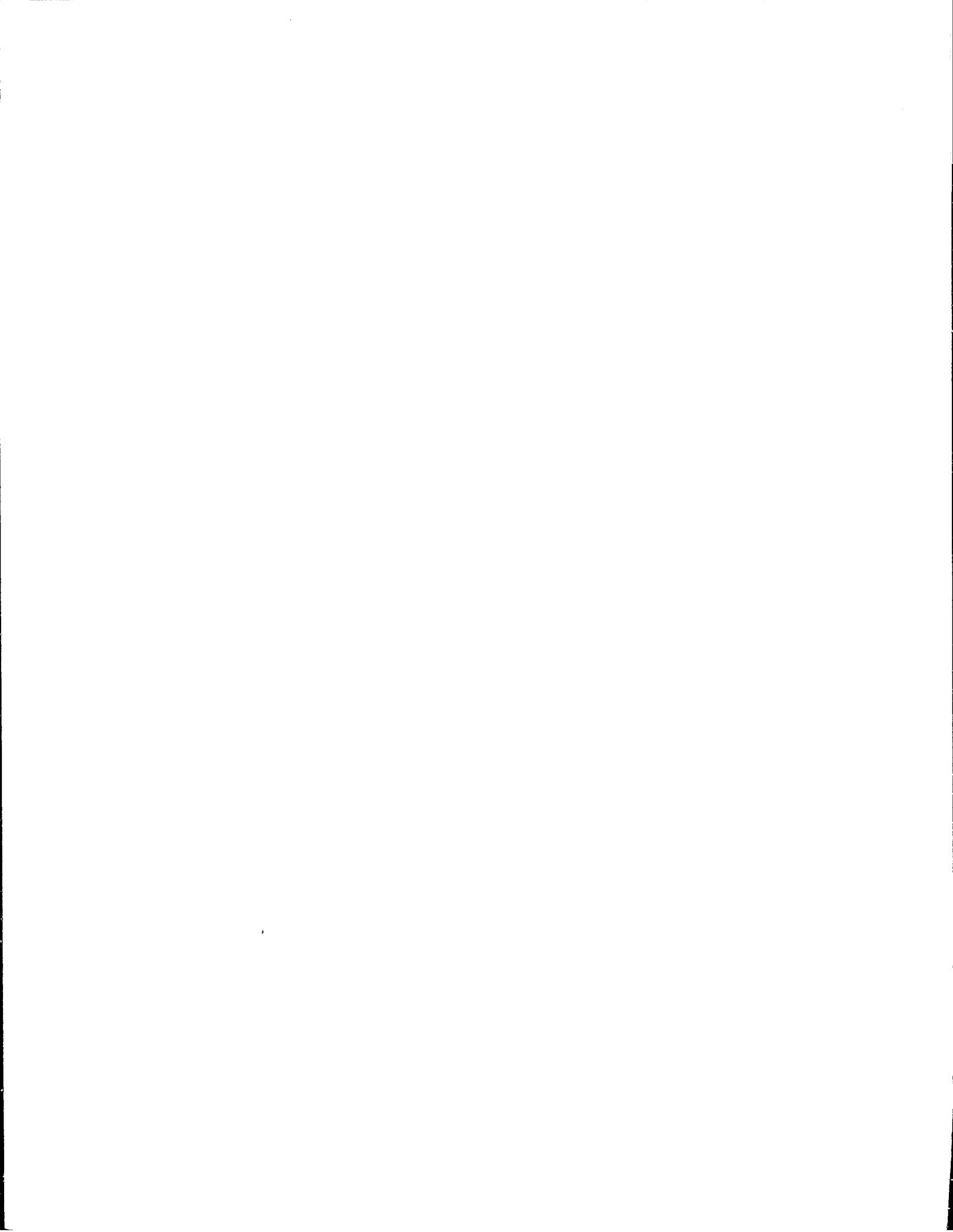
Arson is but a visible manifestation of the traditional techniques of organized crime, and in that sense, should be a grim warning to law enforcement agencies. Even when the result is not as obvious as arson, the degree to which organized crime has permeated our society ought to frighten all Americans because of the potential for the erosion of our basic institutions of democratic government.

#### INFLUENCE ON BUSINESS

Organized crime has achieved its success in penetrating American business in a variety of ways. For example, it can employ arson to sabotage the equipment of a competing business, to punish an uncooperative firm or to intimidate a recalcitrant company into acquiescence.

More subtly, organized crime takes over businesses through the devious use of illegally obtained funds or, more recently, through complex, computer-aided financial transactions that are extremely difficult to unravel.

Many experts in law enforcement feel that the criminal assault against American business has been against an almost completely defenseless target. Business executives have been generally naive, un-



**CONTINUED**

**2 OF 6**

wary, and unprepared to deal with experienced, cunning, and when necessary, violent criminal adversaries.

Trained in traditional business and management skills, businessmen tend to think of business security in terms of security guards, burglar alarms, and inventory checks rather than the very real danger of organized crime frauds and takeovers.

Businesses are at a further disadvantage in dealing with organized crime activities for two other reasons: First, intelligence gathering on organized crime, in general, and arson, specifically, is probably at its lowest ebb in decades, a point I would like to address later; second, when white collar crime is involved, local law enforcement agencies usually do not view the problem as being their primary responsibility, nor are the agencies perceived as a possible resource by local businesses. Thus, little law enforcement protection against organized crime is afforded to corporations.

Whatever the means, once members of an organized crime group penetrate heretofore legal business, they operate that business illegally, as the Kefauver committee showed over a decade ago. They continue to invest, and they continue to monopolize by force.

When this occurs, the public pays the ultimate bill since the operations of American business are intricately involved with the well-being, standard of living, and livelihood of American citizens. Excessively high prices to customers, below-standard quality of products, inflated insurance premiums, unfair competition and loss of revenue to the State are but a few of the items of that ultimate bill.

#### EROSION OF PUBLIC TRUST

There is another hidden cost in that bill which society pays when organized crime takes over legal enterprises. Business, quite appropriately, has always been a political influence in our democratic society.

Instances where known organized crime members have acquired respectable business images with the attendant political and social influence have made it appear hopeless and hazardous to the average citizen to even attempt to challenge the organized crime operation.

Senator NUNN. Let me ask you one question here that I think is important. You state on page 3 that—if I can find the right spot here—second paragraph, third paragraph down, and I quote: "First, intelligence gathering on organized crime in general and arson specifically is probably at its lowest ebb in decades."

You are saying that the intelligence-gathering capability of our law enforcement community as a whole to deal with organized crime is lower than it has ever been?

Mr. McNAMARA. Yes, Senator. I am. I think one of the unforeseen consequences of the Freedom of Information Act and the Privacy Act has been to make cooperation by citizens giving information to law enforcement so hazardous because their identity is being revealed through legal techniques of organized crime attorneys, so much so that local law enforcement agencies at this point in time will not share information with the Secret Service, with the FBI, and with the

other Federal law enforcement agencies because we fear the people who have given us such information may be murdered.

Senator NUNN. So you are saying as chief of police of a large city, a man who has been in New York police activities, Kansas City, and other places, you are saying that your experience indicates that local officials, local law enforcement officials in this day and time, are reluctant to share information of an intelligence nature with the Federal authorities and the reason for that, go ahead and express the reason.

Mr. McNAMARA. The reason, Senator, is that attorneys for, and fronts for, organized crime groups are able to obtain that confidential information from Federal law enforcement intelligence files on the basis of Freedom of Information and Privacy Acts provisions.

And I think I can say that this concern is shared very widely throughout the United States at this time.

Senator NUNN. Have you had any direct examples where information was given to Federal authorities, that you are aware of, that has later been turned over to organized crime, through either the Freedom of Information Act or Privacy Act?

Mr. McNAMARA. I don't have specific incidents to relate, Senator, but I can tell you that I have worked very closely with the FBI for a number of years. They share our concern that the balance has swung too far away from the legitimate law enforcement responsibilities.

All of us recognize that privacy of information has to be protected and that Government employees have no right to violate such privacy or to engage in unprofessional or unethical behavior in terms of intelligence gathering. But I think it is certainly not what Congress intended, that those few individuals who we can get to come forward and to give information about organized crime should be placed in jeopardy.

I know that the Freedom of Information Act does provide for protection, deletion of the identity of witnesses, but very frequently the nature of the information that is gained through Freedom of Information Act inquires might as well tell the people involved who the individual was.

Senator NUNN. So merely not naming the individual is not enough. The nature of the information given may be indicative of who the individual is? Is that what you are saying?

Mr. McNAMARA. Yes, sir.

Senator NUNN. We had testimony from Gary Bowdach, basically stating on several occasions, having been a member of organized crime, that he and his associates were able to gain enough information to identify informers.

Is that consistent with your impression?

Mr. McNAMARA. Yes, sir, I certainly believe that to be true. We are dealing with very skilled and powerful enemies in organized crime who have access to great legal talent and have money to spend.

I think it would be most foolhardy to assume that they are not interested in these intelligence files. There has been a recent case, for example, in Las Vegas where the FBI revealed that organized crime elements had been getting secret law enforcement intelligence files through corruption and bribery. So we know that they are most

concerned to learn what law enforcement knows of their various dealings.

Senator NUNN. You are saying there is less intelligence information moving from local law enforcement to the Federal agencies than any time in your experience as a law enforcement official?

Mr. McNAMARA. Yes, sir.

Senator NUNN. How about the other side of the coin? How about the information flowing from the Federal agencies to the local and State? Would you care to categorize that?

Mr. McNAMARA. I think the problem in that direction, Senator, is that the Federal agencies are simply not getting the same quality and the same volume of information because people fear to give them information. We have two people at the present time that have given us information of a very, very significant nature relating to organized crime activities, who have steadfastly refused to have anything to do with giving information to the Federal authorities, saying it would only work with the local police because they do not trust the FBI and other Federal authorities that would have jurisdiction because they fear being identified.

Senator NUNN. They fear what?

Mr. McNAMARA. Being identified as sources of that information.

Senator NUNN. Is this something that the people at the street level understand and know about?

Mr. McNAMARA. Yes, sir.

Senator NUNN. Would you say then that what we have done in some of the laws that have been placed onto the books in recent years, is to inadvertently create a legal atmosphere of protection to organized crime?

Mr. McNAMARA. I think we have Senator. I think the intent of Congress was never to protect the evils of organized crime or to endanger those few citizens that do come forward to cooperate with law enforcement, but in fact, we believe that has happened.

Senator NUNN. Is this something that you believe your fellow law enforcement officials share with you, or do you believe this is just your individual opinion?

Mr. McNAMARA. No. I believe this is a widely shared feeling throughout the United States on the part of the local police chiefs as well as Federal law enforcement officers.

Senator NUNN. Does California have any kind of Freedom of Information Act at the State level?

Mr. McNAMARA. Yes, sir. It does. We are deeply concerned about that. We find that discovery motions in criminal trials are a problem as well as where attorneys have at times attempted to go on fishing expeditions to reach into those intelligence files.

One of the real concerns that I have that I will relate to you a little bit later, is that to a great extent law enforcement is losing the public relations battle and that organized crime groups have taken advantage of the public sentiment against law enforcement against government, and against intelligence gathering, and I think we need to address that problem very strongly.

However, at the present time in the prosecution, the last thing that any law enforcement agency wants to do is to identify the various defendants as possible organized crime figures because as soon as we do, there will be a legal motion for discovery and all of the police, intelligence information becomes subject to inspection.

So as a result of that, the public is being deprived of some vital information about organized crime.

Senator NUNN. I am not sure I follow that. When you identify a person you are investigating as being a member of organized crime, what kind of chain reaction does this set off legally?

Mr. McNAMARA. The attorney for defendants will immediately make discovery motions and they have the right to all of the information within the hands of the prosecution.

Senator NUNN. You mean this is after indictment?

Mr. McNAMARA. Yes.

Senator NUNN. But let us say Joe Jones is indicted; this can happen in an individual case, whether it is organized crime or not; can it not?

Mr. McNAMARA. Yes, sir.

Senator NUNN. What I don't understand is the nexus between identifying a person as a member of the organized crime and broadened discovery. It seems an individual could have this discovery whether they were organized crime or not.

Mr. McNAMARA. No. They would not. The access to intelligence files becomes operative, once the police or the prosecutor has raised the issue that the defendant is involved in organized crime. At that point, the defense attorney would have a right to inspect any intelligence relating to that assertion.

Senator NUNN. In other words, once you identify the person as being part of organized crime, it broadens the scope of the legal discovery available to the defense lawyer?

Mr. McNAMARA. Yes.

Senator NUNN. They can go far beyond the individual case and get all of the intelligence that is available relating to this individual's participation in organized crime and the activities of organized crime?

Mr. McNAMARA. Yes, sir.

Senator NUNN. Is it a State law that allows that? Is this something that is unique to California or is it a problem all over the country?

Mr. McNAMARA. My experience has been that it is increasingly spread throughout the country in terms of discovery, legal discovery rules of the various States, and I think it is operative in the Federal prosecutions as well.

The real damage to that is that we are unable, for example, to identify a particularly vicious murder that may have occurred as the work of organized crime and I think that is very important, that the public be aware of just how vicious and how atrocious the organized crime activities are.

Senator NUNN. If I understand this, you are saying that broadened discovery can lead to premature disclosure of a lot of organized crime intelligence data that was never previously identified by local law enforcement as such in the news media and other places?

Mr. McNAMARA. That is correct.

Senator NUNN. I had not heard that before. This is the first time I have heard that. I would like staff to look into this particular discovery law.

I guess probably it would be broadened by court decisions more than by the statute itself. Is that right?

Mr. McNAMARA. Yes, sir.

Senator NUNN. Court decisions interpreting the discovery law in California?

Mr. McNAMARA. I think the law itself is fairly straightforward. There will be no withholding of any information which the prosecutor has relative to the prosecution. So, in that sense, it is extremely broad.

We, of course, would resist any attempt to get into police intelligence files, but I think we have seen several cases in recent years where there have been court tests of law enforcements ability to protect the identity of the people who give information.

And we are faced with a real problem since we know that some of the attorneys representing organized crime through the years probably are not observing the legal ethics that we proceed on the theory that they do.

The court proceeds on that theory. So, in effect, an attorney who looks at the police confidential information could just be turning that right over to the very people under investigation.

Senator NUNN. One other question that is somewhat unrelated to the subject of arson, but we have gotten into it before in other hearings.

Is there any proposal in California or do you already have any provision in your law that would allow defense attorneys in the grand jury room?

Mr. McNAMARA. There is a proposal for that, Senator. It has not yet become law in California. The law enforcement groups are resisting that. But I can't predict what the outcome will be.

Senator NUNN. What is your view on that? We have some legislation like that pending here at the Federal level, too. What is your view of it?

Mr. McNAMARA. I think it would be one more obstacle in getting people to come forward to testify. The reality of law enforcement is that people are terrified quite realistically, unfortunately, terrified that they will be identified as having cooperated with the police in giving information and the defense attorney who is privy to that secret testimony before a grand jury might well result in less people coming forward; some additional people being murdered or maimed as a result of their cooperating in prosecuting criminals.

Senator NUNN. Are there many cases where a person would appear before a grand jury and testify, but never be called in an actual trial? In other words, if a person appears as a prosecution witness before a grand jury that person pretty well knows that at some point they will be identified to the defendant and to the defense attorney because they have to appear in the actual trial of the case.

Are there many instances where a person would appear before a grand jury, but never have his identity revealed because he never appears at trial?

Mr. McNAMARA. I certainly think there are. Not every grand jury investigation results in a prosecution so that someone who did contrib-

ute evidence on some kind of a criminal conspiracy, for example, that was not prosecuted for a number of years could live without being jeopardized.

Maybe the case will never be prosecuted because of some higher priorities in law enforcement. Perhaps the prosecutor decides that it is not sufficient evidence to prosecute the defendant might—the people involved might die as they frequently do, through violent means which eliminates the need for prosecution.

But the person who testified would still be subject to retaliation. So I think there are many cases where grand jury testimony given by witnesses may not ever become public. I think we should try everything that we can do to protect the identity of those who give that kind of information.

Senator NUNN. All right, go ahead with your testimony.

Thank you.

Mr. McNAMARA. As an illustration, I am reminded of the investigation conducted in the 1950's by then District Attorney Hogan of New York, who disclosed that in a wiretapped conversation a candidate who had just been nominated for the New York State Supreme Court judgeship—tantamount to election—thanked Frank Costello, a leading organized crime figure, for the nomination and pledged his “undying gratitude.”

The resulting investigation disclosed the sorry picture of organized crime's great influence and almost complete control of the local political process.

District Attorney Hogan uncovered and destroyed the system by which gangsters had effectively taken over and subverted government to their own ends. It should constitute a grim warning to any who would minimize or romanticize organized crime.

Had District Attorney Hogan not uncovered that situation, New York residents might have been faced with the spectacle of a known crime figure hobnobbing with judges and high elected officials.

That particular spectacle was avoided through the disclosure of the wiretapping conversation, but we can all think of instances when such bizarre associations have been publicly flaunted.

The average citizen sees such relationships, sees organized crime flourishing, sees how inadequate punishment is for the few cases that are prosecuted, and the sad result is that public trust is eroded.

Instead of obtaining public support, public cooperation, and public vigilance to aid in their investigations on arson and other organized crime activities, law enforcement agencies understandably have to deal with public apathy, reluctance, and fear.

#### LOW EBB OF INTELLIGENCE GATHERING AND SHARING

As I mentioned earlier, an important reason for the present success of organized crime activities, arson included, is that law enforcement intelligence-gathering and sharing capabilities are at their lowest ebb.

No responsible officials in law enforcement deny that there have been past abuses in intelligence gathering and protection of privacy, nor do responsible leaders quarrel with the need for reform, study, and safeguards to be developed in these areas.

Certainly the Freedom of Information Act and the Privacy Act are cornerstones in building and protection against future violations of citizens' right by Government. However, many of us believe that it is important to point out to the public and Congress that Government has a basic responsibility to protect the rights of citizens from violation by criminals as well as against potential violations by Government employees.

For example, the Secret Service reports that it is experiencing so severe a decline in the quality and quantity of intelligence information that its ability to protect the President and other public figures has been seriously impaired.

Similarly, other agencies are experiencing the same dearth of intelligence information that might help them investigate possible arson cases and other organized crime activities.

At the present time, we hesitate to share information of an intelligence nature with the Federal Bureau of Investigation or the Secret Service because we know that the sources of that information will probably become available under the Freedom of Information Act queries.

It is most foolhardy to imagine that the sophisticated criminals we are dealing with do not, through attorneys and fronts, take all possible advantages to learn what information law enforcement has gathered about their activities.

It has always been difficult to obtain information about secret organizations with well-deserved reputations for killing individuals who give information to authorities about their criminal activities.

In all honesty, we must admit that anyone giving such information today to Federal authorities is taking an almost reckless risk with his or her own safety.

Senator NUNN. You are saying anyone who gives information to the Federal Government today dealing with organized crime is really placing his own life in jeopardy?

Mr. McNAMARA. Yes, sir, much more so than in the past. It was always a hazardous possibility that identities could be discovered, but today it is almost a certainty that they will be.

Furthermore, a good deal of important and valuable information about individuals, businesses, and activities is simply that—information and not evidence which could be sustained in a judicial proceeding.

So, a good deal of the required additional evidence is withheld from law enforcement from the fear that a law-abiding citizen's cooperation in informing law enforcement authorities about criminal activities can cause the citizen to be sued when his identification is learned through the Freedom of Information Act, Privacy Act, or legal discovery motions.

The overwhelming majority of leaders in law enforcement think that the balance in these areas has swung against law enforcement to the point that organized criminals and terrorist groups have been immeasurably strengthened because law enforcement is unable to gather intelligence and evidence against them. It is a vicious cycle—the more such groups succeed, the more powerful they appear and the less likelihood that citizens will dare cooperate with law enforcement against these criminal conspiracies.

Interest in arson: specific experiences. San Jose experience, arson investigation.

In California there are currently approximately 60 arsons daily and another 60 to 70 daily fires that are classified as being under suspicious circumstances. The State's health and safety code states that fire departments will investigate every fire for cause; our municipal fire code restates the above.

In San Jose, as in Los Angeles and San Francisco, arson investigations are carried out by the fire departments; the police are generally only superficially involved. Local fire departments while expert at arson investigations, are not equipped to collect intelligence that can tie an arson case to organized crime. No State agency is presently systematically collecting or disseminating data on a regular basis on organized crime arson cases.

Senator NUNN. So you are saying there needs to be a coordinated effort to link intelligence gathered by police with arson information gathered by the fire departments?

Mr. McNAMARA. Yes.

Senator NUNN. You are saying in California there is no such link?

Mr. McNAMARA. I would say probably in most areas of the United States there is no such coordination.

Senator NUNN. At what level should that take place? At the State level, do you think?

Mr. McNAMARA. I think, Senator, that in many areas it should be a regional level, where, for example, in Kansas City the Kansas State boundary ran right through metropolitan Kansas City, Mo. area.

We had many successful regional programs with law enforcement intelligence sharing. So that I think it needs to be a regional effort.

In fiscal year 1976-77, there were 254 fires (47 percent of the fires investigated by the San Jose Fire Department) were identified as arson caused in San Jose; we had thus on the order of five arsons weekly during that year.

Since intelligence information in this area is sadly lacking, it is difficult to identify the offenders and determine whether arson for profit was the motive. Whereas almost 50 percent of the arson fires resulted in the arrest of persons in fiscal year 1976-77, that was due to a large extent to the arrest of 6 suspects who cleared 23 arson cases; in fiscal year 1977-78 it is anticipated that only 28 percent of the arson fires will be cleared by arrest and for fiscal year 1978-79, it is anticipated that the clearance rate will have dropped to 24 percent.

#### ARSON INCREASES CAUSE FOR CONCERN

In San Jose it is also anticipated that arson fires will increase faster than population in the next few years. This, coupled with the expected drop in the clearance rate of arson cases and the increased activity of fairly recent groups, such as the motorcycle gangs that result in such violent acts of intimidation, causes grave concern to the San Jose Police Department.

Senator NUNN. What kind of motorcycle gangs are you talking about?

Mr. McNAMARA. We had some people identified as the Hell's Angels gang who have been investigated. And, in fact, there is a Federal grand

jury presently investigating arsons which we believe were used to take over legitimate businesses in the Santa Clara County area.

Senator NUNN. You mean intimidation?

Mr. McNAMARA. Yes.

Senator NUNN. Burning buildings?

Mr. McNAMARA. Yes; people who were reluctant to let such individuals enter their business; suddenly, a short time later, sold out for a low price.

I might mention that this is a classical organized crime technique and that is why I referred earlier to the fear that these newer groups as organized crime is moving into higher levels, more sophisticated business crimes, that this activity is being taken over by motorcycle gangs and by some of the newly emerging groups moving into those areas.

Senator NUNN. Would you consider the Hell's Angels, generally speaking, as part of organized crime?

Do you classify them as an organized criminal element?

Mr. McNAMARA. We find that there are some very interesting cases where Hell's Angels leaders, one witness who gave testimony in a prostitution-pornography case in San Francisco, was murdered with her family in Oregon.

We find evidence that Hell's Angels leaders have been chauffeuring La Costa Nostra leaders. We see that they have contact together. We think in law enforcement that some of these more vicious motorcycle elements have been used for muscle. Their terrorist activities are quite well-known and as their reputation for that kind of viciousness is so great, we think that they probably are a very effective threat against some businesses.

Senator NUNN. Are you saying that they are being used by organized criminal elements as muscle men in areas in many cases?

Mr. McNAMARA. We think that there is some of that and we think also they are beginning to emulate the takeover activities.

We think that they are into narcotics and the other traditional organized crime activities.

As I mentioned earlier, we are concerned that new groups are evolving into patterns that have provided success for earlier organized crime groups; those patterns include arson, murder, and extortion. Since 1976, there have been at least 10 members associated with syndicated organized crime in California. All of the victims were either organized crime figures, witnesses, or known informants. The highly publicized .22 caliber killings throughout the Nation are other examples of mafia-type hits, which underscore the need for controlling the increasing influence of organized crime.

REGIONAL ARSON INTELLIGENCE SYSTEM: SEPTEMBER 1977 MEETING IN  
SAN FRANCISCO-SAN JOSE AREA

As a reflection of our grave concern about arson and other organized crime activities compounded by the low ebb of intelligence information, a meeting was held on September 1, 1977, by Thomas E. Kotoske, the U.S. attorney in charge, racketeering section, San Francisco. The conference was attended by Federal, local law enforcement,

and fire officials. Conferees generally agreed on the following conclusions:

1. That structural arsons in this region were a serious problem which, for a variety of reasons, had not received sufficient attention.

2. That important intelligence information relating to arson conspiracies was probably being lost partially because California police have traditionally viewed arson investigations as primarily a fire department responsibility. Consequently, intelligence gathering on arson suffered because fire agencies did not possess police intelligence gathering and sharing capabilities.

3. That a regional arson intelligence capability with both police and fire input was necessary.

With Mr. Kotoske, the Federal Government's top organized crime prosecutor for the Western United States, agreeing that an areawide arson intelligence system was a necessary step if we were to stem the rising tide of arson, I decided to seek the assistance of LEAA.

I proposed that a grant to inaugurate a regional arson intelligence system be provided by the Law Enforcement Assistance Administration at the Justice Department. In my letter to James O. Golden, Director of the LEAA's Enforcement Division in the Office of Regional Operations, I summarized the conclusions reached by the conference.

I was optimistic that LEAA would look with favor on the suggestion for two reasons.

First, the chief organized crime prosecutor for the Justice Department in the West thought it was needed, and I could only assume that his judgment would carry some weight at LEAA.

Second, I knew that LEAA had previously recognized the threat of organized crime which would be the focus of the arson intelligence network's activities. In the past, the agency had provided both discretionary and block grant funds to start up intelligence systems and train law enforcement personnel in technical investigative techniques necessary to identify and destroy organized crime activities.

Such a regional arson intelligence network as we envisioned could work closely with the arson task forces recently established under the Bureau of Alcohol, Tobacco and Firearms, to pool information and avoid duplication of effort.

The ATF arson task forces do not take the place of a regional arson intelligence network, which would closely interweave local fire and police personnel intelligence gathering and sharing. For example, our intelligence unit in the San Jose Police Department has not yet been contacted by the arson task force of the local ATF office in San Francisco.

Unfortunately, neither the fact that a Federal strike force attorney recommended it, nor the fact that LEAA had previously funded such projects, made any difference. LEAA advised me that there was no way it could help through direct financial assistance for an arson intelligence network.

Instead, I was told that such a network might be grafted onto another LEAA-funded program in San Jose dealing with crime analysis and internal operations research. It would have been impossible to integrate that project with an areawide organized-crime arson intelli-

gence network. I drew the distinct impression that LEAA really had no idea how urgent the need for an arson intelligence system was.

Moreover, it was clear that the agency did not have a grasp of the narrow scope of the program it had funded, which could not possibly have accommodated the intelligence network contemplated.

#### RECOMMENDATIONS

In closing, I would respectfully offer a number of suggestions to the subcommittee in the hope of alleviating the problems that I have briefly described:

First. We would ask that Congress consider legislation earmarking a very small percentage of the taxes that business pays to fund a voluntary education program to alert banks and major corporations to the danger of infiltration and victimization by organized crime elements.

Senator NUNN. When you say voluntary, do you mean voluntary but carried out by the Federal Government? Voluntary as to whether the businesses want to be educated on that subject?

Mr. McNAMARA. Yes, sir.

Second, we would ask Congress to review the exemptions to the Freedom of Information Act and to consider standard 2.4 of the National Advisory Committee on Criminal Justice Standards and Goals task force report on organized crime. The standard calls for the accommodation of legitimate law enforcement needs in organized crime control, intelligence programs, and protection of basic individual rights of privacy.

Third. We would ask that increased Federal attention be paid to the crime of arson, especially as it has been used by organized crime groups for terror, extortion, and fraud.

Fourth. We suggest that LEAA fund arson intelligence efforts involving both fire and police personnel.

Fifth. We recommend the increased use of Federal grand juries to scrutinize the newer organized crime groups in efforts to prevent them from attaining the power and proficiency of older organized crime groups, and to continue scrutiny of older groups with special attention to business fraud.

Senator NUNN. Thank you very much, Chief McNamara, for, I think, extremely interesting and helpful testimony. I was particularly interested in what you had to say about the intelligence-gathering capabilities of law enforcement authorities. That really is one of the principal focuses of our overall crime hearings.

We have heard from a variety of sources, almost the same thing. Everything from organized criminals themselves to law enforcement people. It is going to be very difficult to provide solutions to some of these problems legislatively, but I think it is apparent that the problems do exist.

I think your testimony is the strongest testimony we have received so far as to the poor condition of our intelligence gathering today, and your testimony was particularly strong in my opinion as to the reluctance of law enforcement officials, local and State, to cooperate with the Federal law enforcement officials.

You made reference to testimony or statements by the Secret Service that they are finding it very difficult to get enough intelligence to

adequately protect the President. Is that something they have said in recent days?

Mr. McNAMARA. Yes. I recall reading Stuart Knight's statement, I suppose roughly a month or 6 weeks ago, that he had testified before a congressional committee mentioning just the kind of obstacles which I have dealt with here.

Senator NUNN. What do you suggest that the LEAA do? You seem to have some frustrations with the LEAA. What do you think they need to do?

Mr. McNAMARA. I must say, Senator, in all fairness to LEAA, that I have had good experiences as well as unfortunate experiences. But I think they need to pay closer attention to the needs of local law enforcement and less attention to some of the excessive administrative rules which they have imposed.

For example, in San Jose, we had a very successful grant from LEAA which was going for third-year funding, and this grant allowed us to give increased attention to the victims of sexual assault. It was highly successful. It was a model program nationally.

Unfortunately, the group, an advisory counsel group which set the priorities for funding, rated this very successful program so low that it did not get funding.

This was a final straw for the city of San Jose which had felt for a number of years that the make up of the counsel had not reflected the needs of the large inner city, as San Jose is a city of some 600,000 people within a 1½ million region.

So we were through from this regional process, to now take advantage of Congress legislation allowing us to go for block grants which we hope will allow us to deal directly with the criminal justice needs in the city of San Jose without having all of the past problems.

Senator NUNN. Would you say based on your experience that LEAA is not aware of the resurgence of the arson problem, both locally and nationally?

Mr. McNAMARA. I am quite sure that was true, from my experience in which I was really quite stunned to see the response from Mr. Golden, which indicated no sense of priority as far as the crime of arson is concerned; and a very casual method of dealing with it from such a wide number of law enforcement officials in that conference, that it seemed to me that information of that nature showing the concern at the level from so many high level law enforcement officials and fire officials in that area should have required some further study and investigation instead of the casual letter suggesting something that just was not even feasible.

Senator NUNN. You also testified that the alcohol, tobacco, and firearms task force out of San Francisco—I believe they operate out of San Francisco—had not contacted you regarding their work. Is that right?

Mr. McNAMARA. Regarding their arson work, Senator, yes. That is true. I think we were somewhat startled as we began to get more deeply into arson investigation.

I might mention that I have been chief in San Jose for almost 2 years now, and we have increased our interaction with the fire investigators and we have really been pushing toward increasing our

intelligence gathering capabilities relative to arson; that I was quite surprised to see this.

Senator NUNN. What about the FBI classification of arson as a crime as part of their part I classification? Do you think arson ought to be classified as a part I crime?

Mr. McNAMARA. I certainly do. The one caution that I would offer is that we not make all arsons part I crime. About 3 years ago I published a piece in the Washington Post which indicated that the FBI crime statistics were not meaningful in law enforcement in reference to decisionmaking.

My criticism basically was that the information was so broad that it had no meaning in itself. For example, automobile losses can swing the whole part I crime index into either a plus or a negative factor when really serious crimes, such as murder, forceable rape, armed robbery, get lost in that statistical mass.

So I would suggest that some distinction be made between the types of arson. I don't think an arson, vandalism, arson set by some school student is really the kind of arson that we are talking about and if all of those arsons are included in the part I crime statistics, my feeling would be that once again it would become too difficult to handle, to know what it means in terms of allocation of resources.

But I think basically by putting arson in part I, we have stated a priority for it. We have said to the higher law enforcement apparatus in the United States, that this is a serious felony.

I think I would suggest that perhaps arsons which involved any kind of extortion or any kind of serious injury or an extremely large amount of financial damage be included.

There is a pattern for that. For example, we did not include all rapes in the part I crime. Only forceable rapes.

So I think it could be done and I do think as the basic strategy, to get people to pay more attention to arson, it would be a good thing to do.

Senator NUNN. What is the reaction of the local law enforcement personnel around the country to the growing problem of organized crime?

Mr. McNAMARA. I think the fear is there, the fear that sources of information are drying up, increasingly, and that organized crime seems to be getting more and more powerful.

Senator NUNN. You were very careful to point out the ethnic distinction between organized crime as a term and say a term like the Mafia, which carries a definite connotation to a good many people.

Is this a problem, the sensitivity of the various ethnic groups and the fact that so many times organized crime has been directly associated with the word "Mafia" when in fact there are many ethnic groups involved in organized crime?

Mr. McNAMARA. Yes, I think it is so important, Senator, because as I mentioned earlier, it seems to me that law enforcement is losing the public relations battle. The organized crime figures who gain some local respectability are extremely wealthy, frequently. They have access to community leaders and very frequently low visibility decisions, for example, limiting the number of people that law enforcement can use in intelligence, propaganda, attacking intelligence gathering

methods, exploitation of the general American sentiment against this kind of law enforcement activity is damaging us.

As I mentioned earlier, the need for doing this is increasingly hard to communicate to the public because of the restrictions that we have. I am talking about organized crime and what it actually does.

So I think the myth that organized crime is something specifically related to the Italian ethnic group has been very damaging for law enforcement. It certainly is not related to any one ethnic group. We see all kinds of other groups presently active and in the past there were other ethnic groups very involved in organized crime activities.

So I think in terms of public information it is important to take away from those individuals who have been exploiting that issue, the fact, the argument that somehow this is an ethnic bias on the part of law enforcement. It certainly is not.

Senator NUNN. Thank you very much, Chief McNamara. You have been extremely helpful and have provided, I think, excellent testimony for our hearings, not only on the arson subject, but also the overall subject of organized crime which we no doubt will be involved in for a long period of time.

We are not viewing this set of hearings or our overall hearings on organized crime as a one-shot proposition. It is going to be of continuing interest to this subcommittee.

At this stage I have a lunch meeting that I have to preside over. I had anticipated Senator Percy would be back by now. He has been delayed.

Mr. CORRIN. Senator, I think he will be here. I suggest we recess until 1:30.

Senator NUNN. We have two other witnesses that we want to hear from: Mr. Ronald Ewert, who is acting executive director of the Illinois Legislative Investigating Commission in Chicago and Mr. Thomas Hampson, Sr., investigator, Illinois Legislative Investigating Commission. I know Senator Percy particularly would be interested in hearing this testimony. But I suggest now, because I simply have to go to another meeting, that we recess until 1:30, at which time the subcommittee will reconvene.

Chief, we appreciate your being here and we appreciate all of the other witnesses being here this morning, and thank you very much for your help.

[Whereupon, at 12:35 p.m., the subcommittee recessed, to reconvene at 1:30 p.m., the same day.]

[Members of the subcommittee present at time of recess: Senator Nunn.]

[The subcommittee reconvened at 2:20 p.m., Senator Percy presiding.]

Senator PERCY [presiding]. The subcommittee will come to order.

[Members of the subcommittee present at time of reconvening: Senator Percy.]

Senator PERCY. In the absence of Chairman Nunn, we will begin and I will call as witnesses from the panel Ronald Ewert, acting executive director, Illinois Legislative Investigating Commission, Chicago; Thomas Hampson, senior investigator, Illinois Legislative Investigating Commission.

Gentlemen, we are pleased to have you here. If you would be sworn in, as is our custom, do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. EWERT. I do.

Mr. HAMPSON. Yes.

**TESTIMONY OF RONALD EWERT, ACTING EXECUTIVE DIRECTOR,  
ILLINOIS LEGISLATIVE INVESTIGATING COMMISSION, CHICAGO,  
ILL.; THOMAS HAMPSON, SENIOR INVESTIGATOR, ILLINOIS  
LEGISLATIVE INVESTIGATING COMMISSION**

Senator PERCY. Mr. Ewert, we are pleased to start with your testimony.

Mr. EWERT. Thank you.

Senator PERCY. We deeply regret the delay. I think I explained this morning the problem that we have today with the natural gas bill.

Mr. EWERT. Thank you.

Mr. Chairman, it is an honor to appear before your subcommittee and share the Illinois Legislative Investigating Commission's research and recommendations on the arson problem which we think affects our entire country.

The Illinois Legislative Investigating Commission is the investigative arm of the Illinois General Assembly. Created in July 1971, we have been given complete authority to investigate any matter of legislative interest and report back to the general assembly with our findings and recommendations, often including proposed legislation.

Our investigation of arson was prompted by a resolution passed by the Illinois Senate in December 1976, responding to a perceived epidemic of arson in Illinois. Our investigators spent more than a year interviewing law enforcement officials, firemen, insurance experts, visiting other cities with arson investigative units, interviewing convicted arsonists, and actually conducting an arson investigation.

Our findings and recommendations are contained in a final report, copies of which are being made available to the subcommittee. Although our report concentrated on the arson problem in Illinois and recommended specific action for the legislature and various State law enforcement agencies, I believe that several of our findings and recommendations should be considered by the Federal Government.

**COMMISSION'S ARSON INVESTIGATION**

In order to document the difficulties and pitfalls of arson detection, the commission performed its own arson investigation on a fire which occurred in the Humboldt Park area of Chicago. The fire in question gutted a two-flat residential property in an economically declining neighborhood. Because a fire had occurred on the same property only 1 week before, the Chicago Police Department's Bomb and Arson Unit investigated the second fire. They noticed no evidence of accelerants and closed the case after interviews with neighbors showed that children had been vandalizing the property.

The commission's investigation involved interviews with the owner of the building, with neighbors, and with officials of the FAIR plan—the insurer of the property. The commission also researched owner-

ship and insurance records and submitted charred remains to the State crime laboratory in Maywood and to a private laboratory.

An interview with tenants who had moved out 1 month before the fire revealed that the building contained numerous serious code violations, which the landlord repeatedly ignored. Although the landlord denied the charges, photographs of the building's interior taken after the fire substantiated the tenants' allegations.

The owner claimed the building was occupied at the time of the fire, contradicting both his former tenants and the fire department report. Under the insurance contract, the owner's claim for insurance benefits would be reduced if the property was vacant at the time of the fire.

The owner also claimed that the fire in question was his first, contradicting FAIR plan records of three claims for fires in this building.

Final proof of arson came from the private testing laboratory. Although the State crime lab found nothing, the private lab detected paint thinner on each of the debris samples submitted and concluded that the fire "must have been of incendiary origin."

As a result of the commission's investigation, FAIR plan officials began their own investigation and later denied the owner's claim for \$25,000 because the owner failed to protect the property and because it had become an increasing hazard. The owner had retained an attorney and has sued the FAIR plan for \$25,000—the amount of the claim—and \$100,000 punitive damages.

The commission's investigation highlighted serious weaknesses in the bomb and arson unit's procedures and showed that the State crime lab may lack the facilities, expertise, and manpower for thorough sample analysis.

#### TRAINING AND PROSECUTION

Some arsonists do get caught. Statistically, however, arson is one of the safest crimes to commit, with fewer than 1 percent of all incidents resulting in conviction. Arsonists operate almost totally without fear of the law.

As a crime, arson presents two unique features making detection difficult. First, extensive investigation is often needed merely to demonstrate that a crime has occurred. Second, arson falls between the cracks of police and fire department expertise. Arsons detected by fire department experts are often not followed up by good police work linking the fire to the person responsible for it.

Detection of arson depends upon careful scrutiny of fire debris. This must be done quickly, before evidence may be altered by the weather or destroyed by cleanup or salvage crews. Trained investigators can learn a surprising amount about the origin and nature of the fire if they arrive promptly and take the time to sift through the wreckage and analyze it carefully with sophisticated scientific methods. Unfortunately, many arsons go undetected due to a woeful shortage of experienced investigators. In Illinois and throughout the country, arson investigators receive very little professional training.

As a result of poor investigations, many fires are classified nebulously as being "suspicious" or of "unknown cause." The magnitude of the arson problem is thus seriously understated. Police and fire departments desire favorable statistics.

For this reason, they may be reluctant to classify suspicious fires as "arson," since the chances of arrest or conviction are quite small. If the number of fires classified as arsons was high and the conviction rate low, the reporting agency might look inefficient.

The lack of investigation is even more serious in rural areas, where most firemen are volunteers trained to extinguish fires, but not to determine cause or origin.

Our State crime laboratories responsible for analyzing the physical evidence suffer from inadequate equipment and lack of sufficient manpower. A trained investigator's painstaking effort to gather solid physical evidence may be wasted by human or technical error in the laboratory. There is no telling how many arsons go undetected as a result.

Better training for investigators is a top priority in the battle against arson. To be truly effective, investigators should know not only the technical aspects of fire detection, but also police methods of criminal investigation.

Many arson cases also falter at the prosecution stage. Arson investigations rarely yield any eyewitnesses. Instead, cases depend upon circumstantial evidence, making it difficult to prove criminal guilt "beyond a reasonable doubt."

Through interviews in Chicago and elsewhere, we found that prosecutors hesitate to bring arson cases for fear of diminishing their conviction rates.

Several prosecutors felt that more successful cases could be built if district attorneys, well schooled in the rules of preserving and using evidence, went to work very early in the investigation, shaping the collection of evidence and monitoring other aspects of the investigation. Thus, one attorney would follow the case from the opening of the investigation to the closing arguments at trial.

Because training is so badly needed for arson investigators and prosecutors at the State and local levels, we recommend that the Federal Government's Law Enforcement Assistance Administration offer a greater portion of its revenue to worthwhile arson training programs around the country.

#### DETERIORATING AND ABANDONED PROPERTIES

The Commission's investigation identified arson-for-profit and arson committed by vandals as the most costly and prevalent forms of arson in Illinois.

Dilapidated urban properties are as good as money in the bank for many profiteering slum landlords. Arson is their essential stock in trade. After buying a tenement, a landlord, greedy for quick profits and unconcerned about the long-run future of his building—not to mention the community—may skip his tax payments and avoid spending money on maintenance and services. When his rental income diminishes, he has his building torched to collect on the insurance.

In other cases, a landlord simply abandons his property, with confidence that vandalism fires will eventually allow him to collect handsomely on insurance.

The Commission found a direct correlation between urban communities with many abandoned buildings and numbers of intentionally-set fires. Many of these buildings are abandoned or left in a dilapidated state because the owner is either unwilling or unable to bring his property into compliance with local codes.

In the case of the unwilling owner—the slum landlord—we recommend that the appropriate legal action be taken against him by the municipality. But for the owner who would like to upgrade his property and cannot afford to, we recommend that a nationwide Federal/local matching program be established to provide low-interest loans or grants to make the necessary repairs.

This program should be made available wherever the need exists not just in certified urban renewal or code enforcement areas.

#### THE ROLE OF HUD

In Chicago, a number of abandoned and deteriorating properties are owned by the Federal Department of Housing and Urban Development. Many of these buildings have been improperly managed while caught in a tangle of foreclosure.

Left vacant, yet still standing for prolonged periods, these structures are easy targets for arson-prone vandals. In Chicago, HUD recently arranged with the city to demolish some of the worst properties at HUD's expense, with the city paying for inspections and legal paperwork.

On a national level, HUD should develop a program to maintain these properties until they can be demolished or resold. As a landlord, the Federal Government should observe the same responsibilities for the upkeep of property as a private homeowner.

HUD's Federal Insurance Administration holds oversight responsibility for State-administered "Fair Access to Insurance Requirements" or FAIR plans. These programs provide basic fire and hazard insurance to applicants in urban areas "whose property is insurable in accordance with reasonable underwriting criteria but who, after diligent efforts, are unable to procure such insurance through normal channels."

In the Chicago metropolitan area, the Illinois FAIR Plan ends up insuring the majority of residential properties burned down by incendiary fires. The Commission concluded that the correlation between FAIR Plan coverage and torched properties is too obvious and recurrent to ignore.

The problem stems, in part, from the fact that the FAIR Plan is not careful enough in screening out poor insurance risks. The Illinois FAIR Plan issues policies to over 95 percent of applicants, despite the fact that the properties and their owners often display clear characteristics of insurance risk.

During 1976 alone, the Illinois FAIR Plan suffered \$4 million in losses. In light of the growing arson problem, the Commission concluded that the FAIR Plan's current underwriting criteria should be tightened.

The Illinois FAIR Plan has thus far failed to initiate policy changes aimed at eliminating unwarranted risks. FAIR Plan offi-

cials in Illinois claim that HUD guidelines and congressional intent limit the degree to which underwriting criteria may be changed.

The GAO study recently completed at Senator Percy's request demonstrates that the FIA and the appropriate State regulatory agency could do more to provide leadership for FAIR plans eager to discourage arson.

Despite the absence of leadership from FIA, however, some State FAIR plans have taken action to deter arson for profit through tighter underwriting. In New York, for example, underwriting decisions can be based upon examinations of records of property tax payments, assessments of property value, and the existence of code violations.

We found no reason why the Illinois FAIR plan could not adopt similar policies. We also recommend that the legislature permit exceptions to the law requiring 30-day notice prior to policy cancellation. Because the conditions of core city properties often changes very rapidly, FAIR plan managers should be permitted to cancel on 5 days' notice in cases of serious fire hazards.

#### PRIVATE INSURANCE COMPANIES

Private insurance companies also contribute to the arson problem by failing to inspect applicant backgrounds or to perform value appraisals on properties prior to issuing policies. This allows potential arsonists to insure their properties for much more than their fair market values.

Until recently, insurance companies, fearful of liability suits, were reluctant to withhold payments on suspicious claims or to share information with law enforcement officials. Under a new Illinois law, passed September 6, 1977, insurance companies are to release information and cooperate with law enforcement officials in cases of fire loss and suspected arson.

Statistics: The National Fire Protection Association estimated over 114,000 incidents of arson in 1974 alone. Although experts generally agree that the arson problem in Illinois and nationwide has grown worse, this impression is difficult to prove since there is no adequate national arson data bank currently in existence.

If anything, however, current statistics probably understate the number of incidents since many arsons are classified as "suspicious" or "unknown causes."

According to the American Insurance Association, the absence of good fire loss data makes it difficult to identify patterns of insurance fraud. Lack of good arson statistics also obscures questions of policy priorities and resource allocation.

The American Insurance Association has recently begun to implement its plan for the creation of a national property insurance loss register to be used in the evaluation of loss claims. Records would be kept on unsolved and suspicious fires, as well as arson suspects.

To further improve the data base on arsons, we recommend that arson be transferred from a part II crime in the FBI's uniform crime reporting statistics to a part I offense. Last January, Senator Glenn's amendment to the Criminal Code Reform Act—directing the FBI to change its reporting procedures in this manner—passed the Senate with the support of Senators Nunn and Percy.

## ORGANIZED CRIME AND ARSON

There is no doubt that organized rings contribute to arson for profit. In Chicago, the FBI and the U.S. attorney recently cracked an arson ring, winning convictions against Anthony Tinghino and Barry Tucker. They were convicted of setting up four phony businesses for the sole purpose of burning them for insurance money. They bribed investigators and insurance adjusters and collected nearly \$75,000 in insurance payoffs.

The commission also learned of an arson-for-profit ring operating in four counties in the Peoria, Ill., vicinity. This scheme involved buying and selling houses for inflated prices, so that the amount of insurance coverage could be increased prior to the torch job.

So far, the Federal agency most active in battling organized arson for profit has been the U.S. Postal Inspection Service. Where conspirators use the mail to file phony insurance claims, mail fraud statutes may be applied.

Actual arson need not be proven. In the future, application of the racketeer-influenced and corrupt organizations or RICO statute may prove very useful in Federal prosecutions of organized arson-for-profit schemes.

I have enjoyed this opportunity to share the commission's findings and recommendations with the subcommittee and would be happy to supply any additional information necessary.

Thank you.

Senator PERCY. Thank you very much indeed. I will insert in the record without objection so that it is available in the committee files the report labeled "Arson by the Illinois Legislative Investigating Commission," dated May 1978.

[The document referred to was marked "Exhibit No. 10" for reference and may be found in the files of the subcommittee.]

Senator PERCY. Mr. Ewert, during the course of our questioning, I may be called out for a moment and I will ask the counsel to then substitute for me, continuing our questioning so as not to lose time.

The \$2 billion annual property loss figure is widely quoted and I have quoted it many times as a national index to the arson problem.

We have also heard the lack of statistics is one of the chief problems in arson law enforcement. Did the commission attempt to substantiate this widely quoted figure to see what you discovered?

I presume we could just sample it as far as Illinois is concerned and project that out, multiplying our ratio to determine the national figure.

Mr. EWERT. Let me have Mr. Hampson answer that question.

Mr. HAMPSON. We were unable to substantiate the \$2 billion figure. What we found instead was that neither the method of detecting arsons nor the method of establishing the statistics are uniformly applied throughout the country. I will give you an example.

In Illinois, in 1974, in St. Clair County, the agencies there reported 850 arson fires for—they used that figure in order to get an LEAA grant.

Senator PERCY. Would this be essentially East St. Louis?

Mr. HAMPSON. Yes. That same year all of the agencies in that county reported only 47 arsons to the Illinois Department of Law Enforcement. There is a big difference. We don't know which is accurate.

Senator PERCY. Do you happen to have any idea, St. Clair County being right across the river from St. Louis itself, is the incidence of arson in the city of St. Louis high?

Mr. EWERT. I have no information.

Senator PERCY. I wonder if you can draw any conclusions from your efforts to identify the source of this particular statistic, \$2 billion, concerning the overall adequacy of arson statistics? Do you think more work ought to be done in this field? Could you give us more information?

Mr. EWERT. There is no question that statistically speaking there needs to be a tremendous amount of upgrading in the way statistics are compiled and tabulated and brought into uniformity throughout the country, because until you are able to do that, you are going to be unable to adequately assess the problem and, correspondingly, take the proper policy directions to correct it.

Senator PERCY. For different reasons, obviously, rape, abortion, so forth, are exceedingly difficult areas to pinpoint and get accurate statistics on, though we have begun moving years ago to really improve our reporting system to really know what we were coping with.

Do you think that we not only should go ahead, but we would benefit by knowing statistically, more accurately, how big a problem that is and would it be worth the effort it would take to get such statistics?

Mr. HAMPSON. I don't think you can make adequate decisions about how to attack the arson problem until you have an accurate description of what the problem is. It is quite common right now for agencies to make estimates on arsons.

Take a figure of perhaps 50 percent of all of those fires that are classified as unknown and calculate them arson. There is no basis for making that type of determination at all.

Senator PERCY. Let me be the devil's advocate for a moment. The Commission itself has said that its efforts were prompted by the perception that arson had reached epidemic proportions in Illinois and elsewhere.

If you don't have good statistics, how did you know that, how did you draw the conclusion?

Mr. EWERT. The resolution was drawn up in that manner, stating that there was an epidemic. In the inclusion of the word "epidemic" is a national followup to improper or poorly put together statistical analyses in that the years preceding this, there were little or no statistical recordkeeping throughout the State. All of a sudden it became a public issue and different agencies started submitting statistical reports and obviously you have a dramatic increase or decrease depending on how they are tabulated.

So what I am saying is I don't think there was an epidemic. I think probably the problem was fairly consistent; all of a sudden there were some statistics, or tried to be put together and were brought to the front and that is what people perceived as being an epidemic.

Senator PERCY. When this subcommittee got into the problem of stolen securities, we found that in order for a ring to operate success-

fully, they had to work in collusion with certain parts of the established, legitimate business, brokerage houses, investment firms, et cetera.

In the case of arson, you mentioned that the U.S. attorney in the northern district of Illinois, which includes Chicago, had recently won convictions against two insurance adjusters in an arson-for-profit ring.

Last week we heard testimony from a public adjuster who participated in a Tampa arson-for-profit conspiracy. I wonder if you can tell us from your own personal observations in Chicago and in Illinois, what was the view of the businesses, from your conversations, about the insurance representatives and police and fire officials?

Mr. EWERT. Very derogatory type of view in that there representation was downcast and downtrodden and, as a matter of fact, that is one of the recommendations of our report. We attached a piece of legislation to license public adjusters to bring them into some type of standard operating, some type of standard procedure of operating and reporting.

Senator PERCY. Would you say that it is fairly easy for unscrupulous adjusters to make illegal profits through unethical practices?

Mr. EWERT. Very easy and they can make tons and tons of money by doing it. No problem at all. Very easy for them to accomplish that.

Senator PERCY. You recommended that both private insurance companies and the FAIR plans research the background of applicants prior to issuing policies to them. What kinds of things should insurers know about an applicant?

Mr. EWERT. They should know his financial history; they should know the insurance problems or the insuring that has gone on with the building and that the individual might have participated in. They should know about his properties and which ones might have been involved in code violations, et cetera. That would spark an interest or give them a clue that something might not be proper.

Senator PERCY. Do you feel that such checks, if made systematically, would save substantial amounts of money in the long run for insurance companies?

Mr. EWERT. I don't know that it would save substantial amounts. I know that it would certainly curtail the problem of people being able to, with little detection, increase the insurance and value of their property and reap huge rewards.

Senator PERCY. Isn't it the ease with which they can adjust upward and inflate those property values, then, that provides the huge profit incentive? If you buy a piece of property for \$100,000 and know you can get it insured for \$150,000, where can you go and in 30, 40, 50 days investment period and get 50 percent on your money? That is a huge incentive; isn't it?

Mr. EWERT. Absolutely.

Senator PERCY. If you held it down to what the real value of that property was, the incentive for arson would be gone; wouldn't it?

Mr. EWERT. Absolutely.

Senator PERCY. You are not going to torch a piece of property for equal what you pay for it or get for it on the market.

Mr. EWERT. It would be like the financial incentive to get involved in that and that is basically the insurance industry responsibility. Instead of blindly insuring properties for a amount of dollars, they have a responsibility to shareholders and to the community at large to see that specific properties, and subsequently, communities aren't subjected to arson which affects the whole community.

Senator PERCY. We all know we have gotten proposition 13 and there are other indications that people are really violent about tax levels today.

Is it your impression that people are also getting very concerned and objecting to rates of insurance on automobiles and other kinds of insurance, including insurance on property?

Mr. EWERT. Yes. There is no question about it. When the insurance industry's lack of attention through inspection of properties obviously drives up premium costs for everyone involved, again it comes back to the insurance industry and inspection and knowing your client before you just blindly insure a building.

Senator PERCY. It always seemed to me if it is easy for a company to pass on increased costs, no matter who it is, insurance industry or otherwise, there is a disincentive to hold costs down, just pass it on. It is easier to do that than to try to control costs.

But if there is an uproar every time you raise the price and you meet a wall of resistance, the inclination then is go back and take a look at those costs. I would think the insurance industry would recognize that all of these additional costs, if it is \$2 billion or \$1 billion in arson, that it has to be passed on eventually to the policyholder.

He pays that extra cost and if they realize that there is going to be an increasing outcry against the administration of insurance, if they don't control this cost, if they are able to do so, then I think, I hope the industry itself would really crack down and attempt in every way possible to control this and take away the incentive that is built into the system right now.

Would you agree with that?

Mr. EWERT. I think we would both agree with that and so would the Commission. Yes.

Senator PERCY. Could insurance firms or their agents reduce the profitability of arson by performing or commissioning physical examinations of property prior to issuing coverage on them?

Mr. HAMPSON. It depends on the type of inspection, number one, and number two, if they inspected every piece of property, it would probably raise the cost of insurance rather than reducing it. And I think that there should be some signals that the insurance company should look for before they decided on going out and doing a physical inspection.

What we found in Chicago is that—Well, one of the underlying assumptions of insurance is that people are maintaining their property, doing needed repairs as time goes on. But in the areas that are hardest hit by arson, that is not the case. So that age might be a good criteria for them to go out, start looking at the property a little more closely.

Senator PERCY. Would the principle apply to the FAIR plans as well?

Mr. HAMPSON. Absolutely.

Senator PERCY. Have insurance companies responded to the growth of arson by performing a greater number of applicant checks or property inspections?

Mr. HAMPSON. Not to my knowledge.

Senator PERCY. Do you have any idea why?

Mr. EWERT. There just hasn't been enough public uproar and outcry, but certainly this type of exposure should put the heat and pressure to bear on them.

Senator PERCY. Have any plans to make these changes—What are the plans that are in the planning stage right now to make procedural changes? Can you tell us any details of that?

Mr. HAMPSON. With respect to the insurance industry or the FAIR plan?

Senator PERCY. The insurance industry.

Mr. HAMPSON. We have another investigation underway that we got a little bit more deeply into the general insurance industry in. From our interviews thus far, it doesn't seem that they are making any plans to significantly change the procedures.

What they are doing is developing a property loss register, nationwide, to gather information about fires as they occur, and certain basic information about the ownership of the property. But as far as more intensive inspection, to try to weed out the potential arsonists before they insure them, I don't think they are doing that.

Senator PERCY. You mentioned that over-insurance comprised a major aspect of the arson problem. Did you also find that companies often fail to pursue investigations fully, simply preferring to save money and expenses by negotiating settlements, even with suspicious claimants?

Mr. EWERT. No question about it, and up until recently a problem which furthered their posture was their inability to share with law enforcement and fire officials information regarding their insurers. That has recently changed; last year Illinois passed a law making that, opening the doors for insurance companies to share insurer information. I would hope that that would help out.

Senator PERCY. That certainly has been done in other phases of the insurance industry, with great savings, I believe, to the industry. Could you describe for us some of the indicators that you have learned should be used by insurance companies to tell them when a physical check of the property is actually required? What kind of things should be danger signals to them?

Mr. HAMPSON. First of all, in Illinois, specifically, if the property is held in trust, rather than having an open owner, that would be an indication they perhaps should look more closely at it.

Another indicator would be if there are any code violations recorded with the building department.

Senator PERCY. Which is an indication that someone is going to have to pour some money into the property and it may not be cost effective?

Mr. HAMPSON. That is right. Another one would be whether or not they paid their tax bill. I think another important one as I mentioned earlier is the age of the building.

Senator PERCY. Is what?

Mr. HAMPSON. The age of the building.

Senator PERCY. What if there is a request for a dramatic increase in coverage and taking into account previous testimony which solidly concluded that the agents' judgment generally is accepted by the company for coverage?

What if they get dramatic increase in coverage that goes well beyond inflationary increases? Understandably a property owner would want that covered as the replacement cost.

Mr. EWERT. That is an obvious indicator. You get into the relationship between the insurance agent and the client. When you have the ability to walk in off the street and obtain a policy from an insurance agent, then come back a couple of months later and dramatically increase it, and the insurance agent doesn't know the insured and or the property, that certainly should be a tipoff.

Unfortunately, many times it isn't simply because of the economics involved for the insurance agent.

Senator PERCY. You commented that it is very hard at this time to successfully prosecute a criminal arson case. What more could insurance companies do in the civil area to cut down on arson of property?

Mr. HAMPSON. One thing they could do is right now they pretty much rely on law enforcement to investigate all these fires for them. Insurance companies could do a little bit more on their own to detect arson and to pursue the case civilly to avoid having to make those payments and thus remove the profit.

Senator PERCY. What are some of the things a good trained arson investigator should know?

Mr. EWERT. They should be acquainted with how to detect the origin of the fire, the burn patterns, materials used in setting of the fire, in general procedures that somebody might have available to them in the case of an attempted arson.

Senator PERCY. Is law enforcement in Chicago hampered by the absence of good arson information systems?

Mr. EWERT. Absolutely, no question about it. In Chicago, up until just a couple of years ago, arson investigations were handled by the Chicago Fire Department. It was recently transferred to the Chicago Police Department whose methodology of keeping information on fires was unbelievably crude.

We took a look at that. It simply is not adequate.

Senator PERCY. Yet, we had an arsonist testify under oath that whereas Minneapolis was appalling, in their lack of sophistication, he considered Chicago a high level of sophistication. He would be less inclined to engage in arson in Chicago than in Minneapolis.

You are now saying that even the Chicago Police Department, their bomb and arson unit, is not up to the standards it should be in order to provide adequate deterrent to an arsonist. Is that correct?

Mr. EWERT. Let me put that in perspective. Until the responsibility for arson investigation was transferred to the Chicago Police Department, I think they had an adequate force and they had an adequate system. Transferring to the police department was a terrible mistake in judgment.

Senator PERCY. Is there anything you can do about that in your Commission or are you just in an advisory capacity? What authority

does the State legislature have in this matter, or is it entirely a matter for the Chicago City Council?

Mr. EWERT. In that particular case, it was the Chicago City Council. The only authority we had was simply advisory and making the facts known.

Obviously, our recommendation in proposed legislation is on a State level, but the report also cited that problem in the city of Chicago and suggested, strongly recommended that responsibility be transferred back from the Chicago Police Department to the Chicago Fire Department because of their expertise and knowledge.

Senator PERCY. Could you work with our staff of the subcommittee in giving us some facts so that I can transmit to the city council, to the fire department, Police Department of Chicago and to the mayor your best judgment in this area?

I was under the impression we did have a degree of sophistication in Chicago to cope with this problem. If, through organizational changes we have decreased and reduced our effectiveness in this area, I think the mayor and city council would like to know about it.

Mr. EWERT. Certainly.

Senator PERCY. We very much appreciate your information and I will do what I can to bring this to their attention.

Could you describe what a good information retrieval system would look like for a city like Chicago?

Mr. HAMPSON. First, of all, you have to have accurate information on all fire losses by various type of buildings, dollar losses, the size of the building, whether it is an apartment or commercial; things of that nature.

Arson as a cause of loss should only be one aspect of the overall system to develop a comprehensive data base in order to effectively evaluate the arson trend.

Senator PERCY. As I understand it from your previous testimony, the indication would be that you believe that the fire department rather than the police department should hold primary responsibility for arson detection and investigation and you reached that conclusion because the bomb and arson squad often arrives too late, after evidence has been scattered. The fire department logically should have full investigative authority from start to finish. Is that correct?

Mr. EWERT. That is correct. That is applicable to the city of Chicago, and is quite different throughout the rest of the State.

Senator PERCY. You mentioned arson conspiracy operating in Peoria. To your knowledge, have any of the participants been tried or convicted? How did the Commission actually learn of this arson ring?

Mr. HAMPSON. Initially, we learned of it through the Insurance Crime Prevention Institute and we interviewed the State's attorney in Peoria, Mr. Mimm.

There were six convictions, four of them received sentences and I believe there were two suspended sentences. There were several other other people under suspicion but there was never any prosecution of them.

Senator PERCY. Finally, I take it from the conclusion of your comments in your prepared testimony that you do have evidence of crime

syndicate involvement in arson for profit in Chicago and in Illinois, is that correct?

Mr. Ewerrt. That is correct, to the extent that there have been a couple of successful prosecutions, but the brunt of our inquiry showed that the arson problem is not via organized crime, but rather vandalism and arson for profit.

Senator Percy. I have no further questions of our witnesses. Does the majority or minority counsel have any questions?

I want to thank both of you and I will just have a short concluding statement.

We have heard disturbing new evidence today that arson-for-profit is out of control in a sense. We have also seen that arson exacts an excruciating toll upon innocent victims. When the testimony presented today is added to what we have previously heard, we have a very grim picture indeed.

Arsonists from Rochester, Minneapolis, and Philadelphia all testified that they set fires with impunity. An insurance adjustor described how easy it was to hoodwink the fire department in Tampa, Fla., through arson schemes that yielded substantial profits.

Law enforcement agencies in Houston, Chicago, and San Jose, despite determined efforts, appear to be losing the battle to the hired torch. And the two women who testified this morning have provided graphic evidence of the immense human tragedy suffered by the victims of arson.

Where does the responsibility lie for dealing with this problem, if not with the Federal Government? Its vast resources clearly have not been targeted on arson-for-profit.

Tomorrow we will hear from the Federal agencies with responsibility in this field. We will be asking them why they have not reacted to the arson epidemic with a coordinated program. And, we will try to determine what these agencies will do, having now been alerted as to the urgency of this matter, to bring arson-for-profit under control.

Though we will delve deeply into the coordinated effort, I do wish to again commend Judge Webster and the FBI for the decision that they have just made to move this program forward in much higher priority.

I think it would be the greatest single encouragement to the discouraged local law enforcement officials and State officials that we have before us.

I do want to thank both of you, indeed for your invaluable testimony to this subcommittee.

The hearings are recessed until 10 o'clock tomorrow morning.

[Whereupon, at 3 p.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, September 14, 1978.]

[Members of the subcommittee present at time of recess: Senator Percy.]

## ARSON FOR HIRE

THURSDAY, SEPTEMBER 14, 1978

U.S. SENATE,  
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,  
*Washington, D.C.*

The subcommittee met at 10 a.m., pursuant to recess, in room 3302, Dirksen Senate Office Building, under the authority of Senate Resolution 370, agreed to March 6, 1978, Hon. Sam Nunn (acting chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; Senator Lawton Chiles, Democrat, Florida; Senator John Glenn, Democrat, Ohio; Senator Charles H. Percy, Republican, Illinois; and Senator Jacob K. Javits, Republican, New York.

Members of the professional staff present: Owen J. Malone, chief counsel; Stuart M. Statler, chief counsel to the minority; Jonathan Cottin, investigator to the minority; Ruth Young Watt, chief clerk; Rosemary Steward, assistant clerk; and Stephanie Grill, secretary to the minority.

Senator NUNN. The subcommittee will come to order.

[Members of the subcommittee present at time of reconvening: Senator Nunn.]

[The letter of authority follows:]

U.S. SENATE,  
COMMITTEE ON GOVERNMENTAL AFFAIRS,  
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,  
*Washington, D.C.*

Pursuant to rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, permission is hereby granted for the chairman, or any member of the subcommittee as designated by the chairman, to conduct open hearings without a quorum of two members for the administration of oaths and taking testimony in connection with arson for profit on Thursday, September 14, 1978.

HENRY M. JACKSON,  
*Chairman.*  
CHARLES H. PERCY,  
*Ranking Minority Member.*

### OPENING STATEMENT OF SENATOR NUNN

Senator NUNN. Today the subcommittee concludes 4 days of public hearings on arson for profit.

A good deal of our testimony from the State and local officials has focused on the role of the Federal Government. The Federal program to help assure the availability of fire insurance to homeowners and businessmen in high risk inner-city areas, for example.

Other Federal agencies: The FBI; the Bureau of Alcohol, Tobacco, and Firearms of the Treasury Department; and the U.S. Postal Service have law enforcement responsibilities in the arson area.

The Law Enforcement Assistance Administration has been criticized for devoting too little of its resources and little attention to the arson crimewave.

Today, we will be receiving testimony from these and other Federal authorities. The subcommittee is vitally interested in their assessment of the magnitude of the problem.

We want their recommendations as to what can and should be done to strengthen the Federal Government's role in dealing with arson with the sense of national urgency that the problem demands.

I hope today's witnesses will address themselves to the criticisms contained in several GAO reports the subcommittee has received. These reports have raised serious concerns over the level and effectiveness of the Federal effort against arson.

I look forward to receiving today's testimony. We will study the record very carefully to determine what Congress can do to help the executive branch to play a more effective role in curbing arson as a crime; and curb the loss of lives and the enormous property and tax losses experienced by citizens across the country.

Our first witness this morning is Gloria Jimenez, who is the Federal Insurance Administrator.

We are delighted to have you this morning. If you don't mind before you get started, if you would introduce your associate with you this morning; give his title, then I will ask both of you to receive the oath. We swear in all of our witnesses before this subcommittee.

Ms. JIMENEZ. My associate is Frank Reilly, Chief Actuary, with the Federal Insurance Administration.

Senator NUNN. Thank you.

Do both of you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. REILLY. I do.

Ms. JIMENEZ. I do.

**TESTIMONY OF GLORIA M. JIMENEZ, FEDERAL INSURANCE ADMINISTRATOR, ACCOMPANIED BY FRANK REILLY, CHIEF ACTUARY, FEDERAL INSURANCE ADMINISTRATION**

Senator NUNN. Go ahead and proceed with your statement.

Ms. JIMENEZ. Thank you, Senator. I appreciate the opportunity to present the position of the Federal Insurance Administration on the subject of arson for profit in the United States.

The Federal Insurance Administration welcomes the in-depth inquiry which the Permanent Subcommittee on Investigations has launched on this subject. The timeliness of this inquiry is emphasized by the many news reports which are drawing the Nation's attention to the problem of destruction by fire in its cities. The Federal Insurance Administration desires to take a continuing leadership role in helping FAIR plans reduce arson with respect to FAIR plan insured properties. However, it must be recognized that the problem here transcends just the FAIR plans.

Senator NUNN. Why don't you tell us what the word "FAIR," means. I am sure that is something most people know, but I think it would be good for the record.

Ms. JIMENEZ. Fair access to insurance requirements. FAIR is an acronym for that term. The FAIR plans were set up in response to the Federal Urban Property Protection and Reinsurance Act in the States. They are creatures of the States.

Some 26 States and two other jurisdictions have FAIR plans, Georgia being one of them. The purpose of them is to insure that insurance, essential property insurance is available, particularly in inner cities of the country.

Senator NUNN. Thank you.

[At this point Senator Glenn entered the hearing room.]

Ms. JIMENEZ. The FAIR plans are only one segment of the total property insurance picture, subject to the same economic and social forces and employing the same principles and mechanisms. Arson represents no less a problem to this total market in either FAIR plan States or non-FAIR plan States. For example, in Illinois, the FAIR plan incurred only 5 percent of the State's claims in 1976 and in the view of the Metropolitan Chicago Loss Bureau only 10 percent of these were even possible instances of arson for profit. Thus, it appears that less than one-half of 1 percent of the State's fire insurance incurred claims represented FAIR plan arson for profit. Indeed, the study indicated that 80 percent of arson occurred in the voluntary market for nonresidential insured properties.

Also, as noted by the GAO report:

In Texas, where there is no FAIR plan, arson losses in Houston alone in 1977 were an estimated \$10.3 million. The Houston fire Marshal said he believed that about 50 percent of the dollar loss from fires in Texas were "arson-for-profit related."

The arson-for-profit problem is not located mainly in the FAIR plan and if the problem transcends the FAIR plan, so also does the solution.

I took the initiative at the June meeting of the National Association of Insurance Commissioners before I was even aware of the GAO report and called upon them to join with me in establishing a forum at which Federal insurance leadership can work out this problem in cooperation with State authorities.

As noted in the GAO report:

FAIR plans are privately owned and operated organizations set up primarily by State legislation. FAIR plans operate under the supervision of the State's insurance authorities and are subject to their approval for changes in operating procedures.

The Federal Insurance Administration, although having no direct jurisdiction over the insurance practices of individual States which are governed by State law and State regulatory jurisdictions, can and will provide an impetus for continued progress in rooting out those practices which may be factors facilitating arson for profit.

Through our review and compliance function in determining eligibility of insurers for Federal riot reinsurance, the FIA has long had discussions with officers of FAIR plans on problems of mutual concern.

[At this point Senator Percy entered the hearing room.]

Ms. JIMENEZ. I have met with FAIR plan officers to dispel any doubts they may have concerning our willingness to devise with them such procedures as may be necessary to take into account the developments in the field of arson, without doing violence to the primary purpose of the FAIR plans; that is, to provide essential insurance to deserving property owners. The procedures must be based on objective criteria lest the victims of redlining be subjected to the same type of arbitrary underwriting which consigned them to the FAIR plan in the first place.

While our primary commitment has been to this objective, FIA has attempted to remain alert to the arson problem. Previous administrators have expressed forcefully their determination to reduce incentives for arson for profit and have approved procedures to enable flexibility to FAIR plans to achieve just that.

But I am less concerned with our past accomplishments than I am with what I intend to do to place our office in a position where its influence and strength can be exerted to achieve cooperation with those who have the direct power to bring about action; that is, the States.

To reiterate a point made before, I must emphasize that the Federal Insurance Administration operates under a mandate in the Urban Property Protection and Reinsurance Act which has its purpose to—

Encourage and assist the various State insurance authorities and the property insurance industry to develop and carry out statewide programs which will make necessary property insurance coverage against fire, crime, and other perils more readily available for residential, business, and other properties meeting reasonable underwriting standards.

The Congress further noted in the act that—

The National interest demands urgent action by the Congress to assure that essential lines of property insurance, including lines providing protection against riot and civil commotion damage, will be available to property owners at reasonable cost.

In other words, any proposal to restrict availability of insurance due to any reason—including arson for profit, which data and studies have demonstrated to be of minor proportions in the FAIR plan—must be weighed against this statutory responsibility and must not be implemented in a manner counter to the interests of the 99 percent of the FAIR plan market who are there because they have no other recourse to insurance and not for the purpose of committing criminal fraud.

Denial of essential property insurance can mean subsequent removal or denial of a mortgage and thus can quickly result in a deteriorated block and, soon, a whole neighborhood.

Senator NUNN. I am going to have to leave in just a few minutes and leave Senator Percy to preside. I have an Armed Services Committee hearing that deals with a vetoed bill that we have to put back together in a very rapid fashion.

I regret I won't be here but I will read all of the testimony of all of the witnesses this morning.

Is there any kind of statistic or analysis kept by your office or the States that you deal with that would determine whether a property owner has become a high risk property owner because his properties may have burned down several times?

Do you have any kind of statistical analysis or cross-reference?

Ms. JIMENEZ. No, sir, we don't have any such information.

Senator NUNN. Do you believe that that kind of information can be kept without jeopardizing the intent of the FAIR plans?

Ms. JIMENEZ. There is in Chicago, for instance, the metropolitan loss bureau, which handles not only FAIR plans, but voluntary market business, is keeping information similar to what you just described and have put out probably the most useful information on the arson problem in the whole country.

They do include that sort of information as to whether the property owner has suffered previous fires, whether the property owner may have owned the other properties that were subject to fire.

So, yes, I think it is an ideal situation. I am not sure that our agency is the proper one to maintain those records.

Senator NUNN. I am not either. I just wondered whether you feel that might violate the right of privacy of the people you are attempting to serve or whether you feel it might violate the purpose of the Congress in setting up your agency.

Ms. JIMENEZ. I take a very hardnosed view of the FAIR plans. I don't believe that the FAIR plans should have to insure properties that are in disrepair, or where the owner has been convicted of arson previously, or where there perhaps may be some other circumstances which indicate that the property would be a very high risk.

Senator NUNN. So you believe that if that information were kept and made available in all jurisdictions, that you do not—or your initial impression is that you don't think that would violate the purpose necessarily of the plan as long as that information was used judiciously.

Ms. JIMENEZ. If it was used judiciously. Of course we have problems with the Federal Privacy Act. We are constantly trying to walk a line between protecting personal rights and at the same time protecting the rights of the public.

So we need to be aware of those requirements at the same time as we try to protect the public at large. These are the problems that I have with an all-out attack on the arson problem, because 95 percent of the people in the FAIR plans don't cause losses. They don't have any losses.

A lot of these people have very fine properties. They have been redlined for one reason or another and so I would hate to see these people further prejudiced.

Senator NUNN. I agree.

Ms. JIMENEZ. This is the caution that I have in addressing the problem.

Senator NUNN. Thank you.

Ms. JIMENEZ. The Federal Insurance Administration is called upon to balance the arson for profit problem on the one hand and the need for 1 million families and businesses, currently insured through FAIR plans, for essential insurance on the other. Just as crime statistics and reports emphasize not the vast numbers of law abiding citizens but rather the few who violate their obligations to society's law, fire and arson statistics and reports focus little attention on the 95 percent of policyholders in the various FAIR plans who have no losses whatsoever, much less arson losses and even fewer arson for profit losses. Given the disadvantages inherent in the coverages afforded by the FAIR plans, this 95 percent of policyholders represents

those citizens most in need of the coverage afforded by the FAIR plan and those who would suffer the most were we to severely curtail availability without considering their demonstrated insurance needs.

I am aware from the subcommittee's letter of August 7, 1978, that the major concern of your subcommittee is to make certain the properties are not overinsured and that properties which present an unreasonable risk are not insured.

This is certainly an objective with which my office can agree and one to which I will continue to press, but the solution to this question is not easy. The same measure which serves as a disincentive to arson profiteers, can also prevent homeowners from being able to rebuild their homes after a fire.

In this regard, I am working with the National Association of Insurance Commissioners on development of a new policy form which would limit cash payments after a loss to market value—and thus be a disincentive to arson for profit—unless a building is reconstructed, at the same location, in which case, the policy would pay for replacement of the structure up to a previously agreed dollar amount—to be an incentive to keeping our cities healthy.

However, this solution to the overinsurance problem is not just a FAIR plan solution, and is one which can be effected only through State action. We wrote to the executive committee of the NAIC on July 12, 1978, and met with them as well to follow up on my discussions with the commissioners at their June meeting with respect to this subject.

The GAO report also quoted industry officials as saying that FAIR plans are not helping revitalize urban core areas because insurance proceeds are often not being used to make repairs to burned buildings, thus causing the neighborhood to deteriorate.

While this observation was made in the context of slum landlords who deliberately walk away with their insurance proceeds, the same result will occur if homeowners receive insurance proceeds determined on the basis of a valuation formula which provides an insurance payment which is not adequate to make the building once again habitable. That is what our work with the NAIC is all about.

We must recognize that we are faced with the interaction of many conflicting policies in this complex area. Our problem is to minimize this aspect in all markets. Moreover, we must also recognize that arson for profit is only one portion of the total arson picture. This is a most important point. Most property owners whose properties suffer arson are in fact that victims of arson rather than the perpetrators and the GAO report quoted at least eight categories of arson, only one of which was arson for profit. In fact, a 1977 report on arson by the Justice Department entitled "Arson and Arson Investigation" found that only 5 percent of arson incidence is due to fraud.

Senator NUNN. One word of caution. We have had an awful lot of testimony that indicates that there are tremendous variations in the degree to which local fire departments and even State insurance commissioners report arson and about the fact that because the Justice Department accumulates a report based on these kinds of statistics doesn't necessarily mean that the Justice Department is correct in their analysis. We had testimony just yesterday from the chief of

police of San Jose, Calif. He and the chief arson investigator from Houston, Tex., basically testified that there is tremendous variation in the capabilities of local fire departments to even detect arson.

So we have a lot of testimony indicating we have only scratched the surface of an iceberg, really, when you look at what may be happening in arson.

Ms. JIMENEZ. I appreciate the fact and, further, the skilled arsonist doesn't even use fire accelerators. So it is very hard to determine whether arson has in fact occurred. I agree.

Senator NUNN. We all have to be very skeptical of arson statistics now. I really do believe that. I don't know whether some statistics may be absolutely correct and some may not, but I don't believe we have a very reliable source of information at the Federal level on arson.

Ms. JIMENEZ. I think you are quite right. I think we also ought to be a little bit skeptical about some of the higher figures for a number of reasons. I had one insurance company representative tell me they place in the category of suspicious fires a fire occurring in a dwelling where the man and woman are not married to each other.

That to me seems a little bit absurd. But I don't think that that should automatically be assumed to be a suspicious fire in those circumstances.

Senator NUNN. I don't quite understand the connection unless someone explains it to me.

Ms. JIMENEZ. The point I was making was that FAIR plans must continue to offer coverage to potential victims of arson—they are victims of society's breakdown and should not be doubly victimized by being asked to shoulder that full burden alone.

My office has already acted to address the issue cited in your letter by making certain that properties which present unreasonable risks are not insured. This action was begun as early as 1970.

I offer for your consideration the underwriting guides of the New York and Missouri FAIR plans which show the great flexibility these underwriters have, with State oversight.

Despite statements to the contrary, Federal regulations do not require FAIR plans to insure vacant buildings, properties in poor physical condition, properties with unrepaired fire damage, properties with serious safety hazards or properties with an unsatisfactory loss history.

I might add if the FAIR plans are proceeding to do this, they are neglecting their job. In fact, since the inception of the plans, over 227,000 out of about 2.9 million applications have been declined for various causes.

In 1968, Hughes panel report, which recommended establishment of the FAIR plans, said:

\* \* \* The responsible owner who cares for his property must not be penalized because of his neighborhood. He must not be denied insurance for reasons beyond his control. To do so not only treats him unfairly, but encourages the spread of urban blight.

It is important to recognize the distinction between this property and uninsurable property that itself is in hazardous condition and cannot or will not be repaired by the owner. Uninsurable property of this latter sort should not be insured, but should, instead, be the object of renewal programs designed to revitalize blighted areas.

The only grand jury to investigate this problem, in St. Louis, said:

We have been led to believe that pressures from Washington force insurers writing coverage under the FAIR plan to accept many risks contrary to their best judgment. Our understanding is directly contrary to this. Nowhere did we find that the Federal directives or guidelines required insurers to assume questionable, let alone ridiculous, risks.

In my letter to the NAIC Executive Committee, I referred to the desirability of FAIR plan underwriting flexibility similar to that used by the New York and Missouri FAIR plans. I plan to personally bring to the attention of the boards of each of the FAIR plans the same information I have imparted to the Commissioners and if any confusion or doubts exist on this matter, my actions will eliminate this needless controversy.

As part of this underwriting flexibility question, the GAO has recommended that FAIR plans obtain and consider information concerning the character of property owners. I should call your attention to a statement made by the Privacy Protection Study Commission in a report of February 1978 on this matter:

Insurers have historically enjoyed considerable latitude in determining what information is and is not necessary to a given decision about an individual. Underwriting is far from an exact science. Moreover, industry spokesmen argue that the cost of collecting information is a powerful enough incentive to collect only relevant information. Yet others claim that insurance institutions collect a great deal of information whose relevance is questionable. Indeed, the industry has been criticized for not taking advantage of its actuarial and computer expertise to refine its relevance criteria.

To a large extent, the relevance-propriety issue in insurance stems from some insurers' belief that they should insure only those of "high moral character" and should shun those whose mode of living differs from what society considers normal. In a society as diverse as ours, however, determining what "society considers normal" is no easy task, and relying on the independent judgment of underwriters to make this determination has led to considerable difficulties.

From an "insurance standpoint," we are as much interested in malicious arson as in arson for profit. The problem is that one cannot approach arson solely from an insurance standpoint anymore than we can allow declinations because of environmental hazard.

The city of Seattle, Wash., reduced fire losses from 1974 to 1977 by 46 percent, reduced arson incidents by 16 percent and increased arrests by almost 200 percent, all through a program of fire department, police department, and insurance industry cooperation. It is through initiatives like this that the problem can be most effectively addressed.

I am glad to be able to tell you what my office is doing to meet the goals of insurance availability maximization and arson for profit minimization. We are in a position to do several things in cooperation with State and industry officials.

As my office prepares for its reorganization into a hazard mitigation agency, along with the Fire Prevention and Control Administration, I find in your inquiries a challenge and a call for leadership in working with the States and insurers in addressing the insurance aspects of arson which I accept.

I will welcome your questions and suggestions at this time.

[At this point Senator Nunn withdrew from the hearing room.]

Senator PERCY. Thank you very much indeed. I want to tell you how sorry I was that I was not here to hear the opening of your testi-

mony but I have heard it carefully. I would like to first, if you could, help me with the pronunciation of your name. Jimenez?

Ms. JIMENEZ. That is all right. Jimenez. That is OK. [Laughter]  
Like Jose Jimenez.

#### OPENING STATEMENT OF SENATOR PERCY

Senator PERCY. I would like to first just put into the record now the opening statement that I would have made, had I been here. It is a brief one. It just simply reiterates that for 3 days the subcommittee has listened to testimony highlighting the appalling facts of arson for profit.

Actual torches and conspirators say it is a piece of cake to pull off dozens of arsons without getting caught. Experienced insurance employees complain that many agents and adjusters willingly help defraud insurance companies and that the companies themselves add fuel to the fire through careless underwriting and claims inspection practices.

Some State laws actually prevent insurance companies from exercising their utmost diligence in tracking down arsonists. Other experts bear out complaints that law enforcement is badly outsmarted by prolific and ingenious arson profiteers. The human, financial, and property costs to society are simply staggering, though we have learned through testimony that it is extraordinary to estimate through statistics what the actual losses are.

The picture painted thus far by our witnesses is bleak. Arson for profit has indeed become a national scourge, laying waste our visions of urban recovery.

Through it all, the Federal Government has been oddly complacent. Eyebrows are raised, but little is done. This morning we will hear from spokesmen of the major Federal agencies with key roles to play in any nationwide push to deal with arson for profit. Because such an effort is clearly needed, we will want to know what actions these agencies have taken to enlist themselves in an aggressive anti-arson campaign.

Unless these agencies step up their antiarson efforts, we will be left to stand by and watch as our cities go up in smoke.

I was pleased to see that the opening statement did concur with some of the conclusions that we have already reached and the hope that we will find areas of agreement as we go along with our other witnesses, because certainly we wish to work hand-in-hand with the Federal agencies that hold the responsibility here and we were very pleased indeed with the response of the FBI the other day.

Senator Glenn, I wonder if you would want to make an opening statement now?

#### OPENING STATEMENT OF SENATOR GLENN

Senator GLENN. I have a short opening statement.

Today, we conclude this series of hearings on arson for profit. I've found them to be an excellent followup to what we began last year. Again, I want to compliment Senators Nunn and Percy for their efforts.

As I said yesterday, these hearing are definitely having an effect. Yesterday morning, yet another Ohio constituent visited my office and vividly described an arson racketeering practice that is going on in Ohio's cities. So our citizens are increasingly becoming aware, and are coming forth—a far cry from when I began this effort last year with S. 1882 and was greeted by a wall of silence and disinterest.

This morning, we focus on the Washington effort which has been roundly and justifiably criticized for its lack of attention toward the arson epidemic. Obviously, I have particular interest in the FBI's efforts, particularly in the crime statistics area. I intend to question the FBI representative quite closely on this. I also have more than a passing interest in the activities of the Postal Service in the arson area since I'm chairman of our postal subcommittee. I've also been involved legislatively with both LEAA and HUD in their arson-related activities.

So, I'm anxious to begin today's session, Mr. Chairman, and again I compliment the chairman and the ranking minority member for their truly significant efforts.

Senator PERCY. I will begin the questioning.

Senator Glenn, I would be happy to yield about every 10 minutes.

Senator GLENN. That would be fine.

Senator PERCY. You quoted the Chicago Metropolitan Loss Bureau estimates that less than one-half of 1 percent of the Illinois fire insurance claims can be attributed to arson for profit under the FAIR plan.

It sounds like a very low figure, yet we know many arsons for profit are not reported as such, and we also know from testimony we have heard that many arsons are never reported.

Checking these figures, staff discovered evidence supporting the conclusion, came really to an opposite conclusion from the one that you have presented this morning. In the first 8 months of 1977, according to the Chicago Metropolitan Loss Bureau the FAIR plan reported 143 Chicago arson fires worth \$3 billion.

During the same period the private market reported only 79 arsons worth \$1.1 billion in claims. Thus the FAIR plan recorded twice as many arsons and nearly three times as much in claims as the voluntary market.

In the face of this, would you still maintain arson is not a serious and expensive problem in the Illinois FAIR plan?

Ms. JIMENEZ. No, I never said it was not a serious problem. I was just saying it was not as bad as it is in the voluntary market.

Senator PERCY. Do you in any way quarrel with the figures reported by the Chicago Metropolitan Loss Bureau.

Ms. JIMENEZ. Senator, I am somewhat confused as to whether you are talking about incendiary fires or what they define as suspicious fires.

There seems to be a wide difference between incendiary fires, which can include arson for revenge, and so forth. Those figures are certainly higher. But I am looking at an exhibit.

Senator PERCY. These are clearly labeled as arson fires.

Ms. JIMENEZ. Yes; arson fires. I agree with you. Part of the problem is that FAIR plan risks are subject to environmental hazards and

so they are subject to things like arson for revenge or arson by mischief because of the area in which they are located.

Arson fires are not the same as arson for profit fires, which would include somebody who went out and torched this building or paid somebody to do that. The figures I have before me here indicate that the voluntary market figures are somewhat higher.

[At this point Senator Javits entered the hearing room.]

Ms. JIMENEZ. I am not quarreling. I think it is a serious problem and I plan to do whatever I can within my power to address it. I think it is silly to quibble over numbers because, as we both know, they are not very reliable.

Senator PERCY. But you do concur that is a serious problem?

Ms. JIMENEZ. Yes, sir, I certainly do.

Senator PERCY. When I quote the Illinois Legislative Investigative Commission in its report on arson, I would like your comment on this quotation. "Correlation between the FAIR plan and properties that are being torched is too obvious and recurrent to ignore."

Do you agree or disagree with that conclusion they have come to?

Ms. JIMENEZ. Again, I go back to the question that we must differentiate between arson for profit and arson for other reasons.

The environmental hazard which many of these risks are exposed to include drug addicts, smoking and leaving a cigarette that sets a building on fire, mischief, kids getting into trouble, or tenants who are aggravated and torch their building. So that figure certainly needs to be adjusted.

The arson-for-profit figure needs to be adjusted for these other figures. I am not quarreling that arson is a problem across the insurance market.

Senator PERCY. Ms. Jimenez, in a letter dated August 29, to Chairman Ribicoff of the Governmental Affairs Committee, HUD Secretary Patricia Harris said, "FAIR plans have a reputation of being tough on claims."

Without objection, I will introduce that letter into the record at this point.

[The documents referred to were marked "Exhibit Nos. 11 and 12" for reference and follow:]

## EXHIBIT 11



THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D. C. 20410

August 29, 1978

Honorable Charles H. Percy  
United States Senate  
Washington, D. C. 20510

Dear Senator Percy:

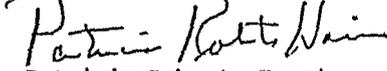
This is in response to your letter of June 23, 1978 pertaining to the letter from Gloria M. Jimenez, Federal Insurance Administrator, to Comptroller General Elmer B. Staats regarding the General Accounting Office's Report on the administration of the FAIR Plan.

You stated in your letter that Administrator Jimenez missed the thrust of the GAO criticism. Perhaps in the effort to point out our concerns with the Report and the limitations of FIA authority, adequate stress was not placed on our desire to play a constructive role in combatting arson for profit in the FAIR Plans. While it is our belief that, on balance, the FAIR Plans are operating effectively in performing their Congressionally-mandated function, we do recognize that there is room for improvement. It is our intention to do all in our power to eliminate any inadvertent incentives for fraud that exist in the Plans.

I am enclosing the Department's comments on the GAO Report which have been sent to the Chairman of the House Government Operations Committee and the Chairman of the Senate Governmental Affairs Committee. I direct your attention to two memoranda sent by Administrator Jimenez to the Executive Committee of the National Association of Insurance Commissioners. In these memoranda, Ms. Jimenez lists FAIR Plan problem areas and expresses her desire to work with NAIC in developing solutions. Among the issues listed, you will find those mentioned in the GAO Report. In addition to this effort, we will work to improve communication with the States and the insurance industry, and we will continue to examine our regulations and to make improvements wherever possible.

Alerted by the level of your concern on this issue, I have instructed the FIA to continue its efforts with increased attention to those administrative procedures suggested by the GAO. If the FIA can be of any assistance to you or your staff, please feel free to call upon them.

Sincerely yours,

A handwritten signature in cursive script that reads "Patricia Roberts Harris". The signature is written in dark ink and is positioned above the printed name.

Patricia Roberts Harris

Enclosure -

## ENCLOSURE - Federal Insurance Administration Memorandum

## ATTACHMENTS TO ENCLOSURE:

1. Memoranda from Federal Insurance Administration to NAIC Executive Committee
2. FIA Instructions on filing of Riot Claims under Standard Reinsurance Contract
3. HUD News Release (March 13, 1972) and letter from Federal Insurance Administrator to Chief Executive Officer of each HUD Reinsurance Policyholder
4. Benjamin B. and Mildred T. Boyes vs. Joint Insurance Association
5. Letter of October 31, 1977, from J. Robert Hunter, Deputy Federal Insurance Administrator, to Mr. Eugene L. LeComte, General Manager, Massachusetts FAIR Plan and response



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
 FEDERAL INSURANCE ADMINISTRATION  
 WASHINGTON, D. C. 20410

JUL 12 1978

IN REPLY REFER TO:

TO: NAIC Executive Committee

SUBJECT: State FAIR Plans

While State FAIR Plans are in substantial compliance with FIA Regulations, I am of the opinion that improvement is needed to make the plans effective in the revitalization of urban areas and to meet the needs of insurance consumers.

I have listed a series of objectives which, in FIA's view, would constitute significant steps toward such improvement. FIA is prepared to provide both assistance and cooperation with State insurance authorities to accomplish any of these or other worthwhile objectives.

1. Experimental programs to train inner city producers to serve the inner city to both expand the voluntary market and service potential FAIR Plan policyholders. This will require a cooperative effort by insurers and agents' associations in sponsoring prospective agents training programs and State insurance department overview and consideration in the agents licensing process. This program could also serve as a vehicle to make Federal Crime Insurance more readily available.
2. Revision of the fire policy sold through the FAIR Plans (and voluntary market) so that the indemnification agreement will provide the appropriate incentive to repair and/or rebuild fire-damaged properties at the same site to avoid a growing vacancy problem because of inadequate indemnification to repair fire-damaged buildings.
3. Expansion of the FAIR Plan to provide additional coverages similar to package policies provided in the voluntary market, such as homeowners, and special multi-peril policies.
4. Notification to FIA of revisions of FAIR Plan operation--Despite the fact that this is an FIA regulation, FIA often becomes aware of such revisions only at the time of an examination or an inquiry directed to our office.

5. Consideration by the insurance departments of the desirability of FAIR Plan underwriting flexibility similar to that used by the New York and Missouri FAIR Plans under insurance department supervision. Employing this flexibility required both of these departments to assume the responsibility of systematic monitoring to avoid overly harsh treatment of insureds by FAIR Plan underwriters.
6. An experimental program of reinspection of surcharged risks with the objective of creating the appropriate incentives to improve the risks. Ohio has such a program which could be evaluated by other insurance departments.
7. State insurance department participation in FIA FAIR Plan examination, with possibly one liaison in each department to deal with all FAIR Plan issues. Kentucky is presently the only State having such a position in the person of Mr. Charles Zeidler, Assistant to the Commissioner.
8. Maintenance by insurance departments of FAIR Plan rates at levels approximating the standard voluntary market.
9. Reevaluation of the mortgagee clause in light of comments made to GAO investigators by insurance industry officials that the clause constitutes a disincentive to do anything about arson because: "Even if property owners can be proven guilty of committing arson, the insurance companies must still pay mortgages on the property."

Sincerely,

Gloria M. Jimenez  
Federal Insurance Administrator



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
 FEDERAL INSURANCE ADMINISTRATION  
 WASHINGTON, D. C. 20410

JUL 12 1978

IN REPLY REFER TO:

TO: NAIC Executive Committee

SUBJECT: Suggested Areas of Joint FIA-NAIC Study

1. Identifying factors having a significant influence on possible insurance redlining and/or FAIR Plan distribution, e.g., age of buildings, ethnic composition, median income, occurrence of incendiary fires. Calculating correlation coefficients.
2. Recognizing emerging patterns of possible redlining by observing the distribution of new policies.
3. Determining FAIR Plan loss ratios, loss frequencies, and damage ratios by neighborhood and census tract.
4. Estimating the magnitude of the arson problem and/or exposure to social and environmental hazards. For this purpose, the following variables would be useful: (1) percentage of suspicious fires insured under the FAIR Plan; (2) average time interval from inception of policy to occurrence of claim (waiting time: (a) for all policies; (b) for suspicious fires); (3) for claims with large damage ratios.
5. An analysis of over-insurance. The policy of some FAIR Plans has been to pay claims on the basis of current market value rather than replacement cost. In many cases, however, policyholders have purchased insurance on the basis of either replacement cost or purchase price. A determination of the number of over-insured claims would allow inferences to be made on the proportion of policies in this category and the magnitude of excess premium payments. Through the use of FHA mortgage tapes, inferences may likewise be made on the percentage of mortgages which as a result of this claim payment policy, are in effect under-insured.
6. Geographical distribution of structural fires - suspicious, incendiary, or otherwise, in those cities where data is available. Percentages of buildings in which fires occurred from January - March 1978, broken down by neighborhood. Percentages of incendiary fires insured under the FAIR Plan. Maps and tabular expositions. Proportion of fires in structures with building violations, tax arrearages.

7. Loss ratios and claims frequencies, broken down by neighborhood and census tracts for owner occupied and tenant occupied buildings.
8. Comparison of loss frequencies and damage ratios for fires occurring within the first six months of inception of policy with those occurring after 6 months. Identification of neighborhoods with the highest proportion of claims.
9. Mean waiting time from inception of policy to occurrence of first claims, loss ratios and average damage ratios.
  - a) for all policies (broken down by neighborhood),
  - b) for policies with at least one claim (broken down by neighborhood),
  - c) for claims with damage ratios greater than 50%,
  - d) for owner occupied dwellings,
  - e) for fires regarded by fire departments as incendiary or suspicious,
  - f) for over-insured claims,
  - g) for claims with private mortgagees,
  - h) for claims with building violations, tax arrearages.
10. Proportion of claimants suffering total loss and who were over-insured (i.e., where payments made on the basis of current market value are less than insurance coverage). Proportion of claims with mortgages suffering total losses which were in effect underinsured, i.e., where insurance coverage exceeds the value of the mortgage but where the payment is less than the value of the mortgage (due in part to the policy of paying claims on the basis of current market value rather than replacement cost).
11. Incidence of fires occurring during 30 day period after cancellation notices were served (if this information is available on tape). Average damage ratio.
12. Obtaining crime insurance loss ratios broken down by neighborhood, police precinct, and census tract. Correlating loss ratios with crime statistics. These results may then be used to indicate areas with the greatest need for intensified policy promotion and law enforcement efforts.
13. Incidence of robbery, burglary and arson reported by police precinct (if feasible, further broken down by sector and post). These statistics may be aggregated on a neighborhood basis, if police sectors and posts are manually sorted in this fashion. This would allow correlation of Federal Crime Insurance and FAIR Plan losses with DCP neighborhood data.

Sincerely,

Gloria M. Jimenez  
Federal Insurance Administrator



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
FEDERAL INSURANCE ADMINISTRATION  
WASHINGTON, D. C. 20410

IN REPLY REFER TO:

August 1977

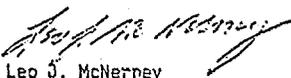
ANNOUNCEMENT

At this time, we are providing FAIR Plan Managers and members of the PIPSO Claims Committee with our most recent information concerning the filing of Riot and Civil Disorder losses under the Standard Reinsurance Contract.

Enclosed are these documents:

1. Notice to FAIR Plans, which covers the technique of submittals.
2. A listing of the material required for the verification of claims.
3. A Claims Guideline, containing an explanation of the Contract definitions regarding claims.
4. A copy of the 1977-1978 Contract.

This material should bring your Riot Claim folders up to date. We trust the information will prove helpful.

  
Leo J. McNerney  
Claims Manager



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
FEDERAL INSURANCE ADMINISTRATION  
WASHINGTON, D. C. 20410

IN REPLY REFER TO:

August 1977

NOTICE TO FAIR PLANS

The Federal Insurance Administration has established a procedure to guide the FAIR Plans of the various States concerning the presentation of riot and civil disorder losses to this office. The plan was designed primarily for the purpose of eliminating unnecessary duplication of effort by individual pool members holding Standard Reinsurance Contracts. Accordingly, the FAIR Plans will submit directly to this office those files upon which a determination is being requested regarding eligibility for reinsurance under the Standard Reinsurance Contract. These submittals will be made by the FAIR Plans upon behalf of all their reinsured member companies.

To assist the FAIR Plans in this function, we are attaching an outline of the nature and extent of the information and documentation required for the verification of riot and civil disorder losses under the terms of the 1977-1978 Standard Reinsurance Contract. This material should be included in the loss submittal.

When the determination has been made by this office concerning the eligibility of the submitted losses, the FAIR Plan will be advised accordingly, and can in turn notify the member companies. An FIA number will be ascribed by this office to each loss for identification purposes.

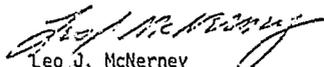
A reinsured member's share of approved FAIR Plan losses may be included in the aggregate of losses contained in a reinsurance claim submitted to this office for payment under the terms of the Standard Reinsurance Contract. The dollar amount of such share will be determined by applying the member's participation percentage in the Plan to the amount of the approved losses. This office will review in detail all computations and will make any necessary corrections.

Please recall that payment of verified riot and civil disorder reinsurance claims requires that a company have "excess aggregate losses" in a given State where reinsurance is available. Basically stated, excess loss is that part which exceeds the company's retention in a given jurisdiction. Experience has demonstrated that a company's share of approved FAIR Plan losses is usually insufficient by itself to pierce the retention and establish an excess aggregate loss. However, shares of approved FAIR Plan losses do comprise part of the company's aggregate within a given Contract year.

For reference purposes, a copy of the 1977-1978 Standard Reinsurance Contract is enclosed.

This office stands ready at all times to lend cooperation and assistance to the Plans and to the Contract holders on any associated problem.

Sincerely,

  
Leo J. McNerney  
Claims Manager

Attachments

August 1977

Standard Reinsurance ContractINFORMATION NECESSARY IN THE VERIFICATION OF LOSSES UNDER  
FEDERAL RIOT REINSURANCE PROGRAM

1. General: Please supply the necessary information in response to all of the following items.
  - a. Name and address of approved pool.
  - b. Writing company, policy number and type of coverage.
  - c. Pool loss identification number.
  - d. Date and time of loss.
  - e. Category of loss as defined in the Standard Reinsurance Contract.
  - f. Address of insured property.
  - g. Name and address of insured owner.
  - h. Name and address of adjusting organization and name of adjuster.
  - i. Amount of insured loss.
  - j. Date of payment to insured.
  - k. Information as to subrogation.
  - l. Narrative description of nature and extent of loss, including explanation of why it is considered to have resulted from riot or civil disorder.
  
2. Computation of Loss for Reinsurance Purposes:
  - a. Amount of loss settlement (actual).
  - b. Plus allowable expense as defined in the Standard Reinsurance Contract.
  - c. Total amount of loss for reinsurance purposes.

3. Documentation: Please note that evidence must be submitted in sufficient quality and detail to establish each of the three elements listed below; namely --
- a. That a riot or civil disorder within the meaning of the Standard Reinsurance Contract actually or probably occurred at the time and place specified. Typical of the evidence valuable in establishing this proof are:
    1. Newspaper accounts and photographs (not necessarily limited to the date of the loss, but covering prior dates, to furnish evidence of activity, tension, etc.).
    2. Police Reports.
    3. Fire Reports.
    4. Signed Statements of Witnesses.
    5. Professional investigation reports.
  - b. That the loss in question was actually or probably caused as a result of such riot or civil disorder. Generally, the same types of information as above, as well as adjustment reports, will establish this proof. An independent, intervening cause would destroy this element.
  - c. That the actual extent of the loss was of the nature and amount specified. Generally, this element is best established by:
    1. Copies of the adjuster's reports.
    2. Statement of Loss.
    3. Proof of Loss.
    4. Contractor's estimates.
    5. Settlement draft copies.

August 1977

## REINSURANCE CLAIMS GUIDELINES

Under the Program, a reinsurance claim is payable if the total evidence adduced in its support will sustain a finding that a riot or civil disorder, as defined in the Standard Reinsurance Contract, was the cause of the loss.

The Contract, at Section XVII (8) provides these definitions:

(8) "Loss resulting from riot" means:

loss of or damage to property actually and immediately resulting from an overt and tumultuous disturbance of the public peace by three or more persons mutually assisting one another, or otherwise acting in designed concert, in the execution of a common purpose through the unlawful use of force and violence.

"Loss resulting from civil disorder" means:

- (A) Loss of or damage to property actually and immediately resulting from any pattern of unlawful incidents taking place within close proximity both as to time and place and involving damage to property intentionally caused by persons apparently having the primary motivation of disturbing the public peace through civil disruption, civil disobedience, or civil protest; provided that at least two of such related incidents result in property damage in excess of \$1,000 each; or
- (B) Loss of or damage to property actually and immediately resulting from any occurrence involving property damage in excess of \$2,000 caused by persons whose unlawful conduct in so causing the occurrence manifests their primary purpose of disturbing the public peace through civil disruption, civil disobedience, or civil protest.

The riot definition basically tracks the common law definition. It is specified that the outbreak must be clamorous and violent in nature, rather than quiet and stealthy. At least three persons must be involved, and there must be evidence of the concerted intent of the perpetrators to mutually assist one another. Their acts must demonstrate an unlawful use of force, which resulted in property damage.

The possible causes of riots are not specified in the Contract definition; however, the cause could understandably arise from conflicts which were by nature racial, political, economic, or religious. The element of "terror to the populace," found in the common law, has been omitted from the Contract definition of riot, in an effort to prevent restriction of coverage, as a true riot, from the insurance standpoint, could happen without the general populace being terrorized. For example, it is acknowledged that full-scale riots can arise from conflicts following sports events or popular music presentations.

Following the intent of Congress, the Contract definition of riot was drawn to cover significant occurrences of general civil disorder and wholesale destruction of property, such as took place, some years ago, in Watts, Newark, and Detroit. However, claims arising from cases involving less participation, and less damage than those major upheavals can qualify for coverage if the evidence presented meets the Contract definition. It can be observed that turmoil during strikes or other manifestations of labor disputes can possibly generate into full-scale riots, with coverage applying under the Contract, provided all the elements of the riot definition are fulfilled.

The (A) definition of civil disorder, regarding acts falling into a pattern, follows the House and Senate Committee Reports which broadened reinsurance coverage from the original catastrophic cover intended as follows:

"It has been pointed out that there has recently been a pattern of losses resulting from intentionally caused fire or other property damage which may or may not be connected in time or place to riots or group activity, but which could be determined to be a form of civil disorder. It is the view of the Committee that losses of this nature might be considered by the Secretary when he issues regulations delineating the precise scope of 'losses resulting from riots or civil disorders.' Cf. House Report No. 1585, Committee on Banking and Currency, 90th Congress, 2d. Session, p.80; Senate Report No. 1123, p. 91."

Here, the evidence must demonstrate that the perpetrators obviously had the motivation of civil disruption, civil disobedience, or civil protest. Their acts must be shown to have been directed at society as a whole, or against a major segment of society. The public nature of the acts must be established, and show that the object of such violence was a neighborhood, a community, or the general populace. Acts of private vandalism or theft, directed at a single person, firm, or organization, for instance, would thus not qualify for coverage under this definition.

Under these considerations, violence arising during labor disputes, such as firebombing and vandalism, when directed at the employing unit, yet not constituting a common law riot, would thus be limited in scope and coverage would therefore not apply. The traditional violence historically associated with labor disputes is not the type of occurrence which the Congress contemplated when enacting the Urban Property Protection and Reinsurance Act of 1968, nor when adopting the Congressional Reports above quoted. This type of crime is considered in the same light as ordinary theft, arson, or vandalism.

The (B) definition follows also the Congressional intent to broaden coverage, and is designed to cover "single occurrence" cases. Here the file evidence must clearly manifest the primary purpose of civil disruption, civil disobedience or civil protest. This section demands a higher quality of proof to validate a claim than does the (A) definition. The facts must show not merely the apparent motive of the perpetrators, but must clearly establish their motivation.

To recapitulate, the Contract definitions were drawn to meet the Congressional intent; first to cover the large scale riots, then to cover acts of civil disorder, both in pattern circumstances, and in cases of single occurrences. The burden of proof is upon the reinsured companies.

Experience has demonstrated that the burden of proof is lightest in the full-scale riot situations, and becomes progressively heavier as the scope of the occurrence is narrowed.

Large-scale riots covering considerable areas and involving many persons are usually well documented by newspaper accounts and photographs. Experience has shown that several companies are normally involved in these situations, and the accumulation of data is accomplished in a prompt fashion. This Department will not require duplicate evidence from all filing companies; thus, when a sufficient body of evidence is at hand, no further background information will be necessary.

The proof required under the (A) definition of civil disorder is more exacting than the proof under the riot definition. If a number of incidents, proximate in location and time, can be shown to have similar antisocial motivation, the emerging pattern becomes indicative of the apparent motive. However, as the pattern situation presents a narrower field of consideration than the full riot condition, it is obvious that the evidence required to establish the apparent motive of the perpetrators must be drawn from more confined circumstances.

Under the (B) definition, validation requires that the primary purpose of the perpetrators be clearly manifested by the facts. No assumption of the motive will be made by this Department. We will look to the evidence presented to establish the case.

We do not require the type and degree of proof that a court would demand. As an administrative body, this Department in its consideration of claims, will weigh all relevant direct and circumstantial evidence. The confirmation of the data, including reasonable inferences, with respect to each element of the definition, can be sufficient to establish the validity of a claim. It must be noted, however, that we will give no credence to speculation or conjecture by adjusters or examiners regarding motive or causation. These elements must be drawn from the facts of the presented case.

*Leo G. McNerney*  
Leo G. McNerney  
Claims Manager



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
 FEDERAL INSURANCE ADMINISTRATION  
 WASHINGTON, D. C. 20410

IN REPLY REFER TO:  
 UPI-RC

Gentlemen:

Pursuant and subject to the Urban Property and Reinsurance Act of 1968, as amended, enclosed is a copy of the Notice of Offer to provide reinsurance against riot or civil disorders for the contract year commencing May 1, 1977, as published in the Federal Register. This Notice contains the offer of reinsurance, the method of acceptance of the offer, and the terms and conditions of the Standard Reinsurance Contract (1977-78).

Acceptances of this offer should be addressed to:

Mr. J. Robert Hunter  
 Acting Federal Insurance Administrator  
 Federal Insurance Administration  
 Department of Housing and Urban Development  
 451 Seventh Street, S.W.  
 Washington, D. C. 20410

Companies are eligible for reinsurance only in States where they participate in statewide FAIR Plans on a risk-bearing basis, as certified by the State insurance commissioner. The States and jurisdictions having acceptable FAIR Plans and eligible for inclusion in this Standard Reinsurance Contract are as follows:

California	Kentucky	North Carolina
Connecticut	Maryland	Ohio
Delaware	Massachusetts	Oregon
District of Columbia	Michigan	Pennsylvania
Georgia	Minnesota	Rhode Island
Illinois	Missouri	Virginia
Indiana	New Jersey	Washington
Iowa	New Mexico	Wisconsin
Kansas	New York	Puerto Rico

Payment of the advance reinsurance premium is due without notice within 30 days of the effective date of coverage. This advance reinsurance premium is to be estimated by the company in accordance with Section II of the contract. The basic premium rate for computation of the advance reinsurance premium remains at \$0.02 per \$100 of direct premiums earned on lines reinsured.

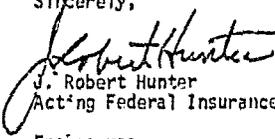
The advance premium should be made payable to the Department of Housing and Urban Development and mailed together with a transmittal letter in duplicate (indicating the direct premiums earned by State which are used to compute the advance payment), in the enclosed envelope to:

Department of Housing and Urban Development  
Program Accounting Division  
Bicentennial Building  
Washington, D. C. 20410

It should be noted that, as stated in the contract, the program authority to continue reinsurance beyond April 30, 1977, requires the enactment of Federal legislation currently under consideration by the Congress. Therefore the validity of this offer is conditioned upon the enactment of the enabling legislation. It is our expectation that the legislation will be enacted but, if it should not be, any advance premiums received will be refunded.

For further information or clarification, you may call the office of the Federal Insurance Administrator in Washington, D. C., on telephone number (202) 755-6555.

Sincerely,

  
J. Robert Hunter  
Acting Federal Insurance Administrator

Enclosures



# HUD NEWS

U.S. DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT  
WASHINGTON D.C. 20410

HUD-No. 72-152  
Phone (202) 755-5284  
(Dan Day)

FOR IMMEDIATE RELEASE:  
Monday  
March 13, 1972

## FEDERAL ADMINISTRATOR URGES INDUSTRY ATTACK ON ARSON

Expressing concern over the mounting incidence of arson for profit, Federal Insurance Administrator George K. Bernstein today urged the insurance industry to use its existing underwriting authority to curb these illegal practices.

In a letter to the Chief Executive Officers of all insurers purchasing Federal riot reinsurance, Mr. Bernstein expressed hope that the arson problem would not be used by the industry "as an excuse for further underwriting restrictions not related to arson frauds."

The Federal Insurance Administration, a part of the U.S. Department of Housing and Urban Development, has long been critical of those insurance industry underwriting practices which arbitrarily deny coverage to insureds on the "whim of an underwriter," thereby forcing applicants for coverage into the FAIR Plans and other residual markets.

FAIR (Fair Access to Insurance Requirements) Plans are associations of insurance companies set up to make essential property insurance more widely available in inner-city and urban areas.

- more -

Mr. Bernstein cited the recent report of a St. Louis, Mo., Grand Jury which criticized the insurance industry for improperly claiming that Federal restrictions on denial of FAIR Plan coverage were impeding the industry in its fight against arsonists.

The Grand Jury, in rejecting the industry's attempt to shift responsibility for failure to cope with the arson problem to the Federal Government, was generally critical of the failure of the industry to adequately police the overall arson problem.

A copy of Mr. Bernstein's letter is attached.



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
 FEDERAL INSURANCE ADMINISTRATION  
 WASHINGTON, D. C. 20410

IN REPLY REFER TO:

TO THE CHIEF EXECUTIVE OFFICER OF EACH PROPERTY INSURER  
 HOLDING A HUD REINSURANCE CONTRACT

Arson for Profit

In recent months there has been considerable concern on the part of the public, this office, several Commissioners, and many in the insurance industry about the increasing incidence of arson related to property insurance, both in the voluntary market and in the FAIR Plans.

In order to encourage more effective coordination of various efforts to reverse this trend, our office called a December 14 meeting in Chicago of Federal, State, and local officials, and of industry representatives. Continuing efforts were pledged to stem the tide of arson for profit.

Unfortunately, certain insurance industry spokesmen have suggested that the Federal regulations applying to FAIR Plan operations, which seek to assure a broad and equitable availability of essential property insurance at reasonable rates in all areas, have contributed to the inability of the insurance industry to properly police the arson situation. Such a position is totally unsupported by the facts and is refuted by the express provisions of our existing regulations.

The following excerpt from the report of a recent St. Louis, Missouri, Grand Jury, which investigated the problem of arson for profit, gives a less-biased assessment of the facts. The Grand Jury addressed itself specifically to the claim by certain industry representatives that pressures from Washington forced insurers writing coverage under the FAIR Plan to accept many risks contrary to their best judgment, and it totally rejected all such assertions. Its findings were as follows:

"F. Federal Controls

"State laws set up the FAIR Plan operation and these laws are undergirded by the Federal legislation of 1968, implementation of which is under the jurisdiction of the Department of Housing and Urban Development.

"We have been led to believe that pressures from Washington force insurers writing coverage under the FAIR Plan to accept many risks contrary to their best judgment. Our understanding is directly contrary to this. Nowhere did we find that the Federal directives or guidelines required insurers to assume questionable, let alone ridiculous, risks. The plan established for the States included a list of ten provisions, one of which says in part, 'if the risk meets reasonable underwriting standards at the applicable premium rate', it shall be written. Additional latitude is given insurers under the Federal rule which states, 'plans may vary from state to state due to local conditions'. Taking local conditions here into consideration, it seems to us that the FAIR Plan should have eliminated some of the worst of their risks without any hesitation. The defense that the Federal regulations did not permit this was not supported in our investigation."

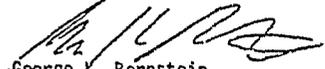
In addition to rejecting the industry's attempt to shift responsibility, the Grand Jury report was generally critical of the failure of the insurance industry to police the overall arson problem.

At the Chicago meeting there was a clear indication by both State officials and industry representatives that arson fraud is not a new problem and that it is probably just as prevalent outside the FAIR Plans as within it. Despite these observations, little has since been done either to organize or reinstate appropriate industry investigatory bodies, such as the American Insurance Association's former Fraud and Arson Bureau (discontinued in 1970), or to set up or update appropriate arson loss reference files either nationally or within individual States.

If it exercised the necessary initiative, the insurance industry already has adequate underwriting powers, and nothing in the Federal Insurance Administration's FAIR Plan regulations impinges upon its ability to apply the sound and proper underwriting standards needed to deter a high incidence of arson for profit. This underwriting freedom can be exercised without refusing to write insurable risks, and, of course, also exists with respect to voluntary writings outside the FAIR Plan.

It would indeed be unfortunate if the industry succumbed to the popular social convention and claimed that it was the victim of its environment.

Sincerely,

  
George K. Bernstein  
Federal Insurance Administrator



On or about December 13, 1975 there was a fire at said property when damage was sustained. Noyes retained Goodman, Gable and Gould Co. as adjustor on the claim for loss to JIA. On or about December 29, 1975 a statement of repair estimate and claim was submitted to JIA in amount of \$12,636.08 plus other incidental charges, with no depreciation amount shown. Said estimate was prepared by Millison, Inc., contractors and fire appraisers, for Noyes' adjustor anticipating the generally and historically accepted method of determining Actual Cash Value of the loss, that is, Replacement Less Depreciation. Appellants want to repair the dwelling, not raze it. JIA denied said claim as presented.

Harford Mutual Insurance Company, service insurer for JIA, through its adjustor, Gay and Taylor, obtained an estimate of \$14,400.15 dated April 2, 1976 made by R & K Contractors, which was found to be excessive and by subsequent inspection revised to \$9,328.97 on April 12, 1976. Gay and Taylor applied what it termed "fairly heavy depreciation" to said estimate arriving at an Actual Cash Value claim of \$6,301.20 for Harford Mutual, also estimating Replacement Cost of the dwelling to be \$15,472.

During this same period, Gay & Taylor, under instructions, obtained an Appraisal of Property from Daniel Pollack, Appraiser, dated February 23, 1976, which appraised the property as of December 11, 1975, one or two days before the fire, in order to determine its Fair Market Value. Upon consideration of assessment amounts, area, site, and improvements of subject property, and after applying three different approaches (cost, income, comparable) to said determination, each found to be in the neighborhood or \$2500, Mr. Pollack estimated the Fair Market Value in fee simple to be \$2500, relying heavily on value by comparison with like properties in the area. It is noted, that in his value by cost approach, Mr. Pollack estimated the cost of replacement to be \$10,707, but allowed \$8,566 for physical depreciation due to age and condition.

JIA then, through its agents using Fair Market Value of \$2500, deducting \$404 land value, and adding \$2000 cost of demolition, offered \$4,096 on February 25, 1976, which was rejected by Noyes' adjustor, Goodman, Gable & Gould. Contemporaneously with these claim events, JIA had discovered that it had been paying out more in claims than was received in premium dollars because property values were less than replacement costs. In approximately March, 1976, on the advise of counsel, JIA consolidated its definition of Actual Cash Value to be determined by the Broad Evidence Rule which looks at many factors, including Fair Market Value, not just Replacement Less Depreciation as had been the historical method, and used it in determining the \$4,096 offer supra.

The dispute which followed eventually came before the JIA Governing Committee on July 26, 1976 where the decision of JIA's service insurer was affirmed, and now is appealed to the Insurance Commissioner for hearing.

ARGUMENT

Appellant argues that coverage of \$14,000 was purchased in good faith at the cost of additional premium, not at the minimum premium; that the property was a dwelling, is a dwelling and is expected to be a dwelling therefore is not obsolete; that Appellee's appraisal of the value of the property at the time of loss was incorrect since entrance to the property was not made; and that it was improper for Appellee to determine Actual Cash Value by whatever method is most beneficial to it, after the policy had been purchased and after having historically used the method of Replacement Less Depreciation,

Appellee argued that the use of Broad Evidence Rule is more modern and has been supported in a 1928 New York appeals case, *McAnarney vs. Newark Fire Insurance Company*, 247, N.Y. 176, 159 N.E. 902, which rejected both Reproduction Less Depreciation and Market Value as the sole test of Actual Cash Value, and allowing adoption of the Broad Evidence Rule; and Maryland adopted said Rule in *Schrieber vs. Pacific Fire Insurance Company*, 195 M.D. 639, 645, 75 A.2d 108, 111 (1950) when the court rejected Replacement Less Depreciation as the measure of Actual Cash Value, but is very important evidence of value.

In its Memorandum of Law Appellee cited cases in other jurisdictions and publications to support fourteen different factors which it offered as an incomplete list to be considered under the Broad Evidence Rule, they are, reproduction less depreciation, fair market value, age of building, purchase price, materials of building, purpose for which built, use at time of fire, possible uses of building, state of preservation, functional and economic obsolescence, income producing capabilities of building, location of building, declarations of insured against interest and opinions as to value by expert witnesses.

Appellee argued further that the purpose of fire insurance is to indemnify the insured as a personal contract to the extent of financial loss sustained by him and to place him in the same position he would have been had there been no fire. To pay on an inflated value would put the insured in a better position. Even though its policy does not define Actual Cash Value, Appellee believes it acted rightfully, within its policy contract, in its determination of "Actual Cash Value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property..., nor in any event for more than the interest of the insured..." which by using Fair Market Value under the Broad Evidence Rule rather than Replacement Less Depreciation, had prevented a windfall to its insured.

CONCLUSION OF LAW

The evidence clearly reveals that Appellants Noyes applied for and obtained the insurance on the dwelling located at 407 S. Monroe Street in the amount of \$14,000, for which additional premium was paid, in April and May 1975. Appellee JIA made no effort to determine the Actual Cash Value at that time. Noyes continued to improve the property. The fire occurred on December 12 or 13, 1975. Both of these events were prior to JIA deciding in March 1976 to use the Broad Evidence Rule in determining Actual Cash Value. Not until November 1, 1976 did JIA send a letter to Maryland Insurance Agents discussing its substantial financial losses, the need for closer underwriting to bring policy limits in line with Actual Cash Value as instituted in May 1976, and outlining the factors to be considered at the time of application. The Hearing Officer concludes that Appellee JIA was unfair, arbitrary, and capricious insofar as its procedures, which were established after Appellant Noyes' loss occurred, were applied without warning and in ex post facto fashion, thus reducing his recovery.

For the aforesaid reason, the Hearing Officer concludes that the Governing Committee of JIA erred in affirming that the adjustor for JIA service insurer applied the proper method in determining the Actual Cash Value at the time of loss.

ORDER

Therefore, it being the intent and purpose of Hearing this Appeal, to determine whether or not the decision of the Joint Insurance Association Governing Committee in this matter was just and legally proper, upon the grounds aforesaid in the findings of fact and conclusions of law, thereon, it is this 12<sup>th</sup> day of December 1977 by the Insurance Commissioner of Maryland,

ORDERED, that the decision of August 24, 1976 by the Joint Insurance Association Governing Committee be and is hereby Reversed, and be it further,

ORDERED, that this matter be and is hereby Remanded to Joint Insurance Association Governing Committee so that a prompt and fair determination and settlement of the Actual Cash Value or amount of loss may be directed as provided within the terms of the insuring contract as contemplated and generally accepted in Maryland at the time of its inception and at the time of loss.

AS WITNESS My Hand and Seal this 12<sup>th</sup> day of December 1977.



EDWARD J. BIRNANE, JR.  
INSURANCE COMMISSIONER

*James E. Sybert*  
James E. Sybert  
Acting Chief Hearing Officer

OCT 31 1977

Mr. Eugene L. Leconte  
 General Manager  
 Massachusetts Property Insurance  
 Underwriting Association  
 3 Center Plaza  
 Boston, Massachusetts 02108

Dear Mr. Leconte:

It was extremely gratifying to note in the October 17 issue of the New York Times and Boston Evening Globe of arson probe undertaken by Attorney General Francis X. Bellotte involving 35 fires between 1973 and 1976. I would like to take this opportunity to congratulate you and your staff for your assistance to the Attorney General.

The very real and ubiquitous problem of "arson for profit" can be successfully attacked, as you have so ably demonstrated, through post-claim review and vigorous prosecution of the culprits as opposed to attempts to combat it through screening and selection practices, the principal effect of which is to deny insurance to inner city residents who are themselves the innocent victims of arsonists.

Keep up the good work.

Sincerely,

Howard B. Clark

J. Robert Hunter  
 Deputy Federal Insurance Administrator

cc:  
 Chron & FIA Files  
 IU:DeHenzel:lss/10-26-77 .x56580 /mjc/10-28-77

FORM APPROVED DATE & TIME	ORIGINATOR	CONCURRENCE	CONCURRENCE	CONCURRENCE	CONCURRENCE	CONCURRENCE
Name						
Date						

Use previous edition

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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HUD-713 (7-75)

U.S. GOVERNMENT PRINTING OFFICE: 1977 216 016

## EXHIBIT 12



THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D. C. 20410

AUG 29 1978

Honorable Abraham A. Ribicoff  
Chairman, Committee on Governmental  
Affairs  
United States Senate  
Washington, D. C. 20510

Dear Mr. Chairman:

I am writing in response to the General Accounting Office's report, "Arson for Profit: More Could Be Done To Reduce It."

Despite its broad title, the report does not discuss the entire problem of arson for profit, but concentrates on the extent to which it is a problem in State-established Fair Access to Insurance Requirements (FAIR) Plans. Our primary concern about the report is that readers not conclude that arson for profit is extremely widespread in, and is essentially confined to, FAIR Plans. The fact is that arson for profit is a prostitution of the insurance mechanism for purposes of greed and is an extremely serious crime involving all insurance. It should be emphasized that about 1,000,000 American families and businesses are insured through FAIR Plans, and less than five percent of these have had claims of any nature, much less arson for profit. In any given year, 95 percent of policyholders in the various FAIR Plans have no losses. A study of incendiary fire incidence in the metropolitan Chicago area shows that in 1977, FAIR Plan arson for profit represented only one-half of one percent of the total number of fire claims. FIA insurance examiners, who have continually examined FAIR Plan activity for many years, are of the opinion that under FAIR Plans more examination of suspicious fires are performed than are generally done by the voluntary market. FAIR Plans have a reputation of being tough on claims, using every procedure at their command to reduce the size of losses.

However, we agree with the GAO that there is room for improvement in the FAIR Plans and that solutions to the Nation's arson problem must be sought at the Federal level as well as the State level. Ms. Gloria Jimenez, the Federal Insurance Administrator, has already begun to explore solutions to the complicated problems involved in providing insurance to the deserving while excluding those who would abuse the program. In the enclosed memoranda from Ms. Jimenez to the Executive Committee of the National Association of Insurance Commissioners (NAIC) (Attachment #1 to enclosed FIA memorandum), many of the issues raised in

the GAO report are included as areas of concern and problems to be solved. We intend to do all in our power to work with the State insurance agencies and the insurance industry to improve the effectiveness of the FAIR plans.

The GAO report makes four recommendations, three of which deal with FAIR Plan administrative procedures requiring supervision by the State insurance authorities. Before addressing these recommendations, I would like to make some comments with regard to the limitation of FIA's authority and the roles of the Federal and State governments. The supervisory responsibility for the FAIR Plans is clearly delegated to the States under the Act and consistent with the McCarran-Ferguson Act's philosophy; Congress did not provide for a host of Federal investigators handling insurance regulatory matters. (In light of the importance of the respective Federal and State roles, we were concerned that the list of organizations contacted did not include even one State insurance department, the very authority which is responsible for the FAIR Plan in each State.) The FIA has the responsibility for monitoring the effectiveness of the Plans in making essential property insurance readily available at reasonable rates. The FIA does not at present have the statutory authority and staff resources to supervise day-to-day underwriting decisions to assure the availability of essential insurance to deserving FAIR Plan applicants and exclude those intending to commit fraud.

Turning to the recommendations of the GAO, we have the following comments:

Recommendation 1:

Require that all FAIR Plans establish property value at the time of underwriting and eliminate the practice of giving property owners any amount of insurance desired.

HUD Response:

Many States already follow this practice. These are State sanctioned requirements and not FIA requirements; if these could be required of the total insurance market, which they are not, we would consider a revision of the FIA regulations. However, since there is disagreement over the most equitable way of establishing property value, a sweeping requirement could be used to limit adequate coverage to deserving risks. The same measure which serves as a disincentive to arson profiteers can also prevent homeowners from being able to rebuild their homes after a fire.

The obvious result is neighborhood abandonment. As has already been stated, we will work with State agencies to eliminate any incentives for arson for profit that may exist in the FAIR Plans without violating the interests of the 99 percent of the FAIR Plan market who are there because they have no other recourse to insurance and not for the purpose of committing criminal fraud. We will also examine our regulations to see if there is any way that we can encourage the States to take further action to eliminate fraud.

Recommendation 2:

Require all FAIR Plans to obtain and consider information concerning the character of the property owner in its determination of insurability, as the insurance industry does.

HUD Response:

A few FAIR Plans apply such criteria on a selective basis today. Rather than establish a blanket FIA requirement, we are of the opinion that States are in a better position than the FIA to determine which criteria are most appropriate within their respective jurisdictions. Where States have requested it, we have permitted different underwriting criteria based on the collection of such data. We do not in any way, as the report itself points out, prohibit reasonable underwriting standards to be applied in any State. What we oppose, as our regulations state, is the application of standards which are not relevant to the risk against which insurance is being sought. When one considers that the FAIR Plans receive approximately 450,000 new applications and 600,000 renewal applications a year, a blanket requirement to obtain the type of information which would make possible a reasonable judgment regarding a property owner's character would result in a tremendous cost burden on the FAIR Plan system. Whereas the private insurance market can deny coverage on the most tenuous basis, the FAIR Plan would be obligated to perform a much more in-depth analysis. Therefore, to suggest that the FAIR Plan could do it as the private market does is misleading.

Recommendation 3:

Permit FAIR Plans to use a five-day cancellation notice with State insurance department approval in each instance.

HUD Response:

FIA has, in fact, approved every reasonable request by State authorities for underwriting flexibility or special cancellation prerogatives. Indeed, three States now are administering five-day cancellation provision procedures. In the State of Illinois, the FIA and the Illinois Insurance Commissioner, working together, in 1974 established the pilot plan for "constructive-abandonment" procedures providing for a five-day cancellation notice. Subsequently, we were notified that the Illinois State Legislature had enacted into law cancellation provisions which, in effect, prohibited the Director of Insurance from continuing the five-day cancellation agreement.

Recommendation 4:

We also recommend that the Administrator discuss the desirability of adopting the broad evidence rule basis with State insurance authorities in those FAIR Plan States that require insurance payments at actual cash value without consideration of market value.

HUD Response:

On July 12, 1978, the Federal Insurance Administrator, meeting with members of the NAIC Executive Committee, included fire insurance indemnification as an issue warranting FIA-NAIC attention (see enclosure). A factor which complicates action in this area is the differing interpretation given to the term "actual cash value" by the various States. For example, in New York, the meaning of "actual cash value" is controlled by New York law as interpreted by New York courts. From a very early date, the New York courts have construed the term in accordance with what is generally known as the "broad evidence" rule. That rule is to the general effect that the trier of fact is not confined by rigid rules of valuation in determining the actual cash value of property. Such value may be represented by market value, or by replacement value less depreciation, or it may be represented, by some other basis which, under the circumstances of the individual case, provides a better measure for indemnifying the insured fairly for his loss.

Other States treat this matter quite differently. In some non-FAIR Plan as well as FAIR Plan States, the legislatures have enacted valued policy laws which require the insurer to pay the face amount of the policy upon the occurrence of a total loss. Obviously, coverage is vitiated by

fraud; but absent fraud, it is the public policy of such States that the insured shall be entitled to recover the total loss on the same basis that he has paid premiums. We do not have the authority to substitute some other public policy for the policy adopted by those States.

However, as indicated above, FIA has initiated discussions with the NAIC on the fire insurance indemnification problem. The Federal Insurance Administrator has also requested insurance representatives to focus on revised policy language.

Let me assure you that the FIA will work with State insurance authorities and the insurance industry to improve underwriting mechanisms consistent with the objectives of the FAIR Plan. The GAO report contains other specific points warranting clarification which are addressed in the enclosed FIA memorandum. If you have any additional questions regarding any of the issues raised, please let me know.

I am sending an identical response to Congressman Jack Brooks, Chairman of the House Committee on Government Operations.

Sincerely yours,

/s/ Patricia Roberts Harris

Patricia Roberts Harris

Enclosure

FEDERAL INSURANCE ADMINISTRATION  
MEMORANDUMSPECIFIC GAO POINTS WARRANTING CLARIFICATION

Point #1 - "Although the act does not require that States establish FAIR Plans, twenty-five States, Puerto Rico, and the District of Columbia have." (p.3)

Comment - There are presently twenty-six States, in addition to Puerto Rico and the District of Columbia, with operating FAIR Plans. Louisiana was omitted by the Report, possibly because Federal riot reinsurance has been suspended since July 7, 1972.

Point #2 - "FAIR Plans operate under the supervision of the States' insurance authorities and are subject to their approval for changes in operating procedures." (p.3)

Comment - We view this statement as critical to a complete understanding of the appropriate FIA and State insurance authority roles with respect to FAIR Plans. Congress, in its findings and declaration of purpose for the Act creating the FAIR Plans, states in Sec. 1102.(a): "The Congress finds that (1) the vitality of many American cities is being threatened by the deterioration of their inner city areas; responsible owners of well-maintained residential, business, and other properties in many of these areas are unable to obtain adequate property insurance coverage against fire, crime, and other perils; the lack of such insurance coverage accelerates the deterioration of these areas by discouraging private investment and restricting the availability of credit to repair and improve property therein; and this deterioration poses a serious threat to the national economy; (2) recent riots and other civil commotion in many American cities have brought about abnormally high losses to the private property insurance industry for which adequate reinsurance cannot be obtained at reasonable cost, and the risk of such losses will make most lines of property insurance even more difficult to obtain; (3) the capacity of the private property insurance industry to provide adequate insurance is threatened, and the continuity of such property insurance protection is essential to the extension of credit in these areas; and (4) the national interest demands urgent action by the Congress to assure that essential lines of property insurance, including lines providing protection against riot and civil commotion damage will be available to property owners at reasonable cost."

"(b) The purposes of this title are, therefore, to (1) encourage and assist the various State insurance authorities and the property insurance industry to develop and carry out statewide programs which will make necessary property insurance coverage against the fire, crime, and other perils more readily available for residential, business, and other properties meeting reasonable underwriting standards; (2) provide a Federal program of reinsurance against abnormally high property insurance losses resulting

from riots and other civil commotion, placing appropriate financial responsibility upon the States to share in such losses; and (3) provide direct insurance through the facilities of the Federal Government in the case of properties for which statewide programs and the Federal reinsurance program either do not make crime insurance available or offer such insurance to property owners only at prohibitive cost."

In extending the Act in 1975, Congress added the following: "Section 1.(a) The purpose of this Act, therefore, is to extend the duration of the national insurance development program so as to maintain the Federal riot reinsurance program which reinsures the general insurance business against the catastrophic peril of riot and, thus, makes this insurance available, together with its re issue and compliance function which assures that the intent of the Housing and Urban Development Act of 1968 (Public Law 90-448, approved August 1, 1968) as amended is carried out, as well as the Federal crime insurance program which provides basic crime insurance coverages in the States where it is needed, both of which programs aid the insurance purchasing consumer when, from time to time and especially in times such as these, insurers engage in conscious policies of market constriction which lead to serious inner-city insurance availability problems of the kind the national insurance development program has been created to ameliorate."

Under the Act, Congress chose not to encroach upon the jurisdiction of the States by defining the conditions for the determination of eligibility under the Riot Reinsurance Program. Section 1211(b) of the Act states that the FAIR Plan "must be approved by, and administered under the supervision of, the State insurance authority, or be authorized or required by State law," whereas the FIA role, under Section 1215, requires the review of the FAIR Plans "in order to assure that such plan(s) are effectively making essential property insurance readily available."

I believe the Report does not provide an adequate understanding of this essential distinction.

Point #3 - "In calendar year 1976, all FAIR Plans combined wrote about \$18.9 billion of insurance on 751,441 insurance policies. About \$194 million in premiums were earned by the FAIR Plans on these policies." (p.3)

Comment - To update the data here, the figures for calendar year 1977 show about \$27.9 billion of insurance on 894,715 policies. The rather significant increase is a dramatic illustration of the insurance unavailability problem created by the voluntary market's increasing selectivity notwithstanding record profits in 1977.

Point #4 - "FAIR Plans have generally not been financially successful."  
(p.4)

Comment - While this is a correct statement, it can be legitimately interpreted as a negative criticism of FAIR Plan operations. However, the Hughes Panel Report, in recommending establishment of FAIR Plans, placed this financial issue into its proper perspective: "We urge that, insofar as possible, the level of rates generally applicable in a state also apply to properties insured under FAIR Plans. Surcharges, if needed, should be permitted only for demonstrable hazards of the property itself. Wherever possible, there should be no additional rate for environmental hazards.... We recognize, however, that the rates charged for pool risks and the type of risks undertaken by the pool may make recurring losses inevitable. Handling these losses might be resolved in a number of ways. If rates are adequate throughout a state to permit substantial profits by companies generally, companies might be assessed some portion of their underwriting income on non-pool property."

Presumably, a given state could assess taxpayers, generally, to fund the deficit between residual market and voluntary market rates to accomplish that "out-front subsidization," the virtues of which are so often extolled by some segments of the industry and some regulators. We remain troubled, however, by the loose application of the term "subsidization" to the clean residual market risk which is spurned by the voluntary insurance market because of "redlining" or some other reason unrelated to inherent hazard within the control of the insured. Statistics filed with the FIA by the FAIR Plans reveal that in FAIR Plan Fiscal Year 1977, approximately 95% of the FAIR Plan policies were loss-free. Indeed, where such a clean risk is required to pay a greater premium in a self-rated FAIR Plan because of the greater impact of the poor experience of risks in the Plan for cause, the case can easily be made that this clean FAIR Plan risk is, in fact, subsidizing the FAIR Plan. The evidence is too overwhelming to ignore that the residual risk market is the inevitable by-product of the selection-competition phenomenon. Given that fact, it is not only good sense but good economic theory to internalize the costs thereof within the insurance enterprise.

Point #5 - "The New York and Michigan FAIR Plans have the highest underwriting losses from inception to September 30, 1977; \$68.5 and \$60.5 million, respectively." (p.4)

Comment - This statement is not an accurate representation of the financial experience of the FAIR Plan insofar as it does not take into account related investment income and the actual cash flow position of the Plans. The report acknowledges this, but we question this decision not to present these latter figures, as we have in the past stated publicly. It is our view that the use by certain FAIR Plans of 'statutory' rather than 'adjusted'

underwriting results in reporting alleged losses is misleading to the public and should be discontinued. Such usage serves only to fuel legitimate public indignation concerning anti-consumer practices.

In truth, if investment income is included in the financial picture, then the New York FAIR Plan shows a \$15.5 million investment income through September 30, 1977. This alone brings the operating loss down to \$52.9 million, but this figure also tells an incomplete story because it includes contingent reserves covering anticipated losses and expenses. HUD-1603, the official financial statement for the FAIR Plans, presumably the source for GAO's findings, includes the investment returns, operating earnings, distribution to members, assessment collected from members, and most importantly, an analysis of the cash flow position of the pool. In the case of New York, current investments of the Plan are valued at over \$38.6 million, whereas the total assessment collected from member companies to meet operating deficits for the full 10-year life of the Plan is only \$28.1 million.

In Michigan, a special FAIR Plan premium tax collected by member companies from inception is currently \$64.8 million and \$35.2 million remain available for the payment of operating deficits. All these facts are relevant to a complete financial picture of the FAIR Plans.

Point #6 - "The Federal Government's role is to (1) offer, through FIA, riot reinsurance to the private insurance companies that participate in FAIR Plans whether voluntarily or mandatorily, (2) periodically review each Plan and the methods and practices by which such Plan is being carried out in the areas and communities where it is intended to operate to (a) assure that such Plan is effectively making essential property insurance readily available in such areas and communities and (b) identify any aspects of the operation or administration of such Plan which may require revision, modification, or other action to carry out the purposes of the reinsurance act of 1968." (p.4)

Comment - This statement makes it clear that FIA's role, under the Act, relates to "availability" whereas it is the State that has the regulatory role.

Point #7 - "Riot reinsurance covers properties insured in the private market by these companies and not FAIR Plan insured properties." (p.4)

Comment - This statement is incorrect since riot reinsurance does cover FAIR Plan insured properties. Attachment #2 is an instruction to FAIR Plans on procedures for filing riot reinsurance claims.

Furthermore, in light of the fact that the GAO statement: "It would therefore appear, that private insurance companies, not FIA, have paid most of the riot-related losses that have occurred to date in those States that have a FAIR Plan," appears in the same paragraph with Point #7, we

are concerned that erroneous conclusions might be drawn from it. Under the Riot Reinsurance Program, 267 claims have been approved involving FAIR Plan properties and 41 involving voluntary market properties. This does not yet include losses resulting from the New York blackout. The FIA examiners estimate that over 500 New York blackout claims involving FAIR Plan properties will be approved, and less than 200 involving voluntary market properties.

As indicated by the statement, FIA, the reinsurer, absent a catastrophic event (riot) has paid a minor portion of the total riot losses, certainly an expected set of circumstances with any excess aggregate loss reinsurance program.

Point #8 - "The Property Insurance Loss Register, a nationwide fire loss history file, has been established to contain information on every fire claim that has been filed with insurance companies subscribing to the register." (p.9)

Comment - No mention is made of the fact that in 1972 the Federal Insurance Administrator decried the insurance industry's abolition of the Arson Loss Reference Files and the industry Fraud and Arson Bureau in 1970. FIA provided the GAO with HUD's news release and the Administrator's letter to the Chief Executive Officer of each insurer holding a riot reinsurance contract (Attachment #3). The FIA position as expressed in that letter states: "there was a clear indication by both State officials and industry representatives that arson fraud is not a new problem and that it is probably just as prevalent outside the FAIR Plans as within it. Despite these observations, little has since been done either to organize or reinstate appropriate industry investigatory bodies such as the American Insurance Association's former Fraud and Arson Bureau (discontinued in 1970), or to set up or update appropriate arson loss reference files either nationally or within individual States.

"If it exercised the necessary initiative, the insurance industry already has adequate underwriting powers, and nothing in the Federal Insurance Administration's FAIR Plan regulations impinges upon its ability to apply the sound and proper underwriting standards needed to deter a high incidence of arson for profit. This underwriting freedom can be exercised without refusing to write insurable risks, and, of course, also exists with respect to voluntary writings outside the FAIR Plan." This has been our consistent position with respect to underwriting and loss adjustment responsibilities of State and industry officials.

We are also disappointed that no mention was made of the Justice Department's stance which has been interpreted as a disincentive to maintain arson or suspicious fire listings and their current opposition to establishing arson as a Class I crime under the FBI Uniform Crime Reporting System.

Point #9 - "The Massachusetts FAIR Plan does have several people under indictment for arson, including suspected organized crime figures." (p.10)

Comment - The Massachusetts FAIR Plan lacks the statutory authority to return indictments. However, the Massachusetts FAIR Plan does spend over \$1 million a year on arson investigation, as was pointed out by the GAO Report. Arson is an insidious crime, and was made even more insidious by the fact that the Boston arson ring included fire department officials. Many of these cases were directed at the voluntary market. Furthermore, we view with concern, in the discussion of the Massachusetts situation, in a section titled "Arson-for-Profit in FAIR Plan," a statement from a 1977 study that "the fuel that keeps fires raging in Boston's neighborhoods is insurance money." The implied indictment of the Massachusetts FAIR Plan for reasons which are unique not to the FAIR Plan but to the concept of insurance is unfair when one considers that the FAIR Plan is at least trying to overcome through cooperative government-industry efforts the manipulation of the insurance mechanism by criminals.

Point #10 - "The Maryland FAIR Plan official told us that, as a result of an analysis of FAIR Plan losses, the Plan's underwriting criteria was revised for investor-owned, nonowner-occupied habitational properties. He also said that about 83 percent of the FAIR Plan's losses were from these kinds of properties. The FAIR Plan's analysis showed that in many instances the amounts of insurance coverage being requested bore no relationship to the actual cash value of the properties. The analysis also pointed out that the practice of giving an owner more insurance than the actual cash value of his property as the FAIR Plan had been doing had necessitated settlement of claims by the FAIR Plan where the cost of repairs exceeded the actual cash value of the property." (p.14)

Comment - This may be the appropriate place to raise what has been a consistent concern of FIA touching on the question of the proper Federal and State roles. The FAIR Plans were established to provide essential insurance. At the same time, the Administrators of the Plans must be alert to avoiding any attempts at fraud, such as arson-for-profit. In the implementation of measures to accomplish the latter, FIA is concerned that the measures not be used to undercut the primary objective of making insurance available to deserving property owners. Upon examination, we have found numerous cases where deserving risks were denied insurance or denied claim payments under programs which appeared to be meritorious on the surface but which were implemented by the FAIR Plan without State supervision or knowledge. We have attached a case arising out of the Maryland measure cited by the report as responsive to the arson problem (Attachment #4). Apparently, the Maryland Plan to limit the amount of insurance was done without State supervisory knowledge or approval and has resulted in forcing the State officials to issue a cease-and-desist order until its rationale and administration can be reviewed. (We agree with the State insurance department's action and we are encouraged that they are exercising the appropriate type of oversight with regard to such underwriting measures.)

Point #11 - "FAIR Plan officials that we contacted believe that Plans are operating in a manner that encourages arson-for-profit. These officials as well as insurance industry officials with whom we met, contend that, FAIR Plans provide insurance to almost everyone due to FIA's attitude that no one should be denied insurance coverage. All FAIR Plans we visited expressed the need for more flexibility in their underwriting prerogatives which would provide greater authority to deny insurance or otherwise limit coverage and thereby provide a means of reducing arson-for-profit." (p.17)

Comment - The fact is that FIA has approved every request for underwriting flexibility sought by FAIR Plan officials and approved by State Insurance Authorities. This includes measures with regard to the three areas mentioned in the Report. Indeed, in 1974 the Property Insurance Plans Service Office (PIPSO), the industry advisory group to the FAIR Plans, distributed to all FAIR Plans information relating to the waiver of the 30-day cancellation notice provision granted by FIA. It should be noted that in the case of immediate coverage question, FIA does not require immediate coverage, but in order to avoid undue delay in providing insurance protection, the regulations allow the Plans to delay coverage to 20 calendar days, pending inspection (FIA Reg. 1905.6).

Congress itself addresses exclusionary underwriting practices by requiring in the Act, under Section 1211(b)(6): "If the insurer declines the risk, or agrees to write the coverage sought on condition that the property be improved, it shall also promptly send a copy of both the inspection and action reports to the property owner and the State insurance authority."

Point #12 - "Officials of the Property Insurance Plans Service Office said that FIA was discouraging FAIR Plans from being selective in underwriting. Insurance industry, FAIR Plan and Service Office officials mentioned an October 1977, letter from FIA to the Massachusetts FAIR Plan manager as indicative of FIA's attitude towards fighting the arson-for-profit problem in FAIR Plans. The letter stated that "\* \* \* 'arson for profit' can be successfully attacked, as you have so ably demonstrated, through post-claim review and vigorous prosecution of the culprits as opposed to attempts to combat it through screening and selection practices \* \* \*". FAIR Plan, Service Office, and industry officials disagree with this and said that this attitude indicated a disregard for lives that are lost and millions of dollars of property damages that result from arson." (p.19)

Comment - This statement appears to have been based upon an extra-contextual reference to a letter. Inasmuch as the letter itself is the best evidence of what it said, we proffer the complete letter. The prodigious amount of arson for profit in the voluntary market and in the States having no FAIR Plans suggests that, as of now, preclusion through underwriting has not been remarkably successful even where complete freedom in underwriting exists. (Attachment #5)

Point #13 - "Illinois and New York have asked FIA to waive its 30-day cancellation requirement under certain circumstances. The New York Plan's request was not granted because it did not, according to FIA, show that the existing requirement was inequitable or caused undue hardship to the Plan. Illinois' request was granted where specific conditions existed but, according to FIA, the Illinois legislature in 1975, passed into law a 30-day cancellation requirement which included the FAIR Plan. An Illinois insurance department official said that the 1975 law did not apply to the FAIR Plan. FAIR Plan officials, however, said that their counsel had determined that the Plan did have to comply with this law." (p.22)

Comment - FIA has not denied the New York FAIR Plan's request for a waiver of the 30-day cancellation requirement. We have simply told the Plan to take the issue up with the New York Department of Insurance which is the supervisory authority of the Plan. With respect to Illinois, FIA never withdrew its waiver; FIA was informed by Mr. DeMott, the General Counsel of the Illinois Insurance Department, that legislation passed by the Illinois Legislature in 1975 in effect prohibited the Director of Insurance from continuing the 5-day cancellation agreement. We are unaware of any other official Illinois insurance department opinion which differs from the General Counsel's, and we note that the FAIR Plan's Counsel apparently subscribes to Mr. DeMott's view.

Senator PERCY. Since both the GAO and the Illinois Legislative Investigating Commission reports that precisely the opposite is true, could you tell us the source of the Secretary's assertions?

Ms. JIMENEZ. Yes, sir. I was just looking at a statement that was submitted by the Insurance Information Institute which outlined the kinds of efforts that the FAIR plans have taken in the area of arson; the Massachusetts FAIR plan, the Connecticut FAIR plan, the Chicago FAIR plan, just to name a few, have gone into some depth in researching and trying to ferret out arsonists.

I don't believe the same kind of effort is going on in the voluntary market alone. They are hardnosed on claims. They do get complaints and the commissioners get complaints about how tough the FAIR plans are in adjusting claims.

They are much harder in claims adjustment than the voluntary markets.

Senator PERCY. In this same letter, Secretary Harris notes that your agency lacks the resources to supervise day-to-day operations of the FAIR plans. This may be so.

Don't you believe FIA has the leadership responsibility to insure that day-to-day decisions fall under the improved overall policy standards or guidelines that have yet to be issued, or is it your belief that FIA simply has a passive role with respect to State FAIR plans?

Ms. JIMENEZ. I think the role that I can play is a role of coaxing, cajoling, encouraging. I don't have any statutory authority over the FAIR plans. They are within the States' domain.

I have already, Senator, tried to work with the National Association of Insurance Commissioners and with individual commissioners encouraging them to take a stronger role in the operation of their FAIR plans, and I would like to report that for instance, the commissioner in Maryland has done just that, has taken a very strong role, and other commissioners are beginning to do that.

Senator PERCY. Would you feel it desirable for you to have statutory authority with respect to FAIR plans?

Ms. JIMENEZ. First of all, we would not only have to have authority, we have two people doing examinations of FAIR plans right now on a nationwide basis. Obviously, we would need much greater staffing and that would be expensive.

So it would be nice to have additional authority, but please don't give me the additional authority unless you can give me the staff to do the job properly.

Senator PERCY. If you do believe that FIA does not have oversight and leadership responsibilities—that is, it depends on your interpretation here—it is effectively left with no role and should be abolished?

Would care to comment?

Ms. JIMENEZ. I have been quoted as saying it would be very nice if the insurance industry tomorrow would write these risks on a voluntary basis, and if that should happen, and if people could be assured that they could buy insurance in the voluntary market, then I would wholeheartedly agree with you that we abolish the program.

But, Senator, we live in the real world, and I don't see that these risks are going to be able to purchase insurance in the voluntary market. So until we can assure that that is done, that people can buy insurance—I am talking about good risks who take care of their

property, who don't have trash all around, who protect their buildings—they ought to be able to buy insurance.

I don't think Chicago, for instance, could survive if tomorrow there was no insurance available through the FAIR plans.

[At this point Senator Chiles entered the hearing room.]

Senator PERCY. In her letter—you have seen the letter?

Ms. JIMENEZ. Yes.

Senator PERCY. Secretary Harris resists the GAO proposal of FAIR plans to stop writing whatever insurance coverage the property owner requests. She said implementation of a sweeping requirement to limit coverage could deny deserving property owners adequate coverage.

Even without a sweeping requirement, is there not something FIA can do more than it has done to limit the amount of coverage where appropriate so that the FAIR plans can effectively cut down arson for profit?

Would you also concur with the philosophy that if we can take away this overinflated valuation of properties, you do remove the incentive for arson?

Ms. JIMENEZ. Senator, we had some hearings in New York in December on the problems in the FAIR plan. We found out that there were people in New York; for instance, a woman testified that she had a piece of property. She lived in it. It was a two-family dwelling and she had something like \$25,000 worth of insurance on it, and she had an \$18,000 mortgage.

She was in the FAIR plan. She had a total loss of her property. And the FAIR plan offered her \$8,000, which they claimed was the market value of the property.

She got the \$8,000 and the lady was fortunate enough to get into public housing. The shell of that building is still standing there as a danger to the rest of the community.

So we have a serious problem here to balance. What I am concerned about is that we should have a type of policy that would provide one amount, a lesser amount, market value, if the person decided to leave, take the money and run. But if the person wants to stay in the community, try to keep the community healthy, then I think we should try to help that person at least build to some acceptable standard, not to its old grandeur, necessarily, but to some acceptable standard.

This is the way of using the program as a community development mechanism.

Senator PERCY. Thank you very much. I will continue my questioning after my distinguished colleague.

Senator JAVITS, do you or Senator Chiles, before Senator Glenn begins his questioning, have any opening statement?

Senator JAVITS. Mr. Chairman, I am very interested to be here. We have grave problems in my State. Ms. Jimenez just referred to them. I am here to learn and pursue such leads as I consider to be constructive, including legislation.

I thank the Chair.

Senator PERCY. We thank you very much, indeed.

Senator CHILES?

Senator CHILES. I have no opening statement.

Senator Percy. Senator Glenn.

Senator GLENN. Thank you.

Are you familiar with Congresswoman Holtzman's amendment to Senate bill S. 3084, Housing and Community Development Act amendments?

Ms. JIMENEZ. Yes, sir.

Senator JAVITS. Did you say Holtzman?

Senator GLENN. Yes.

Senator JAVITS. Ms. Holtzman in the House?

Senator GLENN. Yes. That is right.

We urged, I urged on July 20, Secretary Harris to move promptly to adopt the GAO recommendations with respect to the administration of the State FAIR plans. One would require that all FAIR plans establish property values at the time of underwriting and eliminate the practice of giving property owners any amount of insurance desired.

No. 2, require all FAIR plans to obtain and consider information concerning the character of the property owner in its determination of insurability, just as the insurance industry does in other areas.

No. 3, to permit FAIR plans to use a 5-day cancellation notice with State insurance departments' approval in each instance.

What are you doing in these areas, or is anything being done in these areas?

Ms. JIMENEZ. Yes, sir. Starting with the last one, the 5-day cancellation with the commissioner's approval is a procedure that we at FIA, I just joined them in March, have encouraged the States to do.

There are a number of States that are already doing that: Pennsylvania, New York, Missouri are States that come to mind immediately.

Ohio, we have a request from the commissioner of Ohio which will be granted.

Senator GLENN. I have a letter here from Nationwide Insurance Co., and they were very much concerned about this Holtzman amendment.

Before I get off on that letter, how about the other two points?

Ms. JIMENEZ. The question of the character of the individual, I think we need to be very careful how we approach that, but I think the underwriting guidelines that can be used by the FAIR plans and are used by some of the FAIR plans it would address the problem that you are speaking of.

For instance, any risk owned by an applicant who has been convicted of a felony, such as fraud, burglary, robbery, et cetera, ought to be taken into account when they are taking an application.

We don't suggest that they cover such a risk. Any risk where the applicant has an extremely unsatisfactory loss history invoking fire losses of a suspicious nature should not be insured.

Senator GLENN. Who should be responsible for checking that?

Ms. JIMENEZ. This is under the State's jurisdiction, and the States should be checking this. Indeed, some of the States already are giving this some attention.

Senator GLENN. We had some testimony last fall in hearings I held then on arson in which the Symphony Row Tenants Organization of Boston came in and established—they had set up a model of predicting

where arson would actually be accomplished. They had set up quite an intricate system of checking this.

But I think they weren't far beyond what most States are either willing to do or are capable of doing in every single case. It is a very difficult thing to administer, to go back and check every single insurance applicant on this.

Do you think we need some new way of doing this or more formalized procedures for doing this rather than just throwing it out and saying we ought to check or somebody should check somewhere?

Ms. JIMENEZ. If there should be another such procedure, I don't have any suggestion on how we go about it. I think that the FAIR Plans are using the methods that are used by the voluntary market and if there are problems in the FAIR Plans, then there are problems in the voluntary market and it would need to be addressed across the board.

But it is a very tough problem because there are questions of individuals rights that need to be balanced with the public's rights to be protected against arson.

Senator GLENN. How about the other point on the establishment of the property value?

Ms. JIMENEZ. On the establishment of the property value, I was just in response to Senator Percy's question outlining some of the problems that I have with that.

If property value is established at some kind of replacement cost, much as this lady I just described to you, I described to you earlier, she had bought her house in the last 10 years, had paid in the range of \$25,000. If that was the established property value, I guess it would be all right.

But what happened to her with the market value later on there was no way she could possibly rebuild it. So we must come up with some kind of a formula that would enable an individual if they chose to stay in the community to get enough to rebuild, but if they chose to take the money and run, some lesser amount so that we would not in any way be encouraging arson.

Senator GLENN. How would you get around the problem of multiple sales over several years period in preparation for an arson fire where individuals sell property back and forth or within a group at a continually inflating value so it shows an increasing market value with the actual value of the property not going up; they insure at the higher market value because they have sold to each other; torch the building, collect the higher insurance which is far above the market value?

Ms. JIMENEZ. They take-back mortgages, so even though the owner gets nothing, the mortgagee gets the money. It is a very tough problem.

I would suggest taking a look at the mortgagees as well, not just looking at the owner. But it is a problem that is very complex and there are no easy answers to it.

Senator GLENN. Back to the Holtzman amendment here again. I have a letter from Nationwide, they are expressing great concern about this Holtzman amendment because it would require that insurance on properties obtainable through State FAIR plans be sold at the same rate levels found in the voluntary market.

They feel that this is unrealistic when weighted against the loss potential involved and think it could actually encourage arson-for-profit under FAIR plans instead of correcting it.

What would be your comment on that?

Ms. JIMENEZ. I don't agree with that. In fact, the administration supported the Holtzman amendment. The plight of the people who live in some of these very well-kept but fringe areas of the cities—and I was in Cleveland not too long ago and was in some of the neighborhoods around Cleveland that are very well-maintained communities. And they are very ethnic; Hungarian people in the communities, as I recall. And they had very well-maintained homes.

I went in and toured several of them. They had safe wiring. They had nice yards. They were well-kept and yet these people could not buy insurance in the voluntary market.

It seems to me that it is very unfair to tell people that you are for some reason beyond your control because you are in a fringe area, bordering on an area that is integrated very often—that is the only reason that I could determine—that you should be in the FAIR plan, and because you are in the FAIR plan you should pay a higher rate.

I just think that is terribly unfair and I think it adds to the decline of the cities.

In New York, for instance, where people have to pay higher rates because they are assigned to the FAIR plan, it amounts to something like four and five times the rates they would pay in the voluntary market for no good reasons.

Senator GLENN. I would agree that there should not be a specific markup just because it is under a FAIR plan, but where there is a demonstrated risk that the insurance companies have assumed, like in areas where they have actually had far more payoffs on policies, then, I don't see why there couldn't be some increase in rates.

I see you have not made a hard and fast rule either way, whether FAIR plan should have a higher rate or just the opposite.

Ms. JIMENEZ. We do encourage where the risk is an acceptable risk. But where there are some minor things wrong with it, they may surcharge the risk. We don't think that people should be expected to pay more because of the environmental hazards over which they have no control.

If they are at least making an effort to maintain their building and maintain their premises, then we don't think that they should have to pay more. These people are the most important resources in the cities and if we discourage them from staying there, they are going to leave and add to the decline of the cities.

Mr. REILLY. If I might add, a lot of the attention has been given to the first part of the Holtzman amendment which is the one that would require that the FAIR plan charge the rates approved for the principal rating organizations.

There is the second part of the Holtzman amendment which says that the FAIR plans can surcharge properties that are not well maintained, that do present a hazard that is within the control of the owner. That is the second part of the Holtzman amendment.

We think emphasis should be placed on that part of the amendment, too.

Senator JAVITS. How is that surcharge determined? By some government agency or by the insurer?

Mr. REILLY. The FAIR plans inspect pretty much—well, the figures in 1977 are a little bit lower—but about 72 percent currently of all

applications. Over their history they have inspected about 73 percent. These inspection reports, of which I have samples here, do take an insurance inspection service which goes out and looks at the physical condition of the property.

Senator JAVITS. Who determines the-----

Mr. REILLY. The FAIR plans pay for that inspection.

Senator JAVITS. Who determines the surcharge?

Ms. JIMENEZ. The FAIR plan determines it.

Senator GLENN. I think one of the points to be made is, quite often, in fact usually, under a FAIR plan insurance it is an absentee landlord, and not the people living there, who is directly involved with any insurance claims that are made against the property.

My time is up, Mr. Chairman.

Senator PERCY. Senator Javits?

Senator JAVITS. I yield my time to Senator Glenn.

Senator GLENN. I had finished.

I would like to enter into the record this letter from Nationwide that they submitted to me, and we will make a copy available to the recorder here.

Senator PERCY. Without objection, it will be Exhibit No. 13.

[The document referred to was marked "Exhibit No. 13" for reference and follows:]

## EXHIBIT 13

LEGISLATIVE AFFAIRS OFFICE  
1000 CONNECTICUT AVENUE, N.W., SUITE 304 • WASHINGTON, D.C. 20030  
HOME OFFICE: COLUMBUS, OHIO



September 12, 1978

The Honorable John Glenn  
204 Russell Senate Office Building  
Washington D.C. 20510

Dear Senator Glenn:

As a member of the Senate Permanent Investigations Subcommittee, I know you are interested in the problem of arson-for-hire. I further realize that you and some of your associates are working hard to try and find a solution to this extraordinarily expensive problem.

However, I am not sure that you are aware that while you and your colleagues are looking for ways to combat arson, a House-Senate conference committee is currently meeting and considering language in a piece of legislation which we feel would encourage it. I am speaking of the conference on S 3084, the Housing and Community Development authorization. The House-passed version of this legislation includes language commonly referred to as the "Holtzman Amendment", which would require that insurance on properties obtainable through state FAIR plans be sold at the same rate levels found in the voluntary insurance market. We believe that this is unrealistic when weighed against the loss potential involved and, accordingly, we feel that the Holtzman Amendment would encourage arson-for-profit in our cities.

The homeowners policy is a replacement coverage contract. This means that if insured property is destroyed by fire, the insurance company must pay for the loss in an amount equal to the cost of replacing the structure at today's inflated construction costs. Because of the unique structure and design of many older homes and businesses in our cities, the cost of replacement very frequently exceeds the fair market price for the property.

Thus, insurance companies have necessarily required that the homes be insured under the homeowners contract subject to premium charges that fairly reflect the cost of replacing the structure. It is often the case that an older home purchased for \$25,000, a fair market price for the neighborhood, might have a replacement cost considerably in excess of that figure. Perhaps as much as double. When such a situation exists as it does in older neighborhoods a climate for arson, for profit and betterment is created.

NATIONWIDE MUTUAL INSURANCE COMPANY  
NATIONWIDE MUTUAL FIRE INSURANCE COMPANY  
NATIONWIDE LIFE INSURANCE COMPANY  
NATIONWIDE GENERAL INSURANCE COMPANY

This is exactly the situation it is feared the Holtzman Amendment would promote. That is, to encourage arson to obtain the inflated replacement value of the property.

Police officials continually request that we lock our car and take the keys, yet we pay little or no attention to the fire-arson authorities who tell us not to create a situation in which arson-for-profit can exist or is encouraged. As part of your continuing investigation of the arson problem, may I respectfully suggest that you look into the impact of the Holtzman Amendment to the Housing and Community Development Authorization.

This controversial amendment is scheduled to be considered by House-Senate conferees late in the week of September 11 or September 18. For your information, sir, the Senate conferees are Senators Proxmire, Sparkman, Williams, McIntyre, Brooke, Tower and Schmidt.

Sincerely,



TED V. RODGERS  
Federal Affairs Officer

TVR:cjc

Senator PERCY. We have a couple of questions.

According to the GAO, the Pennsylvania FAIR plan official feels that the plan could be obliged to insure an individual who applied to the FAIR plan following a suspicious fire.

Is this true of FAIR plans generally?

Ms. JIMENEZ. No, sir. As I just outlined to you, if the FAIR plan makes a request to the Commission, the Commission forwards it to us. We would be delighted to permit them to have much more flexibility underwriting criteria, and we encourage that.

Senator PERCY. An FIA memo on arson now in the record is extremely critical of the Justice Department for not maintaining arson listings or making arson a part I crime under the FBI's uniform crime reports system. Two questions in that respect.

Is it your opinion that the Justice Department's lack of interest in the crime of arson has had the effect of actually encouraging arson? I speak now in the past tense because the FBI has obviously moved it up to an item of higher priority.

Ms. JIMENEZ. I don't know that it has had the effect of encouraging arson, but certainly if arsonists are so successful and they don't get caught, that is the kind of thing that would say, sure I did this so well, why not do some more? I am not suggesting that the Department's position has caused that.

Senator PERCY. In the light of all the testimony—You are aware of all the testimony—arsonists sitting here telling us, this is one crime you can commit and never feel you are going to get caught, it is so easy to outwit them, the ineptitude of the local arson squads is so apparent.

How can one person sit there and testify he torched 100 buildings in one city alone with no fear whatsoever of being apprehended? Wouldn't a reasonable mind lead us to believe that that encourages that crime as against other crimes? You just shop around, you want to make a little money in crime, you go to the area of highest return, lowest risk.

It is like capital flowing someplace, the same principles apply. But when there is low risk and high return, couldn't you fairly come to the conclusion actually the existence of that situation encourages this type of crime? That is why it is the fastest growing industry among those in the country?

[At this point Senators Javits and Glenn withdrew from the hearing room.]

Senator PERCY. Do you have any opinion as to whether the other Federal law enforcement agencies may be encouraging arson for profit through their disinterest and if so, could you identify these agencies?

In other words, we now have Judge Webster saying this is a real problem, we intend to take it seriously, we intend to monitor right from Washington the 59 Bureau offices out in the field to see what they are doing about this problem.

What other agencies are involved, and what other agencies do you think should take similar action that the FBI has?

Ms. JIMENEZ. The Fire Prevention Assistance Administration I think really should take the lead. They work most closely, or should be, with the local fire departments, and I think that is where the key to the thing is.

I just recently left the State of North Carolina and North Carolina was mobilizing on a State level to respond to the problem of planning a coordinated response to fire control problems and I think through the States and through the local fire departments and voluntary firemen, by the way, who represent the largest number of firefighting people, through adequate training of these people, in cooperation with insurance companies and the State, and other Federal agencies that we can begin to address the problem.

[At this point Senator Javits entered the hearing room.]

Senator Percy. I want to thank you very much indeed. To save time, if I submit some questions to you, could you answer those for the record?

Ms. JIMENEZ. I would be delighted.

[The questions and answers together with additional material furnished by Ms. Jimenez follows:]

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## United States Senate

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GOVERNMENTAL AFFAIRS  
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ON INVESTIGATIONS  
(PURSUANT TO S. RES. 111, 87TH CONGRESS)  
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October 6, 1978

The Honorable Gloria M. Jimenez  
Administrator  
Federal Insurance Administration  
Department of Housing and Urban Development  
Washington, D.C. 20410

BY HAND

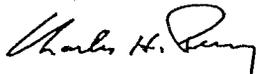
Dear Ms. Jimenez:

As indicated to you during your appearance on September 14, 1978 before the Permanent Subcommittee on Investigations, the hearing record has been left open so that additional questions could be submitted to you concerning the FIA role in attacking FAIR Plan arson-for-profit.

Enclosed are questions to which I would appreciate your earliest convenient response.

Thank you for your continued cooperation with the Subcommittee.

Sincerely,



Charles H. Percy  
Ranking Minority Member

CHP:jic

Enclosure



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
FEDERAL INSURANCE ADMINISTRATION  
WASHINGTON, D. C. 20410

IN REPLY REFER TO:

10/11/78

Honorable Charles H. Percy  
Ranking Minority Member  
Senate Permanent Subcommittee  
on Investigations  
Committee on Governmental Affairs  
Washington, D. C. 20510

Dear Senator Percy:

This is in response to your letter of October 6, 1978, listing a series of questions concerning FIA's role with regard to FAIR Plans and the problem of arson-for-profit. I am sending the same reply to Senators Jackson and Nunn.

Attached are the individual responses to your inquiries as well as a copy of HUD's response to the GAO Report on the FAIR Plans, which provides additional detail on many of the issues raised.

If I can be of further assistance in this matter, please let me know.

Sincerely,

Gloria M. Jimenez  
Federal Insurance Administrator

Enclosures

QUESTIONS SUBMITTED TO GLORIA JIMENEZ,  
ADMINISTRATOR, FEDERAL INSURANCE ADMINISTRATION  
FROM THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
October 6, 1978

1. The Subcommittee has heard four days of testimony on arson-for-profit, much of which focused on the lax attitude of many insurance companies with respect to claims review. In addition, an Aerospace Corporation study released last October showed that fewer than one out of every one hundred arsons results in a conviction. An October 1978 letter from the FIA to the manager of the Massachusetts FAIR Plan stated, "arson-for-profit can be successfully attacked, through post-claims review and vigorous prosecution of the culprits, as opposed to attempts to oppose it through screening and selection practices."

Is this an accurate indication of FIA policy at the present time?

- A. This particular quote has never been an accurate reflection of FIA's policy on arson. It is an extra-contextual reference to a letter sent to the General Manager of the Massachusetts FAIR Plan commending him on the assistance given to the Attorney General by the Plan in the arson probe which had just been completed. FIA regulations have always allowed for declination of risk based on "specific characteristics of ownership, condition, occupancy, or maintenance that are violative of law or public policy" [Section 1905.7(c)(3)]. We have, however, stressed that the standards for declination be related to the perils insured against, since screening and selection procedures can be and have been used to deny insurance on the basis of non-relevant standards.

The President's Privacy Protection Study Commission has made an interesting comment on this very point:

"Insurers have historically enjoyed considerable latitude in determining what information is and is not necessary to a given decision about an individual. Underwriting is far from an exact science. Moreover, industry spokesmen argue that the cost of collecting information is a powerful enough incentive to collect only relevant information. Yet others claim that insurance institutions collect a great deal of information whose relevance is questionable. Indeed, the industry has been criticized for not taking advantage of its actuarial and computer expertise to refine its relevance criteria.

"To a large extent, the relevance-propriety issue in insurance stems from some insurers' belief that they should insure only those of "high moral character," and should shun those whose mode of living differs from what society considers normal. In a society as diverse as ours, however, determining what "society considers normal" is no easy task, and relying on the independent judgment of underwriters to make this determination has led to considerable difficulties."

FIA's latitude in granting flexibility to FAIR Plans in the use of objective underwriting standards is a matter of record, but we continue to believe that we must never lose sight of the importance of continued availability of insurance to deserving property owners.

2. Do you feel that screening and selection must play a crucial role in efforts to eliminate arson-for-profit in the FAIR Plans?
- A. As indicated above, and by our actions, we do believe that screening and selection have a vital role in efforts to eliminate arson-for-profit both in the FAIR Plans and in the voluntary market. Our concern is that such selection be predicated upon objective criteria that enjoy statistical support rather than upon subjective criteria.
3. Considering what we have heard about the ineffectiveness of post-claims review and poor success rates in prosecution, would you say that screening and selection should be taken much more seriously by insurers--and by the FAIR Plans in particular--as a way to combat arson-for-profit?
  - A. See Answer #1. It is our opinion that the ineffectiveness of post-claims review has been attributed to the fact that such review has not been pursued as diligently as it should be by the insurance industry and local governmental officials. Where it has been pursued, such as in Illinois, Massachusetts, and Seattle, Washington, it has proved to be effective. Those bent on fraud have a number of devices available to penetrate any underwriting screen. The real deterrent comes from industry-community action against the perpetrators of arson with ample publicity of its successes. Inasmuch as the data clearly indicate that about 90% of arson-for-profit stems from risks in the voluntary market, we are unable to follow the logic of particularizing the FAIR Plans for screening and selection.
4. In a report to the Congress last May, the General Accounting Office recommended that the Secretary of Housing and Urban Development direct the Administrator of FIA to revise its regulations to require that all State FAIR Plans adopt certain procedures to reduce the risk of arson.
  - a. Have the regulations been revised as GAO suggested?
  - b. If not, why not?
  - c. Will the regulations be developed?
  - d. When?

- A. HUD's response to the Report details sufficiently why we should not establish a blanket requirement regarding either the determination of property value upon application for insurance or the collection of information on the character of applicants. We have, however, urged all FAIR Plans and companies holding a riot reinsurance contract to subscribe to the recently-reinstituted Property Loss Register. We are writing to States which have not enacted immunity statutes protecting insurers who provide loss information to encourage them to do so. We have also developed a proposed rebuilding endorsement which will indemnify an insured at the time of loss on the basis of the insured's intention to rebuild or not. The endorsement will serve as a disincentive to those who are unconcerned about neighborhood preservation. Copies of these items are enclosed. We have met with members of the NAIC Subcommittee on essential property insurance and the insurance industry trade associations on October 24, 1978, and have agreed in principle to include anti-arson-for-profit provisions in the insurance policy.

We are now in the process of a revision of the FAIR Plan regulations to encourage State insurance authorities to address the arson question without unduly restricting the availability of insurance for those who are in good faith entitled to essential property insurance.

5. The underlying purpose of the Urban Property Protection and Reinsurance Act which originally authorized the FAIR Plans was to stem the tide of urban deterioration. FIA's responsibility under that Act is to review FAIR Plan operations and to identify any aspects of those operations requiring revision or modification in order to carry out the purposes of the Act. Since the GAO report concluded that current FAIR Plan practices may encourage arson-for-profit, thus contributing to serious urban deterioration, doesn't FIA have a responsibility to scrutinize FAIR Plan practices closely and to encourage changes--such as tighter underwriting standards--necessary to reduce arson-for-profit?
- A. The continued deterioration of many urban areas is attributable to a host of interrelated factors including the decision by many insurance companies not to insure. A review of the evidence, as detailed in our response to the GAO Report, would seem to indicate that arson-for-profit in the FAIR Plan is one of the lesser contributory factors to urban deterioration. It certainly ranks behind lack of financing, high unemployment, a dearth of essential public services, and the relocation of business. However, arson in the FAIR Plans being part of this process, we will continue to examine the Plans' practices to determine necessary courses of action. For a more complete discussion, we refer you to HUD's response to the GAO Report.

6. The GAO report notes that arson-for-profit has skyrocketed partly because most FAIR Plans issue coverage to almost anyone who requests it. Illinois FAIR Plan officials told the GAO they refuse to insure only about one out of every one hundred applicants. In general, they claim there are only three conditions under which they can refuse coverage:

1. if previous unrepaired fire damage exists;
2. if the property owner has been convicted of arson; and
3. if the property is vacant.

Does this attitude within the Illinois FAIR Plan stem from guidelines or advice from the FIA here in Washington? If not, how is it that officials across the country feel that FIA opposes efforts to require greater selectivity?

A. We interviewed the Illinois FAIR Plan manager on the points mentioned in your letter, and he indicated that the GAO must have misunderstood some of his statements. Like FIA, he had no opportunity to review and correct the Report before it was published. In fact, in addition to the three reasons cited, the Plan can decline a risk because of:

- The generally deteriorated condition of a property
- Three or more substandard condition charges
- Past adverse loss record.

These underwriting standards were effective and being employed prior to the GAO investigation. The Plan has since established two additional criteria:

- Unpaid property taxes for three years on commercial properties, including multifamily structures (more than four families)
- Moral aspects relating to financial and criminal background contained in Dun and Bradstreet reports.

The Illinois Plan declined about 10 out of 100 applicants for insurance in 1977, and thus far in 1978 about 22 of 100 applicants, as contrasted with the one out of 100 cited by the GAO.

Apparently, serious misunderstanding by the GAO of the FAIR Plan situation, as evidenced by the specific Illinois case, has led to erroneous extrapolations regarding the nationwide picture of FAIR Plans.

7. According to the GAO, a Pennsylvania FAIR Plan official feels that the Plan could be obliged to insure an individual who applied to the FAIR Plan following a suspicious fire.

- a. Have you checked with this official?

- b. What have you done to disabuse him of this view?
  - c. Are FAIR Plans obliged to cover properties owned by individuals with previous suspicious fires?
  - d. Should FAIR Plans consider a past history of suspicious fires when deciding whether to issue a policy to a given individual?
- A. a) Yes.
- b) The requirement in this case is the State's decision and specifies that risks should be declined only if evidence of fraud exists. Unsupported feelings on the part of a claims adjuster alone normally do not constitute grounds to deny insurance eligibility to the FAIR Plan applicant.
  - c) Not by FIA regulation. If it is deemed by the State insurance authority to be necessary to combat abuse of the FAIR Plan, FIA will support the State's position. Attached is a letter to the Commonwealth of Pennsylvania supporting such State response. In addition, in our interview of the State official responsible for FAIR Plan review, he told us that with respect to the series of arsonists in Philadelphia (testified to by the arsonist at the hearings), the State instructed the FAIR Plan to cancel all of the policies of the named insureds.
  - d) Yes, so long as a proper definition of "suspicious fire" is used.
8. Should FAIR Plans use all the normal insurance industry criteria, except location, when considering whether to issue coverage?
- A. We refer you to HUD's August 29 response to GAO Recommendation #2 of its Report.
9. Prior to issuing an insurance policy:
- a. Should FAIR Plans explore information pertaining to the applicant's financial status, tax arrearages, housing code violations, or fire history?
  - b. Do all FAIR Plans gather such information as a matter of routine?
  - c. Which FAIR Plans do not gather such data?

- A. a) Yes
- b) Most do not
- c) To our knowledge, all but Illinois, Missouri, and New York do not. Early in 1978, I recommended to the full NAIC that they reevaluate their State FAIR Plan underwriting practices in light of the underwriting improvement which were in effect in Missouri and New York.
10. a. Have you checked out the case, cited by CAO, in which a state insurance authority ruled that the FAIR Plan was bound to issue a policy to a particular individual even though that person was under indictment for arson at the time?
- b. What is your feeling about that action?
- A. a) We have been unable to identify either the individual in question or the FAIR Plan.
- b) We would support a State policy of denying coverage in such cases.
11. Are FAIR Plans justified in denying coverage to persons under reasonable suspicion by law enforcement authorities of arson?
- A. Yes. This presumes that the applicant is notified of the availability of an appeal process to the State Insurance Authority to assure due process.
12. a. What advice or guidelines, if any, has FIA issued to the individual FAIR Plans concerning its interpretation of "reasonable underwriting standards"?
- b. Please provide copies of these guidelines.
- A. The matter of "reasonable underwriting guidelines" for the guidance of FAIR Plans was dealt with in great detail following the disclosure of unfair underwriting practices by the Missouri FAIR Plan during 1974-75. Many of the Missouri FAIR Plan Executive Committee members represent companies doing business on a nationwide basis and they were closely involved in the resolution of the FAIR Plan underwriting problem. Additionally, PIPSO, the nationwide trade association for FAIR Plans, also attempted to persuade the insurance industry representatives on the Missouri FAIR Plan Executive Committee to abandon these unfair underwriting practices. It is entirely reasonable to assume that most of the property and casualty insurance industry was aware of the struggle between the FIA and the Governor of Missouri on the one hand and the Missouri FAIR Plan on the other. The resolution of the Missouri FAIR Plan issue involved the payment of over \$300,000 in claims which were determined by the FIA and the State to have been denied because of



**CONTINUED**

**3 OF 6**

improper post-claim underwriting and the development of the insurance industry, the Commission and the FIA of underwriting guidelines to address potential arson-for-profit. In fact, this whole matter relating to the Missouri underwriting situation was discussed at length with PIPSO officials. This discussion led to PIPSO setting up an underwriting committee to advise FAIR Plan managements and develop acceptable underwriting procedures.

13.
  - a. What specific information, if any, has FIA independently developed to identify the extent of arson-for-profit in the FAIR Plans, and the extent of organized crime involvement in this crime?
  - b. Please provide data compiled on this.
  - A. Since FIA has as its primary mission promoting insurance availability and has a very limited staff to accomplish this objective, since the States are the regulatory authorities responsible for FAIR Plan supervision, and since the Federal responsibility to pursue arson investigation rests outside the FIA, FIA has had to rely on these other sources for information.
14. According to GAO, FAIR Plan losses in just two states -- New York and Michigan -- have reportedly amounted to nearly \$130 million. While FIA has challenged the total figure, it has not denied that the losses are substantial.
  - a. Since these losses are eventually passed on to consumers in the form of premium rate increases, what should state insurance officials do to reduce FAIR Plan losses?
  - b. Have you advised representatives of private companies participating in the FAIR Plans what to do about them?
  - c. What was your advice?
  - d. What position or positions have they taken, and have you acted on any of their recommendations?
  - A. We have pointed out at length that FAIR Plans were never intended to be profit-making operations, despite the fact that some are. Because of the environmental hazards to which so many FAIR Plan-insured properties are exposed, losses are inevitable. They are, however, an effective mechanism for spreading such losses throughout the industry without significantly affecting the premium paid by non-FAIR Plan insureds. This attribute of the FAIR Plan mechanism along with the GAO findings on the FAIR Plans were discussed in Congressional Hearings and on the floor of the House prior to the enactment of the Housing and Community Development Amendments of 1978 which make this loss spreading feature a Federal requirement for the FAIR Plan.

The insurance losses generated from the economic and social trauma of our inner cities can not be stemmed solely by state insurance officials. This is a matter of such complexity that the Congress by Public Law 95-24 established a National Commission to undertake a comprehensive investigation of the factors contributing to the decline of neighborhoods and of the factors necessary to neighborhood survival and revitalization. The attached progress report gives some indication of the vast issues involved, many of which result in the inevitably adverse insurance picture reflected in FAIR Plan statistics. Until substantial resolution of these factors is attained, Fair Access to Insurance Requirements remains an important component of this Nation's urban policy.

15. In response to GAO recommendations that FIA encourage FAIR Plans to conduct background checks on insurance applicants, Secretary Harris has responded that the state officials are in a better position to establish criteria for these checks than FIA. Yet, the GAO reports that many FAIR administrators are confused about what they can and cannot do with respect to background checks.
  - a. Why are they confused?
  - b. How can they act intelligently if they don't know what FIA wants?
  - c. Is there no way that FIA can assist these confused FAIR administrators so that they have some guidelines to follow on this crucial issue?
  - d. Will FIA now provide guidelines to help avoid covering at least the most obviously unacceptable risks?
- A. a) Such perceived confusion may stem from a conviction that such pre-screening is not cost-effective, and therefore it is simpler not to utilize underwriting tools which are at best marginally effective. However, we do not concur in the opinion that these FAIR Plan officials are confused and are so timid that they dare not seek clarification from State or Federal authorities.
- b) We have repeatedly stated that reasonable underwriting standards, including background checks, related to the perils insured and which have been endorsed by the State insurance regulatory authority having jurisdiction will receive our sympathetic consideration.
- c) The above guideline is clear. We are ready to further clarify specific points of confusion upon request. We have also alerted the NAIC that the GAO feels that many FAIR Plan Administrators are confused. We have asked the Commissioners to help alleviate any such areas of confusion.
- d) We have. See c) above.

16. According to the GAO, an FIA official claimed that FIA had provided arson-related material to the FAIR Plans and state insurance departments; however, FIA provided GAO with little arson-related information that had been seen by the FAIR Plans. Furthermore, FAIR Plan officials complained that the Plans had no guidance from FIA on the arson problem.
  - a. What is your explanation for the discrepancy between FIA's claim that arson information had been distributed and the fact that FIA could produce little such information to show GAO, while FAIR Plans maintained they have received no guidance on arson from FIA?
  - b. When will FIA provide guidance on this matter to the State FAIR Plans and insurance departments?
- A.
  - a) Attached is a listing of FIA-FAIR Plan activity on the arson problem in the past.
  - b) Attached is further information sent to FAIR Plans on the arson question.
17. Secretary Harris resists the GAO recommendation to reduce the notice of cancellation period from 30 days to five days, saying that some states already follow the five-day rule.
  - a. For the record, are you in favor or against the five-day rule?
  - b. Do you not think that a five-day rule would substantially reduce the chances for illegal fraud fires?
  - c. What steps, if any, has FIA taken to encourage adoption of the five-day rule among the individual Plans?
  - d. Why can FIA not encourage the states to establish a five-day rule, rather than stand by while the states flounder over this serious question?
- A.
  - a) Insofar as the States view the 5-day rule as necessary to effective administration of the FAIR Plan, FIA will support them. It should be understood that the 30-day period was designed to provide insureds who already have been denied insurance by a large portion of the market an opportunity to locate another insurer in a severely constricted market.
  - b) It may be helpful, though future statistics will be needed to assure the amount of reduction. However, if the experience of the voluntary market in non-FAIR Plan States, where no such rule exists, is an accurate barometer, optimism on FAIR Plan prospects can hardly be unbounded.

- c) See attached letter to Insurance Commissioners.
  - d) See c.
18. Rather than paying cash replacement value, several FAIR Plans have begun to limit coverage to the market value of the property. Will this help to reduce the risk of arson-for-profit?
- a. Why not encourage all states to do this?
  - b. Has FIA taken the initiative on this?
  - c. Will it?
- A. See Answer #4. Some problems related to the GAO Recommendation on this issue are addressed in HUD's August 29 response.
19. The GAO report indicates that poor claims investigations by the FAIR Plans may allow many arson-for-profit cases to go undetected. You have already described two states where you are satisfied with claims investigations. What about the rest?
- A. We have cited Illinois and New York as examples of effective investigation. However, it is our belief that all FAIR Plans are more vigorous in claims investigation than their counterparts in the voluntary market. However, such investigation without the support of local governmental authorities and appropriate insulation from civil suit has proven to be relatively ineffective.
20. Your testimony referred to a possible system whereby FAIR-insured fire victims choosing to remain in the community would receive enough money to rebuild, but those choosing to leave would receive a lesser amount, thus discouraging intentional arson.
- a. Has FIA taken any steps to submit such an idea, in concrete form, to state insurance authorities?
  - b. If not, why not?
  - c. When will FIA encourage adoption of such a strategy by the individual Plans?
- A. I personally attended hearings of the Federal Insurance Administration on insurance company redlining in New York City in January, 1978, where I heard testimony of fire victims and toured some of the affected neighborhoods. It became apparent to me that the insurance indemnification clause in the standard fire policy was adversely affecting many urban policyholders.

Soon after these hearings, I met with New York City officials on these fire insurance problems and also met with the newly-appointed New York State Insurance Commissioner to speak to him personally about my findings. At the invitation of the New York State Legislature, I testified on May 11, 1978, before the New York State Assembly Committee on Insurance. On the issue of a rebuilding incentive, I testified:

"The policy offered by the New York Property Insurance Underwriting Association (the FAIR Plan) limits indemnification to market value regardless of the amount of insurance the individual may carry. In the event of a loss in a neighborhood where market values have depreciated, the individual who recovers only market value will be unable to rebuild and will be forced to abandon the building. The insurance mechanism, with this depreciating market value limitation, outrightly discourages the repair of fire damaged buildings. I recommend that work be done to change the insurance policy to provide reasonable construction and repair costs if the insured rebuilds or repairs the building. It doesn't take an insurance expert to know that an abandoned or vacant fire damaged building presents a hazardous and unhealthy situation adversely affecting the the people of the area and completing the vicious circle of decline and deterioration. New insurance policy language can be achieved without sacrificing the vital task of overcoming arson-for-profit. Under this type of reform, full payment should be made only if an individual rebuilds or repairs, thus removing the profit potential."<sup>11</sup>

Additionally, I brought this matter up with the appropriate NAIC Subcommittee prior to the GAO report. As early as June 22, I received constructive proposals from responsible insurance industry representatives in an attempt to formulate revised policy provisions to provide adequate insurance indemnification without encouraging arson-for-profit. On October 24, 1978, my staff met with NAIC and insurance industry representatives to develop proposed policy terms. When the insurance policy is so modified by necessary state action, we will encourage the Plans to market the policy.



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
FEDERAL INSURANCE ADMINISTRATION

WASHINGTON, D. C. 20410

October 11, 1978

IN REPLY REFER TO:

TO: The Chief Executive Officer

RE: Property Insurance Loss Register and Arson Losses

In recent months my office has met with industry and public groups, including the National Association of Insurance Commissioners to discuss ways of reducing arson losses. There appears to be general agreement that the Property Insurance Loss Register, an industry-wide nonprofit subscription service operated by the Property Claims Services of the American Insurance Association, can play a constructive role in providing insurers with information needed to fight arson.

Many companies already subscribe to this service, but if your company or companies do not, I strongly urge that you consider participating in this program. Arson is a crime which deserves the attention of all of us and the Loss Register is one of the means which can help us protect society against the spread of this critical problem.

Sincerely, :

  
Gloria M. Jimenez  
Federal Insurance Administrator

TO: FAIR Plan Managers

SEP 27 1978

RE: Property Insurance Loss Register - An Effort Dedicated to  
Reducing Arson Losses

The Property Insurance Loss Register is an industry-wide, non-profit subscription service operated by the Property Claims Services of the American Insurance Association. While most of the Governing Boards of the FAIR Plans have elected to subscribe to this service, we note that your FAIR Plan is not as yet one of the subscribers. Would you please advise me if the FAIR Plan under your supervision plans to join in this industry effort to minimize arson for profit losses.

I fully recognize that the mode of operation of the FAIR Plan under your supervision is through a single or multiple servicing carrier. In this regard I would like to be advised if FAIR Plan losses reported to your servicing carrier will be reported to the Loss Register.

Sincerely,

GLORIA M. JIMENEZ

Gloria M. Jimenez  
Federal Insurance AdministratorDistribution

FP Manager of Iowa  
 FP Manager of Kansas  
 FP Manager of Kentucky *mo.*  
 FP Manager of Minnesota  
 FP Manager of New Mexico  
 FP Manager of Oregon  
 FP Manager of Washington

cc: Chron & FIA Files  
 IEE:DeHenzel:mjc 9/19/78  
 Retyped IE:Lss 9/25/78



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
 FEDERAL INSURANCE ADMINISTRATION  
 WASHINGTON, D. C. 20410

SEP 26 1978

IN REPLY REFER TO:

TO: INSURANCE COMMISSIONERS IN FAIR PLAN STATES

Section 1905.9 (Notice of Cancellation or Non-Renewal) of the Federal Regulations requires: "Except in cases of owner or occupant incendiarism, material misrepresentation, or nonpayment of premium, each Plan shall require its participating insurers to give, and each such insurer shall give, property owners no less than 30 days prior written notice of any cancellation or non-renewal of coverage initiated by the insurer with respect to any eligible risk, whether or not such risk is then insured under the Plan, in order to allow the affected property owners sufficient time to apply for an inspection and to obtain coverage under the Plan, if necessary."

The Federal Insurance Administrator may waive compliance with any requirement of the regulations with respect to any State for a stated time, temporarily or indefinitely, and in whole or in part, if the State Insurance Authority certifies that compliance is inadvisable under local conditions or State law. The Insurance Departments in Kentucky, Rhode Island and Ohio have requested and been granted a waiver to the above cited section of the Federal Regulations which now permits these FAIR Plans to cancel FAIR Plan policies (based on established guidelines) according to policy conditions.

During my meeting with the NAIC Executive Committee I pledged the full support of the Federal Insurance Administration in helping the FAIR Plans improve the efficiency of their underwriting operation. In this regard, I urge you to discuss with the FAIR Plan in your State the propriety of securing a waiver from Federal Regulations to the present cancellation requirement.

I have attached a copy of my recent response to the Honorable Harry V. Jump, Director of Insurance, State of Ohio, relative to this issue which you may wish to use as a guide in discussing this issue with FAIR Plan officials in your State.

Sincerely,

*Gloria M. Jimenez*  
 Gloria M. Jimenez  
 Federal Insurance Administrator

Attachment

cc: FAIR Plan Managers  
 Property Insurance Plans Service Offices



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
 FEDERAL INSURANCE ADMINISTRATION  
 WASHINGTON, D. C. 20410

SEP 19 1978

IN REPLY REFER TO:

IUR 2-2

Honorable Harry V. Jump  
 Director of Insurance  
 Department of Insurance  
 2100 Stella Court  
 Columbus, Ohio 43215

Dear Director Jump:

Reference is made to your recent letter requesting a waiver of the 30 day notice of termination of coverage requirement imposed by Section 1905.9(a)(b) of the Regulations, this waiver provision being provided the Administrator under Section 1905.12(c) of the Federal Regulations.

I wholeheartedly concur with your observation that due to local conditions in Ohio compliance with Section 1905.9(a) of the Federal Regulations is inadvisable and I will grant a twelve (12) month temporary waiver of compliance. In order to assure that the waiver is applied consistently and is not over-reaching, I suggest the following guidelines and amendments to Mr. Stubb's letter of July 17, 1978, be followed.

1. Each policy cancelled in accordance with the established guidelines should be personally approved by the Manager of the FAIR Plan and the Department of Insurance notified of the grounds and underlying details of the cancellation in order that the Department could delay implementation of the short term notice if it thought the matter warranted further investigation.

The Department of Insurance will review, on an individual case basis the FAIR Plan's adherence to the guidelines. This review should at least reveal the objectivity of the findings, the professionalism of the inspection reports and adequacy of the documentation of the cancellation criteria. These files should also be made available to our Insurance Examination Staff for their review.

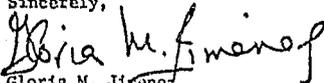
2. The waiver should not apply to member insurers with respect to cancellation or non-renewal of voluntary policies, nor shall anything herein be deemed to eliminate or modify the requirement that such voluntary market policies receive thirty (30) days advance notice of cancellation or non-renewal to the end that they may have sufficient time to obtain coverage under the FAIR Plan. However, if the Insurance Department establishes a procedure to provide due protection to the affected insured, through an appeal procedure, which in effect would result in full reinstatement of coverage, we would concur with such an arrangement. As you know we have previously granted a waiver to member companies which permits a short term cancellation notice on risks insured under a binder.

3. Item C in FAIR Plan Manager M. E. Stubb's letter of July 17, 1978, should be changed to read: "Evidence of incendiarism by the insured." While I agree that something must be done to limit or deny recovery to unscrupulous mortgagee or loss payee under the fire contract, property owners should not be victimized by their fraudulent acts. I recognize that the mortgage document could be used as a basis for establishing high insurable value and therefore should be subject to evidence of validity. I would suggest that the FAIR Plan consider securing a copy of the mortgagee's note with the application when the mortgagee is other than a licensed lending institution.
4. Item D should be clarified by reading: "Buildings with at least sixty-five (65) percent of the rental units in the buildings unoccupied and at least twenty-five (25) percent of said unoccupied units are left unprotected against trespass. A rental unit will be deemed to be unprotected against trespass when an entrance door to such unit (or an exterior door to a hall, stairway or other common passage leading to such unit), is open, missing, unlocked, or unsecured, or when a window in such unit has not been replaced or boarded up within one (1) day after the insured has been notified of the condition requiring replacement or board-up."
5. Item H should be amended to read: "Buildings in which repairs of material damage caused by a peril that can be insured by the FAIR Plan has not commenced within 120 days after the occurrence of said damage, or within 60 days after settlement of any FAIR Plan claim growing out of said damage, whichever is later. If conditions beyond the control of the insured prevent the commencement of repairs, the running of the specified time will be suspended and will not begin to run again until the condition(s) has ceased to be a factor."

I would like to compliment you and your staff on taking an affirmative action on this issue. If you feel that there are other underwriting prerogatives which the FIA should address which might help to reduce the incentive of arson for profit, I would welcome your comments.

The waiver of compliance with Section 1905.9 of the Federal Regulations will become effective as of the date of your letter concurring with conditions outlined above.

Sincerely,

  
Gloria M. Jimenez  
Federal Insurance Administrator



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
FEDERAL INSURANCE ADMINISTRATION  
WASHINGTON, D. C. 20410

OCT 31 1978

IN REPLY REFER TO:

TO: All State Insurance Commissioners

SUBJECT: Fire Insurers Immunity for Reporting Suspicious Fires

A free flow of information between fire marshals' offices and similar law enforcement organizations and the insurance industry is of paramount importance if the serious problem of arson is to be challenged. Sixteen states have passed legislation which would require an insurer to notify and furnish the fire marshal with all relevant information acquired by such insurer during its investigation of a claim if the insurer suspects that the fire was caused by incendiary means. While the legislation varies from state to state its common theme is to provide a qualified immunity to an insurer or other person who, in good faith and without express malice, furnishes the information mentioned above, thus protecting the informer, generally, from civil or criminal liability.

I urge you to use the power of your office to support similar legislation in your state or to propose such legislation to the Governor for consideration by the state legislature. The following states have passed immunity legislation:

Connecticut	Maryland	Ohio
Georgia	Massachusetts	Rhode Island
Florida	Michigan	Texas
Illinois	North Carolina	West Virginia
Louisiana	New York	Wisconsin
Maine		

Sincerely,

*Gloria M. Jenkins*  
Gloria M. Jenkins  
Federal Insurance Administrator

FEDERAL INSURANCE ADMINISTRATION

**DRAFT**ENDORSEMENT

In consideration of the rate and premium charged, this policy is made subject to the following provisions.

1. In the event of loss or damage, by a peril insured against, to the building or buildings covered in this policy:
  - a. If the loss or damage from a peril insured against is not repaired or replaced by the insured for the same occupancy and use within twelve (12) months of the date of such damage, at or within 500 feet of the site where the building stood immediately prior to the loss, the amount of recovery shall be determined on an actual cash value basis.
  - b. If the loss or damage from a peril insured against is repaired or replaced by the insured for the same occupancy and use within twelve (12) months of the date of such damage at or within 500 feet of the site where the building stood immediately prior to the loss, the liability of this company shall not exceed the lesser of:
    - (1) the amount of insurance applying to the damaged or destroyed building structure,
    - (2) the "cost of repairs" (being the costs determined by the use of building materials required by current building code to meet basic standards of safe and sanitary occupancy eliminating obsolete, antique or other unusual construction in replacing or repairing damaged property caused by the perils insured against) of that part of the building structure damaged or destroyed.
2. This company shall not be liable under this policy, including this endorsement, for a greater proportion of any loss than the amount of this policy applying to the property to which this endorsement applies, bears to the total amount of other insurance on such property against the peril(s) involved.

PROPOSAL DISCUSSED ON OCTOBER 24, 1978, WITH NAIC AND INSURANCE INDUSTRY REPRESENTATIVES.

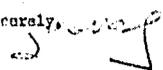
APR 3 1978

Honorable William J. Sheppard  
 Insurance Commissioner  
 State of Pennsylvania  
 North Office Building  
 Harrisburg, Pennsylvania 17120

Dear Mr. Sheppard:

Our Director of Insurance Examinations has recently reported to me the concerns of the Insurance Placement Facility (IPIF Plan) in dealing with a particular class of business insured by the Plan. It is our opinion that the Insurance Department acted prudently in its decision, however, due to our continuing concern with the IPIF Plan operations as they relate to these problems, we would appreciate being kept apprised of any other situations in order that we might be given the opportunity to comment in your decision.

As you know, we have approved in the States of Illinois, Kentucky and Rhode Island and offered to approve in the State of New York more flexible underwriting freedom based upon conditions of constructive abandonment, arson, etc., which permits short-term cancellation of risks with department approval. We would indeed extend this approval to the Commonwealth of Pennsylvania should you feel it desirable and welcome a discussion on this subject with you or your staff.

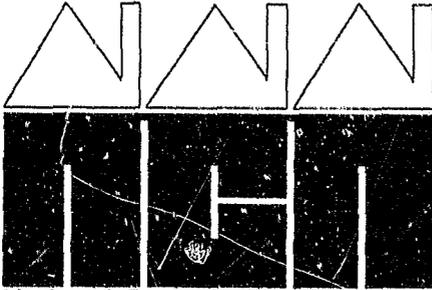
Sincerely,  


Gloria M. Jimenez  
 Federal Insurance Administrator

cc: Chron  
 FIA Files  
 Jimenez

FF:DeHengell:100 3/28/78 856580

CONCURRENCE OFFICE CHIEF	ORIGINATOR	CONCURRENCE	CONCURRENCE	CONCURRENCE	CONCURRENCE	CONCURRENCE
	1/2/78	3/28/78	3/28/78			
Date		03/21	3/28			



National Commission on Neighborhoods

## The Case for Neighborhoods

### A Progress Report

June 1978

Joseph F. Timilty, Chairman  
Chairman, Massachusetts Joint  
Legislative Committee on Urban Affairs  
Boston, Massachusetts

Dr. Ethel D. Allen  
City Council  
Philadelphia, Pennsylvania

Anno Bartley  
Commissioner, Arkansas Department of  
Natural and Cultural Heritage  
Little Rock, Arkansas

Nicholas R. Carbone  
City Council  
Hartford, Connecticut

Gale Cincotta  
Executive Director, National Training and  
Information Center  
Chicago, Illinois

Jake Garn  
U.S. Senator  
Utah

Harold W. Greenwood  
Chairman of the Board and President,  
Midwest Federal Savings and Loan Association  
Minneapolis, Minnesota

Maynard Jackson, Mayor  
Atlanta, Georgia

Norman Krumholz  
Director, Housing and Community Development  
Cleveland, Ohio

David C. Lizarraga  
Executive Director, The East Los Angeles  
Community Union (TELACU)  
Los Angeles, California

John McClaughry  
President, Institute for Liberty and Community  
Concord, Vermont

Victoria Mongiardo  
Field Director, National Center for  
Urban, Ethnic Affairs  
Washington, D.C.

Dr. Arthur J. Naparstek  
Director, Washington Public Affairs Center  
University of Southern California  
Washington, D.C.

Robert B. O'Brien, Jr.  
President, Director and Chief Executive Officer  
Carteret Savings and Loan Association  
Newark, New Jersey

Jool Pritchard, Congressman  
1st District  
Seattle, Washington

William Proxmire  
U.S. Senator  
Wisconsin

Maclor Shepard  
President, Jeff-Vander-Lou, Inc.  
St. Louis, Missouri

Peter Ujvagi  
Birmingham Neighborhood Coalition  
Toledo, Ohio

Dr. Bathrus Bailey Williams  
Educational Consultant  
Washington, D.C.

Robert Kutner  
Executive Director — Designate

## PREFACE

The National Commission on Neighborhoods was established by Public Law 95-24, and appointed by President Carter on December 19, 1977. In creating the Commission, Congress declared "existing city neighborhoods are a national resource to be conserved and revitalized wherever possible, and that public policy should promote that objective."

The Commission was directed to "undertake a comprehensive study and investigation of the factors contributing to the decline of neighborhoods and of the factors necessary to neighborhood survival and revitalization."

At its first meeting, the Commission resolved to study neighborhood problems by visiting as many diverse neighborhoods as possible within a twelve month life, and listening to residents, business people, public officials, scholars, and leaders of community organizations. Meeting on weekends, we have heard several hundred witnesses in Baltimore, Cleveland, St. Louis, Chicago, and Los Angeles. The Commission plans at least five additional field hearings during 1978.

In addition, we are sponsoring some ten issue conferences, several general policy conferences, forums with business, labor and media, and a full program of research. The Commission has divided into five task forces, on Governance, Reinvestment, Obstacles, Economic Development, and Human Services, each with a staff support person and research consultants. We meet regularly with neighborhood organizations, professional associations, and federal agencies whose programs involve neighborhoods.

We have used this progress report as an opportunity to reach a consensus on a conceptual framework and a research strategy for the balance of our work.

Senate Report 95-61 required:

"In order to assure adequate consideration of the issues to be covered, the Committee agreed that the Commission should, after its first six months of operation, report to the Committee concerning its work, and make recommendations concerning the need for an extension of its study period and its funding needs." We have requested a three month extension, with an authorization of \$500,000 to complete our research.

## I. INTRODUCTION

Why Neighborhoods

The case for neighborhoods should be self evident - - yet this Commission was created out of a public outcry that public and private policy often undermines neighborhoods.

A neighborhood is an open place where the human spirit can flourish because the scale is human; where people can feel that their environment is not beyond their control. A national neighborhood policy is required, not to impose yet another layer of Federal programs on skeptical communities, but to help create the pre-conditions in which local institutions can revive. This will require adjusting government policies and programs to make them more neighborhood-sensitive. It will require leaving much to neighborhoods to decide themselves.

In a working neighborhood - whether rich or poor - transactions are likely to be personal rather than institutional. It is a place, as President Carter observed, where people look after each other's children, where the local policeman is somebody's cousin, where you recognize your neighbors and the local storekeepers; where solutions to local problems are the product of local wisdom and energy rather than bureaucracy.

In our first five months, we have visited scores of city neighborhoods to listen mostly to neighborhood people. People in every city told us they are sick of centralized, alienating institutions that respond to human needs in remote, bureaucratic fashion. These run the gamut from Federal agencies, city halls, large labor unions, big business, impersonal human and social services, and public utilities.

The Commission advocates open and diverse neighborhoods. The Commission will address those factors that contribute to racism and segregated neighborhoods. We are strongly committed to the preservation and revitalization of neighborhoods without displacement and without exclusion. No ethnic group has a monopoly on a viable community. We strenuously resist those who use neighborhood to mean racial or ethnic exclusion. Our legislation

mandates that the Commission recommend strategies to strengthen economically and socially diverse neighborhoods. These culturally and economically mixed neighborhoods are often the most vibrant in cities, and the Commission will recommend effective strategies to strengthen them.

We have seen that diverse groups can come together by working on common issues through community-based organizations. This process can effectively help to break down the barriers of race, economics, and ethnicity between diverse groups.

Although cities are distressed, with grave structural problems, we have seen working neighborhoods where old fashioned community ties are reviving. They have in common a sense of participation and optimism.

We have also seen the failures -- a neighborhood turned over wholesale to a developer, with needless displacement of hundreds of families; miles of unrelieved public housing where the design obliterates the possibility of community; equally bleak upper income redevelopment areas where the breakdown of neighborhood coping mechanisms creates an obsession with security.

Most importantly, we have seen extraordinary diversity and we recognize that neighborhoods are varied places where a single approach imposed from Washington or even from downtown is almost certain to cut across the grain of the community's own strengths, and to fail. Too often, well-intentioned Federal programs and municipal grand designs ignored -- and therefore wrecked -- the fabric of local communities.

#### B. New Partnerships

We view the urban policy announced by President Carter in his statement of March 27, 1978, as the signal for a significant shift. The President called for a New Partnership "above all, drawing on the sense of community and voluntary effort that I believe is alive in America, and on the loyalty that Americans feel for their neighborhoods."

For the first time, there is presidential recognition of the importance of neighborhoods for the spirit they give to a city and for the resources they can bring to the task of revitalization.

In our field visits, we have seen the kind of partnerships which should be the cornerstone of a neighborhood policy. Although there are rough edges and continuous jousting, some city governments already support neighborhood-based revitalization strategies and encourage positive actions by community organizations. We have seen the beginning of private sector cooperation not just for downtown and industrial development, but neighborhood-based housing and commercial revitalization -- through partnership programs like Neighborhood Housing Services. Some city administrations are beginning to appreciate that their capacity to achieve revitalization goals increases with the capacity of community organizations to initiate, execute, and sustain neighborhood development activities.

Where we saw neighborhood strategies, there was a general feeling of confidence even though demographic or employment statistics left the city among the most distressed. Neighborhood groups had developed a capacity to cope with and combat problems such as displacement and housing abandonment, on a block by block basis. Community organizations often fashioned highly innovative solutions as the situation demanded. This kind of strategy involved the revitalization of both downtown and existing neighborhoods, recognizing the importance of each for the future well-being of the city.

If first class partnership is to be a reality for neighborhoods, there must be understanding of past policy mistakes and misperceptions. We find the President's own words in his March 29 address heartening, but we recognize how much must be done to adjust public policies to fit the vision of a New Partnership.

## II. WORK PLAN

The Commission, through its five task forces, research program, and conferences is working to translate its general policy framework into the specific recommendations, which will be offered in a final report.

### A. Capacity

If strong neighborhoods are essential to healthy cities, then capacity-building is necessary to fully unleash the potential for self-sufficiency and successful action which exists in almost every neighborhood.

Revitalization of cities cannot proceed successfully until neighborhoods and their residents acquire the competence and organization at the neighborhood level to overcome forces that threaten the neighborhood and to initiate positive change.

The chief areas of concern are how the process and results of building strong neighborhood and community organizations can promote social goals such as building citizen leadership and responsibility; maintaining and facilitating racial, ethnic, economic, and age diversity; strengthening neighborhood institutions; creating and sustaining an environment where people can become more complete human beings; and revitalizing communities. We will specifically focus upon the problems of revitalization and preservation without displacement and exclusion; the development of community-based organizations; the role of voluntary associations in community organizations; and the role of mandated citizen participation.

Within this framework, we will study questions which relate to capacity-building for neighborhood revitalization: fiscal capacity-building; development of neighborhood leadership; and capacity-building in city government to achieve neighborhood revitalization goals. Ultimately the Commission hopes to make the case that the rebuilding of our cities can occur most effectively when citizens themselves assume decisive roles and that this is a precondition for successful neighborhood revitalization and the advancement of our stated social goals.

Even though the President has now introduced neighborhoods into full partnership with the government and private economic sectors, the realization of this partnership requires locally designed strategies. Neighborhood capacity derives from strong institutions. A neighborhood with strong voluntary institutions is more likely to exercise authority effectively. In a community with weakened capacity and overburdened social supports, community organizations can help revive or create natural support networks, increase healthy civic participation, and restore the sense of control over one's life. This can come through such institutions as a community congress, a local community action agency, a local economic development corporation, a Neighborhood Housing Services office, a vigorous church or synagogue, active PTA, strong block clubs, effective technical assistance, or a combination of many approaches. The common element of a successful community organization is that it serves to catalyze local energies and stimulates indigenous leadership to address local problems.

One of the Commission's principal research projects is a series of fifty case studies of neighborhood capacity-building experience. These will include:

- (1) Capacity building arising from grassroots organization
  - (a) traditional community associations
  - (b) organizing experiences
  - (c) response to specific survival threat
  - (d) community economic development
  - (e) housing development/ cooperatives
  - (f) human services delivery
  - (g) specific issue organizing (redlining, FHA)
- (2) Capacity building attempts arising from sources outside the neighborhood
  - (a) Neighborhood Housing Services
  - (b) City effort to encourage capacity-building
  - (c) Model Cities; OEO
- (3) Neighborhood revitalization attempts without local capacity
  - (a) Community Preservation Corporation
  - (b) commercial revitalization
  - (c) gentrification/displacement

(4) Devolution

- (a) Federally mandated citizen participation
- (b) City charter decentralized planning process
- (c) Administrative decentralization

Based on our case studies, the Commission's final report will offer specific policy recommendations.

- (1) We will note approaches that seem to offer examples of success, emphasizing flexibility and local design;
- (2) We will evaluate existing approaches to devolution of authority to neighborhoods, making recommendations for how government resources and legal authority might best be used to encourage the empowerment process. The study will include synthesis of existing and model citizen participation legislation; administrative decentralization models; evaluation of existing literature and case histories; and evaluation of federal programs with capacity-building impact (Block Grant; capital and labor intensive activities under the Economic Development Administration; Community Services Administration; and Comprehensive Employment Training Act.)

We will analyze government devices for provision of technical assistance and staff (community design centers, VISTA); alternative means and purposes of fiscal empowerment; proposed new programs (Neighborhood Self-Help Fund, Mini-Grants); and problems posed for community organizations which see opportunities in such programs as the Urban Development Action Grant. And since the neighborhood has such a strong sense of place and identity, we will also be analyzing those neighborhoods that have utilized their unique architectural, visual, historic and heritage qualities for the benefit of all residents. We will be gathering legislation, programs and strategies implemented by neighborhoods that are utilizing architectural and visual qualities for residents without exclusion and without displacement.

In addition, our conferences will assemble experienced individuals with diverse perspectives, including neighborhood leaders and organizers, city and state officials, scholars, administrators, and industry and financial representatives. Thus, before the final report has been issued, the Commission will have the benefit of a wide spectrum of opinion and will also have embarked on an educational and constituency building effort.

B. Administrative, Legal, Fiscal Obstacles

States and municipalities should be encouraged to remove legal and fiscal obstacles to the self-determination and revitalization of neighborhoods.

The capacity of neighborhood people and organizations to act effectively in their own interest is critically influenced by the obstacles in their paths. Many obstacles - lack of education, lack of resources, lack of technical skills in neighborhood redevelopment, apathy, poverty, and racism, for example - stem from conditions in the overall society of which neighborhoods are a part. But there are a surprising number of obstacles to neighborhood well-being posed by governmental laws, regulations, ordinances, and policies which have the effect of inhibiting spontaneous self-help efforts by neighborhood residents.

1) Tax Policies. The Commission is sponsoring two research projects concerned with federal and local taxes. One study will analyze the federal tax treatment of housing investment, the effects of federal tax incentives on management and maintenance of rental housing, the effects of tax laws on the location and magnitude of industrial investment, and an overall assessment of the relative importance of federal tax laws for neighborhood development. A second study addresses property tax assessments, abatements and exemption procedures, and their effect on neighborhood stability and housing turnover. It will critically review what is known about the responsiveness of residential rehab and new construction investment to property tax abatements, and will make recommendations as to the use of property tax abatements and federal attitudes toward them.

2) Neighborhood Organizations. A conference, scheduled for late summer, will examine mechanisms by which neighborhood organizations can acquire the fiscal ability to develop and manage their own programs. The techniques which will be examined range from direct funding of CDBG pass-through to community taxing districts. A major conference paper will be prepared on this issue.

3) Building Codes. Research will address how present building codes impede low cost rehab, and how such impediments can be removed. It will examine the possibilities for a rehab code and the role of the federal government, if any, in code reform.

4) Property Systems. This research will examine three critical areas of recordation of property, foreclosure, and reconveyancing. The focus of this research will be on how these systems may be reworked to allow neighborhood organizations concerned with development to acquire title to abandoned or blighted property, and to removing those facets of these systems which pose obstacles to neighborhood revitalization.

5) Housing Abandonment and Redevelopment. This research will examine the problems faced by community organizations attempting housing rehab and management. Using a case study approach, it will focus on the problems of these groups with financing, taxes, local codes, receivership and foreclosure procedures and technical assistance.

6) Open Housing. The Commission is sponsoring a study which will examine obstacles posed to neighborhood stability by the lack of open housing opportunities. This research will focus on the issues of blockbusting and racial steering for inner city neighborhoods, the difficulty of enforcing Fair Housing laws to protect all types of neighborhoods, and on the issues of suburban exclusionary zoning patterns and regional housing plans which may fail to provide adequate housing opportunities.

#### C. Reinvestment

Policies should be developed to promote reinvestment by private sector financial institutions in established communities, working wherever possible through partnerships.

Private sector financial institutions are not yet fully mobilized to the task of reinvesting in city neighborhoods.

Yet there are hopeful signs. We have seen financial institutions which prove that affirmative reinvestment is not only possible,

but profitable. The Neighborhood Housing Services program has raised the consciousness of hundreds of lending officers about the viability of reinvestment in older neighborhoods.

The issue of mortgage 'red-lining' has turned a corner where debate is no longer focused on whether denial of credit exists, but rather on what are the best strategies to overcome it. The Commission seconds President Carter's declaration that the Community Reinvestment Act regulations should be "strong, consistent, and effective."

1) Community Reinvestment.

Enforcement of the Community Reinvestment Act is central to the strategy of encouraging financial institutions to support their communities. The Task Force on Reinvestment has had one major conference with state and Federal regulatory officials, lenders, and community leaders on regulatory strategies to promote reinvestment. The Task Force will continue to closely monitor the development of Community Reinvestment Act regulations, and other initiatives by federal financial supervisory agencies, and the Commission will make major recommendations in this area.

2) Insurance Availability.

The Commission plans a major research project on the problem of insurance availability in older, disinvested neighborhoods, including an issue forum on insurance red-lining. We will have major recommendations on the FAIR plan, insurance availability for small business, the need for comprehensive homeowners insurance to be available in all locations, and rate differentials based on location in other kinds of insurance, such as automobile.

3) Data.

The Commission is also sponsoring a major study of neighborhood economies, identifying key actors and analyzing public and private flows of funds in and out of neighborhoods. Where data are not available, the project will identify cost-effective means of providing information through modifications in Census, IRS, etc., techniques, so that information will be more readily available to help neighborhood organizations, public officials, researchers, and private businesses better understand and utilize neighborhood economic forces.

#### 4) Pension Funds and Insurance Companies.

Public pension funds and life and casualty insurance company assets are two other major sources of capital for investment in existing neighborhoods. The Commission is sponsoring a study of how public employee pension funds can support local reinvestment needs. The Reinvestment Task Force also plans to analyze how public and semi-private secondary market institutions can be more effectively matched to low and moderate income housing needs, and how instruments can be designed to promote insurance company reinvestment.

#### D. Physical Development.

Physical development programs should build on the strengths of existing communities, seeking to upgrade rather than replace.

Traditional Federal housing and community development programs have not been sufficiently neighborhood-sensitive or neighborhood supportive.

Citizen participation requirements are not effective. The Housing Assistance Plan (HAP), which is potentially a means of requiring planning to assure that housing is provided in a manner that enhances the neighborhoods, is seldom used as a meaningful planning tool. Also, only a small fraction of rent subsidy (Section 8) funds have been set aside for explicitly neighborhood-related programs.

In short, housing programs are not yet attuned to the needs of revitalizing neighborhoods. The old partnerships of city hall, HUD, lender, investor and builder must be replaced with the New Partnership of President Carter's urban policy, which includes neighborhood residents and community institutions. This will require different strategies for different neighborhoods. An under-maintained 'soft' neighborhood with serviceable housing stock requires one set of remedies that may include selective subsidy to restore and occupy vacant units, promotion of home-ownership, and affirmative marketing, while a 'hot' neighborhood

may require a totally different set of strategies to dampen speculative fever and prevent displacement of long-time residents.

The Commission is on record as opposing displacement of existing residents as revitalization of neighborhoods goes forward. The Federal government needs a far superior policy to cope with displacement than the existing Uniform Relocation Act, which fails to protect residents from even all Federally subsidized dislocation, let alone that caused by market forces.

The Task Force on Reinvestment will analyze existing Federal housing programs to determine where they should be modified to make them more neighborhood-supportive. This will include:

- 1) Administrative obstacles in rehabilitation loan programs.
- 2) Management weaknesses in HUD supervision of FHA-insured and/or subsidized apartment projects and the impact of FHA-insured single family homes on neighborhoods.
- 3) FHA supervision of the mortgage banking industry.
- 4) Allocation of community development funds to low and moderate-income neighborhoods.
- 5) Use of Federal housing subsidies to displace existing residents.
- 6) The use of rent supplements (Section 8) to shore up neighborhoods with weak housing demand.
- 7) The use of Section 8 funds for moderate rehabilitation, and the administrative obstacles to this use.
- 8) Technical assistance for neighborhood-based management and development organizations.
- 9) Promotion of urban homeownership, low and moderate-income cooperative and/or condominium ownership, and owner-occupancy of small apartment buildings.
- 10) Targeting of subsidy funds to low and moderate-income neighborhoods.
- 11) Involvement of neighborhood institutions in the execution (as well as the planning) of community development projects.

The Commission plans a major issue forum in September on the neighborhood impact of HUD policies and programs.

Multifamily Housing and the Private Sector. A major research project, including a conference, to be held in New York City on June 12-13 in cooperation with the Ford Foundation, is addressing problems of maintaining a viable private market for lower-income rental housing. We will examine the causes of decline of this rental market, and look at revitalization initiatives by neighborhood-based housing groups. Specific constraints include federal and local tax policy, foreclosure and receivership, ownership and management systems, codes and construction industry practices.

The Task Force on Reinvestment will also study the displacement problem and will recommend a comprehensive strategy for minimizing displacement of existing residents from their neighborhoods through either public or private market actions.

The Commission will comprehensively analyze how UDAG grants have been used; to what extent they have supported existing residential neighborhoods; the legislative constraints that have limited neighborhood participation in UDAG awards. The Commission will make recommendations to make the program more supportive of neighborhood revitalization.

#### E. Economic Forces.

Macro-economic incentives and government development programs should aim to stimulate small-scale, locally owned economic institutions, including co-ops, community development organizations and small business, as well as retain industry and commerce in existing areas. Development policies should aim to create self-sufficiency rather than continued dependency.

The local economies in older urban areas are in serious decline. Public policy has contributed to this decline by creating incentives for industry and commerce to move from city to suburb, from established region to newer region, and from smaller scale to larger scale. There are also distressed local

economies in newer regions. Both require local economic development. The Commission proposes to address this need in several ways:

- \* The modification of macro-economic incentives that undermine local economies and reward sprawl.
- \* Strengthening of community development organizations as a means of both enhancing local economies and building the capacity of community-based institutions.
- \* Rationalizing the assorted Federal programs now directed at community economic development.
- \* Promoting investment by the private sector and the creation of new public sector institutions to promote "New Partnerships" for community economic development.
- \* Targeting economic assistance in order to reduce unemployment without creating inflation.

The economies of depressed communities can be compared with those of under-developed, or colonialized nations. Resources flow through the community, but are not pumped back into the community. Skilled workers who perform higher paying work in the community are often imported from without. Even the community's meager savings seldom are reinvested proportionately in the community's economy. Finally, such public assistance that reaches the community is delivered in a manner that reinforces dependence rather than contributing to self-sufficiency. Thus, even those programs intended to help, are often self-defeating.

The Commission believes that economic assistance to depressed neighborhoods must be carried out in a manner that creates ownership, through institutions like co-ops, community development corporations, and neighborhood partnerships for provision of goods and services, as well as greater accountability of traditional economic and political institutions.

#### 1. Program Review

The Commission is reviewing federal, state and municipal policies which directly impact upon the economics of older urban areas.

Overlapping Federal economic development programs and the variety of agencies that administer them often frustrate local community development organizations. The Commission intends to identify administrative changes which could be readily undertaken to make Federal economic development programs more supportive of neighborhood economic development.

We are using case studies to identify successful models of community economic development, and these studies will also provide recommendations for changes in tax, regulatory and subsidy policy.

The Commission plans conferences with mayors, trade unions and business people to consider strategies for neighborhood economies.

## 2. Development Bank

A centerpiece of President Carter's Urban Policy Message was the proposal for a National Development Bank to provide loans, grants and other incentives to firms establishing job-creating facilities in depressed areas. The Commission will analyze how significantly incentives provided by the proposal would induce business location in qualifying distressed urban areas. We also propose to examine whether large corporations using the Bank would produce substantially fewer jobs per dollar of capital investment than small and medium sized enterprises. We will also study the feasibility of expanding the secondary market program so that the National Development Bank would be able to purchase loans and investments made by more risk-oriented investors to finance cash flow requirements of growing new and small companies.

## 3. State And Local Development Strategies

Recent analysis has documented clearly the federal tilt towards the suburbs and newer regions of the country, away from older neighborhoods, cities and regions and older capital. In its research the Commission is analyzing similar tilts in municipal and state policies that undercut small scale locally-owned enterprise.

#### F. Human Services

Human Service programs must be designed to restore and support natural coping and helping networks rather than supplant them with bureaucratic institutions.

Many human service programs have operated at cross purposes with community strengths and community-defined needs. Rather than building on inherent energies, they have established bureaucratic mechanisms. Even 'Great Society' programs though aimed at helping communities, in many cases fostered new layers of bureaucracy on the neighborhood level.

As a consequence, many service programs which exist today exhibit fragmentation, duplication and overlap, inadequate community accountability, unrealistic goal-setting, and inaccessibility: all evidence of a lack of neighborhood/community input.

The traditional maze of federal agency responsibility in the development of human service programs emphasizes top/bottom planning, and does not allow for adequate neighborhood participation. The weakness of this system of delivery is evident at the community level. Such services may not really meet the needs of a particular client population at all. Even worse, services may not be available to the client because of complex eligibility criteria or lack of adequate service information and referral.

##### 1. Neighborhood Analysis

In order to analyze how human services such as health, mental health, day care, family services, housing, jobs, education, etc., impact neighborhoods, the Human Services Task Force will develop a research project comparing several racially and economically diverse neighborhoods. The study will analyze major barriers to neighborhood-based human service delivery, including federal, state and local funding mechanisms, administrative regulations, and community participation planning.

This project will also identify the types of technical assistance and support strategies needed to strengthen a neighborhood's capacity for developing and controlling its own human

service programs. We will identify model approaches of service integration on the neighborhood level, and offer legislative and administrative recommendations.

2. Title XX (Revenue Sharing)

The Human Services Task Force is conducting a survey of a sample of public officials and neighborhood organizations involved in managing Title XX programs. They will be requested to furnish information regarding the problems and strengths of the Title XX program. The task force will develop recommendations to facilitate Title XX funding for additional neighborhood and voluntary organizations, and to minimize administrative overload.

3. Aging

The Human Services Task Force is looking at model programs for the aged which give maximum assistance to helping the elderly remain independent in their homes and neighborhoods, as well as developing reasonable alternatives. The Congregate Housing Services Act of 1978, provides for supportive services to the aged living in federally assisted housing. The purpose of this legislation is to enhance the capability of the elderly to maintain independent living, and to deter unnecessary nursing home care. The task force will review this legislation and recommend further supportive strategies which will aid the elderly living in private homes, rental units, and extended family situations. Foster care for the elderly is one of these program alternatives.

4. Neighborhood Schools

We will visit the new Cities-In-Schools Project which is an example of an integrated human service program utilizing the neighborhood school as a base. The role of the neighborhood school as in human service delivery will be assessed. The task force will review model uses of the Title I program to improve education in low-income neighborhoods.

5. Crime

Neighborhood crime control strategies will be researched from the perspective of how partnerships between neighborhood groups and criminal justice institutions can reduce neighborhood crime.

6. Low-Income Neighborhoods

The task force will research the impact of public housing and welfare programs on selected low-income neighborhoods, and the manner in which human services can be integrated and delivered in federal housing projects. The St. Louis Tenant Management Corporations are an example of a coordinated service delivery system in public housing. The task force will be developing recommendations which address effective strategies for augmenting human service delivery in these neighborhoods. Another project will focus on outlining the various coping mechanisms and support networks that are inherent in low-income neighborhoods, for the purpose of understanding how human service delivery in these areas can be designed to support inherent coping mechanisms.

U.S. DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT*Memorandum*

TO : Francis V. Reilly, Asst Administrator for  
Insurance Examination & Actuarial Services, IF  
IN REPLY REFER TO:

DATE: SEP 12 1978

FROM : Robert J. *RJ* Dellenzel, Federal Insurance Administration, IEE

SUBJECT: Chronology of FAIR Plan Program Activity in Addressing the Arson Problem

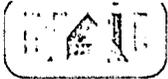
- 1969 - Arson ring investigation and Grand Jury indictments in Rhode Island. Insurance Commissioner Peter F. Mullaney authorized the Rhode Island FAIR Plan to cancel 28 existing insurance policies involving \$375,000 of coverage.
- 1970-1 - Arson ring uncovered by Illinois FAIR Plan in westside of Chicago. Approximately 117 properties involved. Convictions were obtained.
- 1971 - Federal Insurance Administration wrote to the Commissioner of the Internal Revenue Service, advising that the Chicago ring appeared to be associated with certain individuals involved in interstate insurance operations. Meetings set up in Chicago by Federal and State officials from Illinois, Missouri and Rhode Island to pool information that might preclude the widespread risk of arson to collect insurance on properties insured under the FAIR Plan. Internal Revenue Service, in letter to former Federal Insurance Administrator, indicated support in supplying information as needed for the December 14, 1971 meeting.
- 1971 - Arson ring in Missouri. Grand Jury Report found that flexibility exists in Federal Regulations to develop reasonable underwriting standards according to local conditions.
- 1972 - Federal Insurance Administrator's letter on Arson for Profit to the Chief Executive Officer of each property insurer holding a HUD Reinsurance Contract. This letter in part stated, "at the Chicago meeting there was a clear indication by both State officials and industry representatives that arson fraud is not a new problem and that it is probably just as prevalent outside the FAIR Plan as within it. Despite these observations, little has since been done either to

organize or reinstate appropriate industry investigating bodies, such as the American Insurance Association's former Fraud and Arson Bureau (discontinued in 1970) or to set up or update appropriate arson loss reference files either nationally or within individual states." The latter records developed by the Fraud and Arson Bureau were destroyed as requested the State and Federal Governments.

- 1972 - Letter from the Chief Executive Officer and member of the Advisory Board of the National Insurance Development Fund (Riot Program) stated in part, "For many years the stock insurance industry supported the Arson Bureau. Some years ago we tried to elicit broad industry support for the Arson Bureau, for it was beneficial to all, but we were unsuccessful. Therefore, as we could not develop support from the Mutuals and from the Independent companies, we dissolved the Arson Bureau. In retrospect I believe this was a mistake and now we are looking for ways in which to reconstitute the Arson Bureau. We have a Casualty Fraud Bureau and there is a void not having an Arson Bureau."
- 1972 - Request from the Illinois Insurance Department for a waiver to Federal Regulations permitting a 5 day cancellation notice for constructive abandonment. Waiver granted.
- 1973 - Property Insurance Plan Service Office letter to each FAIR Plan reporting on the efforts by the Illinois FAIR Plan Association regarding Arson for Profit.
- 1974 - Property Insurance Plan Service Office letter to each FAIR Plan recommending a request for waiver to Federal Regulations of cancellation requirements, similar to the waiver granted by FIA to the Illinois FAIR Plan.
- 1974 - Massachusetts FAIR Plan Arson Committee established. Ohio Blue Ribbon Committee on Arson established. Designed to train adjusters and industry personnel on arson detection and investigation, and to coordinate with appropriate law enforcement officials.
- 1974 - Establishment by the New York FAIR Plan of an "Early Warning System," i.e., the use of patrols in the South Bronx which resulted in a decrease of arson occurrence.

- 1974 - Establishment by New York FAIR Plan of a "Risk Research and Evaluation Department," which recorded loss information on each FAIR Plan risk and reviewed each new application against the record.
- 1975 - Michigan FAIR Plan Arson Committee established.
- 1975 - Approval by FIA of revised underwriting criteria submitted by Missouri FAIR Plan.
- 1975 - Waiver granted by FIA to Kentucky FAIR Plan permitting a short term cancellation.
- 1975-6 - a. Letter to Connecticut FAIR Plan requesting arson statistics to analyze gravity of arson problem.
- b. Letter to Insurance Commissioner of Florida requesting arson statistics.
- c. Letter to Massachusetts FAIR Plan requesting arson statistics.
- d. Letter to Illinois FAIR Plan requesting arson statistics.
- e. Letter to Mr. Howard D. Tipton, Administrator, National Fire Prevention and Control Administration, requesting his presence at the National Insurance Development Program Advisory Board to discuss the report on arson, America's malignant crime. Advisory Board recommended that the insurance industry support reclassification of arson as a Class I crime.
- 1976 - Ohio passed the "Fire Insurers Immunity for Reporting Suspicious Fires Act", granting all insurers immunity in releasing information on possible arson cases to responsible officials. Similar legislation has been passed in 14 states, with six others pending.
- 1977 - Summary of jury verdict in the case of Cristine Holding Corporation vs. N.Y. FAIR Plan - \$165,000 claimed - \$500 paid. FAIR Plan denied claim based on strict adjustment procedures.

- 1977 - American Insurance Association's proposal to establish the Property Insurance Loss Register to be operational in October 1978. 21 FAIR Plans have subscribed to this loss register and we have been assured all FAIR Plans will participate in the near future.
- 1977 - Discovery of an arson ring in the Boston area. FIA letter to the FAIR Plan complimenting them on their efforts in this regard. FAIR Plan worked with State's attorney in investigation - Resulted in 121 indictments of 33 individuals to date.
- 1977 - Approval by FIA of revised underwriting criteria submitted by N.Y. FAIR Plan.
- 1978 - Letter to the Commissioner of Pennsylvania complimenting the Department on its prudent decision to permit the FAIR Plan to cancel certain risks which appeared to be in violation of public policy.
- 1978 - Waiver by FIA of compliance to Federal Regulations granting short term cancellation notice in Rhode Island.
- 1978 - Meeting with the NAIC Executive Committee to discuss issues relative to the arson problem and FAIR Plan operation.
- 1978 - Participation in the Arson Awareness Program Symposium jointly sponsored by the New York FAIR Plan and the City of Buffalo.

National Association  of Independent Insurers

2600 RIVER ROAD, DES PLAINES, ILLINOIS 60010

312/297-7600

Arthur C. Mertz, President  
June 22, 1978

C. Robert Hall, C.P.C.U., Vice President

Mrs. Gloria M. Jimenez  
Federal Insurance Administrator  
Department of Housing & Urban Development  
Seventh and D Streets  
Washington, DC 20410

Dear Gloria:

NAII Customized Homeowners Insurance Policy (CHIP)

We very much enjoyed visiting with you during the recent meeting of the National Committee on Property Insurance. At that meeting, and at the following meeting of the (D1) Committee of NAIC, the NAII Customized Homeowners Insurance Policy was discussed. I am enclosing a copy of the material we have sent to almost all insurance departments. We would be pleased to receive any personal inquiry you would care to make concerning the program.

You mentioned concern over the situation where an individual would be unable to rebuild property subject to a total loss with an amount of insurance equal to market value. We are giving this question close consideration now. Our attention has been focused on rating problems resulting from the ACV - Replacement Cost Value disparity. I think you will agree that the NAII program substantially improves the position of the owner of a low valued or older dwelling. With all values increasing so rapidly, I anticipate public sentiment will not remain on replacement for total losses but on the lower losses most likely to occur. When a premium moves from \$75 to \$275 because of increased values, mostly, plain "vanilla" seems to have a renewed appeal.

Sincerely,



C. Robert Hall  
Vice President

CRH:hw  
Encl.

cc: Mr. Robert J. Dehenzel w/encl.  
Federal Insurance Administration

Mr. Charles H. Fritzel (NAII-DC)



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
 FEDERAL INSURANCE ADMINISTRATION  
 WASHINGTON, D. C. 20410

20 1978

IN REPLY REFER TO:

SENATE PERMANENT  
 SUBCOMM ON INVESTIGATIONS

REC'D SEP 27 1978

REFERRED \_\_\_\_\_  
 INITIAL \_\_\_\_\_ FILE NO. \_\_\_\_\_

Honorable Sam Nunn  
 Vice Chairman, Permanent Subcommittee  
 on Investigations  
 Committee on Governmental Affairs  
 United States Senate  
 Washington, D. C. 20510

Dear Senator Nunn:

During my testimony before the Permanent Subcommittee on Investigations on September 14, 1978, I offered for your consideration the underwriting guides of the Missouri and New York FAIR Plans as examples of the type of flexibility which is available to the State FAIR Plans under FIA regulation.

Further, on July 12, 1978, I requested that the Executive Committee of the National Association of Insurance Commissioners consider the desirability of employing such underwriting flexibility to minimize abuses of the insurance mechanism, such as arson-for-profit.

Attached hereto for completion of the records of your hearings with respect to FAIR Plans are copies of the subject underwriting guide.

Sincerely,

*Gloria M. Jimenez*  
 Gloria M. Jimenez

Federal Insurance Administrator

**RECEIVED**

APR 22 1976

DEPT. OF CONSUMER AFFAIRS  
REGULATORY DIVISION  
DIVISION OF INSURANCE

MISSOURI PROPERTY INSURANCE

PLACEMENT FACILITY

(FAIR PLAN)

**FILED**

APR 22 1976

DIRECTOR OF  
INSURANCE

By JOHN J. PERKINS

PROCEDURE GUIDE

JANUARY 1976

### III. UNDERWRITING GUIDE -

#### All Classes, Habitational and Commercial

There is a maximum limit of liability at any one location of \$100,000 for Habitational and \$500,000 for Commercial.

The following risks will not be considered acceptable:

1. Vacant property or property that is substantially unoccupied.
2. Property in a severe state of disrepair.
3. Any risk with unrepaired damage due to prior losses.
4. Any risk, which at the time application is submitted, has delinquent property taxes outstanding. Extenuating circumstances will be given consideration if properly indicated on application.
5. Any risk owned by an applicant who has been convicted of a felony, such as fraud, burglary, robbery, etc.
6. Any risk where the applicant has an extremely unsatisfactory loss history involving fire losses of a suspicious nature.

Risks which are, upon inspection, found to have one or more of the following conditions present, may be considered unacceptable for coverage:

1. Unsafe heating arrangement, such as
  - a. Seriously rusted or deteriorated equipment
  - b. Deteriorated chimneys and vents, including breaches from furnaces to chimneys.
  - c. Use of space heaters, solid, liquid or gas with insufficient clearance to combustibles
  - d. Stove pipes with severely inadequate clearance
2. Unsafe electric wiring, such as
  - a. Exposed or frayed wires
  - b. Improperly spliced wires
  - c. Seriously overloaded circuits, fuses hot.
  - d. Severely deteriorating wiring-dry-cracked, etc.
3. Poor housekeeping (Substantial amount of trash, debris, garbage)  
(In And Out Of Risk)

For the benefit of our Producers, in order that you may better understand our terminology, the following definitions with respect to values apply:

#### REPLACEMENT COST

This is the amount it would cost to replace the building at today's costs. This figure should never be used in determining the amount of insurance for FAIR PLAN applicants as the Facility does not write Replacement Cost Coverage.

#### ACTUAL CASH VALUE

This is replacement cost less normal depreciation. This value should not be used in determining the amount of insurance for FAIR PLAN applicants.

#### MARKET VALUE

Market Value is the amount, usually expressed in dollars at which a property will exchange between a willing buyer and a willing seller, each having reasonable knowledge of all relevant facts, with equity to both. IT IS THE AMOUNT THAT SHOULD BE USED AS THE LIMIT OF LIABILITY ON THE FAIR PLAN APPLICATION (unless Purchase Price is less-see below). Because of the considerable discrepancy usually existing between MARKET VALUE AND ACTUAL CASH VALUE, it is suggested that policies be requested on a no-coinsurance basis.

DO NOT ASK THE FAIR PLAN TO WRITE INSURANCE IN AN AMOUNT IN EXCESS OF THE MARKET VALUE, OR PURCHASE PRICE, WHICHEVER IS LESS.

#### PURCHASE PRICE

This is the amount paid for the property by the applicant. This information is very important to the Facility, and in all cases, new and renewal, it is necessary the date of purchase and the purchase price be supplied. If the property was purchased after 1965, please do not request insurance in excess of the purchase price. Any increases in building costs have been offset by depreciation in MARKET VALUE because of the location. If any exception is desired, it will be necessary to write the Facility a memorandum explaining why. The only acceptable reasons for exceeding the purchase price would be if an addition was made or extensive remodeling was completed.

\*NOTE: FALSE INFORMATION ON APPLICATION CONCERNING PURCHASE PRICE MAY VOID THE CONTRACT.

DEEMER PROVISION

"The guidelines for FAIR Plans as set forth by the Department of Housing and Urban Development provides for a "Deemer Provision" indicating that risks are automatically deemed insured if, through no fault of the applicant, coverage has not been either offered or declined within 20 calendar days after the date the application was received in the Facility, and providing the applicant pays either the estimated annual premium or the portion thereof that is appropriate for the period of time for which coverage is provided.

If you wish to take advantage of this provision, it is suggested you suspense your application for 18 days, and if you have not received notice of acceptance or declination by the end of this period, that you send a certified check, bank draft or money order, payable to MISSOURI FAIR PLAN for the estimated annual premium, computed at current rates. This payment is only a deposit premium and subject to adjustment after the inspection is completed. Coverage will become effective at Noon (Standard Time) on the 20th day after receipt of the application, or the day the check is received, whichever is the latest.

The responsibility for requesting this coverage shall be with the agent or broker."

Be sure you advise your applicant of this important feature of the FAIR Plan.

DWELLING QUESTIONNAIRE

In an effort to provide better service on risks located in rural or out-state areas, the Facility has designed a "Dwelling Questionnaire" FAC 4A (2-73) which should be completed and attached to the application when submitted. It is necessary that a photograph be attached to the Dwelling Questionnaire in the space provided.

This completed questionnaire will enable the Facility underwriters to determine whether or not a full inspection is necessary.

These questionnaires are not required on risks emanating from the Greater St. Louis Metropolitan area (including St. Louis County) nor the Kansas City area.

INSPECTIONS AND DEFICIENCY CHARGES

Premises inspections are made on all risks being submitted to the FAIR Plan as new business (Exception: in certain outstate areas of Missouri inspections may be waived at the discretion of the Facility). Inspections on Habitational structures are made by contract inspectors while inspections on Commercial risks are made by the INSURANCE SERVICE OFFICE.

Renewal inspections are made on a selected basis at the discretion of the Facility based on established guidelines.

Deficiency charges are assessed by the contract inspectors on Habitational risks where conditions are found to exist which reflect inadequate maintenance or housekeeping on the part of the property owner. Copies of the inspection report are furnished both the agent and the insured and this inspection report outlines the factors upon which the deficiency charges are based. If and when the deficiencies for which charges have been assessed are corrected, if the Facility is notified, the deficiency charges can be removed and a return premium allowed the insured. The Facility may choose to reinspect certain properties to determine compliance or completion of the necessary corrective action in order to remove the deficiency charges.

Insureds should be advised by the agents as to how the deficiency charges can be removed and also that they can receive a refund if the deficiencies are corrected.

CO-INSURANCE PROVISIONS

It is not uncommon to find property insured in the FAIR Plan having a Market Value (see Page 10) which is far less than the Actual Cash Value of the property (again see Page 10). Due to the increasing costs of construction over the years, it would undoubtedly cost considerably more than the property is worth from a Market Value standpoint to rebuild it. Most property owners having risks in the FAIR Plan would probably not choose to rebuild on the same premises in the event the risk were totally destroyed.

If the FAIR Plan were to insure property for the Actual Cash Value (Replacement Cost less Depreciation) rather than Market Value, it is easy to see that it could be extremely profitable to the property owner in the event the building was destroyed. It would be an outright invitation to arson. Recognizing this fact, the FAIR Plan will not insure property for more than the Market Value or the Purchase Price (if purchased since 1965) whichever is less. The question arises as to the interpretation of the co-insurance clause in the event of a loss under the circumstances described above.

First of all, the FAIR Plan recommends that insurance be written on a no co-insurance basis to avoid any misunderstandings. However, if the insured chooses to utilize co-insurance in order to obtain the reduction in rate, then the FAIR Plan must apply a different approach to the co-insurance requirement that would be done in the ordinary market.

In the event of loss where insured has an 80% co-insurance clause on the policy, compliance with the clause is determined as follows:

Actual Cash Value-----	\$185,000
Market Value-----	\$100,000
Values Insured-----	\$ 80,000

80% of \$100,000= \$80,000-Co-insurance requirements met.

The FAIR Plan does not use the Actual Cash Value of the property in the determination of compliance with co-insurance requirements.

Again, we would recommend that policies be written on a no co-insurance basis in the FAIR Plan.



## *Outline of Procedure*

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NEW YORK PROPERTY INSURANCE UNDERWRITING ASSOCIATION  
110 William Street, New York, New York 10038 - (212) 577-3700

## II. Uninsurable Property

The following properties and contents therein are not insurable under this Plan:

- A. Buildings, substantial portions of which are unoccupied and accessible to unauthorized persons.
- B. Buildings which have been unoccupied 90 consecutive days immediately prior to the date application for insurance is received and buildings which become unoccupied for 90 consecutive days during the policy term (except buildings which have a seasonal occupancy and buildings actually in the course of construction or repair and reconstruction which are properly secured against unauthorized entry).

Coverage will be provided for vacant or unoccupied buildings which are properly secured against unauthorized entry upon written certification that repair or reconstruction will commence within 60 days thereafter or that there is to be a change in ownership and the new owner will occupy or commence to rehabilitate the building within 60 days thereafter. In the case of a new owner the coverage will be effective on the closing day of the real estate transaction.

- C. Buildings which have characteristics of ownership, condition, occupancy or maintenance which are violative of public policy.
- D. Buildings on which any combination of the following conditions exist:
  - (1) failure to pay real estate taxes on the property for two (2) years or more, or
  - (2) failure, within the insured's control, to furnish heat, water or public lighting for 30 consecutive days or more, or
  - (3) failure within a reasonable time to correct conditions dangerous to life, health or safety, or
  - (4) failure to supervise building in accordance with applicable law.
- E. Buildings in which material damage caused by any peril that can be insured by this Association has not been repaired within a reasonable time after receipt of any applicable insurance proceeds.
- F. Buildings subject to extremely hazardous conditions not contemplated by the filed rating plans of the Insurance Services Office (except buildings actually in the course of repair and reconstruction).
- G. Buildings which are in danger of collapse because of serious structural conditions, or those buildings which are in such a state of disrepair as to be dilapidated (except buildings actually in the course of repair and reconstruction).
- H. Buildings on which, because of their physical condition, there is an outstanding order to vacate, an outstanding demolition order or which have been declared unsafe in accordance with applicable law.

*NOTE: Neighborhood or area location shall not be considered in determining insurable condition.*

the following vacant properties are insurable by the Association:

Buildings which are vacant or unoccupied will be covered when the applicant complies with the rules and warranty shown below and the risk is not otherwise uninsurable under paragraphs C, D, E, F, G and H of this section.

Policies shall be written without coinsurance (i.e., flat)\* without automatic reinstatement of amount of insurance, subject to a deductible of five (5%) percent of the amount of insurance and with the following warranty:

*That the named insured shall maintain the insured building secure against entry by unauthorized persons and shall certify in writing to the Association on the forms supplied by the Association, certification forms UA-483 and 484 [see specimen pages in Appendix], within ten (10) days after the first day of each month during the term of the policy that the building has been inspected within ten (10) days prior to the date of said certification and found to be secure as prescribed therein. Failure to so certify or any false certification will immediately suspend and render inoperative any insurance afforded by this policy.*

Contents of unoccupied or vacant buildings are not insurable except for schools. (See page 501.)  
See page 303 for methods of obtaining non-coinsurance (flat) rates. □

Senator PERCY. We will keep the record open for a period of 10 days. Thank you very much indeed.

Mr. Reilly, we appreciate your being here, also.

The next witness is Mr. Robert Keuch, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice.

Mr. Keuch, if you would be sworn in, please.

Mr. Gregg, Mr. James Gregg, Assistant Administrator, Law Enforcement Assistance Administration; Mr. Donald Moore, Assistant Director, Federal Bureau of Investigation.

I think we can have you join us as a panel there.

If the three of you would be sworn in, please?

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KEUCH. I do.

Mr. GREGG. I do.

Mr. MOORE. I do.

**TESTIMONY OF ROBERT L. KEUCH, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE; JAMES M. H. GREGG, ASSISTANT ADMINISTRATOR, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION; AND DONALD W. MOORE, JR., ASSISTANT DIRECTOR, FEDERAL BUREAU OF INVESTIGATION**

Senator PERCY. Mr. Keuch, you can proceed with the prepared testimony. And any parts of it you would just like to summarize, of course, the entire testimony will go into the record.

Mr. KEUCH. Thank you.

In view of the schedule this morning and since my prepared testimony will be part of the record, I think I will briefly summarize that testimony and, of course, attempt to answer any questions that you may have.

My statement points out first that arson is not a Federal crime per se, given certain exceptions such as in the special maritime and territorial jurisdiction of the United States and in a limited way under certain other particular statutes.

However, this is not to say that there is not a substantial area of Federal jurisdiction over arson and I think most particularly arson for profit. These cases are generally brought under the mail fraud statutes, the tax laws, the explosives statutes which I will mention in some greater detail in a moment, and most importantly perhaps certain racketeering statutes particularly 18 U.S.C. 1952 and 18 U.S.C. 1962, both of which specifically mention arson crimes as part of their coverage.

All of these statutes, of course, are further amplified by the provisions of the general conspiracy statute, 18 U.S.C. 371.

I have set forth in my testimony a number of examples of recent prosecutions using these weapons in the Federal statutory scheme, particularly the racketeering statutes and the RICO statute, 18 U.S.C. 1962.

I think it is important to note in those cases that in many of them the defendants who have been prosecuted successfully by our strike

forces or the U.S. attorney's offices have been found to be involved in patterns of arson activities.

In one case I think they had been engaged in a ring operating for some 12 to 15 years and had been responsible for something like 100 fires in New England alone.

We believe the RICO statute is a particularly useful weapon in this area for two reasons. One is that for the first time we can go after a pattern of organized crime or criminal activity so that rather than our going against a particular isolated incidence of a crime or a particular fraud, a particular gambling operation or a particular arson operation, we can go against a pattern of such operations.

The second point that is very important is that we believe that it is a weapon to take some of the profit out of these operations. I know that the committee has heard testimony of the U.S. attorneys or the strike force personnel who tried one of the cases I mentioned in my statement in Tampa, which was brought under the RICO statute. We used there for the first time the enforcement procedures of the RICO statute which in essence provide that an individual's profit from criminal activity shall be forfeited to the United States whether that profit has gone into a new enterprise, or retained its original form as cash, assets, et cetera.

We are attempting to further increase the use of that provision and I think the attorneys mentioned it was one of the first attempts, a learning process, but we intend to vigorously pursue the forfeiture provisions of the statute.

I might also mention that that statute gives the private sector some protection in the sense it provides for treble damages for the victims, including of course, victims of the arson-for-profit schemes.

I think one of the other cases I would like to mention or describe is a recent one in Savannah, Ga. The reason that case is important is that it is a very good judicial interpretation of the explosives laws.

We have attempted to apply that statute to the materials used in arsons that can result in explosive-type situations or are explosive in nature, combinations of gasoline, for example, and other materials.

For the first time we have judicial confirmation of that use of the statute. We think that will be an important case to follow and we can use that weapon, also.

I have also discussed briefly and I know the gentleman from Treasury is going to testify about the development of the strike forces by the Bureau of Alcohol, Tobacco, and Firearms in the Treasury Department.

Our strike forces are working closely with those strike forces. We have been consulted in setting up procedures, priorities, et cetera. We have been trying to contribute to the training of individuals and the rest, and we are looking forward to the development of that program.

However, I think it is important to note that the Federal activity or the Federal presence in this area may still result in relatively few cases. I believe that is true for two reasons. First, we believe the appropriate use of the Federal resources is in the type of cases exemplified by the examples I have listed in my statement.

That is cases involving long range interstate impact, years of activity, arson-for-profit situations, the rest. Second, in our view arson still

remains primarily a local law enforcement problem. There are a number of reasons for this which I outline in my statement.

Among others are the sheer practical problem of investigating immediately after the arson is committed and the fact we do not have, at this point, good data about just exactly what are the motives for the arsons.

Some reports vary as much as, for example, an estimate of 1 percent for arson for profit to another report which shows 17 percent are arsons for profit. A great number of them, as prior witnesses indicated, may come from vandalism, may come from careless individuals, et cetera.

It is very important we think first to determine our statistics, particularly the scope of the problem. We have attempted to initiate programs that will result in more meaningful data.

One of the first things we looked at is whether or not there was a need for a legislative change and the legislative initiatives by the Federal Government. We have determined at the moment the answer to that question is "No." The first reason for that answer is the statutes I have already mentioned which are exemplified by the cases I have outlined in my statement.

The second reason is as I think has been made clear by many of the witnesses before this committee, and this committee's work, is the fact that we still do not have the necessary type of information to draw up the appropriate legislation if indeed additional legislative initiatives is ever needed.

The GAO report which is made to Senator Percy, in response to that GAO report which recommends the Attorney General take the lead in developing such information, we pointed out in the letter I believe you have, Senator, that we agree, concur in that concept and we are taking a number of initiatives which are outlined in that response.

Many of these result also from the efforts of the LEAA. I am sure Mr. Gregg will go into those in some detail. I believe that is a—I hope, a consistent and accurate summary of my statement, Senator.

[Mr. Keuch's complete statement follows:]

STATEMENT OF ROBERT L. KEUCH, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

I am pleased to be here today to present for your consideration a statement as to the measures taken by the Department of Justice in the past few years, and the measures currently being taken, to attempt to meet the serious problem presented by the growing incidence of crimes of arson, particularly arson committed for profit. Preliminarily, it should be noted that arson, is not, by itself, a specific Federal crime unless it is committed at a location within the special maritime or territorial jurisdiction of the United States (18 U.S.C. 81). This area of jurisdiction includes the high seas and any lands reserved or acquired by the United States and held under exclusive or concurrent jurisdiction of the United States (18 U.S.C. 7). The statute prohibits anyone within this area of jurisdiction from willfully and maliciously setting fire to or burning, or attempting to set fire to or burn any building, structure or vessel, any machinery or building materials or supplies, military or naval stores, munitions of war, or any structural aids or appliances for navigation or shipping. The penalty is a fine of not more than \$1,000 or imprisonment for not more than five years or both. If the building is a dwelling or if the life of any person is placed in jeopardy, the statute provides that the penalty be increased to a fine of not more than \$5,000 or for imprisonment for not more than twenty years or both.

Other federal statutes which peripherally deal with arson are 26 U.S.C. 5861 and 18 U.S.C. 922 which make it a crime to transport, deliver, receive or possess a destructive device, such as a bomb or Molotov cocktail capable of starting a fire. It is also a crime to mail injurious articles such as explosives or inflammable materials under 18 U.S.C. 1716. Also, 18 U.S.C. 1855 makes it a crime to set fire to any timber, underbrush, or grass or other inflammable material upon the public domain or upon any lands owned or leased by or under the partial, concurrent or exclusive jurisdiction of the United States. These statutes have varying penalties.

Because of the jurisdictional or other limitations of these statutes, many acts of arson fall outside their scope, thereby precluding Federal authorities from investigating the crime and prosecuting the perpetrators. Many arsonists, for example, are aware of the Federal explosives statutes and, therefore, start their fires by means other than an explosive in order to keep Federal investigators and prosecutors out of the case.

However, despite the fact that, except in the limited circumstances noted, arson per se is not a violation of Federal criminal law, current law affords a substantial area of Federal jurisdiction over arson and, more particularly, arson for profit. Arsons are potentially cognizable by the Federal government most frequently perhaps because the offenses are committed as part of a scheme to defraud and are followed by mail or wire fraud violations (18 U.S.C. 1341, 1343) or entail violations of Federal tax laws (e.g., 26 U.S.C. 7201, 1203, 7206). Arsons may also be Federally cognizable because they were committed by means of explosives, or compounds or devices capable of exploding, against property used in interstate or foreign commerce or in any activity affecting such commerce (18 U.S.C. 844). The reach of these provisions is expanded by the general conspiracy statute (18 U.S.C. 371). Also, for example, the Federal government may reach business arsons and professional arsonists by means of certain racketeering provisions, such as 18 U.S.C. 1952 and 1962. The explosive materials and racketeering provisions carry relatively severe penalties, making their use particularly desirable in appropriate situations.

For example, the Department's Organized Crime Strike Forces have, in recent years, successfully prosecuted a number of highly significant cases involving arson for profit. These cases have been brought, in general, under Federal anti-racketeering laws (18 U.S.C. 1952, 1962), the mail fraud statute (18 U.S.C. 1341), and the general conspiracy statute (18 U.S.C. 371) just mentioned, or a combination of these statutes. While these cases reflect major Federal accomplishments, they are also, in important respects, the result of the efforts of cooperating state and local officials.

Among the most significant prosecutions in the arson-for-profit area was the one prosecuted in Tampa, Florida, concerning which this Subcommittee has already received detailed information. The case was significant not only because of the dimensions of the scheme, which encompassed the burning of a large office building, but also because the defendants included two prominent real estate brokers, an insurance adjuster, a former police official, and an organized crime figure. And not only were substantial prison sentences imposed in the case, but the property interest in two loan companies and over \$340,000 in insurance proceeds were forfeited to the Government.

The Strike Force in Pittsburgh, Pennsylvania, prosecuted a case a year ago that may be as important as any ever prosecuted in the arson-for-profit area. One of the principals, Merrill H. Klein, turned government witness and was instrumental in obtaining nineteen convictions against a ring of arsonists. The case was built around the burnings of several factory buildings, a warehouse, hotel, and cocktail lounge worth several millions of dollars. The government witness, who was sentenced in 1977 to five years imprisonment, disclosed that the arson ring had been in operation for some 12-15 years, and had been responsible for hundreds of fires in several states stretching from New England to Kentucky.

Another recent prosecution occurred in Louisville, Kentucky, based on a fraudulent, million dollar insurance claim for the destruction of a retail store. The defendant was sentenced to prison for seven years and a fine of \$11,000. The case is particularly significant because there is reason to believe the defendant was responsible for some twenty other major arsons committed over a period of years, in Kentucky and Indiana.

The Strike Force in Buffalo, New York, in 1976, convicted Leonard E. Kobrin and Allen King for destroying some fifteen structures whose value had previously

been inflated in a scheme to defraud an insurance company (An associate of these two persons was convicted in 1977 for the arson of a dwelling). Kobrin and Allen received five-year prison sentences.

The Buffalo strike force, using the so-called RICO statute (18 U.S.C. 1962), completed a very significant arson-for-hire prosecution in October 1977. The case involved the burning of eight buildings, which cost eleven insurance companies some \$480,000. One of the men convicted, Eugene DiFrancesco, was sentenced to prison for a term of fourteen years. Four defendants in the case were acquitted, and some aspects of the case are still pending. There is another major arson prosecution pending in Buffalo that includes bankruptcy fraud. I would note parenthetically that the RICO statute is a very effective tool. Under this statute, any two-count mail fraud or interstate arson charge (or one such case plus a state arson felony offense) can be prosecuted as a twenty year federal felony. In addition, such businesses and assets as were utilized in the arson scheme can be forfeited to the Government following conviction. The victim of the fraud can, in addition, bring treble damage actions against the perpetrators. This type of prosecution goes a long way toward taking the profit out of arson.

The strike force in Newark, New Jersey, won a conviction in 1977 of two individuals and a corporation for scheming to defraud insurance companies of \$1.4 million for the burning of four condominium apartments.

One of the so-called "Sting" operations paid dividends recently in the arson-for-profit area. An Arizona restaurateur tried to hire a government agent ostensibly involved in fencing to burn down his restaurant. That overture was the basis for a successful Federal prosecution in Phoenix.

There are a number of other Federal prosecutions pending, and a number of investigations in process. One other prosecution must be mentioned. The United States Attorney at Savannah, Georgia, concluded a case only a few weeks ago in which three persons were convicted for the burning of a tavern, one of whom was sentenced to imprisonment for up to twenty years and a fine of \$21,000. The case has received attention from the news media because the government won, for the first time, a particularly favorable construction of the 1970 explosive materials legislation (18 U.S.C. 844). To the extent that future arsons may involve the use of gasoline or other volatile liquids, or any of various other means, in ways that could cause an explosion, the Federal government may be able to widen its involvement in arson cases as a result of the judicial approval of our use of the statute in such circumstances.

It is, of course, our hope that such successful prosecutions on the Federal level can be continued. As I'm sure the Subcommittee is aware and as I understand will be discussed more fully by the witnesses from the Treasury Department, arson task forces have been established by the Bureau of Alcohol, Tobacco and Firearms in a number of cities. The formation of these task forces followed discussions initiated by ATF with the Department of Justice and consultations with the Organized Crime and Racketeering Section of the Criminal Division worked to develop investigative guidelines.

The Department of Justice supports the efforts of the Bureau of Alcohol, Tobacco and Firearms to set up arson strike forces for the purpose of providing in-depth investigations, detection, and prevention of the crime of arson. These arson strike forces are being established in the twenty-three primary and satellite cities in which the Department of Justice has established organized crime strike forces, including Chicago, where the arson strike force has been operational since June 1978. The Department of Justice looks forward to working in close cooperation with these arson strike forces, as well as with the state and local law enforcement officials, to prevent, detect, and prosecute the crime of arson to the extent Federal criminal statutes are applicable.

The end result of the work of the arson task forces and organized crime strike forces may be a relatively few cases, but they are generally cases which will involve persons ultimately responsible for a large number of arsons. It should be clear, however, that such Federal efforts are not necessarily the solution to the large number of arsons occurring throughout the country. While the Federal government can offer a material kind of assistance to state and local officials, it is they who must bear the general law enforcement responsibility for crimes of arson.

The Department of Justice and in particular the Criminal Division is continuing to review the totality of Federal efforts and resources for contending with crimes of arson. The magnitude and the seriousness of the problem are, you may be sure, fully appreciated.

No one can fail to recognize that arson has become an extremely serious and challenging problem for law enforcement: the prosecutions and other federal actions I have mentioned illustrate it; this Subcommittee has demonstrated the fact most emphatically; and the news media has been presenting some most disturbing statistics to show the dimensions of the arson problem. The situation certainly requires that all devote our best efforts to overcoming this terrible problem.

One of the first questions considered by the Department, in confronting the increasingly serious problem of arson, is whether any legislative changes should be recommended. However, after due consideration, we would not recommend any changes in Federal law at this time. At least on initial impression—the matter is receiving further study—current legislation appears to provide an appropriate basis for the assertion of Federal jurisdiction over arson. And despite the many valuable contributions that have been made by the recent publicizing of the arson problem, the Department is not now convinced that there is enough of the right kind of information available to admit of our making any far-ranging conclusions about altering or expanding the national federal effort to deal with the problem directly.

Statistics have appeared in several newspapers, interest having been galvanized by the work of this Subcommittee, to show virtually a year-by-year increase in the number of arsons in particular communities and a similar progression in the aggregate amount of monetary damages suffered. But there is not ordinarily any estimate made as to the extent of the arson-for-profit problem as distinguished, for example, from the problem of vandalism. Nor is differentiation usually made as to the kinds of property involved. Law enforcement may face distinct challenges to the extent arsons involve inhabited buildings, uninhabited buildings, factories or businesses, homes, commercial or private vehicles, woods or brush, or whatever may be comprehended by the statistics on arson.

In developing a Federal strategy for dealing with arson, it would be desirable to know such things as the various types of property involved, the total number of suspicious fires occurring, the number of these fires that receive careful investigation, the number determined to be arsons, the motives for the offenses, the means or methods used, etc. To gather and evaluate such information properly is itself a challenge.

About a year ago (in October 1977), the Law Enforcement Assistance Administration published a survey and assessment, entitled "Arson and Arson Investigation," which contains some of the kinds of information needed in addressing the problem of arson. A new study of arson is to be published within the next several months, a draft of which was recently furnished the Criminal Division of the Department of Justice.

The Comptroller General's report dated April 15, 1978, to Senator Percy recommends that the Attorney General take the lead in developing information needed to assess the seriousness of the arson problem and, based on the results, develop an appropriate Federal law enforcement strategy.

In responding to that Report, the Department of Justice noted that we agree with the need for this action and that several steps related to the recommendation have already been taken. First, the National Institute of Law Enforcement and Criminal Justice (NILECJ) has funded a research project to organize and assess the existing literature and data on arson. Second, the Attorney General has proposed the development of a Bureau of Justice Statistics. This Bureau will provide for the long-range improvement of all justice statistics, including data on arson, and will have the capability to undertake special studies of selected problems.

Follow-on plans provide for NILECJ to fund additional research projects on the topic of arson. These projects will be selected on the basis of information developed in the initial research project and will address the Department's interest in identifying approaches to the prevention and control of arson crimes. In addition to these efforts, the Federal Justice Research Program (FJRP) is funding a study on the sentencing of Federal offenders, including those associated with arson-related crimes, that will provide data on the way in which violators of relevant Federal laws have been handled in the courts.

Finally, a newly formed ad hoc committee consisting of the planning and research director of all units in the Department of Justice has been instructed to consider the GAO recommendation and to present a plan to the Attorney General for additional studies in this area. Following the completion of these efforts, which will take approximately 12 months, the Department will be in a better posi-

tion to assess the extent of the arson-for profit problem and consider the appropriateness of Federal legislation for coordinated law enforcement in this area.

The development of more concrete information should lay the predicate for selecting points of emphasis and making future plans. But it must be emphasized that whatever the ultimate conclusion may be as to whether the Federal role in combating arson should be expanded, and whichever form such an expanded role, if determined to be necessary and appropriate, might take, the principal responsibility for dealing with arson must be left to state and local officials.

Firefighting is obviously a local government function, and it has logically been a part of that function for determinations to be made as to the causes of fires. Such determinations need to be made promptly. The simple ventilation of a burned-out area can carry off the residues of accelerants used in arson, and scientific analyses will otherwise become less effective as time lapses. Furthermore, the Supreme Court has held that, absent a warrant, government officials may search for and seize evidence of the causes of a fire for only a limited time after the extinction of the fire. *Michigan v. Tyler*, No. 70-1608, decided May 31, 1978. Failure promptly to investigate a fire may preclude adequate investigation later, when a search warrant would be needed to gain access to the premises. To a very large extent, then, the effectiveness of Federal law enforcement will depend on the effectiveness of state or local officials working at the scene of the fires. The case in Savannah, Georgia, which I mentioned earlier, and which involved extensive investigation by Alcohol, Tobacco and Firearms agents, depended upon the work of Georgia State agents who collected and analyzed the evidence of the arson itself.

Even after the evidence of an arson has been secured, the job of identifying the culprit can be enormously difficult, especially if the arsonist has only some slight relationship to the property, such as a vandal or a professional "torch" might have. There is simply no easy way of eradicating the recent contagion of arsons. But evidence of an arson can survive a conflagration, at least in many instances, and the detection of such evidence when it exists is a matter of basic and overriding importance.

It seems clear that a most important step to be taken in a Federal strategy for combatting arsons is to make certain that the state and local officials who are called to fires possess the necessary training and the means to determine the causes of fires. This whole subject is one that LEAA has been addressing and the LEAA spokesman can give the Subcommittee detailed information about its plans for furthering state and local investigation of fires.

The Department of Justice and, in particular, the Criminal Division, is continuing to review the problem of arson in its totality—whether changes in Federal law would be useful, whether our enforcement efforts can be improved, whether the arson strike forces that have been established point the way toward a solution, etc. We are considering such measures as combining the efforts of the various Federal investigative agencies into units having the assignment of identifying the arsons that might appear to be the work of professionals or to reflect a design to defraud and to give such cases the priority and major effort that state or local authorities are not always able to give.

In our judgment, law enforcement officials at every level—the local fire marshal and police officer, the local and state prosecutor, the FBI agent and the ATF agent, the Department of Justice, and every other responsible official—are becoming more fully alert to the magnitude and the seriousness of the problem of arson; and the public has also become alert to, and concerned about, the problem. Anything the Department of Justice can do in the coming months to improve law enforcement or to propose constructive changes in the law will be done in the interest of overcoming the alarming incidence of arson crimes.

Senator Percy. Thank you very much indeed. We will adhere to the 10-minute rule. I will yield to you at any time.

Mr. Keuch, anything the Department of Justice can do in the coming months to improve law enforcement or to propose constructive changes in the law will be done in the interest of overcoming alarming incidents of arson crimes.

What we are concerned with, however, and the reason we are here today, is why it has taken so long to get the Government moving on this matter. Can you take a look back? What has been the problem in

bringing this matter to the forefront within the executive branch of Government?

Mr. KEUCER. I think there are a number of factors. I have tried to go back over our efforts and to see where we have been in the past and where we stand at the present time. I would point out that some of the statutes I have mentioned, the RICO statute particularly and the Explosives Act were fairly new creations; 1970 and 1971 seems a while back, but those are now getting good judicial construction. So they are fairly recent weapons.

I think it must be recognized that again we have to emphasize that absent the large scale operations, absent the arson-for-profit situation that cuts across the interstate lines, I believe it has been the Department's position that the arson matters are primarily a local problem for all of the matters that I outlined.

And there is another factor here, and that is the resources are limited. We have attempted to apply those resources and look into our high priority programs. I am not suggesting that the types of cases that are exemplified by my statement are not among our high priorities.

White-collar crime and fraud, both of which would cover the types of arson described in my statement, of course, would fall in our highest priorities. I believe that the absence of meaningful statistics, the absence of meaningful information on the problem is also an aspect, but I think it is fair to say that we still want to await the studies that have been initiated, the information being developed by the efforts of this committee and hopefully by the efforts I outlined in my statement, to make a determination just exactly what we do need in the legislative side.

[At this point Senator Glenn withdrew from the hearing room.]

Senator PERCY. I wonder why it will not be until some time in 1979 that we will actually have reliable statistics from the Justice Department on the true measure of arson and arson for profit in the United States.

Shouldn't these statistics really have been available years ago? If they are attainable next year, why couldn't they have been attainable before?

When you mention white-collar crime and other areas, the crimes on the victims, thousands of lives lost, reaching levels higher than the Vietnam war at times that we were there and the property damage, even though it is hard to pin down, why is it that the Justice Department didn't assign higher priorities before?

Mr. KEUCER. Senator, we have a problem across the board in making determinations and if you ask me for the statistics of white-collar and organized crime, we have the same problems. We are dealing in imperfect sciences and imperfect results and I think one of the problems is there has been a great deal of information available, but a great deal of it has varied. I think Mr. Gregg in his statement points out, two of the studies he points to, one indicates 1 percent of the arsons are for profit, the other study indicates it is 17 percent. I think we could all agree that the Federal Government's presence and resources cannot be utilized best in directing its attention against arsons that result from vandalism, revenge, that type of what again has to be a local problem.

I think we have made some strides in participating in training

programs for local people, LEAA again has some programs making funds available.

We have cooperated in training programs, prosecutors, ATF strike forces, and the rest. I think the reason for the year's delay is that we need an opportunity to make a determination of the correctness of the figures, a proper analysis.

But I hope I am not giving the impression that within that year there will be no activity at all. We are looking forward to further use of the RICO statute in this area. There is greater emphasis in our strike forces.

The very fact that the FBI has reorganized and has put emphasis on it, will of course result in greater emphasis in our strike forces. Those investigations will not go unprosecuted.

The ATF strike forces will also be a factor, and we are looking forward to that experience. So I think it is an area in which we are making some strides, and we are certainly not going to be standing still for a year.

Senator PERCY. I have found in questioning of the administration, certainly last year I tried to also understand the problems we were talking about then were not their problems, they had to have time to search them out.

We were hoping to cause them to assign higher priority to them. Now as we move into the end of the second year of this administration, there has to be an assumption of responsibility.

You state that local law enforcement must bear the general responsibility for arson crimes. You also state that LEAA has a role to play in assisting local law enforcement in this area. As you know, yesterday the San Jose police chief, with the backing of the Federal strike force attorney in San Francisco, asked LEAA for a grant to support a regional arson intelligence system. He testified this request was summarily rejected.

As you know, the General Accounting Office reported to us that LEAA for the past 3 years have spent approximately one-tenth of 1 percent of \$2 billion on arson control problems.

Speaking now for Attorney General Bell, do you believe that this demonstrates that that kind of Federal attention to arson will provide local governments the tools to deal with it?

Do you think local governments are adequately equipped now in the light of all of the testimony we have had to cope with this major problem?

Mr. KUCER. To take the easy part of the question, I think it is clear from the testimony this committee is hearing and our experience and what information we have, that local law enforcement does need help in training and development and the rest.

However, again, we are in an area where resources are not unlimited. We have attempted, the Attorney General, the administration, has as I indicated, drawn up a list of prosecutive priorities.

Where this places those prosecuting priorities, I think is the most important area for the Federal presence at least from a prosecuting area. That is again a major white collar, fraud area, where these large rings operate, where the losses are major and the rest.

While in certain areas the totality of the losses may be extreme, it is not always the case. But that total loss or a major percentage of

that loss resulted from that type of activity. Again, I want to go back to the fact that if it is individual acts of vengeance, individual acts of vandalism, carelessness and the rest, I don't believe that appropriate use of the Federal resources falls in that area.

So there are a broad range of problems we know across the criminal justice spectrum. I believe we are making an appropriate response.

Senator PERCY. Mr. Keuch, I come back to my original question. The lines of authority are followed here. The strike force recommended the San Jose program. The frustration you get when you convince the top guy there on the spot to support you, and then he summarily is turned down, what do you have to do to get something approved?

Mr. KEUCH. Senator, I was not aware of that request. I would be happy to provide any additional detail I can.

[The information follows:]

DEPARTMENT OF JUSTICE,  
Washington, D.C., October 17, 1978.

Hon. SAM NUNN,  
Vice Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, Washington, D.C.

DEAR MR. VICE CHAIRMAN: During my testimony on September 14, 1978, before your subcommittee inquiring into the problem of arson for profit, Senator Charles H. Percy asked me about information given the subcommittee that the Law Enforcement Assistance Administration had summarily denied a request from the Police Chief of San Jose, California, for a grant to fund an arson intelligence system. I responded by indicating that I was not aware of the matter but would provide the subcommittee with pertinent information at a later time. See pages 475-478 of the transcript. This is to furnish the information Senator Percy requested.

I am informed that the Chief of Police of San Jose, California, wrote the Law Enforcement Assistance Administration in September 1977 to inquire about funding for an arson intelligence network. No formal application for funding was submitted. The Law Enforcement Assistance Administration responded to the Police Chief by pointing out that, while LEAA had no established program for giving direct financial assistance for such a purpose, the Police Chief could seek funding for an arson intelligence network from the California Office of Criminal Justice Planning, the State agency responsible for distributing LEAA block grant funds. It was also suggested that, as an alternative to an arson intelligence network, the Police Chief might consider utilizing the San Jose Integrated Criminal Apprehension Project, and that he might also wish to inquire of the National Fire Academy for certain related assistance.

Enclosed for your information is a copy of the material supplied to me to enable me to respond to Senator Percy's inquiry.

If I may be of any further assistance to you or your subcommittee in this or any other matter, please let me know.

Sincerely,

ROBERT L. KEUCH,  
Deputy Assistant Attorney General.

U.S. DEPARTMENT OF JUSTICE,  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,  
October 6, 1978.

Memorandum to: Robert Keuch, Deputy Assistant Attorney General, Criminal Division.

From: Stephen T. Boyle, Director, Office of Congressional Liaison.

Subject: September 14, 1978, Testimony Concerning Arson.

On page 477 of the transcript of the above-mentioned testimony, Senator Percy asked you about a San Jose Police Department request for a LEAA grant to support an arson intelligence system. Your response was that you were not familiar with the request but that you would provide additional details.

A review of our records indicates that a formal application was not received by LEAA. However, a letter from Joseph D. McNamara, Chief of the San Jose Police Department, was received by LEAA approximately 13 months ago. Chief McNamara inquired as to the availability of LEAA discretionary funds. I have attached a copy of LEAA's response which I trust you will find self-explanatory.

In LEAA's response, we informed the Chief that funding may be available from LEAA block grant funds awarded to the State of California. The major portion of LEAA funds is distributed to the states on a population formula basis. LEAA neither approves nor disapproves subgrant applications under the jurisdiction of the state planning agencies, and each state makes these decisions on the basis of its own evaluation of needs and priorities.

We checked with the California Office of Criminal Justice Planning and were informed that it has no record of any inquiries or applications for block funds from the San Jose Police Department to establish an arson intelligence network.

I have also attached a copy of the relevant portions of the transcript for your full information. If you have any questions concerning this matter, please contact Tim West of my staff on 376-3720.

Attachments.

SEPTEMBER 16, 1977.

Mr. JOSEPH D. McNAMARA,  
*Chief of Police.*  
*San Jose, Calif.*

DEAR CHIEF McNAMARA: In reply to your letter of September 9, 1977, this agency does not have an established program under which to provide direct financial assistance for an arson intelligence network. Consequently, any such funding would be through block grant funds from the Office of Criminal Justice Planning which constitutes the State's planning agency and the distributor of block funds.

Although there may be a recognizable need to conduct a special analysis and law enforcement response to arson, such an effort could be facilitated through the San Jose Integrated Criminal Apprehension Project, which this agency presently supports. This project was initiated in San Jose and other jurisdictions to serve as the focal point for crime analysis and tactical deployment in response to the jurisdiction's crime problem. As an alternative to a separately established arson intelligence network, the project could be the coordinating mechanism to perform regional analysis should surrounding jurisdictions consent. Such an integration of arson activities into crime analysis performed by the project would be one of many factors to demonstrate the project's vitality and contribution to law enforcement agencies within the region.

As an aside, you may be aware of the National Fire Academy's current efforts to upgrade arson investigative capabilities of fire officials through specialized training. Victor Palumbo of the Academy is directing this effort and may have some valuable thoughts upon arson activities, trends and investigative techniques which may foster greater coordination among law enforcement and fire officials.

Your interest in the Law Enforcement Assistance Administration is appreciated.

Sincerely,

JAMES O. GOLDEN,  
*Director, Enforcement Division, Office of Regional Operations.*

Senator PERCY. We place a lot of responsibility on local law enforcement.

I don't know how we can expect the local law enforcement to deal with arson if they really lack the tools, go to LEAA, ask for the tools, assistance and help and then are rejected.

If we can concur on that, you can take that with you to find out what can be done to assist and help. Again, LEAA simply has to recognize, from all of the testimony we have had, one of the most cost effective places they can put the funds. No person in their right mind would spend money on some of the frills, the junk that they have gone in for heavily, when you have got an area like this of high payoff.

I just can't understand why we can't get real back up and support for our local people.

Would it not be a good idea for the Attorney General to examine LEAA's arson policy to determine whether some major changes need to be made?

Mr. KEUCH. I believe one of the concepts of the studies that I set forth in my statement that are being undertaken, such as the ad hoc committee that is going to develop those particular areas of research where attention is needed. I think one of the concepts would be to see whether the Federal response is appropriate and that would cover everything from our prosecutive participation to the funding participation, training participation and the rest.

I might also note two other matters, though certainly not caused only by this problem, but two other steps that have been taken in recognition of the situation that we have often taken action on matters in the criminal justice area which would impact on local authorities and the Department's position quite correctly I believe is that there must be greater participation by State and local officials.

I think there has been a history, perhaps, that we should not be too proud of when we make the statement of ex parte judgments without the participation of the State and local officials before reaching those judgments, or at least giving them the opportunity of being aware of our positions.

The Attorney General and the Deputy Attorney General have recently set up periodic meetings with organizations such as the International Association of Chiefs of Police, the National Association of Attorneys Generals, et cetera.

For the first time the Department will be meeting with those organizations, not on a some time, interim basis, but on a regular basis, with an agenda prepared. The whole purpose of that is to open up a greater discussion, a better line of communication between the Department and State and local authorities.

In the criminal division itself, we have a very aggressive State and local law enforcement program in which we encourage every one of our U.S. attorneys to set up Federal-State law enforcement committees or groups so they can meet on a periodic basis and discuss these problems.

We hope in the future we will not be making just ad hoc, ex parte determinations without at least consultation and notice to State and local law enforcement.

So I know the Attorney General and Deputy intend to use that forum also as a means of discussing problems. Certainly one of them will be the arson problem.

Senator PERCY. If you would be good enough to communicate directly to the Attorney General my request, to personally view the grant policies of the LEAA so as to upgrade the priority he assigns to arson, if I could have your assurance, I would be very pleased?

Mr. KEUCH. Certainly.

Senator PERCY. One last thing to close here, I am extraordinarily pleased to not only see the directive sent out by the FBI, by Director Webster, but also to see that he is very realistic about even the FBI. His efficiency, I think, is right at the top of our Federal agencies.

I have always felt that way. But he didn't take a chance. He just didn't send the directives as I have seen many agencies do and hope

for the best. He said, we intend to monitor it. That really is a very sensible thing.

It would be, I think, a compliment to his judgment, but if the Attorney General would indicate that he would intend to take an interest in that, and would also like to personally monitor the effect of what has happened as a result of that directive, through the FBI, I think in a sense it would be a compliment to Judge Webster to have that loop closed so that right up at the top we know this has been moved from really the back burner right to the front burner.

I would like to have your assurance on that point. I think that would be all the questions I would have.

Mr. KEUCH. Perhaps only with one qualification. I know the Attorney General feels very strongly that the matters in the criminal justice area, particularly the prosecutive, investigative matters, should be primarily concerned with the criminal division.

In a different context, he has recently reaffirmed his belief, in the importance of the independence of criminal division. I know he will look to the criminal division to carry the load in doing that monitoring.

With that qualification, I am sure the Attorney General through the criminal division will be very interested. As I pointed out, we are looking forward to the experience with the ATF strike forces. That will obviously impact on our organized crime strike forces.

We have already started and have for a period of time engaged in training programs for prosecutors. We will look forward to the results and efforts of the FBI.

I think using the statutes I outlined, we can make a contribution as to the types of cases in which I believe the Federal presence is most appropriate.

Senator PERCY. Thank you very much. Without objection I will insert in the record at this point an August 2 directive from the Justice Department entitled "Investigation of Arson Matters."

[The document referred to was marked "Exhibit No. 14" for reference and follows:]

## EXHIBIT 14

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

August 2, 1978

INVESTIGATION  
OF ARSON MATTERS

The continued emphasis on targeting quality organized crime cases makes it incumbent to highlight the FBI's significant jurisdiction in major arson and related violations.

Unlike many other covert criminal activities, the impact of increased major arsons has a direct visible effect on the lives of the average citizen. Insurance premiums are raised, property is destroyed, people are killed or maimed, and the quality of life in the area affected by arson is considerably diminished.

Title 18, U. S. Code, Sections 1961-1968, Racketeer Influenced and Corrupt Organizations (RICO) is an effective means to curtail mob-run arson rings. In addition to arson, there are several other related unlawful acts covered by this statute. Among these violations are Mail Fraud, Fraud by Wire, Obstruction of Justice, Bank Fraud and Embezzlement, and local felonies including Murder Extortion, and Bribery.

An example of a quality RICO-Arson case recently investigated by the Tampa Division of the FBI in close cooperation with the local Federal Strike Force resulted in solving hundreds of arsons, the conviction of 19 individuals, including insurance adjusters and others who were sentenced to substantial jail terms. Additionally, over \$350,000 was directed by the jury to be forfeited by the defendants coupled with the seizure of their related corporations. Thus, the entire pattern of arson-oriented racketeering activity was terminated through successful prosecutive action.



Investigation of  
Arson Matters

In order to implement a cohesive, meaningful approach the FBI is instituting an action-oriented program and an ongoing assessment as to the magnitude of this problem within each of their respective field divisions.

1. Their efforts will be to determine identities of professional torches (arsonists), including their modus operandi, physical description, past criminal activities, clients, and related necessary data.
2. Establishing effective liaison with the police/fire and related agencies delegated primary responsibility for arson investigations. During the course of this liaison determine if there is a pattern of major arson activity conducive to a qualitative RICO investigative approach with particular emphasis placed on substantial organized crime activity.

If such a pattern of major organized arson exists in a field division and the FBI has jurisdiction, appropriate investigative effort should be promptly initiated.

Each field office should record its progress in establishing increased major organized arson coverage.

It has been determined that arson investigations need not stand alone but often form a valuable part of a RICO investigation encompassing a number of other racketeering activities.

If good judgment prevails in the selection and investigation of key arson violations, it is anticipated that the FBI will contribute substantially to the fight against organized crime in an area of concern to a large segment of our population.

Senator PERCY. Senator Javits?

Senator JAVITS. No. Thank you very much.

Senator PERCY. Mr. Gregg, my comments about LEAA, of course, recognize a great deal of the initiative has to come from the local level. Some projects have been wasted because the local people didn't put their sense of priorities in the plan.

LEAA has accomplished a great deal. But we are hopeful as a result of these hearings we can move arson up in priority in LEAA.

We would appreciate your assisting with your testimony. The entire testimony will be incorporated in the record and that of you, Mr. Moore, and if you care to summarize your testimony, we would appreciate your proceeding.

We are hoping you can do that. We will ask you to submit yourself to questions.

Mr. GREGG. I would appreciate that and I would like to make at least several points.

I brought with me also several documents that I would like to either provide the committee informally or submit as part of the record, as you deem appropriate.

I would like to briefly describe them. This is a compendium prepared by the Criminal Justice Reference Service of over 80 major studies in the area of arson. They are abstracts of those studies.

This document, like the others that I will be presenting, is available at no cost to State and local criminal justice agencies, as well as other people interested in the problem of arson.

This document is a study prepared for LEAA, submitted to it by the Aerospace Corp., entitled "Arson Investigation," and is the source of some of the points and statistics that have been used in the course of these hearings.

[The documents referred to were marked "Exhibit Nos. 15 and 16" for reference and may be found in the files of the subcommittee.]

Mr. GREGG. Third, we have a document prepared for us in May of 1978 by Mr. Stephen Tauber, who reviewed literature and programs in the field of arson. He makes a number of recommendations with respect to the problem.

Lastly, LEAA convened in July a meeting of State and local government representatives, insurance agencies and associations, and representatives of Federal agencies to discuss the issue and problem of arson. It was a workshop and I have some summary points and notes from that workshop that I would like to submit.

[The documents referred to were marked "Exhibits Nos. 17 and 18" for reference and may be found in the files of the subcommittee.]

Senator PERCY. Those documents will be then filed with the committee and kept in the committee files.

Mr. GREGG. Our written testimony does review in detail a number of LEAA activities with respect to arson. I would also appreciate submitting for the record a computer print-out of over 100 LEAA projects directly related to arson, involving over \$5 million of LEAA funds.

[The document referred to was marked "Exhibit No. 19" for reference and may be found in the files of the subcommittee.]

Mr. GREGG. I would also like to emphasize that a great many LEAA programs and projects which are not exclusively directed at arson

nevertheless can have a very direct impact on it and would not be picked up in our information system, which gives us projects only completely or exclusively devoted to the arson problem.

Here I refer to such LEAA programs as the career criminal prosecution program; our integrated criminal apprehension program, which is primarily a police program; our various white-collar crime programs; and to the extent that we are dealing with arson more broadly than arson for profit—areas in which the motive for arson is revenge, or vandalism—LEAA programs in the area of juvenile delinquency prevention, neighborhood and community anticrime programs and various neighborhood watch programs contribute.

Components of some of these programs are explicitly directed at arson and in several cities which seem to have been successful in dealing with the problem, these are components of their programs.

I would also like to briefly highlight two relatively recent developments in LEAA which do reflect the increasing priority of the arson problem for State and local governments and for LEAA and the Department of Justice.

We have recently made a decision to set aside an additional \$750,000 of research funds in our National Institute of Criminal Justice for next year, to examine—with the National Fire Prevention and Control Administration—certain data, statistical and research needs in the area of arson. We will also use a portion of that money to develop action programs built on successful experiences of communities in dealing with arson, notably experiences in Seattle, Wash., New York City, Lynn, Mass., and Houston, Tex.

In addition, we have just this week awarded a major grant of over \$900,000 to the National District Attorneys Association, which will provide assistance to major prosecution units involved in white-collar crime activities in over 70 jurisdictions throughout the country. We are giving, in that grant, special priority to the problem of arson. Arson will receive priority attention by the grantee and by the prosecution units throughout the country.

I would like to conclude, Mr. Chairman, by observing that a number of Federal agencies have responsibilities in this area and it would be a very useful service of these hearings to more clearly define congressional expectations with respect to the roles of the various Federal agencies involved.

Thank you.

[The complete statement of James Gregg follows:]

STATEMENT OF JAMES M. H. GREGG, ASSISTANT ADMINISTRATOR, LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Mr. Chairman, I appreciate the opportunity to appear before this Subcommittee to discuss the efforts of the Law Enforcement Assistance Administration regarding an important problem of national concern—arson.

It is the LEAA mission to provide leadership and financial and technical assistance to State and local governments and organizations in order to increase their efficiency and effectiveness in controlling crime and delinquency and improving the criminal justice system. LEAA is not an enforcement agency and does not itself enforce arson statutes. LEAA funds may, however, be used to support such operations when conducted by state or local law enforcement and criminal justice agencies.

Acting on the basis that crime is essentially a local problem that must be dealt with by State and local governments if it is to be controlled effectively, the Congress provided that the bulk of LEAA funds be distributed to the states

in block grants on the basis of population. Funds are allocated to a state contingent upon an annual comprehensive state criminal justice plan which must be approved by LEAA before funds are disbursed. The funds subsequently are distributed to the various units of State and local governments through State planning agencies which administer the LEAA program in the individual states.

LEAA neither approves nor disapproves subgrant applications under the jurisdiction of the State planning agencies, and each state makes those decisions on the basis of its own evaluation of needs and priorities. Anti-Arson projects are, of course, eligible for LEAA funding and states have used portions of their block grant funds for just that purpose.

LEAA is also authorized to award a small portion of its appropriation in the form of direct grants to the States, cities, counties, other units of government and non-profit organizations. These discretionary grants support innovative and experimental projects and programs of national scope. These grants have funded innovative police, courts and corrections improvement programs, as well as more specialized projects dealing with organized crime, narcotics control and juvenile justice.

LEAA's principal support efforts have centered on establishing or strengthening the arson investigation units in various cities, training arson investigators, creating new and improving existing crime laboratory capabilities, and undertaking studies to determine where additional research is needed.

The criminal offense of arson-for-profit has recently become a priority for enforcement in many jurisdictions because of its tremendous impact upon the health, safety and integrity of various social, political and economic institutions. Recent developments which have contributed to successful anti-arson efforts include:

1. Cooperation and consolidation of resources are replacing jurisdictional disputes between law enforcement and fire officials.
2. Insurance companies, traditionally ambivalent toward suspected arson losses, are becoming more supportive of investigations concerning potential fraud.

LEAA has initiated a number of discretionary projects to demonstrate and emphasize the utility and need for joint investigations among appropriate public service agencies and the private sector.

One LEAA discretionary grant, awarded in 1976 to the Massachusetts Attorney General's Organized Crime Unit, made it possible for that office to break one of the largest arson-for-profit schemes in the State, and perhaps the country. Over 30 arrests were made during the investigation for offenses including arson, murder and fraud. This arson-for-profit ring is reported to be responsible for over \$6 million in damage and insurance fraud. Insurance firms and a private investigative firm provided assistance throughout the investigation.

A similar discretionary grant was awarded in 1977 to the San Francisco Corruption Unit. The Unit has focused its attention to arson-for-profit and has launched investigations in that area. LEAA is now considering a proposal to initiate a White Collar Crime Program which, as a priority, would support state and local enforcement activities against arson-for-profit.

In addition, LEAA is negotiating with the National Center on White Collar Crime to develop an arson-for-profit desk manual for investigators and prosecutors which would enhance their ability to detect, investigate and remove such schemes. The Center is part of the Battelle Law and Justice Study Center which is located in Seattle.

Mr. Chairman, I feel it is important to note that many LEAA projects, although not solely or specifically aimed at arson, do have the effect of combatting this crime. For example, discretionary funds in excess of \$450,000 have been awarded to the Dade County, Florida State's Attorney's Office for a Career Criminal Project. Crimes to be specifically addressed include homicides, rapes and sexual batteries, armed robberies, residential burglaries, assaults involving serious injury to the victim, extortion, kidnapping, bombings, arson in the first degree and conspiracy to commit any of the foregoing offenses. Another example is a Community Anti-Crime Project in New York which last May was awarded LEAA discretionary funds totalling \$250,000. The grantee is located in the Bronx and will organize 5,500 residents in 190 apartment buildings to initiate lobby and building patrols; negotiate with building owners to install or repair intercom-buzzer systems; mobilize 250 residents to participate in anti-arson activities through neighborhood associations; work to create a dispute resolution center to reduce tensions between tenants, landlords, merchants and consumers; orga-

nize senior citizens to form a street watch during the day, and implement a weekend hotline service.

These are just a few of the LEAA projects which can have an effect on arson and its control. Many projects which do not specifically mention arson, such as police training, courts improvement, or inmate rehabilitation have an effect on arson as well as many other crimes.

LEAA has been gradually shifting the emphasis of its resources from enforcement to the prevention of violent crimes. LEAA's research arm, the National Institute of Law Enforcement and Criminal Justice, is supporting efforts on several fronts to help sort out the complexities of the arson problem and to expand our knowledge of methods for detecting and investigating incendiary fires set with criminal intent.

As with other LEAA anti-arson efforts, the Institute has tried to ensure that our work is coordinated with that of the National Fire Prevention and Control Administration and its Fire Research Center, because these agencies also have major responsibilities for dealing with arson. Thus, Institute staff frequently confer with their counterparts in the Commerce Department to minimize the possibility of duplication or neglect of pressing needs.

Much of the current Institute activity stems from earlier research that dealt with the general subject of arson. In 1971, for example, the National Institute awarded over \$73,000 to the Stanford Research Institute to conduct research into the nature and frequency of violence problems affecting fire departments. As you will recall, Mr. Chairman, firefighters frequently found themselves in hostile confrontations with mobs during the sixties. The National Advisory Commission on Civil Disorders recommended that new knowledge be acquired on how violence—both individual and collective—affects fire departments.

In responding to that need, the Stanford Research Institute surveyed some 1,000 fire departments in both large and small cities. Although not the major focus of the study, useful information on arson was uncovered by the researchers. The study noted the ominous rise in incendiary fires and it pinpointed a number of the obstacles to more effective arson control, starting with the very basics—the lack of uniform definition of what constitutes arson and the absence of reliable national statistics on the true dimensions of the problem.

The results of that early research prompted the Institute to undertake a more in-depth look at the problem. We subsequently commissioned the Aerospace Corporation to conduct a survey and assessment of arson and arson investigation. A report of that \$90,000 study was published by the Institute in 1977.

The study, which analyzed statistics from more than 100 cities over a period of four years, documented an almost epidemic rise in arson. During the period 1965-1975, incendiary building fires increased 325 percent—a larger increase than any of the FBI index crimes. Although predominately viewed as a property crime, arson often results in injury or death. The study estimated that arson claimed 1,000 lives, including those of 45 firefighters, and caused 10,000 injuries from arson in 1975. Property valued at more than \$2 billion was destroyed. The study also found low arrest, conviction, and incarceration rates for known or suspected arsonists.

The reason that fire and law enforcement personnel have been unable to make more inroads against the crime is not hard to understand. Arson is one of the most difficult of all crimes to investigate, because the successful arsonist burns the evidence needed to build a case. Arson investigators require a good deal of training and experience to identify evidence. They are further hampered by the fact that there are usually no witnesses to arson, and we know from our research on other crimes that witnesses are often crucial to securing convictions. Thus, arson cases usually lack two of the critical elements law enforcement officials require in investigating a case. Equally important, the roles of police and fire agencies in detecting and investigating arson are frequently blurred.

The data gathered by this study found that fraud was the motive of only 5 percent of the arrested arsonists. In studying convicted and imprisoned arsonists, the majority were found to be motivated by revenge, while vandalism was the motive of 80 percent of the juveniles. However, the researchers note that professional "Torches" and more sophisticated white collar or organized criminals with access to better legal counsel are less likely to be convicted. In contrast, studies of arson investigations in several states showed an average of 17 percent of the cases where motivation was fraud.

The study produced 20 recommendations, including the following:

Collection and dissemination of arson statistics should be improved.

Increased training for arson investigators of fire and police departments.

An automated nationwide data system available only to authorized arson investigators should be established to help solve cases involving repeaters, professional "torches," and arson rings.

Insurance companies could help eliminate the profit motive from arson through more selective underwriting, avoidance of overinsurance, not paying claims until the investigation has been concluded, more defense against fraudulent claims in civil court, and providing more information on insurance coverage to arson investigators.

Research should be conducted to obtain information to help design arson prevention programs.

As that research was nearing completion, the National Institute was in the process of developing a long-range research agenda that would enable us to allocate our limited funds to meet the greatest needs and to invest in projects that promise the greatest reward in terms of new knowledge. In selecting our priorities, violent crime—including such crimes as homicide, rape, and arson—emerged high on our list.

During the past fiscal year, we have concentrated on pulling together all that is known about arson from all sources available to us, and have aimed our efforts also at helping to forge a more coordinated approach to the problem at the Federal level. The results of the Aerospace study, for example, have been widely disseminated. I believe it is accurate to say that most of the recommendations are being acted upon by organizations with the appropriate authority.

Late in 1977, the Institute commissioned a review of the state-of-the-art on arson control, with a particular emphasis on identifying research needs. The results of the study were reviewed by a number of arson specialists and were the subject of a workshop held by the National Institute last July. The working meeting brought together representatives of the Federal agencies with responsibilities in the area of arson, state and local law enforcement, the insurance industry, and private organizations.

As a result of the state-of-the-art study, the workshop and other consultation with research organizations, the Institute is now designing an expanded program of research on arson.

One of the difficulties in setting research priorities, of course, is the enormity of the problem. While much attention has been focused—and rightfully so—on incendiary fires in buildings, another major part of the arson picture is incendiary wildfires (forest and watershed areas). This form of arson costs millions of dollars annually, and appears to be a particular problem in the south.

Despite these aspects of arson the urgency of the problem in urban areas demands that we focus our limited research resources on a set of clearly defined projects that offer the promise of useful information for policymaking.

For example it seems wise to take advantage of the opportunity that now exists to learn what we can from the experience of arson task forces. As I mentioned with the help of LEAA funds, a number of cities and states have established such units. If we can identify the basic characteristics of the successful units we may be able to transfer these approaches to other localities with some promise of success. At the same time, we expect this sort of evaluation of practical experience to help surface ideas for future research.

Mr. Chairman, this is the first step in the program development process at LEAA. Having defined arson as a problem and conducted research to lay the foundation of knowledge, we are now at the stage of devising a model for an action program that will build on previous research available empirical data and qualitative data derived from experience and expert opinion. Now under way are site assessments of promising anti-arson programs in New York City; Lynn, Massachusetts; Seattle, Washington; and Houston, Texas. The program model report will include information in the following broad categories:

1. *Problem definitions.*—What is arson? What is its magnitude? What are its underlying causes? And who is the perpetrator and victim?

2. *Legal issues.*—What are the current laws governing arson? What types of legislation are necessary to facilitate its successful investigation and possible deterrence?

3. *Organization factors.*—Who should have responsibility for the detection and investigation of arson? How should such a program be organized? And what are the program costs?

4. *Program operations.*—What tactics lead to successful investigations and deterrence? What is the focus of training and specialization?

5. *Technical support.*—What specialized equipment is being utilized? Who provides necessary laboratory support? And what data support is available?

Based on the findings of this effort, the Institute will proceed to develop a design for a program that can be field-tested in several jurisdictions. We have budgeted approximately \$500,000 for this effort in the next fiscal year. We hope the program development process will result in a highly refined program that can be implemented in a wide variety of jurisdictions with LEAA funding.

Another area under consideration is a proposal to examine laws and practices that inadvertently may contribute to arson for fraud or profit. For example, under privacy laws in some states, insurance companies risk being sued for damages if they report suspected arson to the authorities. Another priority for research is arson data. Before we can answer the basic question of what is burning and why, we need to remedy the deficiencies in the quality of data. Many of the difficulties have been cited in previous research, including the lack of uniform classification of the various types of incendiarism. Some of these problems fall within the purview of the Fire Data Center of NFPCA. But additional research might profitably look at how data is currently collected and classified, how the process could be improved to enhance the accuracy and reliability of arson statistics, and how the figures might be analyzed to discern arson-related patterns. A corollary effort might look at data on building ownership and insurance patterns that could yield a method for anticipating arson targets in urban neighborhoods.

In addition to these plans for which we have tentatively allocated \$250,000 for the coming fiscal year, the Institute is now supporting other research that will help arson investigators.

One of the recommendations that emerged from the Institute-sponsored assessment of arson investigation was for research aimed at developing an improved flammable vapor detector to locate residues of liquid fire accelerants at fire scenes. The Institute has transferred \$60,000 to the Fire Research Center at the National Bureau of Standards to assess currently-available equipment and technologies of this type and develop standards of acceptability. The testing also will identify improvements that are needed in existing technologies.

A related project, also being carried out by the Fire Research Center with \$120,000 in Institute funds, will look at the particular problem of fires in correctional institutions. The research will result in guidelines for both fire safety inspection and plans for evacuation in corrections institutions, but the results could also be applicable to other large structures, such as hospitals or hotels which might be the target of arson.

Other research sponsored by the Institute, while not directly related to arson, nonetheless has a bearing on the problem. An example is the major efforts to improve crime laboratories. In addition to the difficulties of finding evidence at the scene of a fire, it may be equally difficult in some areas to locate laboratories capable of analyzing arson evidence.

LEAA has invested millions of dollars to help local jurisdictions establish crime laboratories where none existed. And the Institute has supported a long-term research effort to upgrade the proficiency of labs in analyzing various types of evidentiary materials, including those found at arson scenes. More than \$330,000 in Institute funds have been spent to develop a standard proficiency test for crime labs, and funds also have been awarded to provide training and certification of laboratory examiners. These efforts can help to expand laboratory capabilities in detecting and identifying accelerants and in linking the evidence to the suspect, an essential step in securing convictions.

Another aid to the investigative process is the polygraph and this device, too, has been the subject of an Institute study to determine its effectiveness. The researchers reported a high rate of accuracy when polygraph tests are administered by trained personnel, and made recommendations for improving the ability of law enforcement agencies to analyze the test results.

These examples, of course, in no way exhaust the possibilities for research or action. We are continuing to mine the results of the state-of-the-art study to guide us in developing additional studies or recommendations to others with responsibilities in this area. For example, our research has shown a great need for better training of prosecutors and for developing "case theory" for the prosecution of arson. We understand that NFPCA is developing a course for Prosecutors that will help to fill this need.

Similarly, another area that could be explored is the role of juvenile fire setters and the use of juvenile gangs as hired "torches" to set fire for profit.

The possibilities for research in this area are under consideration jointly with our sister branch at LEAA, the National Institute of Juvenile Justice and Delinquency Prevention.

One of the legislatively mandated objectives of the Institute is to "serve as a national and international clearinghouse for the exchange of information with respect to the improvement of law enforcement and criminal justice \* \* \*." Since 1972 the National Criminal Justice Reference Service (NCJRS) has been a centralized information resource for practitioners and researchers in the criminal justice field. It serves as a clearinghouse of practical and theoretical information with the goal of increasing understanding of the causes, effects, and prevention of crime, and the operation of the criminal justice system. NCJRS activities foster the exchange of information and create channels of communication among those who have an interest in the field of criminal justice.

All NCJRS services and publications are available to the public as well as to the criminal justice professional. The NCJRS collection currently contains nearly 40,000 research reports, published papers, books, articles, and audiovisual presentations. The subjects covered by this collection reflect all aspects of law enforcement and criminal justice—from arson to victimization—and from preliminary research to detailed descriptions of successful programs.

I have available for the committee's information a compendium of abstracts dealing with the subject of arson. This document was prepared by the Reference Service.

Recent Congressional interest, and efforts of the media have increased public awareness of the cost and scope of arson. As we learn more about arson, it should be possible to focus our resources on areas where they will do the most good.

Thank you Mr. Chairman, for the opportunity to appear today and discuss this vital matter. I would now be pleased to respond to any questions you might have.

Senator PERCY. Thank you very much.

Mr. Moore?

Mr. MOORE. First of all, I would like to preface my remarks, Senator, if I might, in complimenting you and your associates in this effort.

We, in the FBI, do also share your concern.

Rather than read the statement as you have requested, I will hit some of the points of possible interest and then certainly answer any of your questions.

[The complete statement of Donald Moore follows:]

STATEMENT OF DONALD W. MOORE, JR., ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FBI

On behalf of the FBI let me say that it is a privilege to appear here today before your subcommittee and explain our responsibilities in the field of arson.

As part of its overall campaign against organized crime, the FBI is firmly committed to the allocation of our available investigative and supportive resources to assist in the protection of the American public from the growing organized "arson-for-hire" problem on a national level.

The FBI involvement in arson matters is two-fold. The first aspect is the compilation of arson statistics in the Uniform Crime Reports (UCR). The second is the investigation of arson violations falling within our jurisdiction. The question has been raised regarding the inclusion of arson in the list of Part I offenses in the Uniform Crime Reporting (UCR) Program. With respect to the UCR Program it should be emphasized that the FBI acts as a repository for crime statistics from city, county, and state law enforcement agencies. To substantially reflect the level of crime occurring in our country, data is gathered on the basis of a selected number of criminal acts commonly referred to as the Crime Index. The Crime Index is composed of seven crimes that are generally reported to law enforcement on a timely basis, become evident as criminal acts contemporaneously with their occurrences, happen with sufficient frequency to make statistical information of value, and are universal in nature. For these, and other reasons, the crime of arson has not been a part of the Crime Index.

Authorities are in accord in categorizing arson as a serious or even a major crime. But all serious crimes are not Part I offenses in the UCR Program. For example, the crimes of kidnaping, extortion, embezzlement, bribery, and bombing, to name only a few, are serious and major crimes that do not meet the tests for Part I offenses.

The FBI recognizes the need for statistical information about arson, and given appropriate resources we would welcome the opportunity to gather meaningful data regarding arson offenses similar to other statistical programs administered by us.

Presently, we collect information on incidents involving the deaths of law enforcement officers through felonious action.

We also gather statistical data on bombing incidents occurring within the United States and its territories. These ongoing special data collection efforts were generated to satisfy information needs. Rather than alter the Crime Index, special data collection efforts were launched thereby drawing special attention to the criminal acts of bombing and felonious deaths of law enforcement officers. I suggest that a similar data collection program focusing upon the crime of arson be initiated. Being armed with comprehensive information regarding arson will permit a more definitive determination as to the feasibility of adjusting Part I listings of the UCR.

From an investigative perspective it should be noted that, unlike many other covert criminal activities, the impact of increasing major arsons has a direct visible effect on the lives of average citizens. Property is destroyed, people are killed or maimed, insurance premiums are raised and the quality of life in the area affected by arson is considerably diminished.

The thrust of the FBI's arson-related jurisdiction is aimed at curbing organized crime involvement and targeting major impact cases of widespread significance for prosecutive action. Specifically, our statutory authority for these investigations is under the auspices of Title 18, United States Code, Section 1961, *et seq.*--Racketeer Influenced and Corrupt Organizations (RICO) Statute which is an effective means to prosecute organized large-scale arson rings.

Additionally, Title 18, United States Code, Section 1952--Interstate Transportation in Aid of Racketeering--Arson is another effective statute falling within the FBI's investigative jurisdiction.

In essence, these statutes require the establishment of an organized crime connection or a pattern of racketeering activity before the FBI enters into a given arson case. Under the RICO Statute, there are several arson-related unlawful acts known as "predicate" violations which form this pattern. Among these Federal violations are Mail Fraud, Fraud by Wire, Obstruction of Justice, Extortionate Credit Transactions, and local felony violations including arson, murder, extortion, and bribery.

As an example of a successful recently concluded RICO case I would cite one which was investigated for almost two years by the FBI in close cooperation with prosecutors of the local Federal Strike Force. This case resulted in the solution of hundreds of arsons and the conviction of 19 individuals who were sentenced to substantial jail terms coupled with the directed forfeiture of over \$350,000.

One of the convicted defendants was a professional arsonist who testified as a Government witness. He provided a detailed account as to the minimal risks he incurred as a professional "torch," compared to the high profit potential in this insidious criminal activity. Thus, as a result of this in-depth prosecutive approach, the entire arson-for-hire activity was exposed and appropriately terminated.

A similarly successful RICO arson case in Milwaukee, Wisconsin, recently resulted in the convictions of six individuals in an arson-for-hire ring. This group specialized in burning inner-city properties which were inflated in value as part of a sophisticated organized fraud scheme to collect large sums of money from insurance companies.

At the present time, the FBI is investigating numerous arson violations from coast to coast. These cases involve a great deal of time-consuming, detailed, and penetrative work, but, from the standpoint of society as a whole, we think that their successful prosecution will make a significant contribution to this combined local, state, and Federal effort.

In addition, Director Webster has approved an extensive training program to insure that the FBI is fully responsive to its responsibilities in this area. For example, he has endorsed formalized arson "in-service" training sessions conducted by our FBI Academy Staff and highlighted by lectures from the

firefighting, prosecutorial, and insurance sectors. These week-long classes are designed to enhance the investigative skills of the Special Agents assigned to these cases. Additionally, he has committed other resources of our training facilities to assist local police officers in the proper handling of arson-related evidence. An arson investigative course of instruction is also offered to the 1,000 attendees of the FBI National Academy each year.

The full supportive resources of the FBI Laboratory are available for the examination of arson crime-scene evidence submitted by local jurisdictions. The facilities of our Laboratory are always available for the evaluation of evidence for any duly constituted state, county, or municipal law enforcement agency at no cost to their respective organization. In this regard, over 1,000 items of arson-related evidence were examined by our Laboratory experts for local authorities during the past fiscal year.

All Special Agents in Charge of our Field Offices have recently been provided with specific guidelines to intensify investigative efforts in this very important area within our investigative jurisdiction. The committee is already in receipt of a copy of this directive.

In summary, the FBI pledges a cooperative effort with other Federal and local authorities in the total unified campaign to eradicate arson-for-profit as a major national problem.

Mr. Moore. The first issue I think that I would like to discuss is the recording of arson statistics with regard to the FBI's uniform crime reporting system.

I won't go through the legislative history of uniform crime reporting, but to indicate that in view of Judge Webster's asserted effort of the FBI to this problem, the Bureau certainly recognizes and appreciates a statistical gathering base of data that will be provided to the law enforcement community and to this country.

He alluded, Senator, to two programs that are adjunct to the uniform crime reporting which we now provide, not as part I categories of UCR, but an adjunct to it. They deal with one of bombing matters in this country and also the assaults of Federal officers. I would certainly be glad to make this available to the committee, if you would like.

Senator Percy. Yes, thank you very much.

[The document referred to was marked "Exhibit No. 20" for reference and may be found in the files of the subcommittee.]

Mr. Moore. I think what I am saying is we would like to have the same capability to conduct studies of what the arson problem really is statistically in this country. I will make those statistical data available.

[The document referred to was marked "Exhibit No. 21" for reference and may be found in the files of the subcommittee.]

Mr. Moore. We recognize that prior to placing any data into the uniform crime report there must be a good, sound base for it. That is not to diminish the arson effort and the profit of arson.

But in order to produce a meaningful statistics we must then conduct the necessary study. I would trust that funding could be made available for us to conduct such a study that we feel necessary in conjunction with the part I categories of UCR.

Senator Percy. I think the members of this subcommittee would be pleased to support that.

Mr. Moore. I appreciate that.

Senator Glenn. What is that study now?

Mr. Moore. Senator, this would be similar to the studies that we have done of the two pamphlets that I enumerated of the assaults of Federal officers and bombings in this country that are adjuncts to the uniform crime reporting.

Senator PERCY. Did I understand you to say there are other studies now?

Mr. MOORE. What we are asking is sufficient funding to conduct a data base in order then to include arson into the uniform crime reporting system, rather than arbitrarily take statistical data as we know it now, which would not have the credibility as a detailed study would have. What we are asking is that we conduct a study of arson in this country as we did in the two pamphlets that I have alluded to.

[At this point Senator Chiles withdrew from the hearing room.]

Mr. MOORE. The main thrust of our investigative responsibility is what Mr. Keuch had mentioned, two primary statutes; one, the RICO statute, and the other is the Interstate Transportation and Aid of Racketeering, ITAR, statute.

The Bureau has had some successes in these endeavors. The most recent case that continued for some 2 years resulted in the convictions of 19 individuals. We currently have on board arson investigations by the FBI from coast to coast.

Director Webster has certainly supported an increased effort of the FBI's participation in arson matters. We have notified all of our 59 field offices to have the awareness and the import of these investigative matters, consistent with the responsibilities of the Bureau and to assist other law enforcement agencies.

We have increased our training process at Quantico of our own special agents, as well as local police officers.

Senator, I think for the sake of brevity, that would pretty well synopsis the statement.

Senator PERCY. Thank you very much.

Mr. GREGG, in your testimony you stated that the results of the Aerospace study was widely examined. I presume this does indicate a commitment on the part of the LEAA to attack the arson problem.

You also list a number of arson-related programs assisted by LEAA funding. The programs you mentioned amounted to less than 1 percent of what LEAA has dispensed—approximately \$2 billion—for non-arson assistance to local law enforcement over the past 3 years.

Is this the level of support that you really believe sufficient to even put a dent in the problem?

Mr. GREGG. I believe we are going to see those amounts increased as the recognition of this problem increases. As you are aware, a large portion of our funds are distributed to the States through a block grant and the priorities for utilizing those funds are determined by the States in the plans that they develop and which are approved by LEAA.

I think we have growing recognition of this problem and we will increasingly see reflected in those plans and those allocations of resources funds to address the problem. We certainly are responding to it at the national level with our discretionary programs in the ways that I have described in the testimony and in recent actions that we have taken that I mentioned in my opening statement.

Senator PERCY. Do you concur as a result of the fourth day now of these hearings that this is a serious problem?

Mr. GREGG. Very much so. We consider it a very serious problem and we certainly are giving it increased priority within the agency.

Senator PERCY. Do you have any concept as to, taking into account

the realization we have now of the seriousness of it, what kind of funding might be appropriate?

Mr. GREGG. That would be one of the major purposes of the increased research allocations that we have made for the next fiscal year which begins in several weeks. We will examine the experience around the country to determine which programs and approaches are most effective and to begin to test those programs. As we prove those approaches successful, we will disseminate that information and encourage communities that have this problem to adopt that kind of program.

So we are building and developing all phases of an action program now.

Senator PERCY. Would you say that one of the reasons for failure to spend more money now is the fact that this problem has not been fully recognized at the local level?

Mr. GREGG. I believe that is correct. However, some communities have for several years recognized that it is a serious problem. I think Seattle is a good example of that; they have developed some very good ways to deal with the problem in Seattle.

Senator PERCY. Houston seems to be one of those cities that has recognized this. You have indicated in your testimony that major support from LEAA has been strengthening arson investigation units, training arson investigators and creating and improving crime laboratory capabilities and yet yesterday, we were told by the chief of the Houston Arson Squad, that when he asked LEAA to support a laboratory desperately needed to end the 18 months backlog in chemical analysis of flammable material, he was told by LEAA officials to forget about it.

In light of your testimony, here is a specific request by a city that recognizes this as a major problem and the question you have to analyze here is the backlog, why is it they were actually discouraged and turned down?

Mr. GREGG. Sir, that was a request to the State of Texas under the block grant program, and I would have to check to see precisely why they rejected that application under their block grant program.

It may be again the fact that the States are just beginning to realize the seriousness of this problem and are beginning now to allocate resources under their new plans for this area. When someone applies, although the project itself might be meritorious, there hasn't been the ground work to develop arson as an area of priority in the State. The applicant may be turned down on the basis that the block funds already have been programed and committed for other purposes.

Senator PERCY. Our staff has been advised by local arson officials in the cities other than Houston and San Jose, who have told us of their frustration in not getting help from LEAA.

I wonder, in your operations has it not filtered up to you?

Mr. GREGG. I was not aware, until this morning, of the particular grant in San Jose. I might say that San Jose has participated very heavily in the LEAA program since the beginning of the program, and some outstanding projects have been undertaken in San Jose.

I also might add that we have four or five times as many grants requested and denied as we are able to approve with the resources that we have.

So I don't think that in any way arson projects are being singled out for negative reaction. We have to turn down or disapprove very large numbers of grants because we don't have the resources to fund all of the good programs and projects that come to us.

I think just knowing the nature of the problem, looking at the testimony from yesterday, that perhaps part of the problem is the issue of funding intelligence and information systems.

We do have to be very careful in doing that, in that we have generalized intelligence information systems that can often deal with a number of crimes. To fund separate intelligence systems dealing exclusively with one type of crime can be an extraordinarily expensive proposition. I think before we embark on that kind of program, we would want to be very certain that it was the wisest way to proceed.

Senator PERCY. Are you aware of the San Jose request, and of frustrations generally across the country?

Mr. GREGG. With respect to arson for profit? No, I'm not, but I think we are going to see more requests coming in for this and unless we are able to respond, I think we will see that level of frustration go up.

Senator PERCY. You mentioned a moment ago the successful program initiated in Seattle. Did I insert in the record the newspaper report?

We will try to locate that and possibly your files would reveal it. We could have it inserted in the record at this time without objection.

[The document referred to was marked "Exhibit No. 22" for reference and follows:]

#### EXHIBIT No. 22

[From the Washington Post, July 23, 1978]

#### GETTING ARSON UNDER CONTROL

(By Neal R. Peirce)

SEATTLE.—Seattle has demonstrated how concerted action can dramatically reduce arson incidents and the fearsome losses to property, and often life, that come in their wake.

Only a handful of other cities—among them Houston, Los Angeles, New York's South Bronx and Boston—have anti-arson campaigns in any way comparable to Seattle's. The formula, explains City Councilman Randy Revelle, is deceptively simple:

"Make arson a priority crime. Establish a specialized arson unit within the fire department; combine its investigative work with that of the police department. Provide arson investigations training—that's absolutely critical. And involve local insurance companies and the media in anti-arson campaigns."

Richard Hargett, commander of the Seattle Fire Department's arson unit, says that by 1975 arson had become "the most serious problem facing the fire force." Between 1971 and 1974, losses in Seattle had risen from \$621,000 to \$3.2 million. "I was feared they would reach \$4.4 million in 1975.

But with its new program, Seattle reduced fire losses to \$2.6 million in 1975. Last year the figure was down to \$1.7 million, and will probably be less in 1978. Arson incidents went down while arrests and convictions multiplied: In 1974, there were 662 arson incidents, with only 73 arrests; last year, incidents were down to 518, arrests up to 217, and 196 of those arrests resulted in convictions.

Seattle's turnaround stands in stark contrast to the spread of arson nationwide. The insurance industry estimates that national losses last year were close to \$4 billion, up from only \$634 million in 1975 and a mere \$68 million a decade before. Arson accounts for 40 per cent of all property losses, the insurers believe, and now kills about 1,000 people a year and injures another 10,000.

A committee set up under the urging of Fire Chief Frank Hansen discovered early in its investigations that arsonists had good reason to believe they would get off scot free. Nationally, for every 100 cases of known or suspected arson, only 9 persons are arrested, only 2 are convicted.

Seattle officials worked quickly at improving the co-operation between city police and fire departments. Typically both agencies claim authority, but neither gives arson proper attention or manpower. Firemen rarely have the investigative skills to solve the more sophisticated cases, and police find arson "unglamorous" compared to robbery and murder. Jurisdictional confusion means neither department pursues arson to the point of prosecution.

Mr. Hansen solved the problem by convincing the police to give the fire department authority over arson from initial investigation through prosecution. But he persuaded the police to assign to the fire department two detectives to assist in investigations. Today, police and firemen share tips on arson and other crimes and the police often back up the fire department with assistance in surveillance and stakeouts and use of police helicopters, district patrol cars and communications systems.

Training for all arson squad members includes basic law-enforcement techniques and sophisticated crime laboratory work.

"Arsonists tend to believe they have destroyed all traces of their crime in the flames; what they fail to realize and what gives us the edge is that the very ashes that are left are where we find our clues," says Inspector Jack Higham.

The motives for arson are several: A business competitor or a disgruntled employee or even a shunned lover may seek revenge. A burglar or murderer may try to cover up another crime. A child playing with matches may be mentally disturbed or making a bid for attention.

Then, there's arson for profit by financially troubled businessmen or homeowners seeking to collect insurance money. Despite the publicity surrounding such events as the arrest of 44 "respected" Bostonians in an arson ring last year, the number of these fraud fires is actually small. But the dollar losses are great.

Seattle attacked the motives one by one. Since 50 per cent of Seattle fires were set by juveniles, reaching them was a top priority. A United Way agency was hired to counsel children who displayed an "unusual" interest in fire; the fire department created an "arson rat" as the symbol of arsonists and received more than 5,000 entries in a campaign to name him. The winning entry: "Sinder Sic."

Neighborhoods and business districts with high arson rates were identified; each night between 11 P.M. and 3 A.M. firefighters travel through them in highly visible vehicles, clearly marked "Community Fire Alert/Arson Patrol." The patrol operates on tips from private citizens, employees of failing businesses, or health and liquor inspectors who may learn that a bar or restaurant owner is contemplating arson.

Insurance companies agreed to withhold payment of large-loss fire claims when the policy holder may have been responsible. And the benefits of the Seattle effort spread statewide when the insurance industry set up a \$5,000 pot to reward "secret witnesses" and underwrote a statewide toll-free arson hotline.

Finally, Seattle newspapers and television stations co-operated in a long-term publicity campaign about the arson problem and the success of investigations. A four-week television series on arson produced by a local station even won an award for investigative reporting.

But the cost to the taxpayers of the entire Seattle effort is only \$100,000 a year. It's an investment even the most ferocious taxpayers' association might find worthwhile.

Senator Percy. Seattle has been really a leader in this field. Can you tell us what if any role LEAA played in the organization of the Seattle program? I am not familiar with whether LEAA was involved or not.

Mr. Gregg. To my knowledge, no funds were directly utilized by Seattle in that effort. They may have had some assistance under the LEAA State program in carrying out their activities. Again, Seattle is a city which has received a large number of LEAA grants over the years, so that indirectly, at least, in upgrading the police activities of the city and the crime prevention activities of the city, there

has been a great deal of LEAA involvement other than through direct funding.

Senator PERCY. Would we say, though, that Seattle has been creative in taking the initiative, recognizing this as a major problem, perhaps ahead of most other cities in America?

Seattle is not a very good place for a torch these days, and that says an awful lot about the way they have found this to be a very cost effective use of LEAA funds.

Mr. GREGG. I think it is a tribute to Seattle. We are going to have someone going in there. We know generally what they have done and the results of it. But we are going to have someone go in and study in detail what they have done so that this information can be made available to other jurisdictions.

One of the most notable aspects of the Seattle effort is the cooperation between police departments and fire departments in joint investigations of suspected arsons. That is a model that we would want to encourage in other jurisdictions.

Senator PERCY. Thank you very much, Mr. Gregg. I will finish my questioning later.

I will yield to Senator Glenn.

Senator GLENN. Thank you very much, Senator Percy.

Last December we received testimony from Paul Zolbe, Chief of the Uniform Code Reporting Section. Mr. Zolbe gave us four criteria to determine whether or not crimes would be characterized as an index or part I crime.

Before I get into some of those details, I would like to ask a couple of questions. Does the FBI act as a clearinghouse for administering the UCR, Uniform Crime Reports, for local law enforcement authorities?

Mr. MOORE. Senator, if I may, my role is from the operations side and I have brought with me Mr. Zolbe to answer your questions.

If I might have him sworn, Mr. Zolbe is here, and will be glad to answer your questions, Senator.

Senator PERCY. If you are going to give testimony, we will swear you in.

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ZOLBE. Yes.

#### TESTIMONY OF PAUL ZOLBE, DIRECTOR, UNIFORM CRIME REPORTS SECTION, FBI

Senator GLENN. Mr. Zolbe, does the FBI act as a clearinghouse for uniform crime reports for local law enforcement authorities?

Mr. ZOLBE. Yes, sir.

Senator GLENN. Is it also true that the program is governed by the International Association of Chiefs of Police and that this relationship has existed since 1928?

Mr. ZOLBE. Yes, sir. They advise us on the operation mainly because they represent law enforcement and they know best the needs of the law enforcement community.

Senator GLENN. It is true that they set these standards in 1928 and the FBI has never changed a single one of them in the 50 years since then. Is that true?

Mr. ZOLBE. The standards used to create the Crime Index, that is correct.

Senator GLENN. Would it be your understanding that the FBI has no authority or control over the reporting of national crime statistics or the reporting now of national crime statistics and over the determination of what is and is not a part I crime?

Mr. ZOLBE. It could be changed, unilaterally changed. However, there would be no assurance we would get the information.

Senator GLENN. Has the FBI ever exercised any control over what is reported as a national crime or part I crime?

Mr. ZOLBE. The FBI has never acted to change the Crime Index, sir.

Senator GLENN. Uniform crime reports have adapted a de facto nature, I guess we could call them a social indicator, and it would seem to me that it is the duty and responsibility of the national administrative agency, funded out of taxpayer funds, to exercise its national policymaking role by making sure UCR serves the overall national interest.

This certainly includes not only the chiefs of police, but the fire chiefs and the fire marshals and the whole American public. If not, why don't we just have the chiefs of police release their own information since we have never seen fit to monitor them in any other way, except to bring them in and release them?

Why don't they do it as an independent association? Why run them through the FBI?

Mr. ZOLBE. They did in 1930 when they created the program. During the first 6 months of that year they administered the program and published the data.

It was the Congress of the United States that, under title 28 section 534, gave the authority to the Attorney General to administer the program. He, in turn, gave it to the FBI, mainly because of our ability to have direct contact with local law enforcement agencies, and we were part of the law enforcement community.

Senator GLENN. With that authority the FBI promptly gave it back to the Association of Chiefs of Police. Is that right?

Mr. ZOLBE. No, sir. We didn't give it back to them. We need them to advise us.

Senator GLENN. I don't quarrel with that at all. I am sure you need their advice. But it just is incredible to me to think that crime patterns have not changed in 50 years in this country and that we are still going along with this same old reporting procedure.

Let me focus on some criteria that the police chiefs have set for inclusion of a crime as an index or part I crime. As I understand it these are strictly of their own making here. This isn't something that the FBI said you will gather along these lines or you won't get the information. This was set by the chiefs.

There are four parts of this. One is seriousness. Would you say arson is a serious crime?

Mr. ZOLBE. Yes, sir, I would.

Senator GLENN. Another one is occurrence in volume. Do you agree with the apparent fact that arson occurs with an increasing and great frequency in this country?

Mr. ZOLBE. On the basis of the available collected data, I would have to agree.

Senator GLENN. The third area is reliability and uniformity of reporting to the police. If there is not exactly uniform reporting of arsons, and I would suppose this would be an adequate reason for not including arson, isn't it a proper role of the FBI that as a national clearinghouse, as you have put it, to try to come up with some minimum basic uniform standards for reporting that would include arson or include new serious crimes?

Mr. ZOLBE. Yes, sir. It is one of the reasons why Assistant Director Moore suggested to look at auxiliary programs that would go to the data sources where arson would be known. We are talking about actual offenses. We feel at this time the most reliable data source would be the fire service community, whereas in the case of offenses in the Crime Index, they are more likely to be reported to law enforcement.

That is why I would suggest that law enforcement just wouldn't have the arson offense information.

Senator GLENN. This gets into the number four criteria, the likelihood of reporting and a further qualification of No. 4, that the criminal act reveal itself as a criminal act at the time of recording.

Mr. ZOLBE. Yes. When one of the crimes that make up the Crime Index occur, by and large you know you have been victimized at that point in time. In the case of arson—

Senator GLENN. But you include in your figures later reporting of automobile thefts or other things that are on that major crime list. You don't eliminate them because they weren't reported within 5 hours or whatever time it was at the time of the crime.

Mr. ZOLBE. No, sir. We find that when an individual's car is stolen, he is going to report it to law enforcement in a very timely manner. That is when it gets scored as a crime.

Senator GLENN. How about burglaries that may not be known for some time on property that has not been visited for a time? That gets included and it may not be reported until some time later.

Mr. ZOLBE. In our system of reporting, if an individual determines his house has been burglarized in a prior month, it would be included in those statistics according to the month it was burglarized, if that could be determined by law enforcement.

Senator GLENN. The fourth requirement, having to have it reported as a criminal act; time of reporting to me is a completely ridiculous requirement. What is important is a crime has occurred and we should be looking into it whether it is recorded within 5 minutes, 2 hours, 20 days, or 1 year.

To me it is a crime and we should be dealing with it if it is occurring in quantity that is causing serious concern, damage and loss across the country. Whether it is reportable instantly to me or not is completely a ridiculous argument in that regard.

I think the No. 4 area there is ridiculous.

We have many burglaries and robberies go unreported particularly in the inner city. With regard to new and advanced arson detection, to get back to arson, we have things that didn't exist years ago that

make more timely reporting possible if we would just get into it. We have a chemical color test, a gas test that costs \$100. We have vapor detectors, six different types now available for use in more timely detection of arson. Flame ionization detectors, gas chromatographs, infrared spectrophotometers, electronic semiconductors—all of these are things that are used for arson detection that make it possible to more timely report crime, if we are just putting some emphasis on this.

Yet to my knowledge the FBI has not particularly used this equipment, although the chiefs of police use them and they are readily available. We even tried to get LEAA to move more rapidly in this area by supporting the arson detection methods, and we have been unable to do that.

With this burgeoning, spreading crime as it is, with means available to do something about it, we can't get our Federal agencies to move on this thing. This has stumped me for about a year now, ever since we have been trying to get some emphasis on the subject.

These things weren't around in 1930 when we set up the criteria of what crimes were not major crimes in the country.

Mr. MOORE. Senator, if I may, I want you to be assured that the Bureau, the FBI is certainly aware there is a definite need to record statistical data relative to arson. What I was alluding to earlier was that we have a system in which to collect this data, using the illustrations of the bomb data that we record, as well as the assaults on Federal officers, that bearing in mind that the three major programs of the FBI so set by the administration is foreign counterintelligence, organized crime, and white collar crime.

What I am really asking for is for us to have the capability to collect this data that we all have a very definite interest in. It will cost some money to do it.

Senator GLENN. The FBI won't put anything on the uniform crime list or they request the chiefs of police not to put anything on the crime list unless it falls under one of those three missions that you just mentioned.

Mr. MOORE. What I am saying is as an alternative that we come up with special collection and coordination data concerning arsons and for us to run this survey. Testimony given, sir, is that there is no real central clearinghouse of statistical data concerning arsons.

That is what we are asking for, if we conduct the study in which to collect this data, then we will have for you law enforcement and the community a meaningful document that indicates the proliferation of arson in this country.

Senator GLENN. Why differentiate this from other things that you report under UCR? This is a serious crime. If you say it is not valid unless we run a separate study on this thing, I would say your figures are now a complete bunch of nonsense because we have not run a separate study on them from the chiefs of police, so they have no validity. Doesn't that follow?

Mr. MOORE. I didn't say that.

Senator GLENN. I said it. What is your response, say we need a separate study to show arson is a serious crime and should receive the credibility of being put on the UCR list. If arson doesn't have credibility because we haven't run a separate study, then none of your

other statistics have validity because we have not run separate studies on them, burglaries, auto thefts; we are taking the chief's word for it which we could just as well do on arson.

Mr. MOORE. I will let Mr. Zolbe answer that.

Mr. ZOLBE. The Crime Index is not the measure of total crime in the United States. It is only an index, similar to the Dow Jones stock average, where we take a group of stocks are studied in an attempt to measure the market. That is what the seven crimes do.

They attempt to give us an indicator of the level of crime in the United States. The questions were asked in the days when they conducted the research; what crimes would fit a set of criteria and what should the criteria be? You just reiterated a moment ago the four criteria. A crime can potentially become a part of the Crime Index when tested against the criteria.

When the program first started, the question was raised, do we create a statistical program to measure the incidence of crime in this country which will be overly burdensome on the record systems of law enforcement agencies? The question was resolved by limiting the size of the list through use of the criteria.

Senator GLENN. The four categories, we say seriousness is the first. I agree with that. Occurrences in volume, sure. We certainly qualify arson under those. So only reliability and uniformity of reporting and likelihood of reporting remain. To make those two things criteria for the exclusion of arson from the UCR list makes no sense to me at all. Because arson doesn't fall under those categories, the country is burning down, somebody could burn up this building today, and we still could not put arson on the UCR list because it isn't reported the same way in Omaha, San Francisco, and someplace in Ohio, like my home town. But that doesn't change one iota the fact that serious crimes are expanding. We lose billions of dollars because of arson but we can't get the FBI to move it up to the UCR list.

Whether intended in 1928 or not, the FBI, through the Uniform Crime Reporting System is used to indicate what crimes across the country are serious and whether they are going up or down. And when a crime goes up, people get concerned. Here we have a major area of crime and we can't get it seriously considered.

It is like a drunk over in the park, considered vagrancy now in the same category. That has got to defy rationality. No argument will sell with me on why this can't be considered a more serious crime than it is now with the FBI.

I can tell you one charge. One person from the Justice Department told us privately that the reason the FBI doesn't want arson included is because it would upset the neat little crime statistics over in the FBI shop and they don't want to show an increase in crime.

I am not making that as a charge. I am passing it along as a comment to be made. I took it with a big grain of salt, but with the difficulties of getting anything through, like getting the FBI to report this rapidly increasing crime, I am beginning to believe it.

Mr. MOORE. If I may, I will certainly categorically deny any comment by that individual that we were using this in any way for the benefit of the FBI. I have indicated, Senator, that we recognize the problem and I assure you that we will assist you and the committee

in any way possible, which you feel should be of necessity. We recognize this.

Senator GLENN. It defies reason that we need more studies to move this on.

Let me get into another area. We had testimony, this isn't just rumor or hearsay, we had testimony by some of the chiefs of police and the fire chiefs that there are continually running interdepartmental battles within the cities for dollars. The officials felt that this jealousy between the chiefs of police and the fire departments in most cities in this country was a very major factor causing less emphasis on arson. The police usually have the upper hand in this battle for dollars and that is probably understandable.

Here we have that kind of jealousy existing across country, we have testimony on the record to that effect, and yet we are letting one party there set the priorities on where the money will go.

Senator PERCY. The result is, in Chicago, where arsonists themselves said the degree of sophistication in the fire department was very, very high; indeed, our own Illinois Legislative Investigating Commission testified that now it has been transferred and the police department has apparently grabbed this thing, the level of efficiency, sophistication has decreased considerably, which I think points up the very problem that Senator Glenn is pinpointing here.

Senator GLENN. What is the Attorney General doing on this? I wrote a letter to the Attorney General on August 21. I am sorry I don't have a reply yet. It went into this whole thing in detail. I think approaching a month is probably long enough to reply to the rather simple questions put to him.

Mr. KEUCH. It is under study by one of the groups mentioned in my statement, the ad hoc committee on research. In part, it is a response not only to this particular problem, but the problem we have across the board in the statistics.

The Attorney General has recently sent to the House and to the Senate recommendations concerning LEAA that include a recommendation for the creation of the Bureau of Justice Statistics, to improve this whole problem of development of information across the board. Of course, arson will be a very important part of that.

A response to your letter will be forthcoming promptly. I believe we intend to support the FBI's indication that an initial way to approach this would be the study on bombings and the studies on assaults on police officers which I have put in the record as extremely good tools.

We believe something like that would be a good tool. The answer is not complete. I don't want to be bound by that.

Senator GLENN. If that is the approach, then it adds to the previous theory I said I am leaning toward. The FBI doesn't want to upset their neat little crime statistics so you are doing a separate study that will be kept out of the uniform crime reporting system, it looks very suspicious.

Mr. KEUCH. I don't share that view. I am sure we will not make a decision on that basis and our response will be forthcoming. The problem is not just in the arson field, not to be resolved merely by something, what I realize you are concerned with, Uniform Crime Reporting Index.

I think the Attorney General's concept is this is a problem across the board and the Bureau of Justice Statistics is a long-range means to solve many of these problems.

Senator GLENN. On August 3 this year, when we debated the Justice Department appropriations bill, Senator Hollings, the bill's manager, joined me in urging the Attorney General to take steps to reclassify arson.

Were you aware of that?

Mr. KEUCH. No, Senator, I was not. I am sorry.

Senator GLENN. Were you familiar with the Criminal Code Act amendments sponsored by the Judiciary Committee's next chairman, Senator Kennedy and myself, seeking arson reclassification as part of the judiciary bill?

Mr. KEUCH. Yes.

Senator GLENN. You already stated you were familiar with my rather lengthy letter to the Attorney General of August 21 of this year?

Mr. KEUCH. Yes. I am sorry the response is not presented to date. But it is being prepared.

Senator GLENN. Are we to wait then until we get this bill through on the new statistics gathering organization before we can expect to have any focus put on arson?

Mr. KEUCH. No, sir. I hope that is not the case, and I hope the statement or any comments made do not indicate that. I think we do feel that before we determine new legislative initiatives and the rest, we do have to improve the information we have to get better information, or valid data.

I think this committee's efforts are a major contribution in the field. I don't mean to indicate that there are not efforts going forward. I hope that the cases that are illustrative of the matters you are handling, as set forth in my statement, are a good indication of our commitment to these matters.

At the same time I have to indicate, I can't mislead the committee, that we are in an area of limited resources and we feel the Federal presence is appropriate in the types of cases that I have listed.

Senator GLENN. I would quarrel with that, it takes absolutely no additional funding, no additional resources to move arson onto part I crime reporting system because you don't do the work yourselves. The Association of Chiefs of Police designate and they do the gathering data and submit them to you.

Mr. KEUCH. I was discussing the entire Federal effort, Senator, and again I would like to say that our response to your letter is being prepared and will be presented to you as soon as possible.

Senator GLENN. I am just not persuaded by your arguments as to why this cannot be moved on to a part I crime when it is the fastest expanding crime in the country. All we need are the insurance statistics if nothing else.

We have some of the dollar loss figures here. Robberies, each incident of robbery losses average \$331; burglaries, \$422; and there are some 6 million incidents of larceny and theft.

Motor vehicle theft, the average value of a car is \$1,457 with about 1 million incidents per year. Average loss for each incendiary fire is

\$4,399, and the average loss for each unknown caused fire which includes a lot of arson, of course, \$9,099.

A 1977 questionnaire conducted among the police and fire officers by the International Association of Fire Chiefs found that most of the policemen responding felt that arson investigation would benefit from arson being reclassified to a major crime. They felt that it would encourage greater coordinated activity and prompt LEAA and other agencies into giving arson fighting a greater priority.

Do you think that would not be the case?

Mr. ZOLBE. The International Association of Chiefs of Police in 1976 and in their conference of 1977, had a resolution placed before the general membership calling for the reclassification of arson, from the part II crime category to the part I. It was rejected by the general membership.

Senator GLENN. The Association of Chiefs of Police was trying to decide what happens over in the fire department next door.

Mr. ZOLBE. No, sir. It wasn't the fire chief's association. It was the chiefs of police.

Senator GLENN. I understand. This apparently historical jealousy back and forth between departments in most cities I am sure would be reflected in their international association meetings, I am not too surprised. We had testimony on that late last fall.

Let me get on to one specific case on the FBI where we had a fire bombing recently. Dayton Air Freight, a small trucking firm in Dayton, Ohio was torched just a few days after its officers had come here at our invitation to testify to Senator Kennedy, myself, and the Judiciary Committee on the need for more flexible entry procedures in the common carrier industry, trucking.

Several of the drivers had been intimidated, and I can't believe it was coincidental that this just accidentally happened after their testimony here. Certainly this is a case for the FBI. And do you have any knowledge of that particular incident and what is going on in that particular investigation? Because that was one where we had a torching, a fire bombing apparently in retribution for them having come in here and giving their testimony before a congressional committee.

Can you give us any report on what efforts are being made in that area?

Mr. MOORE. Yes. There is concurrent jurisdiction in this investigation. Since it is an ongoing investigation, I would rather not in public session address it in depth, Senator, but would be certainly happy to discuss it with you in executive session.

The FBI is conducting an investigative inquiry to establish whether or not there is obstruction of justice relative to the bombings. The bombing incident itself is being investigated by ATF and I am sure they may be able to allude to their part of the investigative matter, but the Bureau is investigating this on the premise of the possibility of obstruction of justice.

Senator GLENN. This one, I hope, you are really following through on aggressively, because any bombing or any firing or any torching is reprehensible, but when it apparently is done, or appears obvious it was done at least in part as retribution for them having come in here and testified, it gets doubly reprehensible.

So I hope every effort is being made on that one.

Mr. MOORE. Yes, sir.

Senator GLENN. Mr. Zolbe, you commented about the UCR being analogous to the Dow Jones Index and indicator. It does indicate trends, I agree. That is one reason I want to see arson moved onto that list so it can assume some of the proper attention that it deserves.

Can you tell me in that regard, are there any specific reasons why no crimes have been added or subtracted in all of these 50 years?

Mr. ZOLBE. By virtue of the fact it is an ongoing index, to add crimes or take away crimes from it would be disruptive of the trend information that develops over a period of time. That is one of the things that is of value for analytical purposes.

Senator GLENN. Your Dow Jones analogy is probably pretty good because Dow Jones assesses different business conditions. As time goes on they add different stocks to their prime list to give them a more current indicator of what is happening through the years and yet the FBI has refused to do this with the chiefs of police information.

Why?

Mr. ZOLBE. The seven basic crimes met the criteria established when the program was created. There is no need to change the listing in and of itself because it was to be acting only as an indicator.

Senator GLENN. In the original case did the FBI approve of those four criteria?

Mr. ZOLBE. I can only presume that they did inasmuch as they took over the administration of the program.

Senator GLENN. Does the FBI, or do you think those should still be the four criteria that we use?

Mr. ZOLBE. I think they should continue if we are going to continue to collect the information from law enforcement agencies; measure crime on the basis of that.

Senator GLENN. This is developed as an indicator of where our efforts should be placed. Do you still think that those criteria should be the criteria and the only criteria that should be used for crime reporting on the part I index?

Mr. ZOLBE. I can only give you my professional opinion, Senator, and I feel that they are an approach to identifying what crimes are most applicable to an index.

Senator GLENN. In other words, we could have a crime that is taking over the whole country, but if it doesn't have a uniformity of reporting set up, it shouldn't be on your list?

Mr. ZOLBE. Senator, we did become concerned about bombings a few years ago and because of that concern, we initiated a specialized data collection program. Also several years ago a great deal of interest was being brought to bear on the number of law enforcement officers being killed feloniously. We again set out a special program to capture that kind of information so that it could be used by law enforcement executives to develop innovative programs to combat the specific crime.

We are suggesting here today we be given the resources to do something similar in the field of arson that will bring sufficient attention to bear on the problem.

Senator GLENN. I don't see why we can get the same data. At least start getting the same data from the chiefs of police, the same kind of data you get on all of these other crimes at no cost whatsoever.

It wouldn't cost you a nickel, new column on the statistics, and that would be a no-cost.

Mr. ZOLBE. We have made inquiries in the past because of the great deal of interest subsequent to and prior to our appearance before you in December. We continued to hear from the law enforcement community that they don't have the arson information, that by and large, through custom statute, and administrative decree, arson belongs in the fire service community.

Senator PERCY. Senator Glenn, just a point of inquiry. I am going to submit my questions for the record to you, Mr. Moore. I have just a couple for Mr. Gregg, and I would like to submit the balance of them for the record.

We have a panel of four following this panel. We would like to finish this morning. Possibly if you have some questions you would like to submit—

Senator GLENN. Any additional questions I will submit, I know we are way over on our time. I appreciate your letting me run a little longer here than we normally would.

I think this is so important, you and I have both worked so long on this. We started working on this almost a year ago and held hearings last December. Now continuing with this and I will say, subsequently, I am not persuaded by your arguments as to why arson can't be considered more seriously by the FBI and the Department of Justice.

I am looking forward to the reply from the Attorney General to my letter. I don't buy the fact that we don't have enough data, that we shouldn't at least try to start gathering information as we do in other crimes.

If we were thinking about putting any of the other crimes on the list that are now normally reported as part I, we could make the same arguments to keep them off that you make on this.

As to some of the uniformity aspects, I am sure I could make an excellent case, not reporting in a timely fashion, I am sure we could make that argument against anything on the list now.

Yet here is our fastest growing crime that everybody seems to acknowledge, the most rapidly growing crime in the whole country and we refuse to put it even on the top crime reporting list so we can start focusing some attention on it.

It defies rationality as far as I am concerned, and having said all of that I would like to tell you that I am a big booster of the FBI from years past. Although I don't sound like it this morning. I am extremely critical of you in this particular case and will continue to be, I guarantee you.

Mr. MOORE. Senator, if I might, I would suggest that I think working together we can satisfy that need that you feel very strongly about which we do share.

Senator GLENN. Do I take that to mean you are going to work to put arson on the [laughter].

Mr. MOORE. Yes. I said we would work very closely together to accomplish that.

Senator GLENN. We will work very closely together.

Mr. MOORE. We appreciate it.

Senator GLENN. Thank you.

Senator PERCY. I think that is a major step forward.

I would just like to again come back to some of the questions, give you an opportunity to comment on some of the testimony we have had from local law enforcement people about their frustration.

On page 3 of your testimony, Mr. Gregg, you described an LEAA discretionary grant in 1976 to the Attorney General's Organized Crime Unit in Massachusetts, which made it possible for that office to break up one of the largest arson-for-profit schemes in the State, perhaps, the country.

Isn't it true that grant was simply to combat organized crime? Our staff has been told by Steve Delinski, Chief, Criminal Division, Massachusetts Attorney General's office, that at no time did anyone in LEAA advise or even encourage use of this money for arson control.

It appears it was entirely the decision of the local officials to divert some of those funds to the investigation. How in the light of that can LEAA list that as an example of its commitment to arson?

Mr. GREGG. I think it is intended to illustrate the point that I made in my opening statement. The figures that the GAO used and the print out that I provided the committee only provided projects that were strictly and exclusively targeted toward the crime of arson but a great many of the programs and projects that we are funding, and I think this is a good example, although not directed exclusively at that crime can have an important impact on it.

That includes some of the organized crime strike forces that States are working on with the Criminal Division and the FBI. It includes white collar crime activities against which we are supporting a large number of district attorneys offices throughout the country. It includes the career criminal program which is prosecuting major offenders.

These grants deal with other crimes as well, but they can have an impact on arson and are not picked up in our statistics on grants and dollars directed against arson.

Senator PERCY. That is true. But what this subcommittee is trying to obtain is evidence as to how high in priority the Federal Government is placing on this and it is entirely to the credit of Massachusetts that they took these funds and used them for this purpose.

It was not LEAA that had anything to do with their decision and their judgment.

Mr. GREGG. I am sure in 1976 with respect to this program that the information you got on that is correct. However, very recently we have taken steps to assure that arson is given priority in these investigations and prosecutions.

Senator PERCY. Let's go to the information provided by Joseph O'Keefe, Massachusetts State fire marshal, who advised our staff that last year he requested funding from LEAA for several arson task forces to be established in those counties which have an unusually high incidence of arson.

Mr. O'Keefe said he was told by officials of the State LEAA agency that the Massachusetts Division of Fire Prevention is ineligible for LEAA funds because arson was not a major criminal priority of the State agency.

Are you personally aware of that? Do you think that in a State like Massachusetts, a State where 4,000 incendiary fires took place in 1977 alone, arson should be treated as a nonpriority crime?

Mr. GREGG. I was not aware of that particular unsuccessful application, but again it gets back to the point made in the first page of our testimony, that a substantial portion of the LEAA program is conducted through a block grant to the States and under our authorizing law, it is the State that determines the priorities for expending those funds.

We can through information, technical assistance and so forth, influence to some extent the priorities that the States set, but under our law, it is the responsibility of the State to set the priorities.

Senator PERCY. In your previous testimony you indicated that the crime laboratory would be a suitable area in the matter of urgency in LEAA funding. Yet we have been informed that the Massachusetts State fire marshal's crime laboratory is so poorly funded that the employees have to buy test tubes and other equipment out of their own personal pockets in the later months of the year.

Yet Mr. O'Keefe said LEAA has not funded any laboratory program. Is this another example of how LEAA is assisting States to deal with the arson problem?

Mr. GREGG. To my knowledge, at the national level, we have not directly funded laboratories that exclusively deal with the problem of arson. However, we have had an extremely keen interest in the general quality of crime laboratories.

We have cooperated with the association of these crime laboratories to survey them and to determine the quality of examinations of evidence that they are conducting. We have published results of those surveys over the last year and we have programs now with crime laboratories to upgrade their general capabilities. Again, this will be of value in dealing with the crime of arson.

I am not aware, however, that we have funded laboratories that deal exclusively with examining evidence found at sites of arson.

Senator GLENN. Will you yield for a comment on that particular area?

We have pressed LEAA to put more funds into arson on the floor and off, in colloquy with Senator Hollings when the Justice appropriations bills was on, and for LEAA to give a higher arson effort.

You have had about a \$2 billion budget from 1975 to 1977. Do you know how much money has been spent on arson out of that budget?

Mr. GREGG. We have the figures the GAO provided but they are very minimum estimates of the amount of money that we have expended for the reason I indicated. A number of these grants and programs deal with arson but would not show up in our information system because they are not exclusively devoted to arson.

We would have to conduct a special study if we wanted to precisely determine how much LEAA money is used against arson.

Senator GLENN. I can tell you the figure I was given. Out of a \$2 billion budget you have had from 1975 to 1977 I was told \$1.7 million

went for arson, \$1.7 million out of \$2 billion appropriations; I don't know if that is off or not.

If that is not correct, I would appreciate having some information on it so we could put it in the record. But with arson being our fastest growing crime, I think that is an atrocious amount.

We have tried and tried to get LEAA to move on this, to no avail so far.

Senator PERCY. Again, also, if upgrading crime laboratories is an essential part of combating crime, if arson is looked upon by LEAA as a serious crime, when we get a specific request for a sum of money to add and supplement laboratories, to specifically provide such facilities, personnel to work in arson, and they are denied and told to forget about it, it just seems totally contrary to all of the intent of your testimony given this morning.

If it was just a mistake made, it would be helpful to say on the record, it was a mistake by someone and that is understandable. Otherwise, it just looks like we are saying one thing and doing something else.

This administration has proudly proclaimed many times, pay no attention to our words, look at what we do. We look at what has been done and it is not very impressive. Mistakes can be made. If it is just a mistake in judgment by someone, then let's just say so.

It is a contravention of principles that you have enunciated.

Mr. GREGG. Whether a mistake in judgment was made in that particular case, since it was the application under a bloc grant, I am just not prepared to say at this time. There may have been a number of factors involved in that application of which I am not aware and as I have indicated, if it is a bloc grant program it has to come within the comprehensive plan developed by the State and under the State's priorities in order to be funded.

Senator PERCY. The Governmental Affairs Committee discussed with the Judiciary Committee that we have some overlapping membership, doing some more oversight work on LEAA.

I have not had occasion to look at an awful lot of the work of the LEAA, but one aspect, you do a lot of studying, and I wonder also what happens to these studies. We just happen to have a specific case here that you mentioned in your testimony.

The Aerospace Corp. study in April of 1977—that cost how much money?

Mr. GREGG. I can get that.

Senator PERCY. \$90,000.

This corporation working through an LEAA grant of \$90,000 delivered to your agency what I consider to be a very useful report on arson. Seven months after its delivery LEAA began distributing the report to law enforcement agencies around the country. On June 4, 1978, 14 months after LEAA first received the report, your agency issued a press release summarizing the results of that valuable study which show among other things that the conviction rate for arsonists is less than 2 in 100.

I am going to, without objection, put this report and the LEAA press release into the record of the proceedings at this point.

[The documents referred to were marked "Exhibit No. 23" for reference; the report may be found in the file of the subcommittee; the press release follows:]

EXHIBIT No. 23

[News Release]

U.S. DEPARTMENT OF JUSTICE,  
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION,  
Washington, D.C., June 4, 1978.

Only nine persons are arrested for every 100 cases of known or suspected arson, only two are convicted, and seldom is anyone actually jailed.

These statistics are disclosed in a study—"Arson and Arson Investigation"—released by the National Institute of Law Enforcement and Criminal Justice, the research arm of the Law Enforcement Assistance Administration (LEAA).

The report belied a frequently held belief that a large percentage of arson cases result from insurance fraud.

The study, conducted by the Aerospace Corporation under a \$90,000 LEAA grant, said arson receives relatively little attention despite being one of the most serious and rapidly increasing crimes.

In 1975, the study said, the estimated loss from arson was \$1.4 billion—more than any offense on the Federal Bureau of Investigation's index of serious crime. This included losses of \$1.3 billion in building fires, \$80 million in motor vehicle fires, and \$60 million in forest and watershed fires.

In addition, there were an estimated 1,000 deaths, including 45 firefighters, and 10,000 injuries in 1975.

Over the 10 year ending in 1975, building fires increased 325 percent—a larger increase than any of the FBI index crimes, including murder, rape, robbery, and burglary.

The 132-page report said one reason arson is increasing with relatively few arrests and convictions is a shortage of trained investigators. Other reasons are that there are usually not witnesses; investigation is hampered by the destruction caused by a fire and damage when it is extinguished; confusion about investigation jurisdiction between police and fire officials, and special prosecutorial problems because arson cases often rely on circumstantial evidence.

The study analyzed arson statistics from 108 cities over four years. Analysis showed cities with higher rates of arson arrest and conviction tended to have fewer cases of arson.

The study said its findings are consistent with, but do not prove, the belief held by many that intensive prosecution reduces arson.

The survey said a study of convicted and imprisoned arsonists showed a tendency for the adult arsonists to be motivated by revenge (55 percent), while vandalism was the motive of 80 percent of the juveniles. Fraud was the motive of only 5 percent of the arsonists. Juveniles made up 60 percent of all persons arrested for arson in 1974.

Most adult arsonists were problem drinkers, the study disclosed.

The report said a major difficulty in mounting a national campaign against arson is that the magnitude of the problem is not widely appreciated—probably because reliable arson statistics do not exist.

It said the FBI's Uniform Crime Reports (UCR) does not list arson as a Part I offense. In the UCR, Part I lists both number of offenses and arrests for most major crimes including murder, robbery, rape, aggravated assault, and burglary. The number of arson arrests, but not the number of offenses, is listed in the UCR Part II.

One of 20 major recommendations of the study is that the crime of arson should be reported with other serious crimes in the FBI Crime Index.

Paul A. Zolbe, the FBI's Chief of Uniform Crime Reporting Programs, said Senate Bill 1882, currently pending, would direct the FBI to redefine arson as a Part I crime and list statistics for it.

Mr. Zolbe said the FBI is not saying that arson is not a serious crime, only that there are problems in defining how to report it.

"We have tried to avoid inflating the statistics by listing two crimes," Mr. Zolbe said. "If a death results from arson, we include that under murder. In many cases of arson there is a burglary committed. We list it as a burglary."

Twenty prominent arson investigators, interviewed as part of the survey, were asked to identify the current needs in arson investigations and their priorities. The questionnaire also dealt with methods used by arsonists and investigators.

Flammable liquids were cited by 62 percent of the respondents as the substance used most often by arsonists. This type of evidence made up 80 percent of the submissions to the state arson laboratory surveyed. Gasoline was found by far to be the most frequently used.

The report's recommendations, which include the suggestions of the 20 arson investigators, follows:

Collection and dissemination of arson statistics should be improved.

Arson should be reported with other serious crimes in the FBI Crime Index.

Increased training for arson investigators of fire and police departments.

More arson investigators are needed in both fire and police departments.

An automated nationwide data system available only to authorized arson investigators should be established to help solve cases involving repeaters, professional "torches," and arson rings.

There should be better fire research so that investigators can determine whether burned and melted electrical wiring has been the cause of a fire or the result of arson. The burning characteristics of cigarettes should also be studied.

A testing program should be conducted to establish the reliability of methods used by investigators to establish the causes of fires.

The amounts, chemical compositions and persistence lifetimes of the residues of the flammable liquids used by arsonists should be established by a scientific testing program and the findings distributed to arson investigators.

The question of whether it is possible to distinguish who manufactures substances used by arsonists should be resolved.

Insurance companies can help eliminate the profit motive from arson through more selective underwriting, avoidance of over insurance, not paying claims until the investigation has been concluded, more defense against fraudulent claims in civil court, and providing more information on insurance coverage to arson investigators.

A flammable vapor detector to locate traces of accelerants at fire scenes should be developed.

A study should be conducted to determine the feasibility of detecting fire accelerants from deposits of soot at fire scenes.

Investigative responsibility should be coordinated. Fire investigation and arson detection should be the responsibility of the fire service. Criminal investigation of fires established as arson should be the responsibility of law enforcement agencies.

Research should be conducted to obtain information to help design arson prevention programs.

Persons interested in obtaining copies of the study—"Arson and Arson Investigation"—may write to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The stock number is 027-000-00600-1. The price is \$3.25 per copy, prepaid.

Senator PERCY. I just again wonder what happens in the bureaucracy that a study is made, some of the conclusions are startling, and yet it takes almost as long as it takes to make the report to even get out a press release on it.

Can you explain why that happens?

Mr. GREGG. It does seem that things move pretty slowly sometimes. I think part of the problem—

Senator PERCY. Even slower than Congress. [Laughter.]

Mr. GREGG. I won't comment on that. [Laughter.]

I think it is a question of competing priorities and if I might say that over the last 18 months, for example, we have testified before 15 different congressional committees dealing with areas of crime that those committees thought were extraordinarily important. Drug abuse prevention, drug trafficking, community crime, family violence, child pornography, child sexual abuse, serious juvenile offenders, organized crime intelligence victim surveys, white collar crime, career criminals, crimes of the cigarette smuggler. In each of those it was stressed that

we should be dealing with those matters giving them priority and in fact I agree in almost every case that we should be. They are serious problems.

Senator PERCY. It is a very, very small administrative problem here. You have a report. You commissioned it. You gave the money. They make the report. They deliver it to you. You could assign an intern to this. It doesn't take a 21-year-old young man or woman to read this report, intelligibly written in clear language, not like our energy bill which you can't even understand after you read it. But this is a good report. Just boil it down, get it out. Get a press release out on it. That is not a competing priority. What you are really saying to me is this thing is so far down at the bottom of the barrel that you can't even assign an intern to synthesize the report, summarize it, put a press release out on it.

If it is going to be done eventually, why not now? I just think, the accumulation of evidence is that this is not a very high priority item with LEAA.

A delay of more than a year in preparing the press release about such an important project, I think, would indicate a lack of interest.

Mr. GREGG. No. It doesn't at all, Senator. As I have tried to stress a number of times this morning, we are giving much greater priority in this area. We are going to move as rapidly as we can.

I just received a note on the particular matter you raised. We had some problems with GPO and the time it took to get the documents published by GPO accounted, in part, for the delay.

But it does not reflect a lack of interest or priority for the problem.

Senator PERCY. My concern is and the reason for a public hearing is to now put you on notice that law enforcement officials, fire chiefs across the country, believe if something is not going to be done, if they are being rebuffed time after time in this field, they get discouraged.

You get two or three requests, rebuffed and turned down, and they are not going to come forward.

It would seem as though as a result of the LEAA, this really is police oriented. Does LEAA regard arson control as a law enforcement activity that really needs and deserves that attention?

Mr. GREGG. That has been part of the problem and the reason that it seems to me the Seattle experience and similar ones reflect the impact that you can have when you get fire departments and police agencies working together. I think the same would go at the Federal level where we have Federal programs that are focused primarily on law enforcement and others that are dealing primarily with fire issues. We have this mutual interest, and I think it is important at the local, State and Federal levels that these agencies are working together on this problem.

Senator PERCY. As a result of these hearings, then, can we expect from you just as we will expect from FBI Director Webster that a directive will go out to State LEAA agencies from headquarters to the effect that from here on out they shall give a high priority to requests for arson assistance in view of the enormous upsurge in arson that this subcommittee has documented and the ease with which criminals and organized crime syndicates can get away with arson for profit?

If we can have a copy of such a directive as the FBI has sent to us, I think this subcommittee will be satisfied that these hearings have been well worthwhile.

Mr. GREGG. We will be happy to work with you on a statement of this sort and I think we can come very close to the one you read.

We would have to recognize the nature of the law that we are operating under and the priority-setting role of the States in it. But I think we can certainly stress to the States the sense of priority for this area and that it will have an influence and impact.

Senator PERCY. Do you have sufficient authority now? Do you need more law?

Mr. GREGG. With that exception we can certainly do what you asked. We cannot tell the State under our existing law that you must give this priority, but we can certainly strongly encourage it.

Senator PERCY. As long as they get that from you, they will know that they will receive sympathetic hearing and that they are working on something that you both feel is a matter of high priority.

I want to thank you very much indeed, all of you, for your testimony. It has been very valuable as a tool to the subcommittee.

Senator PERCY. Richard J. Davis, Assistant Secretary of the Treasury; John G. Krogman, Acting Director, Bureau of Alcohol, Tobacco, and Firearms; William Williams, Deputy Commissioner, Internal Revenue Service; and C. Neil Benson, Chief Postal Inspector, Postal Inspection Service; and Mr. Stein.

If you could stand to be sworn. Do you swear to tell the truth and nothing but the truth, so help you God?

Mr. DAVIS. I do.

Mr. KROGMAN. I do.

Mr. WILLIAMS. I do.

Mr. BENSON. I do.

Mr. STEIN. I do.

**TESTIMONY OF RICHARD J. DAVIS, ASSISTANT SECRETARY, DEPARTMENT OF TREASURY; JOHN G. KROGMAN, ACTING DIRECTOR, BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS; WILLIAM E. WILLIAMS, DEPUTY COMMISSIONER, INTERNAL REVENUE SERVICE; C. NEIL BENSON, CHIEF POSTAL INSPECTOR, POSTAL INSPECTION SERVICE; AND LESTER STEIN, DEPUTY CHIEF COUNSEL, IRS**

Senator GLENN. I do have to go, Mr. Chairman. I have another appointment. I am chairman of the subcommittee that has jurisdiction over the postal matters here in the Senate and I am particularly sorry I do have to go right now.

But I do have several questions here I would like to submit and have them answered for the record. If you could respond, I would appreciate it very much.

Senator PERCY. Thank you very much indeed for your invaluable participation this morning.

Senator PERCY. Gentleman, if you could first identify yourselves.

Mr. DAVIS. I am Richard J. Davis, Assistant Secretary, Department of Treasury for Enforcement and Operations.

Mr. KROGMAN. I am John G. Krogman, Acting Director, Bureau of Alcohol, Tobacco, and Firearms.

Mr. BENSON. I am C. Neil Benson, Chief Postal Inspector, Postal Inspection Service.

Mr. WILLIAMS. I am William E. Williams, Deputy Commissioner, Internal Revenue Service.

Mr. STEIN. Lester Stein, Deputy Chief Counsel, IRS.

Senator PERCY. The subcommittee wishes to express regret about the delay. I know how hard this is for you to tear out a whole morning and then find it 20 minutes to 1, just starting your testimony.

We are very sympathetic with it. We are just fortunate we didn't have a full subcommittee here. [Laughter] We would be running into days instead of hours.

I would suggest that because we have had a chance to review your testimony, it has been very helpful in working with staff, that we might take 5 minutes to summarize your testimony.

[At this point Senator Glenn withdrew from the hearing room.]

Senator PERCY. Then we will go right into questions but the entire testimony will be without objection incorporated in the record at this point.

Mr. DAVIS. Thank you.

[The statement of Mr. Davis follows:]

STATEMENT OF HON. RICHARD J. DAVIS, ASSISTANT SECRETARY OF THE TREASURY

Mr. Chairman and Members of the Subcommittee: I am pleased to have this opportunity to appear before you today on behalf of the Department of the Treasury to discuss the growing problem of arson for profit and the role of the Treasury Department in investigating those incidents. With me is John Krogman, Acting Director of the Bureau of Alcohol, Tobacco and Firearms; and William E. Williams, Deputy Commissioner of the Internal Revenue Service.

There can be no doubt as to the seriousness of the arson for profit problem. It has been characterized as the nation's fastest growing crime; its cost is felt in human suffering as well as in extraordinary economic effects such as the loss of homes, businesses, and jobs; and it is a difficult crime for law enforcement to successfully detect, investigate, and prosecute. The impact of arson has not fallen on any single state or part of our country alone, but has affected all of our major urban areas in various degrees. The National Fire Prevention and Control Administration has informed us that there were approximately 150,000 arsons committed in the United States in 1976, and that the direct losses were estimated at approximately \$1 billion. In addition, we believe that there is evidence that in various areas arson serves as a source of income to organized crime.

Currently, the Treasury Department's role in the investigation or apprehension of those engaged in arson for profit lies with the Bureau of Alcohol, Tobacco and Firearms (B ATF). The responsibilities of the Bureau is to investigate violations of the Federal firearms and explosives statutes which prohibit the possession of many of the explosive and incendiary devices which are commonly used by arsonists. Therefore, B ATF has statutory jurisdiction to investigate arsonists who employ certain proscribed devices to commit arsons. In addition, the Internal Revenue Service, whose mission is the administration and enforcement of our internal revenue laws, has the authority to investigate individuals or entities who fail to report their profits from arsons. As you can see, the Bureau of Alcohol, Tobacco and Firearms has a direct role to play in dealing with this problem, while, on the other hand, the Internal Revenue Service has a much more indirect responsibility in the arson area.

The Federal statutes which currently direct themselves at arson are the National Firearms Act, 26 U.S.C. 5801 et seq., (Title II of the Gun Control Act of 1968), and Title XI of the Organized Crime Control Act of 1970, 18 U.S.C. 841 et seq. Violations of both of these statutes may be punishable by fines of \$10,000 and/or imprisonment for up to 10 years. Justice Department officials will be appearing before this Subcommittee and will be offering their views as

to the effectiveness of these statutes as they relate to arson, as well as some other statutes which might be applicable such as those involving Racketeer Influenced and Corrupt Organizations and mail fraud.

Arson, like many other crimes, involve a blending of Federal, State and local jurisdictions and responsibilities. The Treasury Department believes that, at its core, arson is primarily a state and local crime. These entities have the basic responsibility to maintain public safety within their respective boundaries and, obviously the Treasury Department does not have the resources to actively investigate more than a small percentage of the arsons which are committed each year.

This does not mean, however, that we believe there is no federal role in the arson area. To the contrary, the Treasury Department believes that organized and direct Federal involvement is necessary, and we have acted to provide it. B ATF has already provided substantial assistance in attacking this problem and is currently directing its arson investigative activities to those instances where there is organized criminal involvement, white collar crime, and arson for hire rings which cross state lines in carrying out their illegal activities. We have also been committed to providing technical support and assistance to state and local law enforcement authorities.

In the past the Treasury Department has attempted, within its limited resources, to play an active role in combatting arson and arson-related crimes, predicated upon ATF's enforcement of the Federal firearms and explosives laws. As the members of the Subcommittee may know from the GAO Report, the number of ATF arson cases cannot accurately be measured without great difficulty because what is now reported as an arson or arson-related offense until January, 1978, was reported as a violation of the Federal firearms and explosives laws. I am able to report, however, that between January and July 1978, ATF had 163 active arson-for-profit schemes under investigation, nationwide, 75 of which were being conducted by ATF Arson Task Forces.

I am also able to report that in cases where direct ATF investigative involvement at the State and local levels was precluded for jurisdictional reasons, the Bureau always stood ready to furnish technical and investigative assistance. For instance, during 1976 and 1977, ATF's four forensic laboratories provided technical assistance in over 2,000 arson cases, and investigative assistance in 606 cases.

As the problem of arson grew, the Treasury Department in the past year has sought to develop new and more effective strategies within the Department to combat it. We have also recognized the need for a coordinated Federal effort and have initiated programs with other Federal law enforcement agencies.

I would like to share some of these initiatives with the Subcommittee:

In January 1977, an ATF Arson Task Force was established in the Philadelphia, Pennsylvania, area consisting of personnel from B ATF, the FBI, the Postal Inspection Service, and Philadelphia police and fire investigators. This task force was created to assist local law enforcement authorities in arson investigations where violations of the Federal firearms and explosives laws were suspected. The task force was very effective and has led to the convictions of three individuals who had employed professional arsonists to burn down commercial structures for the purpose of defrauding insurance companies. The task force has also investigated nine other cases, three of which are now awaiting prosecution, and six others awaiting grand jury action.

In the fall of 1977, my office had discussions with the Justice Department concerning the feasibility of establishing Arson Task Forces in the twenty-three Department of Justice primary and satellite strike force locations. The purpose of these task forces is to develop cases against organized crime and racketeering figures who are believed to be involved in arson schemes; and to assist state and local authorities in the investigation and prosecution of significant arson-for-profit cases.

During this same period of time, ATF investigative personnel met with officials of the Criminal Division's Organized Crime and Racketeering Section to develop specific investigative standards and guidelines to be used in determining when an arson-related organized crime or white-collar crime should be investigated. The purpose of setting these guidelines is to ensure that the limited Justice Department and ATF resources would be utilized in the most effective manner by investigating only those cases where there was a reasonable likelihood of successful prosecution.

On February 1, 1978, the task force concept was approved. Beginning in March, ATF began training special agents in arson investigations and since then has trained 120 special agents. The special agents chosen for these assignments all underwent intensive instruction in the detection and investigation of arson-for-profit schemes at the Federal Law Enforcement Training Center in Glynn, Georgia. Since then, ATF, in cooperation with the Department of Justice, also has held a seminar in arson investigative techniques for Special Agents in Charge.

In January, 1978, we also met with representatives of the Commerce Department's National Fire Prevention and Control Administration to offer our assistance at the National Fire Academy in the training of state and local law enforcement and fire-fighting personnel in the detection and investigation of arson. Previously such training had been provided by ATF on only an *ad hoc* basis at the district level. Final arrangements for ATF participation have been made, and it is expected that ATF will begin assuming teaching duties at the Academy within the immediate future.

Because we have recognized the obvious interest that insurance companies have in halting the growth of arson and their wide experience in investigating this crime, we recently enlisted their cooperation in combatting arson-for-profit schemes. For instance, in April and June, 1978, ATF met with representatives of the Insurance Crime Prevention Institute and the Property Loss Research Bureau in order to obtain information regarding major arson-for-profit schemes, and to make arrangements for the future exchanges of information regarding detection techniques. Representatives of both organizations have pledged their full cooperation in support of the ATF Arson Task Force projects. In the case of the Insurance Crime Prevention Institute, there were also arrangements made for ATF to participate on a limited basis in the instruction of new investigators.

Treasury recognizes that further initiatives will be required if the Federal effort against arson-for-profit schemes is to be fully effective and as our experience grows we are prepared, within our resource capability to undertake them. For instance, we know that there must be a better and more efficient procedure for sharing information on suspected arsonists with Federal, State and local authorities. Studies to develop these procedures are now underway.

While we continue to believe that primary responsibility in this area should remain with the State and local authorities, we are committed to continuing our role in this area. However, we caution against heightened expectations that the Federal government alone will be able to provide sufficient resources to attack this problem. It can only be successfully addressed by a coordinated federal/state effort. This is a reflection of the fact that federal resources, law enforcement and others, are not unlimited. This is particularly true of the Bureau of Alcohol, Tobacco and Firearms, whose proposed 1979 budget was severely reduced by the Congress. Nevertheless, we are determined to try to do what we can to try to meet this problem, even though our primary actor--B.A.T.F.--may have less people to meet all its responsibilities.

I will now ask Acting Director Krogman and Deputy Commissioner Williams to present their statements after which we will be glad to answer any questions you may have.

Thank you.

Mr. DAVIS. I will just very briefly summarize the testimony. I think that these hearings and the mere facts themselves support the conclusion that arson is a serious crime, both in terms of the speed with which it is growing, its impact on people and property, the problems which are faced by law enforcement in trying to solve it and the widespread nature throughout the country.

Treasury's role is principally in the Bureau of Alcohol, Tobacco, and Firearms in terms of its enforcement of the explosive laws which involve many of the devices which are used to set many of these fires.

In addition, the Internal Revenue Service, when the arsonist doesn't report his income, also has a role to play in terms of possible income tax prosecutions.

We think that this is the kind of crime like many other crimes which involves the blending of responsibilities, Federal, State, and local. When you talk about approximately 150,000 incidents in terms

of one of the statistics we have been given, we feel that as basically a starting point.

The local authorities should have the lead in the investigations. We think the Federal Government has a very important role and must play an important role in a very directed and organized way and we have been trying to do that. This role is in investigating those arsonists who are involved in organized criminal activity, white collar crime, or whose activities cross State lines.

Through ATF, we have been investigating arsons since 1969. In 1976, and in 1977, ATF provided in over 2,000 instances laboratory assistance to local authorities and over 600 instances of investigative assistance. But ATF also conducts these investigations itself.

In January 1977 ATF started a Philadelphia task force in conjunction with other Federal law enforcement agencies and the Department of Justice, which I think was very successful in showing that this kind of coordinated effort can help in investigating and prosecuting arson offenders.

In the fall of 1977, I had meetings with representatives of the Justice Department and exchanged letters with then Assistant Attorney General Civiletti, in which it was agreed that ATF would expand its task force approach to the 23 strike force cities and satellite strike force cities, and that was done during the winter of 1978.

These task forces are in progress, and are conducting approximately 75 arson investigations now. In addition, ATF, even apart from the task force approach, conducts other arson investigations and is presently conducting many of those in its various offices.

ATF has also been training its agents in arson investigative techniques in order to improve their ability to perform in these various strike forces. It has also gotten heavily involved in terms of trying to train local officials in terms of enhancing their ability to investigate arson.

For example, in the past, ATF would work at its district office level on a more ad hoc basis with local law enforcement officials in providing training to personnel of local police departments. We have now, as a result of conversations with people at the Commerce Department, come to an agreement in which ATF will be given teaching time at the National Fire Academy to enable ATF to provide to the fire and police investigators who go to that Academy the expertise which they have developed in the investigation of arson.

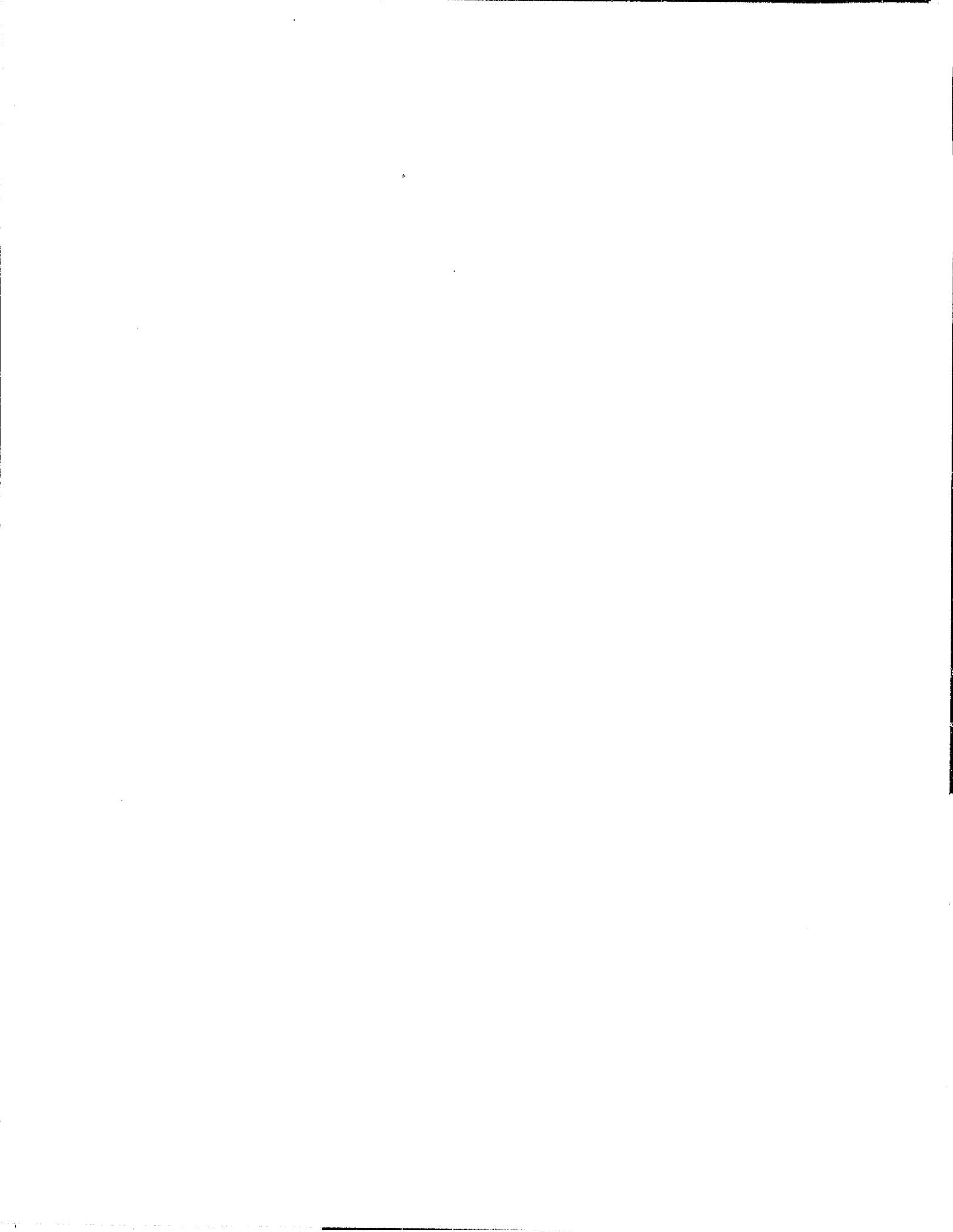
We also met with representatives of the insurance industry to try to improve our coordination and understanding of the problem. We are committed to trying to do the best within our resources to continue these efforts.

I know you are tired of hearing the phrase "within its resources," but for us at ATF and Mr. Krogman, it is particularly an important problem since, as you know, this was a difficult budget year for them in terms of getting the ATF appropriations through the Congress.

Nevertheless, while that may mean we can't expand as fast in all of the areas as we would like, we are committed to continuing to do what we have and to continue the task force approach in order to do something to meet the problem.

Senator PERCY. Thank you very much indeed.

Mr. Krogman.



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**4 OF 6**

Mr. KROGMAN. Traditionally, ATF has been involved in arson investigations in several different ways. Whenever possible, our agents have actively investigated arson cases which fell under ATF jurisdiction, which is essentially the Gun Control Act.

Our forensic laboratories have proceeded and analyzed arson or suspected arson evidence sent to it by State and local law enforcement agencies. Additionally, our Bureau scientists have joined with special agents in conducting training classes in arson detection for State and local law enforcement agencies throughout the United States.

ATF made its first fire bombing case, which now would be termed an arson case in 1969 in Mobile, Ala. In 1969 we also began instructing State and local officers that Federal prosecution of arsonists was available in cases where the fire was started through the use of what we could call a destructive device, "Molotov cocktail" firebomb.

In the early 1970's, ATF was a participant in the Chicago arson task force together with city police agencies. ATF laboratory facilities have provided expert opinion and court testimony, where needed, for local agencies in arson investigations. For example, our laboratories have analyzed evidence in more than 2,100 arson cases.

The most recent ATF tactic in combating arson has been through the use of task forces which utilize the talents of many agencies.

This task force concept was implemented in Philadelphia following a series of arsons there. The ATF Special Agent in Charge was granted permission to form an arson task force for Philadelphia.

The group included ATF, the FBI, postal investigators, and Philadelphia police and fire investigators.

This interagency cooperation with State and local officials resulted in 15 arson investigations, including the successful prosecution of white-collar criminals who employed professional arsonists.

These hirelings burned down buildings and businesses so that the bosses might defraud insurance companies of hundreds of thousands of dollars.

During 1977, on-the-job training was provided ATF agents by temporary assignment to the Philadelphia arson task force in order to provide us with the expertise to expand this enforcement concept to 10 other cities with acute arson problems.

In November, a decision was made to expand the concept to all 23 Justice Department's Strike Force cities.

In February 1978, there was an agreement formalized with the Justice Department, extending the arson concept to the Strike Force cities. Training started immediately, and by April, ATF had contacted all Strike Force attorneys, Federal agencies, and State and local agencies involved.

As of July 1, 1978, we have already initiated 163 arson investigations, 75 of which are under the task force supervision.

We will supplement our task force operation by establishing two national response teams. These 10-man teams will be used in major arson cases, bombings, and accidental explosions. The idea is to develop a well-trained team of specialists who can be convened on short notice anywhere in the United States at the site of a major bombing or arson.

Each team will consist of 10 special agents, augmented by technicians, forensic scientists, and auditors. Because the investigation of explosion and fires can tie up agents for many hours, these quick response

teams will offer relief to the local ATF agents and permit them to conduct their regular investigative work uninterrupted.

These team members are now being selected. They will undergo extensive training and should be operational within a few weeks. We expect to monitor the results of these response teams, as well as the task force, very closely.

[Statement of Mr. Krogman follows:]

STATEMENT BY JOHN G. KROGMAN, ACTING DIRECTOR, BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, U.S. DEPARTMENT OF THE TREASURY

Mr. Chairman, and members of your distinguished subcommittee. I appreciate the opportunity to discuss with the committee ATF's activities in arson investigation, and what the Bureau has done to combat the alarming growth of arson-for-profit in the United States.

Because the Bureau is concerned at the growing number of arsons through the Nation, it has taken steps to aggressively attack the problem within the limits available to it.

This is not to say that ATF has not involved itself in arson cases in the past, for traditionally it has, but under circumstances limited by manpower and priorities.

The Bureau derives its authority in arson investigation from two sources. One is Title II of the Gun Control Act of 1968 which forbids the illegal manufacture of explosive devices. The second source is the Explosives Control Act of 1970. However, because of the Bureau's limited manpower, ATF agents have emphasized the primary intent of both acts: That is, the enforcement of firearms and explosives laws, and the regulation of the two industries.

Nevertheless, through the years the Bureau has conducted many arson investigations based upon the application of these laws. In addition, our laboratories have processed many hundreds of pieces of arson evidence, not only for ATF agents, but as a service to State and local law enforcement agencies.

Until recent years, arson was considered to be outside ATF's jurisdiction, unless the device used to ignite the fire was a traditionally recognized destructive device or an explosive. If the cause of the fire fell within these rather narrow parameters, then jurisdiction could be claimed by ATF. Recently, however, we have established that the use of a flammable liquid when mixed with an oxidizing agent does fall within the definition of explosive as set out in the Explosives Control Act.

A recent U.S. district court decision in Savannah, Ga., supports this Bureau interpretation. With this interpretation ATF has the authority to investigate directly many more arson cases than it previously could. Thus, a violation of Explosive Control Act can be established when gasoline with an oxidizing agent is used or is attempted to be used to damage or destroy any building, vehicle or other real or personal property in interstate or foreign commerce or in any activity affecting interstate of foreign commerce.

Traditionally, ATF has endeavored to be involved in arson investigations in several ways. When possible, ATF agents have actively investigated arson cases which fell under Bureau jurisdiction. The ATF forensic laboratories have always stood ready to process and analyze arson or suspected arson evidence sent to it by State and local law enforcement agencies. Additionally, Bureau scientists have joined with special agents in conducting training classes in arson detection for State and local law enforcement officials.

In the past, our special agents perfected many cases which would not be termed arson cases, but were included in our criminal case reporting system as Gun Control Act or Explosive Control Act cases. For more accurate reporting, we recently revised our system so that we can identify arson investigations as such.

ATF made its first fire bombing case, which now would be termed an arson case in early 1969 in Mobile, Ala. ATF agents then arrested two persons who were convicted and sentenced to 5 years each.

In 1969, we also began instructing State and local officers that Federal prosecution of arsonists was available in cases where the fire was started through use of a destructive device. The "Molotov Cocktail" was a commonly recognized and used device.

In the early 1970's, ATF was a participant in the Chicago arson task force together with city police agencies. ATF laboratory facilities have provided expert opinion and court testimony, where needed, for local agencies in arson investi-

gations. Our laboratories have analyzed evidence in more than 2,100 arson case investigations.

The most recent ATF tactic in combating arson has been through the use of task forces which utilize the talents of many agencies.

This task force concept was implemented in Philadelphia following a series of arsons there. The ATF special agent in charge in Philadelphia was granted permission to form an arson task force for the city. The group included ATF, the FBI, postal investigators and Philadelphia police and fire investigators.

This interagency cooperation with State and local officials resulted in 15 arson investigations including the successful prosecution of white collar criminals who employed professional arsonists. These hirelings burned down buildings and businesses so that their bosses might defraud insurance companies of hundreds of thousands of dollars.

Those criminals caught in the task force web included a Philadelphia insurance agent who sought to collect \$200,000 from insurance companies after his hotel and restaurant were destroyed by fire; and a landlord who conspired to burn several of his unprofitable low-income rental homes.

During 1977, on-the-job training was provided ATF agents by temporary assignment to the Philadelphia arson task force in order to provide us with the expertise to expand this enforcement concept to 10 other cities with acute arson problems. In November, a decision was made to expand the concept to all 23 Justice Department's strike force cities.

In February 1978, there was an agreement formalized with the Justice Department extending the arson concept to the strike force cities. Training started immediately, and by April, ATF had contacted all strike force attorneys, Federal agencies, and State and local agencies involved. As of July 1, 1978, we have initiated 163 arson investigations, 75 of which were task force investigations.

The story of ATF's fight against arson was published by the International Association of Fire Chiefs in the April issue of its professional magazine. A copy of that article is attached to our documentation.

We are also in the process of establishing two national response teams. These 10-man teams will be used to investigate major arson cases, bombings and accidental explosions. The idea is to develop a well-trained team of specialists who can be convened on short notice anywhere in the United States at the site of a major arson or bombing.

Each team will consist of 10 special agents, augmented by technicians, forensic scientists and auditors. Because the investigation of explosions and fires can tie up many agents for long periods, these quick response teams will offer relief to local ATF agents and permit them to conduct their regular investigative work uninterrupted, and leave the investigation of the major arson cases to the response team.

These team members now are being selected. They then will undergo extensive training and should be operational within a few weeks.

As for the GAO report which was critical of efforts being made by Federal agencies in fighting arson, we agree in substance with the report that arson for hire is a very serious problem which is becoming critical. But we disagree with the implications of the report that ATF has not mounted concerted efforts to combat the problem. The testimony I have presented indicates the zeal with which the Bureau has sought to fight arson within our limited resources since 1969.

ATF has been aggressive in its efforts to combat arson for profit. However, we certainly agree that much more should be done. ATF is limited in scope by manpower and resources. We believe we can play an important role in meeting the problem. We have the expertise, the energy and the dedication to mount a meaningful effort. The extent, however, to which we can apply resources to the arson area is a factor of how many resources we have. With more resources we obviously can do more. What we promise, however, is to continue to use our people, to the extent we can, to attack this growing problem.

Thank you.

Senator PERCY. Thank you very much.

Mr. Benson, again your full testimony will be put in the record and you can summarize it.

Mr. BENSON. The Postal Inspection Service is responsible for enforcing the laws which relate to the Postal Service, securing the mail and guaranteeing the integrity of the mail. As such, one of the laws is the

mail fraud statute, and it is under this law that we touch sometimes on arson investigations.

However, it is important to note that in investigating mail fraud we do not normally have to prove arson. It is simply enough to prove the mails were used, that there was a scheme to defraud the insurance company of some money by inflating a claim or by submitting a false claim.

In doing this, we do cooperate with the other agencies through the organized crime strike forces and the various cooperating efforts already mentioned as well as with the insurance industry through the Insurance Crime Prevention Institute.

Senator PERCY. Thank you very kindly.

[The statement of Mr. Benson follows:]

STATEMENT OF CHIEF POSTAL INSPECTOR C. NEIL BENSON

Mr. Chairman, I am Chief Postal Inspector C. Neil Benson. I have been in charge of the Postal Inspection Service since 1975. I first joined the Postal Service in 1944 and became a Postal Inspector in 1959.

I am here today in response to your request for testimony on the law enforcement role of the Postal Service in relation to arson-connected frauds. As an introduction, let me describe for you briefly how our arson-fraud investigations fit within our general law enforcement responsibilities.

Under the provisions of 18 U.S.C. 3061 and 39 U.S.C. 404(a) (7), the Postal Service has authority to conduct investigations of violations of postal laws. One of these laws is the criminal mail fraud statute, 18 U.S.C. 1341, which derives from legislation first enacted in 1872.

Mail fraud covers a large range of criminal activities. Many have to do with false and fraudulent indemnity claims made to insurance companies. Some of these are for personal injuries sustained in staged automobile accidents. Others are indemnification for losses due to theft or burglary. Still others are claims for payment for treatment of injuries or illnesses of persons covered by medical insurance plans. In all, we divide the various mail fraud schemes into some 70 categories, one of which now is arson-related insurance claims.

Today, approximately 258 Postal Inspectors are assigned to mail fraud investigations. In Fiscal Year 1977, a total of 5,037 such investigations were closed. At present, there are about 4,000 open mail fraud investigations.

Insurance-claim frauds are a significant part of this activity. During FY 1977, our records indicate that we received 1,861 complaints of this character involving losses of about \$6½ million. The Inspection Service conducted 197 investigations leading to 322 arrests. In a special poll of our Inspectors, we found that 30 of these investigations and 33 of the arrests involved arson-related frauds.

Our involvement in investigating arson-related frauds generally begins with notification by the insurance industry or local investigative authorities about a suspicious fire and claim that may involve the use of the mails. Since arson itself is within Federal jurisdiction only in limited circumstances, our entry into the case frequently begins some time after the fire on which a claim is based, often after the local investigation of the fire has started or perhaps is over.

In a mail fraud cause, arson itself is not a necessary element of the crime and need not be proved. It is sufficient to prove that the claimed loss did not occur, that the claim has been inflated, or that the building or its contents were over-insured, plus the fact that the mails were used in furtherance of the fraudulent claim.

This does not mean that "arson for profit" should be viewed as just another fraudulent scheme for making money. The arson element makes this a very dangerous and vicious type of fraud.

Let me give you a few examples of the kinds of cases in which the Inspection Service has become involved.

Defendants conspire to cause the bombing of their own business to collect proceeds from an insurance policy.

A development company hires a so-called "torch" to burn a building containing sample condominium apartments, in an attempt to collect \$1.4 million in insurance.

An arsonist who is suspected of being hired to burn a private club is burned to death in another arson fire.

A father and son are charged with mail fraud for defrauding 21 companies through burning their cocktail lounge.

Inventory records are altered to reflect a greater quantity of goods burned in an arson fire than actually were lost.

A claim for insurance on antique automobiles destroyed by fire is found to be overstated tenfold. The cars had not been destroyed as claimed.

Hotel owners hire others to burn the hotel in order to collect insurance.

My staff and I (at National Headquarters) maintain liaison with other Federal agencies including among others the Federal Bureau of Investigation; Bureau of Alcohol, Tobacco and Firearms; Department of Housing and Urban Development; Environmental Protection Agency; Department of Justice; Internal Revenue Service; Secret Service; Department of Health, Education, and Welfare; and Securities and Exchange Commission. The Inspectors in Charge of the 18 Inspection Service Division Headquarters maintain liaison with the 94 United States Attorneys, state and local law enforcement authorities, and consumer and business groups. I also have an Inspector permanently assigned to each of the Department of Justice Organized Crime Strike Forces. Through these contacts we actively solicit referrals of all types of fraudulent activity which involve use of the mails. This, of course, includes arson for profit.

In January 1978, due to increasing concern about arson-connected frauds, a procedure for keeping separate statistics relative to fraud cases involving arson was established. Other steps have been taken to enable us to become more aggressive in efforts relating to this kind of crime. I have met with the Director of the Insurance Crime Prevention Institute to set some guidelines for an active and close cooperation between that organization and the Postal Inspection Service. The Institute is aware that we actively solicit the referral of suspicious claims. A cooperative effort to identify localities with a suspected high incidence of arson has been launched to provide an additional focus for investigation apart from the receipt of individual referrals. Regional Chief Inspectors and Inspectors in Charge maintain regular contact with Institute personnel.

We believe that we have improved our ability to monitor and to deal with arson-related fraud schemes. These are very serious crimes. A significant Federal effort is required and we expect to do our part.

This concludes my prepared statement. I will be pleased to respond to your questions.

Senator PERCY. Mr. Williams?

Mr. WILLIAMS. Yes, Senator. I have a very brief statement which I will summarize.

In IRS, we certainly share this committee's concern that action should be taken to combat the serious crime of arson for profit. The responsibility of the Internal Revenue Service is to enforce the Federal tax laws. Failure to report any taxable gain from the insurance proceeds derived as a result of a fire would be a tax violation.

Similarly, a failure to report any taxable income from arson is a tax violation as is failure to report income from any other activity. The amount of income received and unreported in arson related activities is difficult to prove, as is the case with income from other illegal activities.

Such income is typically concealed.

The Service pursues arson-related tax violations and a number of IRS districts have projects and cases involving such violations. Information relating to the illegal activity having potential tax significance is evaluated by our field offices under a procedure for processing information items.

This includes items identifying individuals engaged in arson-for-profit activities. In addition to the activities I have mentioned, we intend to take a number of specific steps to improve the level of our information about arson activities. We plan to arrange for a specific

arson-related liaison to obtain potential information having tax relevance with the Bureau of Alcohol, Tobacco and Firearms, the Postal Service, and other Federal agencies that have the primary responsibility for law enforcement efforts against the crime of arson.

The Service has agreements with the States for the exchange of tax information. Working through these contacts, we will seek to ascertain the availability of potentially tax related information about arson from State agencies as well as from insurance industry sources.

The Service is committed to the vigorous enforcement of civil and criminal penalties within its jurisdiction as an important part of its responsibility for a balanced program of tax administration.

As part of this commitment, we will investigate and cooperate in the prosecution of tax offenses related to arson as we do in the case of other tax offenses.

Thank you very much.

[The statement of Mr. William E. Williams follows:]

STATEMENT OF WILLIAM E. WILLIAMS, DEPUTY COMMISSIONER, INTERNAL REVENUE SERVICE

Mr. Chairman and Members of the Subcommittee: I appreciate the opportunity to appear before you today to discuss Internal Revenue Service activities relating to arson-for-profit.

We share this Subcommittee's concern that action should be taken to combat the serious crime of "Arson-for-Profit." The responsibility of the Internal Revenue Service is to enforce the Federal tax laws.

Failure to report any taxable gain from the insurance proceeds would be a tax violation. Similarly, a failure to report any taxable income from arson is a tax violation, as is failure to report income from any other activity.

The amount of income received and unreported in arson-related activities is difficult to prove, as is the case with income from other illegal activities. Such income is typically concealed. The Service pursues arson-related tax violations, and a number of IRS Districts have projects and cases involving such violations. Information relating to illegal activity having potential tax significance is evaluated by our field offices under a procedure for processing information items. This includes items identifying individuals engaging in arson-for-profit activities.

In addition to the activities I have mentioned, we intend to take a number of specific steps to improve the level of our information about arson-related activities. We plan to arrange for a specific arson-related liaison to obtain potentially tax-related information from the Bureau of Alcohol, Tobacco and Firearms, the Postal Service, and other Federal agencies that have the primary responsibility for law enforcement efforts against the crime of arson.

The Service has agreements with the States for the exchange of tax information. Working through these contacts we will seek to ascertain the availability of potentially tax-related information about arson from State agencies.

In addition, we will seek to obtain for our own evaluation potentially tax-related information from insurance industry committees established to investigate matters involving arson.

The Service is committed to the vigorous enforcement of civil and criminal penalties within its jurisdiction as an important part of its responsibility for a balanced program of tax administration. As part of this commitment, we will investigate and cooperate in the prosecution of tax offenses related to arson as we do in cases of other tax offenses.

Senator PERCY. At this point, I will ask without objection that the three GAO reports be inserted in the record.

[The documents referred to were marked "Exhibit Nos. 24, 25, and 26" for reference and will be found in the appendix.]

Senator PERCY. Mr. Davis, first you quote figures from the National Fire Prevention and Control Administration of 150,000 arsons in 1976. We heard testimony yesterday from the Chief Arson Investi-

gator in Houston that indicated that arson is vastly under-reported in many cities, in fact throughout the United States.

What can be done so that the arson figures more accurately reflect the truth of this nationwide problem?

Mr. DAVIS. I think the first thing that can be done is probably being done now in these kinds of hearings, to cause not only us, but people back in the States to focus on the problem to improve the reporting systems.

I hate to get involved in the discussion with my colleagues from the FBI, but under either approach, I think there is a recognition that it is a Federal responsibility to try to seek out more information from the States as to the quantities and the numbers of arsons that are taking place and to try and get that information so that we do have a better idea.

Senator PERCY. You say that in the past year, the Department has attempted to develop new and more effective ways to deal with the arson-for-profit problem.

Is it your opinion that the arson problem is of such recent vintage, or is it only within the past year that the Department has begun to realize how serious a nationwide problem it is?

Mr. DAVIS. I think the arson problem has obviously been with us for more than a year and the ATF has been investigating it longer than that. But I think it was in January 1977 when ATF started the task force approach that we began to realize that we had something that could not just be viewed as isolated local incidents, that had to be viewed because it was appearing to be the case, as involving more evidence of rings, more evidence of organized crime involvement.

I think that that awareness developed in 1977. We tried to react to that. I think the problems therefore, and the awareness came gradually.

Senator PERCY. Mr. Krogman, how many investigations of arson for profit did the Bureau conduct last year? Could you give us the results of those investigations?

Mr. DAVIS. I think it was 163 was the figure we used. It was since January of 1978 and prior to that one of the difficulties is that many of the arson figures are figured in with the explosive figures when they were reported back and the problem was going back into the statistics. We have now arson reported in a more identifiable basis.

Mr. KROGMAN. We have been recording arson as such since July, Senator Percy, since then we have participated in 163 arson investigations. Before that, these investigations would be incorporated in our Gun Control Act and our Explosive Control Act statistics. For example, we may conduct an investigation of a Molotov cocktail, which is a firearm as defined under the Gun Control Act.

But now we are collecting statistics which specifically relate to arson.

Senator PERCY. The GAO reported that an ATF official estimated that the new arson task force would be operational by last June. Yesterday, however, we heard from the San Jose police chief and he told the committee that he had not heard from the representatives of the ATF task force in the bay area.

Could you comment on this?

Mr. KROGMAN. Yes, sir. On September 1, 1977, the strike force attorney in San Francisco held a joint meeting of ATF, FBI, Postal

Service representatives, as well as the local chiefs of police, including Chief McNamara, who attended that meeting.

That meeting was subsequently followed up by a resident agent in charge in San Jose, who contacted Chief McNamara around the first of the year, 1978, when they discussed our arson task force.

It is unfortunate that we were not referred by the chief down to his intelligence unit, but we did talk with the chief on both occasions.

Senator PERCY. I would like to read the question put by Senator Nunn:

You also testified that the Alcohol, Tobacco and Firearms Task Force out of San Francisco—I believe they operate out of San Francisco—had not contacted you regarding their work. Is that right?

Mr. McNAMARA. Regarding the arson, yes, that is true.

Can you comment on that a little?

Mr. KROGMAN. Yes; we did contact them on two separate occasions relative to this problem.

Senator PERCY. ATF's efforts will concentrate on organized crime involved in arson?

Mr. KROGMAN. They will concentrate on organized crime as well as white collar crime, arson for profit, but due to our limited resources, we have to be highly selective in the types of arson investigations that we get involved with.

But those are two areas that we have sent instructions to our field offices: Organized crime and arson for profit.

Senator PERCY. Has your Bureau encountered any problems in coordinating its arson-related investigation to the Federal and local law enforcement agencies and, if so, what are they?

Mr. KROGMAN. The first problem I heard about was the one with Chief McNamara. Generally, our cooperation with other officials has been outstanding across the board.

Senator PERCY. Does ATF believe that there is a need for a law making arson a Federal crime or for changes in present law making enforcement more effective?

Mr. KROGMAN. I don't believe so. I think improvement could be made if explosives were included under the RICO statute, that certainly would be an improvement in our enforcement.

Senator PERCY. Thank you very kindly.

Mr. Benson, we do not seek, as you know, jurisdiction over the Postal Service, but we have here several experts. We have a great deal to learn about the Post Office, but certainly I intend to try to intensify my efforts there and hopefully work on it, because there is a good deal of criticism these days as we well know.

Again, in a spirit of cooperation we would like to work with you to see that you have the resources and encouragement and help that you need. We are happy to have you here this morning.

During 3 days of subcommittee testimony on arson for profit, we had heard from experienced criminals and law enforcement authorities, all of whom emphasized the ease with which you can commit arson.

It seems arson for profit is one of the easiest crimes and it has grown rapidly thereof as a result. It has moved into areas of high yield and low risk.

Is the Postal Service aware of the magnitude of the problem presented by arson for profit?

Mr. BENSON. I think we are beginning to be aware of it. We have certainly been working in this area for sometime, but we work very

closely with the insurance industry. They will cooperate with us by providing data on false claims or claims that they suspect to be other than legitimate.

The number of these claims sometimes is not quite as large as we would expect from some of the other areas that we hear about. The insurance companies, of course, cannot always substantiate that the claim is false.

Senator PERCY. As you are beginning to get a comprehension of the seriousness of the problem, can you tell us what steps so far have been taken in respect to this law enforcement problem?

Mr. BENSON. We are making some internal changes. We have added some statistical gathering methods to improve our knowledge of how extensive the arson frauds do impact on us.

In addition to that, we have been cooperating, of course, with the organized crime strike force since the beginning. We have increased our cooperation with the other agencies in this area as they have increased it with us.

We have selected, in cooperation with the Insurance Crime Prevention Institute at Hartford, Conn., what I prefer to use as a sample or a test site to see if we can make an impact in a particular city by reducing the arson-related fraud which is suspected in that particular city.

Senator PERCY. Could you tell us how many arson investigations were completed last year and how many convictions, for instance, were obtained?

Mr. BENSON. I could tell you that we conducted approximately 197 investigations. Last year, we did not separately compile the arson statistics, but we surveyed our divisions and about 30 of those investigations related to arson. As a result of those 30, we did effect 33 arrests.

Senator PERCY. The Postal Service told the GAO that they planned to give more investigative attention during the year 1978 to arson-related insurance frauds.

Can you supplement your report by indicating how many investigations actually have been undertaken and how many are completed thus far this year?

Mr. BENSON. As far as arson?

Senator PERCY. Yes; and arson-related insurance fraud.

Mr. BENSON. It is very difficult to pull out those figures until the end of the year. I am not sure if I understand that question, Senator.

Senator PERCY. You sat down with GAO when they were making their study and indicated that you planned to give more investigative attention during 1978 to this problem.

If you could either give us now or just supplement for the record how many investigations have been undertaken, how many completed, so far this year.

Mr. BENSON. I would have to get those figures and supplement it.

Senator PERCY. We will leave the record open for a reasonable period of time for you to get that information for us then.

[The information furnished by Mr. Benson follows:]

From January to June 1978, there were 17 open arson-related mail fraud investigations, which resulted in 16 arrests.

Senator PERCY. I wonder if you could tell us what difficulties you have found in coordinating your arson-related investigations with the FBI, ATF, and other Federal and local law enforcement agencies?

Mr. BENSON. I don't think we have found any particular difficulties. The human resources necessary to set a higher priority for this particular investigative effort is probably the major item.

Senator PERCY. Finally, the same question I asked previously, do you feel that arson should be made a Federal crime or do you know of any changes in legislation that would require the strengthening of your hand?

Mr. BENSON. No. I know of none that would impact on the Postal Service and I would not suggest a Federal crime.

Senator PERCY. Mr. Williams, a member of your staff—

Mr. MALONE. Before you leave Inspector Benson, Senator Glenn left behind with us a series of questions which we would like to submit to Chief Benson and ask him to prepare responses for the record.

Mr. BENSON. I would be happy to do so.

[The questions submitted by Senator Glenn to C. Neil Benson, Chief Postal Inspector, together with the answers, follow:]

*Question.* On page 4 of your statement, you say that new procedures were begun in January to keep separate statistics on arson-related fraud.

Did this occur because of a noticeable increase in such cases? Can you give us any information that would help quantify the degree to which this problem has grown?

Do you have any information developed that would show the degree to which fraudulent insurance claims through the mails correspond with arson cases? What percentage of arson cases appear to be tied to fraudulent insurance claims?

*Question.* Also on page 4, you refer to cooperative efforts to identify localities with a suspected high incidence of arson and arson-related fraud cases.

Have these efforts had much success in identifying such localities?

Is there a regular program for screening insurance claims when fires of suspicious origin occur?

Could you describe for us any common characteristics shared by localities with suspected high arson and arson-fraud incidence?

*Question.* Do you think the 30 cases of arson-related frauds you found in FY 77 comes anywhere close to accounting for the true number of such schemes?

*Question.* You state that, during Fiscal Year 1977, 30 of your insurance claim investigations—about 15 percent of the total—involved arson.

Does that represent a significant increase?

Of the 33 arrests referred to, were these arrests made by postal inspectors on fraud charges?

Do you know how many of the defendants were charged with the arson itself?

Have your efforts to actively solicit referrals brought about any increase in arson-related investigations?

*Question.* Is there a pattern that would indicate organized arson-for-profit operations, and, if so, are Federal authorities (Organized Crime Strike Forces, etc.) giving sufficient attention to this area?

*Question.* Are the mail fraud statutes an effective tool for getting at the arson-for-profit problem?

Do you have any specific recommendations to make that could lead to improvements in the enforcement efforts against arson or the related business of fraudulent insurance claims?

CHIEF POSTAL INSPECTOR,  
Washington, D.C., September 25, 1978.

HON. JOHN GLENN,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR GLENN: Following my September 14 testimony relating to arson for profit before the Permanent Subcommittee on Investigations, a subcommittee staff member informally referred to me the written questions which you stated at the hearing you wanted me to answer. The purpose of this letter is to respond to your questions and, perhaps, to supplement some of my testimony in regard to arson-for-profit insurance mail fraud schemes.

Our decision in late January 1978 to keep separate statistics on arson fraud did not relate to any noticeable increase in the alleged crimes of this sort being brought to our attention. Rather, the interest in this sort of crime expressed

by Congress, the press, and other investigative agencies led us to decide to capture these statistics in order to determine the extent of the problem as it concerned the Postal Service. Our statistics are accumulated on a quarterly schedule, so we know the figures from January through June, 1978. These figures seem to show perhaps a slight upward trend in our case load in arson fraud matters. During this period, we had 17 such cases under investigation, and they resulted in 16 arrests.

It would appear, based on these early statistics, that arson insurance cases comprise less than ten percent of the overall insurance fraud cases investigated by the Inspection Service. We do not have any statistics on arson apart from arson-related insurance schemes, which provide a nexus for our involvement through the use of the mails in furtherance of the schemes.

Our efforts with the Insurance Crime Prevention Institute (ICPI) to identify localities with suspected high incidence of arson is a new program, so there are no significant developments to report at this stage. The screening of insurance claims when fires of suspicious origin occur is accomplished by insurance companies and organizations such as ICPI. The Inspection Service has no particular involvement in the routine handling of insurance claims until such time as an allegation of mail fraud is reported to us.

There seems to be a wide difference of opinion as to the extent of arson and arson-related frauds. To state whether the number of investigations conducted by Postal Inspectors comes anywhere near the true number of such schemes would be conjecture on my part. However, I am inclined to believe that there may be many such cases unreported to us, in spite of our efforts to encourage such reporting of suspected arson-related mail fraud. Of course, there may also be a number of insurance-related fires for which a likelihood of arson involvement is not detected by police authorities or insurance companies.

I would like to be able to answer your question of whether the investigations of arson-related insurance frauds conducted during Fiscal Year 1977 represents an increase over previous years. However, since the estimated figure for that year is the first one we have, I have no way to determine the degree of increase, if any.

The 33 arrests made by Postal Inspectors during the period prior to 1978 would have been the result of mail fraud investigations or a mail fraud related federal charge, such as wire fraud, interstate transportation of stolen property, etc. It is entirely possible that, in some instances, those persons charged with mail fraud in a U.S. district court were also charged for arson in a state court.

Undoubtedly, organized crime will, or already has, moved into the lucrative area of arson-for-profit. Some of our cases have indicated that possibility. However, we have not discerned a pattern of widespread organized crime activities in arson fraud. As mentioned in my testimony, Postal Inspectors are assigned to the various strike forces. I am confident that these units are fully aware of the arson-for-profit potential and are capable of providing sufficient attention to it. It has also been my experience that the Justice Department and the respective U.S. Attorneys' offices are cognizant of the importance of arson-for-profit insurance fraud cases. These organizations also are able to do a good job.

The Mail Fraud Statute, as I mentioned in my testimony, is a powerful tool in combating many varieties of fraudulent activity involving use of the mails, including arson-for-profit. I therefore do not believe that making arson a federal crime is necessary at this time to deal with the kinds of frauds which the Postal Service has jurisdiction to investigate.

Sincerely,

C. NEIL BENSON,  
Chief Postal Inspector.

Senator PERCY. A member of your staff advised the subcommittee that there is no one person in IRS headquarters monitoring arson investigation. Is this still the case?

Mr. WILLIAMS. This is true, Senator. We cannot at this point in time assemble any data on the number of cases that may have been investigated over the years because of the vast provisions of the Internal Revenue Code.

We have not set up specific provisions to track specific sources of cases such as arson. We do have an idea of the number of cases under investigation at the present time but we have not established specific

cally an arson program, a special program in terms of arson, but rather we consider this along with the other leads and the other data that we have for investigating alleged violations of the Internal Revenue laws in the general compliance area.

Senator PERCY. Are you convinced, as a result of these hearings, that arson for profit does represent a potentially lucrative source of facts that IRS should be interested in?

Mr. WILLIAMS. Yes, Senator. As I indicated in my statement, we share your concern. We do have a number of projects now in process throughout the country dealing in this area and we do plan to place a lot of additional effort in liaison with other agencies, both at the Federal and State level.

Any leads or information that we receive on these contacts will be considered and woven into our compliance programs. We are concerned that any income derived in this area should be reported for tax purposes just as any other income that is not reported.

Senator PERCY. Does the IRS have any overall policy of how to investigate possible arson-for-profit tax violations?

Mr. WILLIAMS. Yes; our manuals that are distributed to our investigative officers have procedures for determining the income that would be derived by taxpayers, whose property may be destroyed in terms of insurance coverage, and so forth, and of course in addition, our effort in the case of arsonists themselves would be directed toward the income that they would have received as a result of their efforts in this area.

Senator PERCY. Our staff was also told the IRS does not attempt to develop its own leads on possible arson-for-profit tax cases. Why is that?

Mr. WILLIAMS. I don't believe I understand the first part of your question, Senator.

Senator PERCY. The staff was told that IRS has not attempted to develop its own data on possible arson-for-profit tax cases, but get your leads from someone else. Is this an area where you should initiate action?

Mr. WILLIAMS. I don't believe this is entirely correct. Of the current projects and cases that we have under investigation, some of those did originate from information developed by the IRS. In most of them, though, I believe the information did come from other agencies and I think this is a normal process in this type of activity. As Mr. Davis has indicated, our role is a rather indirect one in terms of arson.

Senator PERCY. You wouldn't feel it cost effective for you to initiate your own action here?

Mr. WILLIAMS. Senator, we initiate various projects throughout the year when we find areas of noncompliance with the tax laws. This would certainly be included as one of those.

If we had information either that we were to develop ourselves or that we would receive from other agencies and it was weighed and determined to meet our criteria for investigation, we would certainly investigate those cases just as we are doing so now at the present time.

Senator PERCY. Could I be specific now about what followup you might obtain? The subcommittee did hear 2 weeks ago testimony concerning the successful arson-for-profit conspiracy, prosecution, or in-

tent, involving 22 defendants, thousands of dollars were fraudulently gained by many of the conspirators from the insurance companies.

Has IRS determined whether any of these convicted persons owe taxes on the money they were paid?

Mr. WILLIAMS. As you know, under provisions of section 6103 of the Code, it is very difficult for us to discuss our activity on any specific case. I would ask Mr. Stein perhaps to comment further.

Mr. STEIN. I think the point is well taken, but let me add this: The Service has a general policy throughout the country of seeking leads, not only that come to us from other agencies, but from newspapers, from all sources. I would assume that our people in Florida are also reading newspapers.

Senator PEARCE. Staff advises me that the task force, strike force has never heard from IRS on those convictions.

Mr. STEIN. Let me answer it in this manner. When an investigation is started for Internal Revenue purposes, we are unable to disclose the fact of that tax investigation except where it is necessary for us to gather information.

What the precise situation might be down in Tampa, I can't answer.

Mr. WILLIAMS. I might add that on every one of the strike forces the Internal Revenue Service has a representative. I can't speak specifically on particular cases, but we do have one or more people working with every strike force.

I would be happy to look into this particular case.

[Additional information supplied by Mr. Williams follows:]

DEPUTY COMMISSIONER OF INTERNAL REVENUE,  
Washington, D.C., October 30, 1978.

Mr. JONATHAN COTTIN,  
*Investigator, Permanent Subcommittee on Investigations, Senate Committee on Government Affairs, Russell Senate Office Building, Washington, D.C.*

DEAR Mr. COTTIN: This letter is in response to your request for additional information on the Service's recent efforts in the arson-for-profit area.

With regard to the situation in Tampa, Florida, described at the hearings, section 6103 of the Internal Revenue Code, "Confidentiality and Disclosure of Returns and Return Information," prohibits the Service from discussing the specifics of any particular taxpayer's case. However, I can tell you that, in keeping with our normal procedures, copies of relevant testimony from the hearings have been furnished to our Criminal Investigation Division for forwarding to its counterpart in our appropriate service centers. There, the data will be evaluated under our system for processing information items. If appropriate, criminal investigations or civil examinations will be initiated. Additionally, our Southeast Regional Commissioner in Atlanta, whose jurisdiction includes Florida, has been furnished a copy of relevant testimony for his review.

To insure that appropriate follow-up takes place in any future arson cases, our Criminal Investigation and our Examination Divisions are coordinating the development of instructions to our 58 district offices in establishing liaison with appropriate state insurance commissioners. This is for the purpose of soliciting information on insurance claims suspected of being arson related, as well as on those having either criminal or civil tax potential. Moreover, existing guidelines between the IRS and the Justice Department provide for IRS participation in all Strike Forces, and for cooperation in criminal tax investigations, which would include criminal activities related to arson which have an impact on tax administration.

I can assure you that the IRS views arson-for-profit as a serious problem, and will take all the necessary steps to see that it receives appropriate attention in our balanced tax administration system.

With kind regards.

Sincerely,

WILLIAM E. WILLIAMS.

Senator PERCY. I think it might be justified. One of our witnesses yesterday testified that arson in Texas is vastly underreported because of inadequate resources at the local level.

Does this lead you to believe that if all other law enforcement agencies stepped up their activities to identify arson fraud IRS could collect substantial additional revenue?

Mr. WILLIAMS. I would think so. I would think this would follow based on the volume of crime that seems to be committed in this area, and the fact that the potential for tax evasion is very high.

I would think it would increase significantly.

Senator PERCY. Would you feel that arson should receive a higher priority now than it has in the past?

Mr. WILLIAMS. I think if that were to occur, if we were to start to receive, or develop ourselves, considerable information in this area that indicated tax fraud, I think we would increase our effort in this area.

Senator PERCY. Would you care to comment on why you believe this has had a lower priority in the past than you are assigning to it now?

Mr. WILLIAMS. It is difficult, Senator, to evaluate just what priorities were in the Service because the Internal Revenue Code is so vast; so many cases are investigated in a given year. We have never codified the specific source of the investigation to this degree.

I think over the years we probably have investigated a number of cases in this area. However, I do think that this crime apparently is on the increase. I think the work of this committee has identified this and placed it in higher priority and I think as the volume of cases are brought to our attention, our efforts will naturally tend to increase.

But I don't think we have identified this in the tax administration field as a major program.

Senator PERCY. Thank you very much.

Yesterday the headlines across the country proclaimed the passage of the Civil Service Reform Act reported out of this committee and Senator Ribicoff and I steered it through the Senate. I do think it is going to be a very, very good thing.

But I constantly tried to indicate that it is not an indication because we are reforming the civil service the first time in 100 years that there are not efficient and effective bureaus.

I constantly use the example when I am challenged on the inefficiency of the Federal Government and so forth, as I publicly have been, and my identification with this reform program in Illinois, constantly reminding audiences that they can't say there aren't any efficient services. Just take a look at the Internal Revenue Service. It is probably the most efficient, best organized tax collection agency in the world. We have helped a lot of countries develop their tax systems, make them more fair and just and uniform in the collection. And it would save a lot of grief in a lot of countries if they could tax the people as efficiently and as well as we do here.

I might say that from my own experience in working with the FBI and the Internal Revenue Service that they have done an extraordinary job in the past.

All civil servants are looking askance now at the civil service reform. It is really a way of saying we are going to be able to determine which

bureaus are efficient and which aren't; between employees who are riding on the backs of the others and who are incompetent and those who are really outstanding.

I think all of those who are truly competent need not be concerned. In fact, they would welcome this because it would enable us to do an awful lot now. We have now assurances that it will be sent to the President without any question.

I want to thank all of you very much indeed. I have a very brief closing statement on these hearings.

It is fair to say that this should signal the beginning of an aggressive commitment by all the agencies which appeared here today to help stem arson for profit.

I am impressed with the expressed willingness of our witnesses today to meet the challenge they have thus far ignored for the most part—that of putting the hired torch out of business.

I must say in this area, or 15 years ago, I wouldn't feel it was that serious. And both Senator Glenn and I have come to this realization in recent years and we have been rather astounded, though, that there has not been high enough priority assigned to it.

It may require more than a commitment on the part of these agencies alone to deal with this problem. Legislation may be needed. More money may be required from the Congress. Local law enforcement agencies may want to come forward with requests to these agencies or to the Congress with new and innovative approaches. I think we are trying to prove that whatever is put in will be very, very cost effective.

And as the FBI Director pointed out, he indicated very clearly the terrible cost in human tragedy as well as property costs because of our neglect in this area.

I believe that the agencies involved will now be more receptive to requests for help from local law enforcement agencies. I am encouraged by LEAA Administrator Gregg today assigning a high priority to arson activities in allocating grant funds.

This subcommittee now has an obligation to make certain that the Federal Government follows through. We will be monitoring the activities of these agencies through checks in the field with the same sources we developed in the course of this inquiry, as well as with others. We will perform whatever followup investigation is necessary. If more hearings are indicated, they will be convened.

We want these hearings to serve as a starting point for the agencies gathered here today: As a signal to them that the Congress will no longer tolerate inaction and disinterest.

I think it would be heartening to the country to realize that your testimony uniformly indicates that you share our concern, you are in a position to really do something about it. We can back up and support the requests that you make, as well as monitor your actions.

I can assure you you will have many members on this subcommittee that will be strongly behind you.

Does majority counsel have any further comment?

Minority?

Thank you very much indeed. We are most appreciative. The hearings are adjourned.

[Material submitted by the State of Tennessee, Department of Insurance, at the request of Senator Sasser follows:]

STATE OF TENNESSEE,  
THE DEPARTMENT OF INSURANCE,  
DIVISION OF FIRE PREVENTION,  
Nashville, Tenn., September 14, 1978.

Hon. JIM SASSER,  
U.S. Senator,  
Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR SASSER: Per your request, enclosed please find statistical information briefly outlining the arson problem in Tennessee.

As you can see, our office investigates approximately 1800 fires each year. The large majority of these fires are located outside major urban districts or wherever no local fire investigators exist. Our office does, of course, assist local agencies whenever requested to do so. For example, ten state arson investigators assisted Memphis officials during the recent firemen's strike.

Although the Tennessee State Fire Marshal's Office does have the authority to investigate fires anywhere in the State it does depend on local agencies to conduct investigations (and inspections) where they exist. Unfortunately, some counties (as many as 30) are lacking such investigative capabilities and rely solely on our office.

The State Fire Marshal's Office, Arson Section consists of twenty-four investigators (including the Chief). These men have limited formal training but for the most part are experienced investigators. Each man is provided with an automobile, communications equipment, firearms, cameras, etc. The men have immediate access to qualified polygraph examiners, experts in the use of psychological stress evaluator and electronic sniffers.

All investigators are provided and take advantage of continuing education opportunities. Training is available through the state chapter of the International Association of Arson Investigators, Tennessee Fire Training Academy, and the state Law Enforcement Training Academy as well as special workshops, seminar, etc.

Our office has utilized a computer on an experimental basis and has been successful in arresting and convicting five volunteer firemen responsible for more than 130 incendiary fires set in 1976. Limited resources prevent us from continuing the use of the computer on a broader scale.

The main headquarters of the state fire marshal's office is located in Nashville. The headquarters are supported by six regional offices located in Memphis, Jackson, Chattanooga, Knoxville, Cookeville and Johnson City.

To my knowledge respective to manpower the Tennessee State Fire Marshal's Office is the largest in the United States. The staff consists of 184 people including 51 fulltime electrical inspectors working on a contractual basis. The office also has more varied responsibilities than most of its counterparts in other states which accounts in part for its large staff. Our responsibilities include but are not limited to electrical inspection, mobile home manufacturing inspection and "anchoring", fire safety inspection of all education and health care facilities, plans review, public service education and arson investigation.

Since there is no statewide fire incident reporting system presently collecting data in Tennessee, hard statistical information is unavailable. Figures from the Insurance Service Office, the State Department of Insurance and our own surveys give a pretty fair indication of the arson problem in Tennessee.

It is important to note that effective April, 1978, the State Fire Marshal's Office received a grant from the National Fire Prevention and Control Administration to develop a statewide fire incident reporting system. This system is expected to begin collecting data January 1, 1979 and will also be utilized to deal with the arson problem.

A one month study of all fires occurring in Tennessee conducted in November 1977 indicated about 40,000 total fire incidents. I estimate between eight and ten thousand of these fires or 25% were incendiary.

Direct property losses in Tennessee due to arson are estimated to be as high as \$50,000,000.00 annually. Although I believe the actual losses are slightly less, the figure is staggering.

This total does not account for indirect losses-unemployment, reduction in tax revenues, business failures, fighting the actual fires, etc. which can have a

grave impact on a community. Nor does it account for the loss of life or injury to firemen fighting these incendiary fires.

Our study also indicated that arson fires on the average are five times more costly than accidental fires.

In Tennessee I believe insurance fraud is the prime motivation for arson, a close second is the revenue and/or vandalism type fire. Running third and a distant fourth respectively are those arson fires set to cover crimes or by pyromaniacs. There are no studies available to confirm these findings but this has been our experience for the past several years.

Of the 1,800 fires our office investigates each year in Tennessee, approximately 750 are determined to be incendiary. Of the 750, about 250 arrests are made. In many cases the arrested arsonist is responsible for more than one fire. No figures are available for the number of convictions since our investigators turn the individuals over to local law enforcement officials for prosecution.

All things considered, I feel our office is doing a good job of dealing with the arson problem in Tennessee. There remains, however, a multitude of things that can be done.

I trust the information contained in this letter and materials will give you a better understanding of the arson problem in Tennessee and how our office is attempting to deal with it. If you need additional information or have more questions, please do not hesitate to contact me.

I thank you for your interest in making our great state and country a more fire safe place to live.

Very truly yours,

GENE HARTSOOK,

*Assistant Commissioner and State Fire Marshal.*

Enclosure.

TENNESSEE STATE FIRE MARSHAL'S OFFICE: 1977—A GOOD YEAR

(By George C. Schnitzer, Jr., Director of Public Information & Education)

Despite the very tragic Maury County Jail Fire which killed 42 people in June 1977 Tennessee's fire losses were down considerably this past year. Fewer deaths were recorded and recently compiled statistics show a marked decrease in the number of fires destroying personal property. In fact, conditions were favorable enough that the Insurance Service's Office representing more than 250 insurance companies requested and was granted a 7 percent premium DECREASE by the Commissioner of Insurance for commercial fire coverage in Tennessee.

Under the aggressive administration of State Fire Marshal Gene Hartsook the Division of Fire Prevention more commonly referred to as the State Fire Marshal's Office enacted several new programs and regulations dealing with Tennessee's fire problem. Always striving to provide the most fire safe environment possible for the citizens of Tennessee the State Fire Marshal's Office produced nearly 3 million dollars in revenue from permits, licenses and inspection fees during 1977.

The largest office of its kind in the U.S., the Tennessee State Fire Marshal's Office has multi-faceted responsibilities to homeowners, businesses and industry throughout the state. The State Fire Marshal's most obvious responsibility is promulgating laws, rules and regulations pertaining to fire safety and protection. This office has adopted the 1976 National Fire Protection Association's National Fire Code which includes the 1973 Life Safety Code and the 1976 Southern Building Code published by the Southern Building Code Congress.

The Fire Marshal's Office investigates the origin and circumstances of fire and prosecutes the crime of arson and related offenses. The Office also sponsors extensive public education, instructional and public service programs for schools, health care facilities, nursing homes, fire departments and other state and local agencies. One of the most successful education programs conducted by the State Fire Marshal's Office is the elementary school assembly program "Houses Don't Burn Down—They Burn Up".

The Office also regulates, inspects and investigates liquefied petroleum gas in stations and dealers in fireworks, mobile home construction and anchoring, gasoline bulk plants, electrical installations and public buildings for fire safety.

One of the most significant works initiated by the State Fire Marshal's Office is a new regulation requiring public places of assembly to check and announce to

its patrons the availability of emergency exits. The new regulation now in effect has drawn national attention as a progressive fire safety measure.

The State Fire Marshal's Office has also recently received national acclaim for reducing the per capita fire loss in Tennessee from nineteen dollars per individual to fifteen dollars per individual.

The Division is comprised of six sections as follows:

**Arson section.**—The Arson Section investigates all reported incendiary fires and prosecutes arson cases and insurance fraud in cooperation with law enforcement agencies, local fire departments, insurance industry investigators and other state enforcement agencies. To assist in these functions twenty-four highly skilled and technically equipped investigators work out of regional offices in Memphis, Jackson, Knoxville, Chattanooga, Cookeville, and Johnson City. In addition, this section regulates and enforces fireworks law in Tennessee.

Specially trained personnel equipped with sophisticated electronic instruments like polygraphs, psychological stress evaluators, and electronic sniffers have proven invaluable in conducting thorough and complete investigations. In 1977 there were more than 1800 fires investigated by the Arson Section. Of these 742 proved to be incendiary and were closed with arrests in 242 cases. This arrest record is one of the most successful in the south-east.

The computer has also been employed by this section to assist investigators investigating certain arson cases. The Pattern Recognition System was designed and implemented to recognize certain patterns of crime and has proven highly successful. This office was the first in the south to use computers as an investigative aid to fight arson.

This section also issues licenses and enforces laws regulating fireworks dealers, wholesalers, jobbers, manufacturers and displays. Approximately half of Tennessee's 95 counties permit the use or sale of fireworks.

**Education section.**—This newest and very successful addition to the division of Fire Prevention is responsible for the development of programs that promote the knowledge of fire protection and safety to the general public. Working closely with the electronic and printed media public service campaigns and news stories are developed to create a more fire safe environment in which Tennesseans can work and live. This section also works with volunteer groups and other state and local agencies sponsoring workshops, seminars and educational programs designed to promote fire safety.

The most recent public service effort designed to reduce Christmas tree fires was chosen most outstanding in its class in the United States by The National Fire Protection Association. The campaign reduced by 79 percent the number of Christmas tree related fires in Tennessee in December 1976 over December 1975. The campaign was successfully repeated during the 1977 holiday season.

One of the most important projects of the Education Section is the elementary school assembly program, "Houses Don't Burn Down—They Burn Up". This program was seen by more than 130,000 young people during the 1976-77 school year. Plans are already underway to bring the program to an additional 150,000 new students during the 1977-78 school year.

Through the generosity of WDCN-TV the "Houses Don't Burn Down—They Burn Up" program was filmed for a television special which aired on statewide public education television during Fire Prevention Week (1977). The special is now being edited for 16 mm film and will be distributed through the film library maintained by the State Fire Marshal's Office. Funds for the film were provided by the Independent Insurers of Tennessee.

**Electrical section.**—The primary responsibility of the Electrical Section is the enforcement and regulation of the 1975 National Electrical Code to assure correct and safe electrical service to homes and businesses in Tennessee.

Working closely with power distributors throughout the state this section conducts instructional meetings for contractors, home builders and electrical appliance dealers.

This section is also responsible for the inspection of all new or relocated mobile homes with respect to the recently enacted mobile home anchoring law.

A new voluntary program developed to provide the most timely and efficient service is a "rough in" electrical inspection for residential buildings. This program enables builders to obtain more thorough and complete inspections of electrical installations.

More than 65 electrical inspectors located throughout the state conducted more than 90,000 inspections in residential, commercial and industrial buildings during

1977. The section also provides assistance to county and municipal officials in making inspections of large commercial and industrial installations.

**Engineering section.**—This section has a trained staff of fire protection specialists which reviews plans and specifications for proposed construction to determine general compliance with state adopted fire and building codes. Plans reviews for more than 500 hospitals, nursing homes, educational and day care centers were made in 1977. The fire protection engineer supervises a staff of six plans examiners who require specialized education, training and knowledge of National Fire Protection Association and Southern Building Codes. This section works closely with architects, engineers and builders in all new facilities and with major renovation in existing facilities.

The successful activities of this section are demonstrated by the fact that Tennessee has never lost a child to a fire in a public school nor has it ever experienced a multiple fire death in a nursing home or hospital.

The Engineering Section developed and presented several fire safety seminars in cooperation with the Tennessee Hospital Association, and Tennessee State Fire Training Academy throughout the state.

**Fire safety section.**—Twenty-two regionally located fire safety inspectors inspected more than 6,300 facilities in Tennessee during the calendar year 1977. These included more than 750 day care centers, 1,000 hospitals, almost 400 kindergartens, 400 LP gas distributors, 150 mental health and mental retardation facilities, 1,175 nursing homes and more than 2,000 public and private schools and orphanages.

The success of this program is not obvious to the general public since the elimination of fire goes largely unnoticed. Inspectors have advised and made recommendations based on their findings to more than 3,300 school officials, businessmen, health professionals, political leaders and firefighters. Who knows how many fires were prevented through the fire safety inspectors activities?

This section also maintains a fire prevention library, issues licenses and permits for liquefied petroleum gas dealers, explosive handlers and gasoline transporters.

**Mobile homes section.**—One of the most outstanding programs of its kind in the country, the Division of Fire Prevention's Mobile Home Section is one of the first in the U.S. to be given HUD approval to conduct its own state inspection program for mobile home construction. Every mobile home built in one of the fourteen manufacturing plants in Tennessee is inspected at some phase of construction for compliances to the Federal Mobile Home Standard as administered by the U.S. Government.

This section also conducts random inspections of recreational vehicles for compliance to state codes with the assistance of a mobile home engineer, supervisor of inspection and eight field inspectors.

The section also enforces the new Mobile Home Anchoring Law requiring the anchoring of mobile homes to prevent disasters caused by severe storms and high winds. The office approves mobile home anchoring systems used in Tennessee and issues anchoring permits to installers.

Licenses for recreational vehicles and mobile home dealers and manufacturers are also issued by this office.

For more information concerning any one of the varied activities of the State Fire Marshal's Office, please contact the respective section head at our new headquarters. The address is Tennessee State Fire Marshal's Office, 306 Gay Street, Nashville, TN 37201 or telephone direct to: Gene Hartsok, State Fire Marshal—741-2981; George C. Schnitzer, Director of Public Information—747-2081; C. T. Patterson, Chief of Arson Section—741-1322; Tom Copeland, Chief of Fire Protection—741-7190; Welch Bryant, Chief of Fire Safety—741-7162; David Borum, Chief of Mobile Home—741-7170.

#### ARSON SECTION, TENNESSEE STATE FIRE MARSHAL'S OFFICE, AUGUST 1978

1975.—1,800 total fires investigated; <sup>1</sup> 783 incendiary fires; 354 arrests.

1976.—1,600 total fires investigated; <sup>1</sup> 665 incendiary fires; 279 arrests.

1977.—1,800 total fires investigated; <sup>1</sup> 742 incendiary fires; 242 arrests.

1978 (6 months).—1,140 total fires investigated; <sup>1</sup> 341 incendiary fires; 136 arrests.

<sup>1</sup> Represent fires outside prime urban centers or where no local authorities exist.

## DIVISION OF FIRE PREVENTION

The Division of Fire Prevention, also known as the State Fire Marshal's Office, is administered by the Commissioner of The Department of Insurance in his capacity as State Fire Marshal, through the Director of Fire Prevention, and other staff members. The Division is divided into five sections: The Fire Safety Inspection Section, the Arson and Fraud Section, Electrical Inspector Section, Fire Protection Engineering Section, Mobile Home Section, and the Education Section.

The following statistical information reflects the work accomplished by each Section during the calendar year 1976.

The types and numbers of inspections made follows:

Assemblies	53
Bulk oil distributors	155
Camps and churches	31
Commercial	111
Day Care facilities	746
Dormitories	33
Explosives	77
Gasoline delivery vehicles	69
Homes for aged	55
Hospitals	995
Industrial	2
Kindergartens	367
LP gas installation and delivery vehicles	393
Mental hospitals	120
Nursing homes	1, 175
Orphanages	125
Private schools	13
Public schools	1, 761
Residential fireplaces	28
Restaurants	30
Retarded homes	36
Subtotal	<u>6, 375</u>

*Mobile home and recreational vehicle inspections*

Mobile home manufacturers	869
Mobile home sales lots	1, 275
Mobile parks	14
Recreational vehicle manufacturers	37
Recreational vehicle sales lots	399
Subtotal	<u>2, 594</u>
Grand total	<u>3, 969</u>

The following schedule shows the number of arson investigations made during the year 1976 and the result of cases prosecuted.

Arson	665
Suspicious or accidental	534
Undetermined	407
Total cases investigated	<u>1, 606</u>
Arrests	279
Indictments—1976	166
Convictions—1976	150
Assisted investigations	601
Fireworks violations and arrests	2
Hours in court	2, 441.5
Polygraphs	187
PSE exams	206
Savings as result of investigations	\$334, 422. 29

The following statistics show the number of wiring inspections made and the results of such inspections during 1976.

Total inspections	94,240
Number accepted	86,130
Number rejected	8,116
Total inspections on mobile homes and recreational vehicles	10,902
Number accepted	10,543
Number rejected	359
Fee payments to deputy electrical inspectors (including January 1977 payments for December 1976 inspections)	\$769,457.23

STATISTICAL DATA ON ELECTRICAL INSPECTIONS, 1970-76

Year:	Number Inspections		Total	Money received by Inspectors	Milage	Other expense
	Accepted	Rejected				
1970	61,917	5,564	67,481	\$430,664.60	1,055,781	\$19,739.86
1971	71,812	6,698	79,510	502,514.93	1,144,860	28,720.63
1972	8,324	7,522	93,846	605,292.33	1,282,258	39,813.41
1973	109,109	6,252	115,361	899,762.63	1,670,969	61,879.99
1974	95,588	7,237	102,825	833,724.22	1,599,400	53,739.7
1975	79,908	7,047	86,955	701,294.10	1,449,524	31,736.37
1976	86,130	8,116	93,245	769,457.23	1,528,355	32,267.99

<sup>1</sup> Includes amounts paid in January for the December inspections.

Note: 10 percent of the inspection fee received in 1974, 1975, and 1976 was retained by the State. This is not included in the above figures.

The Fire Protection Engineering Section reviewed the preliminary and final plans of the following categories of buildings in 1976.

Educational	350
Institutional	197
Residential	7
Assembly	0
Mercantile	0
Office	15
Industrial	1
Storage	0
Miscellaneous	0
Automatic sprinkler	95
Total	660

The following is a breakdown of the licenses, registrations and revenue collected by the Licensing and Registration Section during 1976.

Liquefied petroleum gas licenses	\$18,335.00
Registration of the fire alarms and extinguishers	450.00
Fireworks permits	47,238.00
Manufacturer	750.00
Distributor	23,250.00
Jobber	10,500.00
Wholesaler	1,750.00
Retailer	10,850.00
Overpayment	1.00
Display	137.00
Registration of electrical contractors	114,484.00
New registrations	17,720.00
Renewals	96,150.00
Additional pocket cards	614.00
Mobile home licenses	6,185.00
Dealers	169
Manufacturers	146

Certification decals-----	\$79,275.00
HUD Program:	
Inspection fees-----	36,400.00
NCSBCS monitoring team-----	60.00
Consumer complaint handling-----	9,477.00
Sales of electrical inspection decals-----	125.00
Sales of fire prevention regulation 15-----	394.00
Fire fines-----	47.50

The following statistics show the results of an educational program for elementary students starting September 1976.

Schools -----	290
Programs -----	370
Students -----	150,142
Counties -----	67

[A statement subsequently received from the Alliance of American Insurers appears in the appendix on pp. 461-487.]

[Whereupon at 1:20 p.m., the subcommittee recessed to reconvene subject to the call of the Chair.]

[Members present at time of recess: Senator Percy.]

## APPENDIX

## EXHIBIT 24



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-171019

April 5, 1978

The Honorable Charles H. Percy  
Ranking Minority Member  
Permanent Subcommittee on Investigations  
Committee on Governmental Affairs  
United States Senate

Dear Senator Percy:

Your August 2, 1977, letter requested that we review a number of issues concerning "arson-for-profit." Your major concerns related to:

- Adequacy of controls over the insurance coverage property owners can obtain.
- Research and development of arson detection techniques, and training of arson investigators.
- Activities of Federal law enforcement agencies to prevent, detect, and prosecute this type of crime.

As agreed with your office, we will give you a report on each of the three areas. This report discusses the authority, activities, and plans of Federal law enforcement agencies regarding arson-related crime.

FEDERAL AUTHORITY AND COORDINATION  
FOR ARSON-RELATED CRIMES

Arson is not generally a federal crime. There are two exceptions to this rule. First, 18 U.S.C. 81 makes arson a Federal crime if committed at a location where the Federal Government exercises special maritime or territorial jurisdiction. In general, and as defined by 18 U.S.C. 7, special maritime or territorial jurisdiction of the United States includes

- the high seas;
- Federal property held under exclusive or concurrent jurisdiction of the United States; and

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--property purchased or otherwise acquired by the United States with the consent of the State legislatures, if the property is initially acquired to erect a fort, magazine, arsenal, dockyard, or other necessary building.

Second, some Federal agencies administer Federal property that is not within the special maritime or territorial jurisdiction of the United States. By issuing regulations, some of these agencies have made arson a Federal misdemeanor on the Federal property they administer.

In general the Federal Government will investigate and prosecute arson only if a Federal law is violated in conjunction with the arson crime. For example, suspects in arson-for-profit cases are usually accused of transmitting insurance claims and other correspondence through the United States mails. If the Federal mail fraud statute (18 U.S.C. 1341) is violated, Federal law enforcement agencies may become involved in investigating the mail fraud and indirectly the arson. Enclosure I lists the Federal statutes covering arson-related crime which various law enforcement officials said their agency could investigate.

The Federal Government has not considered arson-related crimes an enforcement priority; therefore, the Government does not have a unified, coordinated program specifically designed to prevent, detect, investigate, and prosecute these crimes. Four Federal law enforcement agencies--the Department of Justice's Federal Bureau of Investigation (FBI); the Department of the Treasury's Internal Revenue Service (IRS) and Bureau of Alcohol, Tobacco, and Firearms (ATF); and the United States Postal Service--investigate arson-related crimes; however, coordination among these agencies is limited, usually informal, and on a case-by-case basis. Justice's organized crime strike forces, operating in various cities throughout the United States, will also investigate and prosecute arson-related crimes if organized crime is involved.

The consensus of these law enforcement agencies was that no evidence existed to support the contention that arson-related crime is a serious national problem or that a greater Federal effort is warranted. The Federal Government, however, has not made any attempt to determine the severity of the arson problem.

B-171019

CURRENT FEDERAL LAW ENFORCEMENT  
EFFORTS IN THE ARSON AREA

Federal law enforcement agencies involved with arson-related crimes do not collect data which would demonstrate the severity of the arson problem. Therefore, they are not in a position to delineate their previous efforts or to identify the actions needed to cope with the arson issue.

During 1978 the Postal Service plans to give more investigative attention to suspected arson-related insurance fraud schemes and to separately identify and report these cases. ATF officials said that they are revising their statistical reporting system to acquire arson-related information. Neither the FBI nor the IRS had plans to separately identify arson offenses within their internal statistical reporting systems.

None of the four agencies considered arson a priority investigative area and therefore did not have a program designed to deal specifically with arson. ATF, however, is currently establishing arson task forces in several cities. This initiative was prompted by a special project conducted by its Philadelphia District. In January 1977 the Special Agent-in-Charge of ATF's Philadelphia District independently initiated a special project--which he termed a task force--to investigate arson in the Philadelphia area. The task force was established by an informal cooperative agreement between ATF, the local police, the local district attorney, and the local fire marshal. Under the agreement ATF assumed leadership in all arson investigations in the Philadelphia area, with active participation and cooperation from the other officials. As of December 7, 1977, the task force was conducting 15 arson investigations. ATF officials said that all of these investigations involved matters cognizable under 18 U.S.C. 844 (i), 1/ but that collateral violations of the racketeering statutes (18 U.S.C. 1950, 1961-1968) were also being investigated.

Officials said that the idea for the arson task force was, in part, the result of two arson investigations

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1/18 U.S.C. 844 (i) is a criminal statute that deals with the destruction of or damage (by an explosive) to property used in or affecting interstate or foreign commerce.

B-171019

conducted by ATF in Philadelphia. The first was an investigation of an arson case previously investigated by the Philadelphia Police Department. Local citizens groups had protested that the police had arrested, and the court convicted, an innocent person. The local U.S. attorney asked ATF to reinvestigate the case. Officials said their investigation led to the arrest and conviction of the individuals who actually committed the crime and the release of the innocent person. In the other case, the U.S. attorney asked ATF to investigate a fire bombing of a Philadelphia hotel. Investigators found traces of gasoline in an oxidized state which, according to officials, has an explosive capability. Although ATF officials believed that 18 U.S.C. 844 (i) had been violated, the U.S. attorney elected to prosecute the case under statutes dealing with mail fraud and interstate transportation in aid of racketeering. The defendant received a 3-year prison sentence.

On October 14, 1977, the Special Agent-in-Charge of the Philadelphia District, as a result of his experience, recommended instituting ATF-led arson task forces in other U.S. cities. ATF headquarters approved this recommendation in January 1978, and it plans to establish arson task forces in 18 additional cities. (See enclosure II.) An official estimated that the new task forces would not be operational until June 1978.

Although Federal organized crime strike forces are not set up specifically to investigate and prosecute arson cases, the strike forces have investigated arson-related crimes when organized crime was involved. For example, the Buffalo, New York, organized crime strike force became interested in arson cases about 3 years ago. At that time the Erie County District Attorney established a task force of local officials to look into the local arson problem. The task force had two prime suspects it associated with many of the arsons, but it could not get enough evidence against them to make a case. The strike force assisted by identifying a number of suspicious insurance claims and tracing them through various corporate records, deeds, and other documents, looking for an association with the two suspects. They found it. The two individuals pled guilty to charges of mail fraud, and each received a 5-year sentence. The Buffalo strike force recently indicted the entire hierarchy of a Rochester organized crime family engaged in an arson-for-profit ring and, as of December 14, 1977, had one arson-related investigation pending.

B-171019

HAS ARSON BEEN A WIDESPREAD PROBLEM?  
IS A GREATER FEDERAL PRESENCE NEEDED?

Law enforcement agency officials contacted said that no evidence existed to demonstrate that arson-related crime was a widespread problem or that a greater Federal involvement in the arson area should be initiated. As previously mentioned, the Federal Government has not made an attempt to quantify arson-related crimes to determine their severity. Agency officials were willing to reconsider arson as a priority area if evidence became available to justify an expanded effort. The Postal Service and ATF appear to be taking a more aggressive initiative in the arson area. (See p. 3.) ATF officials supported their initiative with the following statistics:

- Incendiary bombings increased 200 percent nationwide in 1976 over 1975.
- Forty-nine percent of the fires of incendiary, suspicious, or unknown origin in New Jersey in 1975 were never investigated.
- Sixty-two percent of the arsons committed in the United States involved the use of flammable liquids or accelerants; of that number 90 percent had an explosive capability when aerated.

In addition to establishing ATF-led arson task forces, ATF is planning to establish an "Explosives Academy" at the Federal Law Enforcement Training Center, Glynco, Georgia, which will include instruction on arson investigation.

In summary, although the Postal Service and ATF have taken some initiatives to combat arson, the rest of the Federal law enforcement community does not view this particular crime as deserving any special priority. There is insufficient hard evidence to accurately gauge the magnitude of the arson problem, and consequently, to gauge the propriety of the Federal posture concerning it. We recommend that the Attorney General take the lead in developing information needed to assess the seriousness of the arson problem and, based on the results, develop an appropriate Federal law enforcement strategy.

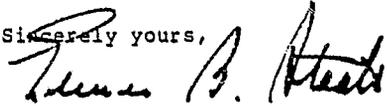
As agreed with your office, we did not obtain formal agency comments on this report. However, we discussed its

B-171019

contents with agency officials and considered their views in preparing the report. Because of your plans for hearings on the arson problem and your desire to release this report at the hearings, we plan no further distribution of the report until that time, or until you publicly announce its contents.

We want to direct your attention to the fact that this report contains a recommendation to the Attorney General. As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions he has taken on our recommendations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations not later than 60 days after the report's date and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the report's date. Your release of this report will enable us to send it to the four Committees for the purpose of setting in motion section 236 requirements. We trust this information will meet your needs.

Sincerely yours,



Comptroller General  
of the United States

Enclosures - 2

ENCLOSURE I

ENCLOSURE I

FEDERAL STATUTES COVERING ARSON ANDARSON-RELATED CRIME

<u>Federal statutes</u>	<u>Title</u>	<u>Agencies claiming investigative jurisdiction</u>			
		<u>FBI</u>	<u>ATF</u>	<u>Postal Service</u>	<u>IRS</u>
18 U.S.C. 81	Arson Within Special Maritime and Territorial Jurisdiction of the United States	X	-	-	-
18 U.S.C. 371	Conspiracy to De- fraud the United States	-	-	-	X
18 U.S.C. 842- 845	Interstate Trans- portation of Ex- plosives or Incen- diary Devices	X	X	X	-
18 U.S.C. 922- 925	Unlawful Acts- Firearms	-	X	-	-
18 U.S.C. 1001	Fraudulent State- ments	-	-	-	X
18 U.S.C. 1073- 1074	Flight to Avoid Prosecution	X	-	-	-
18 U.S.C. 1341	Frauds and Swindles (by Mail)	X	-	X	-
18 U.S.C. 1342	Fictitious Name or Address	-	-	X	-
18 U.S.C. 1343	Fraud by Wire, Radio, or Tele- vision	X	-	-	-
18 U.S.C. 1361- 1362	Destruction of Government Owned or Controlled Property	X	-	-	-

ENCLOSURE I

ENCLOSURE I

<u>Federal statutes</u>	<u>Title</u>	<u>Agencies claiming investigative jurisdiction</u>			
		<u>FBI</u>	<u>ATF</u>	<u>Postal Service</u>	<u>IRS</u>
18 U.S.C. 1363	Destruction of Property Within the Special Maritime and Territorial Jurisdiction of the United States	X	-	-	-
18 U.S.C. 1716	Nonmailable Injurious Articles (Explosives or Incendiary Devices)	-	-	X	-
18 U.S.C. 1855	Destruction by Fire of Timber, Underbrush or Grass Upon Federally Owned or Leased Land, Indian Land or the Public Domain	X	-	-	-
18 U.S.C. 1952	Interstate and Foreign Travel or Transportation in Aid of Racketeering	X	-	-	-
18 U.S.C. 1961-1968	Racketeer Influenced and Corrupt Organizations	X	X	X	-
26 U.S.C. 5861	Prohibited Acts (Re: Firearms and Destructive Devices as defined by 26 U.S.C. 5845)	-	X	-	-

## ENCLOSURE I

## ENCLOSURE I

<u>Federal statutes</u>	<u>Title</u>	<u>Agencies claiming investigative jurisdiction</u>			
		<u>FBI</u>	<u>ATF</u>	<u>Postal Service</u>	<u>IRS</u>
26 U.S.C. 7201	Attempts to Evade or Defeat Tax	-	-	-	X
26 U.S.C. 7203	Willful Failure to File Return, Supply Information, or Pay Tax	-	-	-	X
26 U.S.C. 7206	Fraud and False Statements	-	-	-	X

## ENCLOSURE II

## ENCLOSURE II

PLANNED LOCATIONS FOR ATF'S ARSON TASK FORCES

Atlanta, Georgia  
 Boston, Massachusetts  
 Brooklyn, New York  
 Buffalo, New York  
 Chicago, Illinois  
 Cleveland, Ohio  
 Dallas, Texas  
 Detroit, Michigan  
 Honolulu, Hawaii

Kansas City, Missouri  
 Las Vegas, Nevada  
 Los Angeles, California  
 Miami, Florida  
 New Orleans, Louisiana  
 Phoenix, Arizona  
 Rochester, New York  
 San Juan, Puerto Rico  
 Washington, D.C.

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REPORT BY THE  
**Comptroller General**  
OF THE UNITED STATES

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## Are Federal Programs Adequate To Deal With Arson Problems?

Senator Charles H. Percy, as Ranking Minority Member of the Permanent Subcommittee on Investigations, asked GAO to assess Federal programs dealing with the arson problem in the United States.

This is one of three GAO reports responding to Senator Percy's request and provides information on:

- Research and development of arson detection techniques and equipment.
- Training of arson investigators and prosecutors.
- Programs and funding for State and local arson investigators and prosecutors.



PSAD-78-88  
APRIL 24, 1978



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20545

B-171019

The Honorable Charles H. Percy  
Ranking Minority Member  
Permanent Subcommittee  
on Investigations  
Committee on Governmental Affairs  
United States Senate

Dear Senator Percy:

On August 2, 1977, you asked us to assess the adequacy of current Federal programs dealing with the detection, investigation, and prosecution of arson offenses. It was agreed that we would respond to your request in three separate reports.

This report pertains to the following areas of your request:

- Research and development of arson detection techniques and equipment.
- Training of arson investigators and prosecutors.
- Programs and funding for State and local arson investigators and prosecutors.

Your office agreed that our review would include only Federal programs funding State and local investigators and prosecutors where such programs are specifically directed at the arson problem.

We made our review primarily at the National Fire Prevention and Control Administration, Department of Commerce, Washington, D.C. We interviewed agency officials and reviewed records on Federal arson prevention and control plans and programs. We also obtained information at the Fire Research Center, Department of Commerce, Gaithersburg, Maryland; the Law Enforcement Assistance Administration and the Federal Bureau of Investigation, Department of Justice; and the Bureau of Alcohol, Tobacco and Firearms, Treasury Department; all in Washington, D.C.

Our review showed that only one Federal program is directed at the areas specified in your request. This

B-171019

program is the Fire Administration's training course for arson investigators which is scheduled to begin in April 1978. The Fire Administration also plans to develop an arson detection training program for fire service personnel and an arson prosecutor training program for State and local public attorneys.

#### BACKGROUND

Arson is the act of burning property for an improper purpose. It is difficult to prove arson because evidence is usually destroyed in the fire and, normally, there are no witnesses.

The extent of the arson problem is not known and reliable statistics are not available. However, the Insurance Information Institute estimated national arson-related property losses in 1975 at over \$1.4 billion, while the Insurance Service Office estimated the national arson-related fire losses at over \$4 billion. The National Fire Prevention and Control Administration and the American Insurance Association recognize the need for better data on the arson problem and are currently improving the data.

The socioeconomic factors which motivate arsonists contribute to the complexity of the problem. Such motives include profit, revenge, spite, jealousy, vandalism, crime concealment, intimidation, and pyromania.

The National Fire Prevention and Control Administration, created by the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq. (1976)), has emerged as the Federal focal point for providing arson intervention programs to States and local communities. The Fire Administration's role in the arson area is to reduce arson through education, training, research, public information, and data collection and analysis.

The Law Enforcement Assistance Administration has no program directed at the arson problem; however, at the time of our review, it was making plans to study what its role should be. This agency awards grants to State and local governments for activities decided on by the grantees, including arson-related activities.

B-171019

The Bureau of Alcohol, Tobacco and Firearms has no programs for training arson investigators and prosecutors, or researching arson detection techniques and equipment. As part of the overall training of its agents, however, instruction covers fire-bombing methods, bomb scene searches and investigations, and recognizing incendiary devices. Also, laboratory analysis is performed to identify fire accelerants.

The Fire Research Center, as authorized by the Federal Fire Prevention and Control Act of 1974, has been studying the psychological motivations of fire setters and is conducting one arson-related research program--a survey of laboratory methodology in analyzing fire accelerants.

Within the Federal Bureau of Investigation, arson investigation is not a high priority. Only a few arson investigations have been conducted, and the Bureau believes that a training program for arson investigators is not justified because of the small number of such cases within its jurisdiction.

#### FEDERAL RESEARCH AND TRAINING PROGRAMS

A number of plans have been formulated to meet needs in the areas of research into arson detection techniques and equipment and training for arson investigation, detection, and prosecution; however, only one program--a training course for arson investigators--has been developed.

In a series of seminars in early 1976, 36 experts identified and ranked nine arson areas needing Federal intervention. The results were published by the Fire Administration in its September 1976 report "Arson: America's Malignant Crime." The areas are summarized in appendix I.

Two of the nine areas were arson detection, investigation, and prosecutor training (fourth highest ranking) and research and development on tools for arson investigations (eighth highest ranking). Details on Federal efforts directed at these two areas are presented in the following sections and are tabulated in appendix II.

B-171019

Research into arson detection techniques and equipment

Fire service personnel need equipment that is better suited for detecting arson at the fire scene. A federally sponsored study identified research needs which the Fire Administration is attempting to follow up; however, there is still no Federal program for research on arson detection techniques and equipment.

In addition to the Fire Administration's report identifying research needs in arson detection equipment, the Fire Research Center prepared a report in 1976 which identified the evaluation of arson detection equipment used in the field as a desirable program. Research needs for arson detection equipment were further identified in a 1976 report prepared for the Law Enforcement Assistance Administration. This study was made to assess the arson problem and determine whether there were technical solutions to alleviate it. One conclusion was that a more sensitive and reliable vapor detector and a smoke and soot analyzer are needed. The vapor device would detect residues of such fire accelerants as gasoline. The smoke and soot device would detect the presence of fire accelerants through analysis of these fire byproducts.

As part of its fiscal year 1979 arson effort, the Fire Administration had planned to identify the needs of users for arson detection techniques and equipment. We were told that equipment being used in arson detection work was not designed for such use. By assessing existing devices and the state of the art, the Fire Administration would develop the needed characteristics, for example, sensitivity, portability, and cost, of an arson detection device and the techniques for using it. Fire Administration officials told us that this planned program was eliminated for budgetary reasons.

Arson investigator training course

The Fire Administration, in conjunction with the Lincoln Land Community College, recently developed an arson investigator training course. By 1982 the Fire Administration plans to have given the course to 4,000 investigators. The Lincoln Land Community College was granted \$69,400 to develop this course for increasing

B-171019

the levels of proficiency in fire and arson investigations. The course is based on material from related Federal agency programs, elements of various State and local training programs, and advice solicited from investigators who were asked to review course plans. The course will be given to students beginning in April 1978, after pilot testing by the Fire Administration. The Fire Administration plans to give the course to 200 investigators during fiscal year 1978 at an estimated cost of \$42,000, not including per diem and other expenses for the students. These will be the responsibility of the students' sponsoring organizations. This financing arrangement may have some adverse effect on getting students assigned to the course.

In addition to formal course instruction through the National Fire Academy, the course materials will be duplicated and distributed to 200 State and local entities for their training use at an estimated cost of \$29,000. There are some risks associated with this method of investigator training. The local entities have no obligation to teach the course, and there is no assurance that they have the required teachers or funds. No Federal funds are to be provided.

The Fire Administration does not yet have a formal method to measure the effectiveness of its Fire Academy courses, but it is developing evaluation methods for all its programs. For the investigator training course, initial evaluation will be based on student feedback through course critiques. After the first year of the course, the Academy plans to recall about 50 "trained" investigators to reevaluate and update the course content.

#### Plans for arson detection training

Presently, there is no training program for fire service personnel in arson detection; however, the Fire Administration plans to develop such a course to begin in mid-1978.

Fire service personnel, being first on the fire scene, should know what to look for in a fire of suspicious origin. The Fire Administration is planning a training course (24 hours of instruction) to train instructors who will then teach fire service personnel the procedures to follow when arson is suspected. Much of the course content will come

B-171019

from the arson investigator training course prepared by the Lincoln Land Community College. Plans are to have the course ready by July 1978 to be given over a 4-month period to 250 local fire service instructors in 10 regional areas. According to present plans, these instructors should give the course to about 100,000 firefighters over the next 5 years.

There are no plans to fund the instruction at the local level. Such an incentive might be helpful to insure wide dissemination of the course, particularly to the volunteer firefighters who make up the greater portion of the Nation's firefighting force.

#### Prosecutor training

There is no Federal program for training public attorneys at the State and local level to prosecute arson cases. The Fire Administration believes such training is needed, and a program is planned for development during fiscal year 1979. The Fire Administration is considering establishing formal training seminars to be conducted through an educational institution.

Law Enforcement Assistance Administration representatives told us that they rely on State and local governmental units to identify their needs. They said that no requests have been received for funds to train public attorneys in prosecuting arson cases.

#### FEDERAL PROGRAMS AND FUNDING FOR STATE AND LOCAL INVESTIGATORS AND PROSECUTORS

We found no Federal program specifically directed at funding State and local arson investigators and prosecutors. The Law Enforcement Assistance Administration's grants to State and local governments, in some cases, include funds for arson-related purposes, such as equipment, laboratory analysis support, and training of investigators. In most cases these grants are multipurpose and the portion to be used for arson-related activities cannot be identified from the agency's records. During fiscal years 1975-77, the Law Enforcement Assistance Administration records showed that it awarded 25 such multipurpose grants amounting to \$2.6 million. In addition to the multipurpose grants, it awarded 49 grants amounting to \$1.7 million in

B-171019

fiscal years 1975-77 which were to be used solely for arson-related activities. (See app. III.)

During our review we noted that Federal agencies were funding other arson efforts, such as development of a model arson law, development of a method for predicting fires, and various studies of the arson problem. This information gives additional perspective to the Federal role in combating arson, and we have listed these activities in appendix IV.

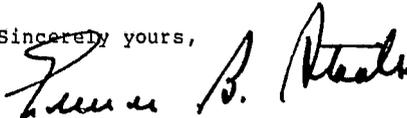
Because only one Federal program has been developed in the research and training areas mentioned in your request--a course for arson investigators--and the course has not yet been made available to local investigators, a good basis does not exist to judge the effectiveness of the course. Generally, Federal resources devoted to research, training, and funding of State and local investigators and prosecutors are small.

There has been no Federal commitment for a coordinated and concerted effort at helping State and local communities deal with the arson problem through research or training and funding for State and local investigators and prosecutors. We believe this is due partly to the (1) lack of good data on the extent of the arson problem and (2) need for a better definition of the roles and responsibilities of the various public and private organizations concerned.

At your request, we did not take the additional time to obtain written agency comments. The matters covered in the report, however, were discussed with Fire Administration officials and their comments are incorporated where appropriate.

Because you plan hearings on the arson problem and will release this report at the hearings, we do not plan to further distribute it until that time or until you publicly announce its contents.

Sincerely yours,



Comptroller General  
of the United States

NINE NEED AREAS IDENTIFIED IN"ARSON: AMERICA'S MALIGNANT CRIME"

1. It is of primary importance to develop and define the responsibilities of the fire services, the law enforcement services, the legal system, insurance companies, and other public and private bodies who should be concerned with the arson problem.
2. There is a need to reclassify arson in crime reporting systems such as the Federal Bureau of Investigation's Uniform Crime Reports to reflect its true status as a major offense so that (a) reporting can be more complete and (b) people can be more aware of its impact.
3. There is a need to make the public, defined broadly to include both the public in general and those with professional interests, more aware of the consequences of arson and the need to do something about them.
4. There is a need to develop and apply training programs which are directly keyed to the job-related needs of professional investigators and of other categories of personnel such as firefighters, police officers, attorneys, prosecutors, judges, insurance adjusters, insurance underwriters, and insurance claims supervisors.
5. There is a need to develop and apply better reporting, data collection, and data analysis procedures on local, State, and national bases so that public and private agencies will have access to information they need for both their own activities and to enhance public understanding.
6. There is a need to promulgate and apply effective laws and regulations which are as uniform as possible among jurisdictions. This applies particularly to effective insurance regulations and practices which can discourage arson.
7. There is a need to identify and develop adequate sources of funding to combat arson.
8. There is a need to conduct research and development (a) to make available better and more useful tools for arson

investigation and (b) to provide a better understanding of social and behavioral phenomena associated with arson.

9. There is a need to develop a consistent, uniform terminology that can be applied to arson and incendiarism by all disciplines and in all sections of the United States.

## APPENDIX II

## APPENDIX II

FEDERAL ARSON RESEARCH AND TRAINING PROGRAM						
Fiscal Year	Total amount for Arson programs (Dole #)	Training Investigators Program		Training Prosecutors Program		Research of detection techniques and equipment Program
		Amount	Description	Amount	Description	Amount Description
<b>National Fire Prevention and Control Administration</b>						
1976-77	\$220,200	\$67,200	Develop investigator training courses.		None	None
1978	317,300	3,000	To pilot test investigator training course.		None	None
		71,000	To conduct and distribute investigator training course--starting April 1978.			
		25,000	To develop, conduct, and distribute detection and identification course--starting July 1978.			
		<u>99,000</u>				
1979	105,000	12,000	To conduct additional investigator training courses throughout U.S.	\$10,000	To assist National College of District Attorneys in development of seminar-type training program.	None
		30,000	To evaluate investigator course and revise as needed.			
		<u>72,000</u>		<u>10,000</u>		
<b>Fire Research Centers:</b>						
1976-77	<u>125,500</u>	-	None	-	None	- None
1978	<u>55,000</u>	-	None	-	None	- None
1979	-	-	None	-	None	- None
<b>Law Enforcement Assistance Administration:</b>						
1976-77	<u>90,000</u>	(b)	None	-	None	(c) To assess the status of investigation equipment.
1978	<u>10,630</u>	-	(d)	-	(d)	- (d)
1979	(d)	-	(d)	-	(d)	- (d)
<b>Alcohol, Tobacco and Firearms:</b>						
1976-79	(-)	-	(f)	-	(f)	- (f)

a/Total amount shown includes programs listed here and other arson programs listed in appendix IV.

b/There are no programs for training investigators; however, some grant funds provided to State and local authorities were for this purpose and other crime investigation training.

c/Funding for this program is included in the larger Arson program assessment listed in appendix IV.

d/No programs planned as of time of our review.

e/Cost not readily determinable.

f/No programs directed at these subjects; however, all agents receive training in firebombing, incendiary device recognition, and bomb scene searches and investigations. Also, laboratory analysis is performed to identify fire accelerants.

APPENDIX III

APPENDIX III

LAW ENFORCEMENT ASSISTANCE ADMINISTRATIONGRANTS FOR ARSON-RELATED ACTIVITIES(AWARDED IN FISCAL YEARS 1975-77)(note a)

<u>Description</u>	<u>Number</u>	<u>Amount</u>
Grants which include arson-related activities	<u>25</u>	<u>\$2,620,619</u>
Grants solely for arson-related activities:		
Improve effectiveness of New York City's investigation of suspicious fires/arson	1	413,390
Establish unit within Bronx, New York, District Attorney's office for investigation and prosecution of arson	1	395,680
Expand New Jersey State police arson investigation unit	3	334,990
Purchase of instruments by State of Washington for use in arson project	1	71,715
Establish a specially equipped and staffed arson investigation unit in Yolo County, California	1	68,462
Establish photographic arson suspect identification system in California	1	59,400
Develop an arson information system by city and county of San Francisco	1	41,124
Operate mobile radio equipment by Ohio Arson Bureau	1	34,212
Other grants	<u>39</u>	<u>301,098</u>
Total	<u>49</u>	<u>\$1,720,071</u>
Total	<u>74</u>	<u>\$4,340,690</u>

a/Compiled from data provided by the Law Enforcement Assistance Administration which has not been verified by the General Accounting Office.

## APPENDIX IV

## APPENDIX IV

OTHER FEDERAL ARSON PROGRAMS

<u>Fiscal year</u>	<u>Amount</u>	<u>Program description</u>
National Fire Prevention and Control Administration: 1976-77	\$ 10,000	To develop model arson law.
	38,000	To develop and print Fire Administration report--"Arson: America's Malignant Crime."
	70,000	To develop an arson information center.
	8,000	To develop an annotated bibliography of arson reference material.
	11,000	To develop a training course in juvenile fire setting.
	6,000	To study the nature and extent of incendiary fires in Boston.
	10,000	To develop intervention strategies for a Federal arson control program (Aerospace Corporation).
	<u>\$153,000</u>	
1978	\$ 6,000	To conduct 10 (3 day) advanced arson seminars.
	6,800	To study incendiary fires and develop a handbook for use by urban planners.
	200,000	To develop a software package that will predict area fires in inner-city neighborhoods and commercial establishments.
	5,500	To complete the annotated bibliography of arson reference material.
	<u>\$218,300</u>	
1979	\$ 10,000	To conduct 10 (2 day) seminars to promote the arson task force concept.
	10,000	To continue and expand the advanced arson seminar program.
	3,000	Undecided.
	(a)	To implement and evaluate fire/arson strategies in three major cities.
	<u>\$ 23,000</u>	

## APPENDIX IV

## APPENDIX IV

<u>Fiscal year</u>	<u>Amount</u>	<u>Program description</u>
<b>Fire Research Center:</b>		
1976-77	\$64,000	To prepare an overview report on how the Center can fulfill its responsibilities in the attacks on arson.
	41,500	To study, analyze, and organize what is currently known about the psychology of arsonists.
	20,000	To survey laboratory techniques used in analyzing accelerants and to assess the need for the adoption of a standard method.
	<u>\$125,500</u>	
1978	\$ 52,000	To develop and publish an arson investigator handbook for easy reference.
	40,000	To continue study of psychology of arson resulting in a written theory of arson behavior.
	<u>\$ 92,000</u>	
1979		None.
<b>Law Enforcement Assistance Administration:</b>		
1976-77	\$ 90,000	To assess the problem of arson and determine whether there were technical solutions to help alleviate the problem.
1978	\$ 10,000	To research arson issues and determine the Law Enforcement Assistance Administration's role in arson. Future effort will depend upon the results of this program.
1979	\$ -	Pending results of fiscal year 1978 program.
<b>Alcohol, Tobacco and Firearms:</b>		
1976-79	\$ (b)	ATF laboratories, upon request, analyze evidence obtained from a fire to assist State and local investigation.
1977-78	\$ (b)	Philadelphia district office formed a group to assist local arson investigations.

a/Funding for this program is for fire prevention strategies including arson. Amount related to arson could not be identified.

b/Cost not readily available.

(952201)

EXHIBIT 26

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REPORT BY THE  
**Comptroller General**  
OF THE UNITED STATES

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## Arson-For-Profit: More Could Be Done To Reduce It

In this report, GAO discusses the extent to which the Federal Riot Reinsurance Program and the Fair Access to Insurance Requirements Plans, established by the States, provide incentives for arson-related insurance fraud, i.e. arson-for-profit.

Fair Access to Insurance Requirements Plans, authorized under Federal law, are privately owned organizations, which operate like private insurance companies, but are established by State legislation. These Plans provide essential property insurance in urban and other areas where the insurance industry will not.

Although these Plans operate under the supervision of States' insurance authorities, the Department of Housing and Urban Development Federal Insurance Administration reviews the Plans' operations to assure that essential property insurance is provided.

Although statistics are lacking, arson-for-profit is considered to be a serious problem in the Plans. GAO makes recommendations in this report to help reduce it.



GED-78-121  
MAY 31, 1978



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-171019

The Honorable Charles H. Percy  
Ranking Minority Member  
Permanent Subcommittee on Investigations  
Committee on Governmental Affairs  
United States Senate

Dear Senator Percy:

Your letter of August 2, 1977, requested assessment of the adequacy of current Federal programs dealing with the detection, investigation and prosecution of arson offenses. One of your specific concerns was the extent to which the Federal Riot Reinsurance Program and the Fair Access to Insurance Requirements Plans established by the States provide an incentive for arson-related insurance fraud. We reviewed the arson-related insurance fraud problem--arson-for-profit--in Fair Access to Insurance Requirements Plans and found that:

- Certain Fair Access to Insurance Requirements Plans are overinsuring property and creating an incentive for arson-for-profit.
- Fair Access to Insurance Requirements Plans need greater underwriting authority to deny or limit insurance coverage to high-risk property owners.

Appendix I contains the detailed results of our review.

Your questions concerning Federal research and development of arson detection techniques and arson investigator training; and Federal law enforcement agencies' activities to detect, investigate and prosecute arson offenses were provided in separate reports, (PSAD-78-88 dated April 24, 1978, and GGD-78-47 dated April 5, 1978, respectively). Your specific questions concerning Fair Access to Insurance Requirements Plans are answered in this letter.

We interviewed officials and obtained written information, regulations or operating policies from the Federal Insurance Administration and the National Fire Prevention and Control Administration in Washington, D.C.; nine Fair Access to Insurance Requirements Plans--Delaware, District of Columbia, Illinois, Maryland, Massachusetts, New York,

B-171019

Pennsylvania, Rhode Island, and Washington--six insurance companies, and two insurance industry trade associations. Appendix III contains a listing of organizations we contacted during our review.

Fair Access Plans and the Federal Riot Reinsurance Program are authorized under the Urban Property Protection and Reinsurance Act of 1968, as amended, (12 U.S.C. 1749 bbb et seq. (1976)). These Plans are privately owned and operated organizations, operating much like private insurance companies, but are established primarily by State legislation. The Plans provide essential property insurance to urban and other areas where the insurance industry will not provide coverage. Although Fair Access Plans operate under the supervision of the States' insurance authorities, the Federal Insurance Administration of the Department of Housing and Urban Development reviews Plan operations to assure that Plans are providing essential property insurance.

The Federal Riot Reinsurance Program, administered by the Federal Insurance Administration, provides private insurance companies riot reinsurance to protect them during riots against excess losses on company-insured properties. To purchase riot reinsurance, a company must be participating in a Fair Access Plan.

Both Fair Access Plan and insurance industry officials believe that arson-for-profit is a serious problem in the Plans, as well as in the private insurance market. The significance of the problem, however, could not be demonstrated because of the lack of specific data on the extent of the problem. Officials have indicated that inadequate investigation of arson cases by both local government and Plans, and the difficulty of proving the insured's involvement, are factors which allow arson-for-profit cases to go undetected. In certain cities in Massachusetts and Pennsylvania, investigations by two of the nine Plans we contacted have identified organized crime involvement in arson-for-profit.

According to Plan and insurance industry officials, one of the major incentives for arson-for-profit is overinsurance; providing an amount of insurance exceeding property market value. The District of Columbia, Illinois, and New York Plans are providing insurance to property owners without attempting to determine property values. As a result,

B-171019

property owners may be insuring their properties for amounts exceeding property values and, therefore, create an incentive for arson. Officials from these Plans believe that it is meaningless and costly for them to establish property values at the time insurance is provided because, in the event of fire, the payment for the resultant claim is based on the property's actual cash value at the time of loss. Other Plans, however, were limiting coverage to the market value of the property at the time insurance was written.

Also, the Maryland, Massachusetts, and Pennsylvania Plans were generally providing insurance in amounts that property owners desired until a few years ago. These Plans now provide insurance coverage generally at market value thus attempting to provide only enough insurance to indemnify property owners for their losses. Plan officials believe that preventing overinsurance is an important step in reducing arson-for-profit in the Plans.

Many Fair Access Plan officials believe that the Plans are encouraging arson-for-profit by providing insurance coverage to almost everyone requesting it. Until the Plans get additional underwriting authority from the Federal Insurance Administration to deny, limit, or modify insurance coverage, certain Plan officials believe little can be done. One Federal Insurance Administration official, however, said that Administration regulations do not require Plans to insure everyone and that the Administration is more concerned that Fair Access Plans are not denying coverage unfairly or unnecessarily. Five of the nine Plans we visited are making or have recently made some changes concerning the conditions under which they will insure properties, but Plan officials agreed that additional changes can and should be made. Most Plans apparently, are not aware of changes that other Plans have made to reduce arson-for-profit.

Answers to your questions are summarized below.

1. How do Fair Access to Insurance Requirements Plans determine the amount of coverage to be given to a property owner? Can the owner insure for any amount he desires, even beyond fair market value?

The amount of coverage that Plans will provide varies. Some Plans base the amount of coverage to be given to a property owner on the market value of the property

B-171019

using such values as owner's purchase price. The Massachusetts Plan, for example, uses tax assessed value, purchase price, and the most recent selling prices of properties in the neighborhood as found in real estate transfer directories. The Pennsylvania Plan will insure up to 150 percent of the purchase price if the amount of insurance is less than \$50,000. Of the nine Plans we visited, however, three (District of Columbia, Illinois and New York) generally provide property owners any amount of coverage they want without regard to property values. (See pp. 13-16 of app. I.)

2. Can the Fair Access to Insurance Requirements Plan refuse to insure for the full amount requested by the owner? Can it refuse coverage altogether?

Although Fair Access Plans can refuse to insure for the full amount requested, three of the nine we visited do not. Of the nine Plans, six do refuse to insure for the full amount requested if it is more than the Plan determines to be the property value. All the Plans that we contacted said that they can refuse coverage altogether, however, there are limited reasons for refusing. As a result, almost everyone is provided insurance. The Illinois Plan is refusing to insure only about one of every 100 applicants. Plan officials of seven of the nine Plans said that the Federal Insurance Administration requires them to insure almost everyone, although an Administration official said that this was not true. Program regulations appear to support the Administration's position. (See pp. 17-21 of app. I.)

3. Is there any provision for less-than-full payment on a claim if the insurer can prove that the insured allowed his property to deteriorate significantly before the damage in question?

Generally, depreciation (deterioration) is considered in paying claims. In seven Fair Access Plan-States--none of which we visited--however, deterioration is not considered when settling claims for total property losses. Property owners are paid the full face amount of their policies. (See pp. 16-17 of app. I.) In four of the nine States that we visited, the basis used for determining the amount to pay under a claim is the property's "actual cash value" at the time of loss. Actual cash value is defined as replacement cost less depreciation.

B-171019

Deterioration is, therefore, considered to some extent when settling claims in these States. Fair Access Plans, however, generally insure properties in economically declining neighborhoods in which replacement cost less depreciation can be much greater than the market value of the properties. In such cases, Fair Access Plan-insured property owners may be paid more than the market or sales value of their properties. In the other five States that we visited, other property values, such as market value, rental and economic value are considered, in addition to replacement cost less depreciation. Property owners in these States, therefore, are not likely to be overcompensated for fire losses. The above mentioned seven States that we did not visit use either the basis used in these five States or the actual cash value basis to settle claims for partial property losses thus, considering deterioration at least to some extent.

You also requested that we determine how the program could be altered to remove the incentive to destroy unprofitable or deteriorating but well-insured buildings. We believe that the Federal Insurance Administration should take a leadership role in helping Plans reduce arson in Plan-insured properties. We make recommendations to the Secretary of Housing and Urban Development for certain revisions in the Administration's regulations. (See app. II.)

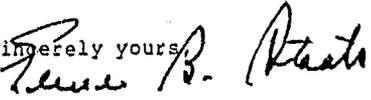
As requested by your office, we did not give the Federal Insurance Administration an opportunity to formally comment on this report. Its contents, however, were generally discussed with Administration officials, and their comments were included in the report as appropriate. As you requested, we will not distribute this report until just prior to your hearings or until you publicly announce its contents. At that time we will send copies to various standing committees in the House and Senate, such as Appropriations, Government Operations, and the Administration's legislative committees: Senate Committee on Banking, Housing and Urban Affairs and House Committee on Banking, Finance and Urban Affairs. We will also provide copies to the Secretary of Housing and Urban Development, the Administrator, Federal Insurance Administration, and the Director, Office of Management and Budget.

A detailed discussion on the results of our review is presented in appendix I and our conclusions and recommendations

B-171019

to the Secretary of Housing and Urban Development are presented  
in appendix II.

Sincerely yours

A handwritten signature in dark ink, appearing to read "James B. Staats". The signature is written in a cursive style with a large, prominent initial "J".

Comptroller General  
of the United States

C o n t e n t s

		<u>Page</u>
APPENDIX		
I	RESULTS OF GAO'S REVIEW OF ARSON-FOR-PROFIT IN NINE FAIR PLANS	1
II	CONCLUSIONS AND RECOMMENDATIONS	25
III	LISTING OF ORGANIZATIONS GAO CONTACTED	27
IV	FAIR PLANS: Number of Policies Issued and Underwriting Profit or Loss From Inception to September 30, 1977	30

ABBREVIATIONS

FAIR	Fair Access to Insurance Requirements
FIA	Federal Insurance Administration
GAO	General Accounting Office

RESULTS OF GAO'S REVIEW OF ARSON-FOR-PROFIT  
IN NINE FAIR PLANS

BACKGROUND

In July 1967, the President, appointed the National Advisory Commission on Civil Disorders to investigate the origins of disorders. The Commission decided that a separate group of experts could deal more expeditiously with the insurance problem of urban core residents and businessmen. In August 1967 the Commission appointed the National Advisory Panel on Insurance in Riot-Affected Areas. The panel was to investigate the difficulties and high costs of obtaining insurance in riot areas or potential riot areas.

In its January 1968 report, the panel pointed out that there was a close relationship between urban blight and the availability of insurance and that failure to insure properties in decaying urban areas only increased the blight. The report also stated that cities must be revitalized and that insurance was a basic force in this effort. The panel found that there was a serious lack of property insurance in core areas of the Nation's cities and that this condition existed even before the riots of the 1960s. According to the report, the basic factor underlying the shortage of insurance in these areas was that insurance companies generally regarded business in these areas as relatively unprofitable. The added risk of riots had prompted some companies to state that continued deterioration of the situation would make them positively unwilling to provide insurance in urban core areas. The report also stated that properties must be considered on individual merit if fair access to insurance, without regard to location, was to be had by everyone.

The panel, however, pointed out that insurance companies were legitimately interested in profits and in maintaining their financial safety and stability and that States were already burdened with demands on their resources. As a result, the panel concluded that the solution to the urban core area insurance problem was a cooperative effort of all who were involved. The panel recommended therefore, that the insurance industry, in cooperation with States, establish in all States Fair Access to Insurance Requirements (FAIR) Plans. The Federal Government role would be that of providing reinsurance against extraordinary riot losses to insurance companies participating in FAIR Plans. The panel believed this would help eliminate riot risk as an impediment to insurance companies selling insurance in urban core areas.

## APPENDIX I

## APPENDIX I

FAIR Plans were established in 1968 when the Congress passed the Urban Property Protection and Reinsurance Act of 1968, as amended, (12 U.S.C. 1749 bbb et seq. (1976)). The act states:

"The Congress finds that (1) the vitality of many American cities is being threatened by the deterioration of their inner city areas; responsible owners of well-maintained residential, business, and other properties in many of these areas are unable to obtain adequate property insurance coverage against fire, crime, and other perils; the lack of such insurance coverage accelerates the deterioration of these areas by discouraging private investment and restricting the availability of credit to repair and improve property therein; and this deterioration poses a serious threat to the national economy; (2) recent riots and other civil commotion in many American cities have brought about abnormally high losses to the private property insurance industry for which adequate reinsurance cannot be obtained at reasonable cost, and the risk of such losses will make most lines of property insurance even more difficult to obtain; (3) the capacity of the private property insurance industry to provide adequate insurance is threatened, and the continuity of such property insurance protection is essential to the extension of credit in these areas; and (4) the national interest demands urgent action by the Congress to assure that essential lines of property insurance, including lines providing protection against riot and civil commotion damage will be available to property owners at reasonable cost."

The act further states that its purpose is to

"\* \* \* (1) encourage and assist the various State insurance authorities and the property insurance industry to develop and carry out statewide programs which will make necessary property insurance coverage against the fire, crime, and other perils more readily available for residential, business, and other properties meeting reasonable underwriting standards; (2) provide a Federal program of reinsurance

against abnormally high property insurance losses resulting from riots and other civil commotion, placing appropriate financial responsibility upon the States to share in such losses \* \* \*."

Although the act does not require that States establish FAIR Plans, twenty-five States, Puerto Rico, and the District of Columbia have. For those States that have established Plans, the act requires that they must be approved by, and administered under the supervision of, the States' insurance authorities, or be authorized or required by State law, and shall be designed to make essential property insurance more readily available in urban and other areas. A listing of FAIR Plans is included as appendix IV.

#### How FAIR Plans operate

Most of the FAIR Plans we visited operate similar to private insurance companies. These Plans write insurance policies under their own name and handle all policy holder claims. FAIR Plans are privately owned and operated organizations set up primarily by State legislation. FAIR Plans operate under the supervision of the States' insurance authorities and are subject to their approval for changes in operating procedures.

All profits and losses are shared by participating insurance companies in a given State. FAIR Plans generally offer insurance against fire and extended coverage (includes hail, windstorm, explosion, riot, civil commotion, and smoke), vandalism and malicious mischief. In calendar year 1976, all FAIR Plans combined wrote about \$18.9 billion of insurance on 751,441 insurance policies. About \$194 million in premiums were earned by the FAIR Plans on these policies.

A property owner may obtain insurance coverage directly from a Plan or have an insurance agent or broker obtain it for him. In either case, the FAIR Plan will generally inspect, or hire someone to inspect, the property at no cost to the owner before it will write a policy on the property. Usually, this inspection is solely to assess risk or fire hazard. After the inspection, the FAIR Plan must determine whether to write a policy on the property and the amount of coverage. If the FAIR Plan accepts the property, the property owner pays the FAIR Plan the insurance premium.

When losses occur the FAIR Plan pays the property owner. At the end of the year, the total losses (claims) paid, added to the costs to administer the FAIR Plan, has usually exceeded

## APPENDIX I

## APPENDIX I

the premiums collected and other income, resulting in a financial loss. This loss is passed on to private insurance companies participating in the FAIR Plan. The Federal Government has no financial involvement in FAIR Plans.

All the States that we visited require all insurance companies selling fire and related lines of insurance in these States to participate in the FAIR Plan, thereby sharing in FAIR Plan profit and losses. Three States with FAIR Plans allow insurance companies to participate voluntarily. In States requiring participation, each insurance company's share of the loss is based on its percentage of the total fire insurance premiums collected in the State. A company collecting 20 percent of the total insurance premium dollars, therefore, has to pay 20 percent of the FAIR Plan losses.

FAIR Plans have generally not been financially successful. According to financial statements they have submitted to FIA as of September 30, 1977, only 5 of the 27 Plans show a profit since they began operating. The California (\$652,000) and Georgia Plans (\$431,000) have the highest underwriting profits from inception to September 30, 1977. The New York and Michigan FAIR Plans have the highest underwriting losses from inception to September 30, 1977; \$68.5 and \$60.5 million, respectively. Appendix IV shows the underwriting profit or loss of each of the 27 FAIR Plans as of September 30, 1977.

#### Riot reinsurance

The Federal Government's role is to (1) offer, through FIA, riot reinsurance to the private insurance companies that participate in FAIR Plans whether voluntarily or mandatorily, (2) periodically review each Plan and the methods and practices by which such Plan is being carried out in the areas and communities where it is intended to operate to (a) assure that such Plan is effectively making essential property insurance readily available in such areas and communities and (b) identify any aspects of the operation or administration of such Plan which may require revision, modification, or other action to carry out the purposes of the reinsurance act of 1968.

Riot reinsurance insures the companies against excess losses that they would sustain during riots or civil disorders. Riot reinsurance covers properties insured in the private market by these companies and not FAIR Plan-insured properties. Insurance companies pay a nominal reinsurance premium, two cents per hundred dollars of reinsurance, to FIA and agree to bear riot-related losses themselves up to a stipulated percentage of their total premiums earned from

selling fire and related lines of insurance to private property owners within a State. This percentage is generally 2.5 percent of an insurance company's premiums. According to an FIA official, 2.5 percent of an insurance company's earned annual premiums from fire and related lines of insurance has covered most of the riot-related losses that insurance companies have incurred to date. It would therefore appear, that private insurance companies, not FIA, have paid most of the riot-related losses that have occurred to date in those States that have a FAIR Plan. FIA has collected over \$100 million of riot reinsurance premiums from private insurance companies and paid excess riot-related losses of about \$12 million from inception of the riot reinsurance program to September 30, 1977.

#### ARSON-FOR-PROFIT

FAIR Plan and insurance industry officials believe that arson-for-profit is a serious problem in FAIR Plans as well as in the private insurance market. Also, two FAIR Plan officials in Massachusetts and Pennsylvania said that organized crime is involved in arson-for-profit in certain cities. The significance of the arson-for-profit problem in FAIR Plans, however, could not be demonstrated because of lack of statistics.

#### What is arson?

A September 1976, United States Department of Commerce-sponsored report prepared by Battelle Columbus Laboratories, "ARSON: AMERICA'S MALIGNANT CRIME", defined arson as "The crime of maliciously burning the building or the property of another, or of burning one's own for some improper purpose, as to collect insurance."

The National Fire Protection Association 1/ identifies at least eight categories of arson including

- fraud fires which usually are to collect insurance because the value of the insured structure and/or contents is less than the value of the insurance;
- political fires set to dramatize an issue or other similar reason;

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1/A nonprofit technical and educational organization which promotes the science and improves the methods of fire protection and prevention.

- pyromaniac fires set for thrills;
- crime cover-up fires;
- spite fires (revenge, jealousy or anger);
- vanity fires set so that the arsonist can appear as a hero in taking countermeasures;
- "psycho" fires committed without any rational motive; and
- vandalism fires set by individuals or groups who are looking for excitement without premeditated motive.

#### Significance of the problem

Although statistics on the various categories of arson are not available from anyone we met (nor did they know of any such statistics available from other sources) information from the Illinois Advisory Committee on Arson Prevention states that insurance fraud--burning-for-profit--may be the number one motive for arson.

The Battelle report stated that current trends in arson are worsening and that urban fire departments estimate that as much as half of all city fire losses are from fires set on purpose. These fire losses, according to the report, may have an impact on the economy each year of as much as \$10 billion through higher insurance premiums, higher prices for what is not burned, lost jobs and higher taxes. In addition, as many as 1,000 lives are lost to arson each year, according to the report. Information published by the Property Loss Research Bureau, an insurance trade association representing about 115 companies, states that since the early 1950s arson losses in the Nation have increased tenfold.

Information obtained from the American Insurance Association, an insurance industry trade association, shows that about \$1.5 billion of the total \$3.5 billion of insurance losses paid by the industry in 1976 resulted from arson/incendiary fires. This is the latest data we could obtain. An Association official said that no one really knew the extent of the arson problem nor how heavily organized crime was involved.

Although arson-for-profit may be a problem in FAIR Plan-insured properties, private insurance companies, are experiencing most of the arson-for-profit, according to some Plan

officials. FAIR Plan officials, however, do not know how much arson or arson-for-profit the Plans are experiencing.

Apparently, one of the reasons the insurance industry is experiencing most of the arson or arson-for-profit is because FAIR Plans write only a small percent of the fire insurance being written in many States. Pennsylvania and New York Plan officials said they write about 2 and 5 percent, respectively, of the total in their States. The Washington FAIR Plan sells less than one-half of one percent (about \$500,000) of the fire and related lines of insurance sold in the State. The latest statistics available for Washington show that losses from arson or suspected arson were about \$2 million in 1976. Also, in Texas, where there is no FAIR Plan arson losses in Houston alone in 1977 were an estimated \$10.3 million. The Houston fire marshal said he believed that about 50 percent of the dollar loss from fires in Texas was arson-for-profit related.

Although a FAIR Plan may write a small percent of the policies in a State, the Plan's portion of the State's arson losses may be greater than its portion of the fire insurance written in that State. A Massachusetts FAIR Plan official estimated that 40 percent of the arson in the State was FAIR Plan-related, even though the Plan writes only 15 percent of the State's fire insurance.

#### Problems affecting arson-for-profit

The insurance industry, insurance trade association and FAIR Plan officials with whom we met pointed out numerous problems affecting the arson-for-profit problem. Some of these problems were of a local nature and some were related to State law or requirements. In addition to Federal regulations, FAIR Plans must generally operate under the same State laws that regulate private insurance companies. Some of the problems mentioned by officials with whom we met, follow.

--There is little real incentive for the insurance industry to do anything about arson. One insurance company official said that even if property owners can be proven guilty of committing arson, the insurance companies must still pay mortgages on the property. Insurance companies have also adopted an attitude that money should probably not be spent to investigate suspected arsonists because the chances of conviction are only about one percent, and the suspects may sue the companies for punitive damages. Another insurance company official told

us that from a financial point of view it did not make sense in many cases to try to prosecute, and that it was less expensive to pay the claims. We noted that a September 1977 study <sup>1/</sup> on fires in urban areas states that at the present time, property owners contemplating arson can feel secure in the knowledge that they have in excess of a 98-percent chance of not being convicted and, until this is changed, the threat of prosecution will have little preventive effect.

- Officials from seven FAIR Plans, as well as other officials, said that prosecutors generally did not want to take an arson case because arson was so difficult to prove.
- We were told that police departments in some cities consider arson investigation a fire department matter, and that the fire departments regard arson a crime and, therefore, a police matter. As a result, arson does not get much attention from either department.
- State laws or requirements in some cases hinder efforts to control arson. Perhaps the requirement mentioned most concerned the basis for paying claims. Some States require that the "actual cash value" <sup>2/</sup> of a property at the time of the loss be used as the basis for paying a claim without consideration of market value of a property. This provides an incentive for arson according to the Battelle report, because it can overcompensate owners which have properties with higher actual cash values than market values. The actual cash value concept for paying claims may also have an adverse effect when insurance policies are written in that it sometimes results in overinsuring. For example, Illinois FAIR Plan officials told us that they generally give property owners the amount of insurance requested without determining the property's value. This is done because in the event of loss, the owners will receive payment based on the actual cash value of the property at the time of loss, not its value at the time the insurance was written. The September 1976 Battelle report recommended that the

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<sup>1/</sup>A National Fire Prevention and Control Administration-funded study called "FIRES IN RESIDENTIAL NEIGHBORHOODS: A SURVEY OF CAUSES AND LOCAL EFFORTS AT PREVENTION".

<sup>2/</sup>This is generally defined as replacement cost less depreciation.

## APPENDIX I

## APPENDIX I

National Association of Insurance Commissioners 1/  
 "specifically study the impacts of state laws  
 which may compel insurance companies to pay insur-  
 ance claims greater than the market values of insured  
 properties". We were told that the Commissioners plan  
 to meet in June 1978, to discuss the Battelle report  
 recommendations.

--The Privacy Act was mentioned by almost everyone with  
 whom we met as a problem hindering arson investigation.  
 Many FAIR Plan officials said that if the fire depart-  
 ment wanted information from FAIR Plan files concern-  
 ing property owners or property, because of the Privacy  
 Act, the fire department would have to subpoena the  
 information. Also, an insurance company cannot make  
 other companies aware of information or share infor-  
 mation concerning a suspicious policy holder, accord-  
 ing to FAIR Plan and insurance company officials.  
 Ohio, however, has passed a law requiring insurance  
 companies (and the FAIR Plan) to provide information  
 to fire and other public investigative personnel on  
 demand. The insurance industry has also taken action  
 through the American Insurance Association to share  
 information concerning fire losses. The Property  
 Insurance Loss Register, a nationwide fire loss his-  
 tory file, has been established to contain informa-  
 tion on every fire claim that has been filed with  
 insurance companies subscribing to the register. As  
 of January 1978, insurance companies writing about 75  
 percent of the fire and related lines of insurance in  
 the Nation had subscribed. According to the American  
 Insurance Association, this history file will help  
 identify insurance fraud, including

- purchase of duplicate insurance from two or more  
 companies and full claims payment from both com-  
 panies for the same loss,
- known major arson and property fraud rings, moving  
 with impunity from city to city, and
- publicly known criminals and arsonists concealing  
 true ownership of intended fraud fire property  
 through "straw" ownership or listing themselves  
 as mortgagees.

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1/An association representing State insurance departments  
 or authorities.

Arson-for-profit in FAIR Plans

FAIR Plan officials believe that arson-for-profit is a problem in FAIR Plans. These officials, however, were not able to provide us statistics showing how serious the problem is. Although the cause(s) of about 28 percent of the fires in Illinois FAIR Plan-insured properties were not determined, the Metropolitan Chicago Loss Bureau, <sup>1/</sup> which settles Plan claims did make an analysis of Plan claims paid in calendar year 1977. The Bureau statistics show that 33 percent (685) of the Plan fire claims were incendiary (arson and arson-for-profit). These claims totaled about \$7.7 million, or 37 percent of the amount of all claims received. The Bureau was able to identify evidence of owner involvement in the fires in 11 percent of the FAIR Plan claims--or 18 percent of the known incendiary fires claims' amount. In addition, according to the Bureau, the FAIR Plan also received 593 claims totaling about \$6.6 million during 1977 for fires for which the cause was not determined. The Bureau did not know how many of these claims resulted from incendiary or arson-for-profit fires.

Arson-for-profit statistics are difficult to develop. FAIR Plan and insurance industry officials have indicated that investigations of suspicious fires by local fire and police departments are sometimes inadequate, and that some FAIR Plans do not adequately investigate arson cases. Arson can be proven in many suspicious fires, but proving owner involvement is difficult, according to these officials.

The Massachusetts FAIR Plan does have several people under indictment for arson, including suspected organized crime figures. FAIR Plan officials said that five FAIR Plan-insured properties had burned that were owned by organized crime or in some way related to organized crime. One fire resulted in a loss of over \$400,000. FAIR Plan officials said they could not prove that this fire was arson but that they believed it was. These officials also said that crime rings other than organized crime were also involved in arson-for-profit in the Boston area. One crime ring identified last year was responsible for several known arson fires, and one official said that although numerous

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<sup>1/</sup> A privately supported, nonprofit organization that supervises adjustment of property claims for its 125 member insurance companies.

arrests had been made, this was only the "tip of the iceberg". The private investigators hired by the FAIR Plan uncovered evidence that there was much more arson-for-profit in the Boston area, as well as other areas, but did not pursue these other cases because of manpower and funding limitations. FAIR Plan officials said that they had paid about \$900,000 for three large arson investigations in the Boston area. The investigators told us that insurance companies, as well as the FAIR Plan, were experiencing arson-for-profit losses in the Boston area.

The September 1977 study on fires in urban residential neighborhoods, funded by the National Fire Prevention and Control Administration, states that arson has become one of Boston's most serious crimes. The study also points out that to a great extent, fire is devastating Boston's neighborhoods because someone profits from it. According to the study, those who profit not only profit from the fire itself but from the whole cycle of deterioration that always precedes it. The study also states that while the pattern of fraud seems to be premeditated, financial hardship or the sudden attraction of getting a financial windfall can also lure otherwise honest property owners to disinvest in their property and allow it to be torched. The fuel that keeps fires raging in Boston's neighborhoods is insurance money, according to the study.

As noted earlier, one Massachusetts FAIR Plan official estimated that 40 percent of Massachusetts arson was FAIR Plan related; the Plan writes about 15 percent of all the fire insurance written in Massachusetts. About 57,000 FAIR Plan policies were in force in Massachusetts as of September 30, 1977.

The Pennsylvania FAIR Plan has also had arson-for-profit fires that involved organized crime. The FAIR Plan had a listing of arson or suspicious fire losses, most of which occurred in 1976 and 1977, that totaled \$1.8 million. FAIR Plan officials told us that the arson-for-profit evidence for some of these losses was circumstantial and arson could not be proven in a criminal court. Payment of the claims, however, can and have been denied in civil courts using such evidence.

Although arson-for-profit may occur as a result of many different situations, a typical case would involve the following circumstances. A property is purchased at a very low price. A few improvements are made, or merely started, to justify an increase in the property's insurable value.

## APPENDIX I

## APPENDIX I

The property may be "sold" to a fellow conspirator at an artificially inflated price; the true owner may become the mortgagee. An insurance policy for an amount substantially greater than the market value is then obtained. Shortly thereafter, a fire destroys the property. In one instance, in a Massachusetts FAIR Plan investigation, property purchased for \$1,000, was covered by a \$25,000 insurance policy. A suspicious fire resulted and the FAIR Plan paid a claim of \$16,000 on this property.

Property Insurance Plans Service Office <sup>1/</sup> officials said that FAIR Plans are not accomplishing their intended objective of revitalizing urban core areas. Instead, they said, the program is having the opposite affect. Slum landlords many times walk away from burned buildings without making repairs with the insurance money received as a result of fires. When a landlord walks away without making repairs, the whole neighborhood begins to deteriorate, according to these officials. The cities are helpless to do anything because property owners cannot be located or, if they are located, they cannot be forced to make necessary repairs. In some instances, the repair costs may exceed the market value of the property and, therefore, there is no financial incentive for the owner to make repairs. Nonowner-occupied property held for investment purposes poses the greatest risk of arson-for-profit--about double the rate of owner-occupied properties--according to these officials.

AMOUNT OF INSURANCE AND THE  
BASIS FOR PAYING CLAIMS

Three of the nine FAIR Plans we contacted were generally providing insurance coverage in amounts the owner requested, without regard to the actual value of the property. FAIR Plan and insurance industry officials we interviewed believe this results in overinsuring property which is a major incentive for arson-for-profit. Five other FAIR Plans providing owner-requested amounts of insurance in the past subsequently changed their underwriting criteria to limit coverage to the property's market value. One FAIR Plan official said that by eliminating overinsurance and the incentive for arson, his Plan had reduced its losses substantially.

FAIR Plans generally insure properties in economically declining neighborhoods in which replacement cost less

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<sup>1/</sup> A national association representing all FAIR Plans.

depreciation is much greater than the market value of the property. In four of the nine States that we visited, FAIR Plans as well as insurance companies are required to pay losses at replacement cost less depreciation, thereby providing policy holders with an incentive for arson.

In addition, 20 States require FAIR Plans and insurance companies, to pay property owners the face value of their policies in the event of a total property loss. These payments can result in financial gains to the owners because the amount the owners are paid exceeds the market value of the property.

#### Overinsurance

The amount of insurance FAIR Plans are willing to write on properties differs among FAIR Plans. Three of the nine FAIR Plans we contacted generally provide the amount of insurance the property owners request without attempting to determine the property's actual or market value. As a result, properties can be insured significantly above their actual market values by the District of Columbia, Illinois and New York FAIR Plans.

Various FAIR Plan and insurance industry officials have stated that overinsured properties provide great incentives for arson to property owners. Various studies have also concluded that overinsurance is a significant factor in the arson problem. The September 1977 report from the National Fire Prevention and Control Administration-funded study, for example, states that arson-for-profit will be difficult to contain as long as buildings can be easily overinsured and the risk of being convicted of arson is so low. The report also states that insurance companies recognize the problem but have done little to stop it because there is no built-in disincentive to stop it. According to the report, the only sure response to this problem is tighter regulation by State insurance commissioners and refusal by these commissioners to allow increases in FAIR Plan rates as long as FAIR Plans cannot show conclusively that they are making more than a token effort at preventing arson through overinsurance. As long as reinsurance companies can pass on arson losses through rate increases, they are unlikely to take action addressing the problem.

Also, the Battelle Laboratories September 1976 report on arson states that there is a need for a reexamination of the insurance underwriting practices and regulations that impact on arson. According to the report, one basic problem is that of avoiding too much insurance on a property.

## APPENDIX I

## APPENDIX I

According to District of Columbia, Illinois and New York FAIR Plan officials, these FAIR Plans generally sell property owners any amount of insurance they request because claims must be paid based on the actual cash value of the property at the time of the loss. Illinois and New York Plan officials said that it was therefore, meaningless, time consuming and sometimes costly to establish property value at the time insurance is written. An Illinois FAIR Plan official said that determining the value of property at the time of insuring it would be too costly, requiring an appraisal. The cost to have the property appraised would in some cases exceed the insurance premium collected from the property owner. As a result, the FAIR Plan does not appraise properties or attempt to determine their value.

According to FAIR Plan officials, the Massachusetts, Maryland, Pennsylvania, and Rhode Island Plans had been providing coverage in the past based on amounts requested by the owners rather than limiting coverage to market values. These plans subsequently changed their underwriting criteria to limit coverage to market values because they believe that older practices were overinsuring properties and, thereby, providing an incentive for arson.

Massachusetts law also requires that insurance claims be paid based on properties' actual cash values. The Massachusetts FAIR Plan, however, does not let this dictate the amount of insurance it will write on property. The Massachusetts Plan, which has had a serious arson problem, is now assuring that properties are only insured in amounts up to their fair or market values--generally the amount for which the property could be sold. Massachusetts FAIR Plan officials said that there are a number of ways to determine the fair market value of a property without paying for a costly professional appraisal. They stated that no precise market value determination can be made but that an approximate market value can be determined. One indicator they use is the selling prices of properties recently sold in the neighborhood. This can be obtained easily from published real estate transfer directories. Other indicators of property values used by the Massachusetts Plan are purchase price and tax assessed values. FAIR Plan officials said, however, that they had not operated under this new policy long enough to measure the impact it will have on arson.

The Maryland and Pennsylvania FAIR Plans now attempt, to some degree, to limit the amount of insurance they will sell on a given property. A Maryland FAIR Plan official told us that, as a result of an analysis of FAIR Plan losses, the

## APPENDIX I

## APPENDIX I

Plan's underwriting criteria was revised for investor-owned, nonowner-occupied habitational properties. He also, said that about 83 percent of the FAIR Plan's losses were from these kinds of properties. The FAIR Plan's analysis showed that in many instances the amounts of insurance coverage being requested bore no relationship to the actual cash value of the properties. The analysis also pointed out that the practice of giving an owner more insurance than the actual cash value of his property as the FAIR Plan had been doing had necessitated settlement of claims by the FAIR Plan where the cost of repairs exceeded the actual cash value of the property.

The primary change that the Maryland Plan made in 1976 was to try to bring the amount of insurance in line with property values. The FAIR Plan official said that the Plan started challenging applicants that wanted more insurance than the Plan thought it should provide based on a number of factors including, the original cost of the building to the insured (applicant), the economic value, age and condition of the building, market value, depreciation and deterioration and repairs and renovations made. Although property owners and public insurance adjusters, according to the FAIR Plan official, were very upset with the new criteria, the number of fires in properties covered by the new policy decreased substantially. During the first 6-month period (May 1976 to October 1976) operating under the new criteria the number of losses were reduced substantially. The FAIR Plan official attributed the decrease to the new underwriting criteria.

Until their policy was changed in 1974, the Pennsylvania FAIR Plan also provided insurance in amounts requested by the owners, according to Pennsylvania FAIR Plan officials. These officials said current Plan practice is to provide insurance at the market value of the property but the Plan will insure up to a value of 150 percent of purchase price, if the total insurance coverage is less than \$50,000. Also, if it is an active business, the FAIR Plan will provide a greater amount of insurance than the purchase price of the property. The Pennsylvania FAIR Plan does not make or have property appraisals made to try to establish property values because it is too expensive, according to FAIR Plan officials.

Fees collected by insurance agents and brokers may also affect the amount of insurance requested. Massachusetts and New York FAIR Plan officials told us that property owners often go through agents and brokers to get insurance, instead of applying directly to the FAIR Plan. FAIR Plan officials said that fees collected by agents and brokers, who are responsible for a significant portion of the insurance these

## APPENDIX I

## APPENDIX I

Plans write, are based on the amount of insurance that FAIR Plans and insurance companies write on properties. For example, agents and brokers providing insurance through the New York FAIR Plan get a 10-percent commission on the amount of insurance obtained. This practice, combined with the fact that some FAIR Plans are providing insurance in virtually any amount requested, could, in our opinion, result in overinsuring properties, thus, creating arson incentives.

#### Actual cash value

Illinois FAIR Plan officials told us that actual cash value has been defined as replacement cost minus depreciation. According to these officials, payment of insurance claims at this value sometimes requires them to pay property owners more than the market value of their property (more than that for which the owners could sell their properties). Properties in older urban areas suffering economic decline are more likely to have market values that are significantly below the actual cash values (replacement cost less depreciation) and are located in areas in which FAIR Plans generally provide coverage. Both FAIR Plan and insurance company officials told us that this difference between market value and actual cash value is a real incentive for "torching" run down property.

Other States that require use of the actual cash value basis to pay property insurance claims have recognized that use of this value alone could result in paying property owners more than the market value of the property. As a result, courts in these States require that actual cash value be determined using the "broad evidence rule". This rule allows insurers to consider, in addition to replacement cost minus depreciation (actual cash value), other values in determining a fair amount to pay property owners whose properties have been destroyed by fire. Such other values include the rental value, the market value, and the economic value of property. Proponents of the broad evidence rule believe that using all these values will help assure that property owners will not be overcompensated for fire losses.

#### "Valued policy" States

Twenty States have passed laws, often called the "valued policy law", to discourage insurance companies and FAIR Plans from selling--and protect consumers against buying--more insurance than is needed to fully compensate property owners for total property losses. FAIR Plans are operated in seven of these States. Generally, this law requires insurers, in case of a total property loss, to pay property owners the

face amount of the policies regardless of property market value. This may reduce the incentive for insurers to over-insure property especially property in economically declining areas. None of the FAIR Plans we visited were in States that had a valued policy law, so we do not know what impact it has on arson in FAIR Plan-insured properties. Even though this law may help to reduce overinsuring and remove arson incentives, it may create an incentive for arson in areas where property values are declining. Property value would be established at the time the policy is written but this value could rapidly decline. Property owners would have incentives to burn their properties knowing that they would collect the face amount of their insurance policies, not the actual cash value of the property at the time of the loss.

NEED FOR GREATER AUTHORITY  
TO DENY OR LIMIT COVERAGE

FAIR Plan officials that we contacted believe that Plans are operating in a manner that encourages arson-for-profit. These officials, as well as insurance industry officials with whom we met, contend that, FAIR Plans provide insurance to almost everyone due to FIA's attitude that no one should be denied insurance coverage. All FAIR Plans we visited expressed the need for more flexibility in their underwriting perogatives which would provide greater authority to deny insurance or otherwise limit coverage and thereby provide a means of reducing arson-for-profit.

Some of the specific problem areas FAIR Plan and/or insurance industry officials mentioned were

- inability to consider the applicant's character,
- requirement to provide immediate coverage before properties can be inspected, and
- need to revise FIA's required 30-day notice before policies can be cancelled.

FIA does encourage FAIR Plans to control arson through the underwriting process, and FIA's regulations do not require FAIR Plans to provide insurance to everyone, according to an FIA official. The official could not provide us with information as to what specific actions have been taken by FIA to help FAIR Plans reduce arson.

The Urban Property Protection and Reinsurance Act of 1968, as amended, which authorized FAIR Plans states that one of the purposes of the act is to "encourage and assist the various State insurance authorities and the property

insurance industry to develop and carry out statewide programs which will make necessary property insurance coverage against the fire, crime, and other perils more readily available for residential, business, and other properties meeting reasonable underwriting standards (underscoring added). The act also states that the Congress finds that "responsible owners of well-maintained (underscoring added) residential, business, and other properties in many" urban areas "are unable to obtain adequate property insurance against fire,\* \* \*". The act further states that FAIR Plans may vary from State to State because of local conditions but all Plans shall contain provisions that no risk shall be denied insurance coverage unless, among other things, there has been a determination that "the risk does not meet reasonable underwriting standards at the applicable premium rate". Apparently, the Congress did not intend that Plans insure every property in urban core areas.

In addition, FIA regulations do not apparently require that all properties be insured. These regulations state that after a FAIR Plan inspects property it must promptly notify the applicants that it agrees to write coverage or that it declines to write coverage because the property does not meet reasonable underwriting standards, stating the specific information that constitutes the basis for this determination. The regulations state further that reasonable underwriting standards for declining properties must be relevant to the perils against which insurance is sought including

- physical condition of the property;
- the property's present use, such as extended vacancy or improper storage of flammable materials; or
- other specific characteristics of ownership, conditions, occupancy, or maintenance that violate the law or public policy and that result in a substantially increased exposure to loss.

Illinois FAIR Plan officials told us that FIA's interpretation of "reasonable underwriting standards" was such that FAIR Plans had to insure just about any property with little concern about risk. They said that there were generally only three reasons under which they could refuse insurance:

- if previous unrepaired fire damage exists,
- if the property owner has been convicted of arson, or
- if the property is vacant.

## APPENDIX I

## APPENDIX I

These officials said that they are refusing insurance to only about one applicant out of every 100 that applies for property insurance.

Pennsylvania and Washington FAIR Plan officials also told us that FIA requires them to insure undesirable risks. These officials said that the best way to prevent arson losses is to be careful in underwriting and not insure all applicants. The Pennsylvania FAIR Plan originally accepted all applicants but recently has attempted to reduce its losses by denying coverage to poor risks. The State insurance department has approved these efforts. Pennsylvania FAIR Plan officials believe that their Plan has been given more flexibility in its underwriting than other Plans have. They said, however, that FIA has put pressure on the States to grant all applicants insurance. The Pennsylvania officials also said that if FIA encouraged States to give FAIR Plans greater perogatives to deny or limit coverage, State insurance authorities would grant FAIR Plans greater flexibility.

A Washington FAIR Plan official said that FIA has criticized him for being too selective as to properties that he insures. He said that FIA could reduce the incentive for arson if it would permit FAIR Plans to be more selective. He said also that FIA is pushing FAIR Plans to insure everything, including high-risk properties, and at a reasonable rate.

Officials of the Property Insurance Plans Service Office said that FIA was discouraging FAIR Plans from being selective in underwriting. Insurance industry, FAIR Plan and Service Office officials mentioned an October 1977, letter from FIA to the Massachusetts FAIR Plan manager as indicative of FIA's attitude towards fighting the arson-for-profit problem in FAIR plans. The letter stated that "\* \* \* 'arson for profit' can be successfully attacked, as you have so ably demonstrated, through post-claim review and vigorous prosecution of the culprits as opposed to attempts to combat it through screening and selection practices\* \* \*". FAIR Plan, Service Office, and industry officials disagree with this and said that this attitude indicated a disregard for lives that are lost and millions of dollars of property damages that result from arson.

One insurance company official who serves on a Plan's board of governors told us that he thought that the standards for underwriting in FAIR Plans were very low. According to this official, these low standards result in losses which are passed on to insurance companies and, ultimately, to property owners buying insurance from these companies. He also said that FAIR Plans have increased the incidence of arson-for-profit because if these Plans had not been established

many of the properties being burned could not get insurance and, therefore, no incentive to burn them. According to this official, one thing that could be done to improve FAIR Plans' arson records, is to allow the Plans to be more selective as to the properties they insure.

#### Character of the insured

FAIR Plans do not have the same prerogatives that insurance companies have, according to FAIR Plan and insurance industry officials. For example, an insurance company can decline to insure an individual after he has had a suspicious fire. Pennsylvania Plan officials said that the insurance company will pay the claim without contesting it and then refer the individual to the FAIR Plan for insurance. The FAIR Plan cannot refuse to insure this individual, according to a Pennsylvania FAIR Plan official.

FAIR Plan and insurance company officials believe that factors other than location must be considered by FAIR Plans before writing insurance, as is done in the insurance industry.

According to one insurance company official, the original purpose of FAIR Plans was to provide insurance in those instances where the insurance industry would not "solely because of where the property is located". He said that FAIR Plans, therefore, should be granted all of the prerogatives of the industry except location.

Illinois FAIR Plan officials said that FAIR Plans need to evaluate not only the property but the property owners as well. Although these officials said that the owner's attitude is important, they do not obtain information concerning this matter. Some of these other factors, often referred to as "moral hazards", concern the character and attitude of insureds and would include such information as the person's or company's financial condition, tax arrearages, housing code violations, use being made of the property and the insured's history of fires. Use of some of this information would require access to city records. As an example, Plan officials cited city inspection records on an owner's violation of building codes, the length of time the violations have remained uncorrected, and renter complaints.

Officials of two FAIR Plans noted that such information may not be readily available because the city government may not cooperate, the cost to get the information may be too expensive, or it may be illegal for the FAIR Plan to get the information.

However, certain FAIR Plans are now receiving data from the city governments and using it in their underwriting activities. For example, the New York FAIR Plan has access to local tax records and building violations and have included in their underwriting criteria, provisions that allow them to deny coverage to individuals for unpaid taxes and building violations.

Certain FAIR Plan and Service Office officials stated that insurance could not be denied to an individual with a history of fires even if the fires were found to be suspicious in nature. According to FAIR Plan officials, one FAIR Plan denied coverage to a property owner who was under indictment for arson. FAIR Plan officials stated that the case was appealed to the State insurance authority, and the FAIR Plan was required to provide the insurance. FAIR Plan officials indicated that only a convicted arsonist can be denied insurance by a FAIR Plan. New York FAIR Plan officials also mentioned that insurance could not be denied to an individual with a number of fires nor could he be otherwise penalized. These FAIR Plan officials feel that this type of person, if not involved in suspicious fires, is at least negligent and should be penalized, perhaps through the use of a deductibility clause in the policy--increase the amount property owners must pay toward any losses.

Pennsylvania FAIR Plan officials stated that if a known organized crime figure had a suspicious fire and the FAIR Plan was resisting the claim on that property, the FAIR Plan could not deny insurance coverage on other property to the same individual. These officials indicated that they were now attempting to justify the need for such authority with their State insurance authority.

Other information on "moral hazard" may be available from sources other than local governments, including the insured. These would include the history of fire claims and the financial condition of the insured or his business.

We believe that FAIR Plans could receive city government and other information which would assist in evaluating owners and their attitudes.

FAIR Plans want to change the insurance cancellation requirement

Seven FAIR Plans we visited complained about the FIA required 30-day notice before a policy can be cancelled. Illinois, New York, Massachusetts and Pennsylvania FAIR Plan officials, as well as insurance company officials with whom we met, said that this requirement was unreasonable in cases

## APPENDIX I

## APPENDIX I

where it is known that an insured building is going to be burned. A Massachusetts FAIR Plan official said the requirement was costly. For example, he said that the FAIR Plan once spent about \$10,000 to provide 24-hour security for a building for 30 days after giving notice of cancellation. None of the FAIR Plans had statistics to show dollar losses or the number of properties that had burned during the 30-day period following issuance of a cancellation notice.

FIA's 30-day cancellation requirement for FAIR Plans is generally a longer period than most States require for insurance companies. For example, the State of Rhode Island has a 5-day cancellation requirement applicable to the insurance industry while the Rhode Island FAIR Plan, until last year, was required to give a 30-day notice. After the Rhode Island State insurance department appealed to FIA, FIA granted the FAIR Plan authority to cancel an insurance policy after giving a 5-day notice, provided the State insurance department approved each case. The Massachusetts FAIR Plan has since asked FIA to grant it the same authority.

Illinois and New York FAIR Plan officials told us that a 5-day requirement, in their opinion, would be very helpful to them. Illinois and New York have asked FIA to waive its 30-day cancellation requirement under certain circumstances. The New York Plan's request was not granted because it did not, according to FIA, show that the existing requirement was inequitable or caused undue hardship to the Plan. Illinois' request was granted where specific conditions existed but, according to FIA, the Illinois legislature in 1975, passed into law a 30-day cancellation requirement which included the FAIR Plan. An Illinois insurance department official said that the 1975 law did not apply to the FAIR Plan. FAIR Plan officials, however, said that their counsel had determined that the Plan did have to comply with this law.

The September 1977, National Fire Prevention and Control Administration-funded study on fires in urban residential neighborhoods states that insurance coverage on abandoned buildings should be terminated more quickly. As soon as abandonment occurs in these structures, the time frame before a major fire occurs can be measured in a matter of days, according to the study.

#### Providing insurance before inspecting property

The New York and Massachusetts FAIR Plans are required to provide insurance on properties before they have an opportunity to inspect the properties. This practice, which is

required by the New York Plan's board of directors, results in a large number of policies being cancelled after the FAIR Plan has had an opportunity to inspect the properties. If the FAIR Plan decides not to accept the property a 30-day notice of cancellation is issued, as required by FIA. This gives property owners at least 30 days of full insurance coverage regardless of the property's condition.

Massachusetts FAIR Plan officials said that about 25 percent of the insurance written monthly (about 1,000 policies) is immediate-type coverage--coverage before inspecting the property. According to these officials, this practice is required by State law.

#### FAIR Plan actions

Within the last few years FAIR Plans began to realize the seriousness of the arson-for-profit problem. Suspected arson fires are being analyzed by some FAIR Plans to try to determine why these fires occur so that corrective actions can be taken to prevent them. The Massachusetts and Rhode Island FAIR Plans appear to have done more than any of the other Plans we visited to try to control the arson problem. Most of the changes they are making or want to make do not require FIA's approval. They feel that underwriting prerogatives are available for FAIR Plans to use. Recent actions the Massachusetts and Rhode Island Plans have taken or have proposed include

- use of Plan-imposed deductibles;
- right to decline insurance on certain idle and/or unoccupied properties;
- right to decline insurance on buildings in which any combination of the following exists: (1) failure to pay real estate taxes for three or more years; (2) failure to furnish heat, water, or public lighting for 30 consecutive days or more; (3) failure to correct conditions dangerous to life, health or safety; or (4) failure to supervise building(s) in accordance with public law; and
- use of a 5-day cancellation notice instead of the FIA 30-day requirement.

Massachusetts and Rhode Island FAIR Plan officials told us that they had not operated under these new practices long enough to measure the impact they will have on arson. They believe that these practices will eliminate some of the arson-for-profit in FAIR Plans.

## APPENDIX I

## APPENDIX I

We discussed with an FIA official the FAIR Plans' concerns regarding the need for additional underwriting prerogatives and flexibility to deny insurance under certain circumstances. The FIA official said that FAIR Plans were not required to insure everyone and, specifically mentioned that there was no FIA requirement that property owners under indictment for arson or those with a history of suspicious fires be insured. He also said that FIA had sent some arson-related information to FAIR Plans and/or State insurance departments although officials from the FAIR Plans we visited said that they had not received any guidance from FIA concerning the arson problem. Except for correspondence concerning four FAIR Plans' requests to use a 5-day cancellation notice instead of FIA's 30-day notice, FIA could not provide us with any arson-related information that had been sent to FAIR Plans. The FIA official said that FIA's role concerning FAIR Plans is not that of telling the Plans how to operate. FIA's concern is that insurance under FAIR Plans is not denied unfairly to those needing it, according to this official, and that the individual States must directly supervise the FAIR Plans.

CONCLUSIONS AND RECOMMENDATIONSCONCLUSIONS

FAIR Plan and insurance industry officials believe that arson-for-profit is a serious problem in the FAIR Plans as well as in the private insurance market. Due to the lack of specific data, the significance of the problem cannot be demonstrated.

Providing insurance in an amount exceeding property value is considered an important incentive for arson-for-profit. Of the nine FAIR Plans we contacted, three are providing insurance to property owners without attempting to determine the property values, thus providing owners the opportunity to overinsure. Officials from the three Plans believe it meaningless and costly to determine value at the time insurance is provided because claims are paid on the basis of property value at the time of loss. Other FAIR Plans, however, are now establishing property value when insurance is provided and attempting to limit coverage to that value. Using a number of values, such as purchase price, selling price of similar properties in the immediate area, and tax assessed values property value can be reasonably estimated. Guarding against overinsuring removes an important incentive for arson-for-profit.

In case of fire, claims are paid at actual cash value or replacement cost less depreciation. Insurance proceeds based on this value can provide property owners more than the market value of their properties. This is an incentive for arson-for-profit which does not exist in States that have adopted the "broad evidence rule," allowing consideration of other property values, such as market, rental, and economic values.

Many FAIR Plan officials believe Plans are encouraging arson-for-profit by providing insurance to almost everyone who requests it. Certain FAIR Plan officials believe there is little they can do until FAIR Plans receive additional underwriting authority from FIA to deny, limit or modify insurance coverage. Other FAIR Plans we visited are making or have recently made changes in their underwriting criteria. We believe that some of these changes would be useful to other FAIR Plans. Because there is little communication among the FAIR Plans, however, the Plans are not aware of all that others are doing to control arson. FAIR Plan officials agreed that more can and should be done to provide greater underwriting flexibility to FAIR Plans.

FAIR Plan officials believe that the character and attitude of the insured should be considered in the Plan's determination to grant coverage. Such information would include the owner's history of fires, his personal or business's financial condition, tax arrearages, and other moral hazard factors.

Seven of the FAIR Plans we visited disagreed with FIA's requirement that a 30-day notice must be given before a policy can be cancelled. FAIR Plan officials believe the requirement is unreasonable when the Plan knows an insured building is going to be burned. The 30-day requirement is generally longer than most States require for insurance companies. Some FAIR Plan officials have suggested a 5-day requirement which has been approved by FIA for the Rhode Island FAIR Plan, subject to case-by-case approval by the State insurance department.

#### RECOMMENDATIONS

We recommend that the Secretary of Housing and Urban Development direct the Administrator, Federal Insurance Administration to revise FIA regulations to:

- Require that all FAIR Plans establish property value at the time of underwriting and eliminate the practice of giving property owners any amount of insurance desired.
- Require all FAIR Plans to obtain and consider information concerning the character of the property owner in its determination of insurability, as the insurance industry does.
- Permit FAIR Plans to use a 5-day cancellation notice with State insurance department approval in each instance.

We also recommend that the Administrator discuss the desirability of adopting the broad evidence rule basis with State insurance authorities in those FAIR Plan-States that require insurance payments at actual cash value without consideration of market value.

LISTING OF ORGANIZATIONS  
GAO CONTACTED

Department of Housing and Urban Development:

Federal Insurance Administration  
Washington, D.C.

Department of Commerce:

National Fire Prevention and Control Administration  
Washington, D.C.

Fair Access to Insurance Requirements (FAIR) Plans:

District of Columbia Property Insurance Facility  
Washington, D.C.

Illinois FAIR Plan Association  
Chicago, Illinois

Joint Insurance Association  
Baltimore, Maryland

Massachusetts Property Insurance Underwriting  
Association 1/ and

Rhode Island Joint Reinsurance Association 1/  
Boston, Massachusetts

New York Property Insurance Underwriting  
Association  
New York, New York

Insurance Placement Facility of Pennsylvania 2/ and

Insurance Placement Facility of Delaware 2/  
Philadelphia, Pennsylvania

Washington FAIR Plan  
Seattle, Washington

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1/ These two FAIR Plans' operations are being managed by a joint management team in Boston, Massachusetts.

2/ These two FAIR Plans' operations are being managed by a joint management team in Philadelphia, Pennsylvania.

## APPENDIX III

## APPENDIX III

Property Insurance Plans Service Office  
Philadelphia, Pennsylvania

## Insurance trade associations:

American Insurance Association  
New York, New York

Property Loss Research Bureau  
Chicago, Illinois

## Insurance companies:

Unigard Insurance Company  
Seattle, Washington

SAFECO Insurance Group  
Seattle, Washington

Hartford Fire Insurance Company  
Chicago, Illinois

Underwriters Adjusting Company  
New York, New York

Pennsylvania National Mutual Casualty  
Insurance Company  
Harrisburg, Pennsylvania

State Farm Insurance Companies  
Austin, Texas

## Other organizations:

The New York Board of Fire Underwriters  
New York, New York

Texas Insurance Advisory Association  
Austin, Texas

Insurance Crime Prevention Institute  
Evergreen Park, Illinois

Insurance Information Institute  
Seattle, Washington and  
Austin, Texas

Metropolitan Chicago Loss Bureau  
Chicago, Illinois

## APPENDIX III

## APPENDIX III

State Board of Insurance  
Austin, Texas

Arson Investigation Unit  
Seattle Fire Department  
Seattle, Washington

Fire Marshal  
Houston Fire Department  
Houston, Texas

APPENDIX IV

APPENDIX IV

FAIR PLANS

Number of Policies Issued and  
Underwriting Profit or Loss  
From Inception to September 30, 1977

	<u>Number of policies issued</u>	<u>Underwriting profit or loss (-) (note a)</u>
California FAIR Plan Association	655,117	\$ 652,000
Connecticut Insurance Placement Facility	87,323	-15,174,000
Insurance Placement Facility of Delaware	39,779	-911,000
District of Columbia Property Insurance Facility	136,932	-621,000
Georgia Underwriting Association	25,730	431,000
Illinois FAIR Plan Association	405,929	-41,638,000
Indiana Basic Property Insurance Underwriting Association	21,145	256,000
Iowa FAIR Plan	11,963	-586,000
Kansas All-Industry Placement Facility	36,282	-1,135,000
Kentucky Property Insurance Placement Facility	68,594	-4,229,000
Joint Insurance Association (Maryland)	349,803	-4,642,000

a/ Profit or loss from writing insurance; excludes interest earned from investments.

## APPENDIX IV

## APPENDIX IV

	<u>Number of policies issued</u>	<u>Underwriting profit or loss (-)</u>
Massachusetts Property Insurance Underwriting Association	329,008	-\$52,419,000
Michigan Basic Property Insurance Association	820,269	-60,498,000
Minnesota Property Insurance Placement Facility	19,352	-2,479,000
Missouri Property Insurance Placement Facility	258,853	-12,315,000
New Jersey Insurance Underwriting Association	366,545	-34,684,000
New Mexico Property Insurance Program	2,282	236,000
New York Property Insurance Underwriting Association	1,187,962	-68,537,000
North Carolina Insurance Placement Facility	64,159	-4,425,000
Ohio FAIR Plan Underwriting Association	163,012	-12,615,000
Oregon FAIR Plan Association	3,990	-565,000
Insurance Placement Facility of Pennsylvania	448,926	-13,058,000
Puerto Rico Fire & Allied Lines Underwriting Association	1,316	298,000
Rhode Island Joint Reinsurance Association	57,927	-7,270,000
Virginia Property Insurance Association	121,607	-2,831,000

## APPENDIX IV

	<u>Number of policies issued</u>	<u>Underwriting profit or loss (-)</u>
Washington FAIR Plan	17,889	-\$ 446,000
Wisconsin Insurance Plan	71,467	-2,555,000

## APPENDIX IV

(06804)



Washington Office

Alliance of American Insurers  
1776 F Street, N.W.  
Washington, D.C. 20006  
202 331 0343

October 6, 1978

The Honorable Henry M. Jackson, Chairman  
Senate Permanent Subcommittee on Investigations  
Committee on Governmental Affairs  
101 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Jackson:

Enclosed is our statement which we respectfully request be made a part of the hearing record on Arson-for-Profit, conducted by the Senate Permanent Subcommittee on Investigations, August 23, 24 and September 13, 14, 1978.

The Alliance of American Insurers is a major national trade association of more than a hundred property and casualty insurance companies. Our member companies provide a full range of property and casualty insurance coverages in the 50 states and the District of Columbia.

This statement has been notarized attesting to our belief that the contents are factual.

The Alliance of American Insurers is dedicated to helping stamp out arson.

Sincerely,

A handwritten signature in cursive script that reads "James E. Jones, Jr." followed by a checkmark.  
James E. Jones, Jr.  
Governmental Affairs Representative

JEJ/d

Enclosures

cc: Committee Members excluding exhibits

Statement to the  
Senate Permanent Subcommittee  
on Investigations  
of the  
Committee on Governmental Affairs  
on  
Arson-For-Profit

Submitted by the  
Alliance of American Insurers  
James E. Jones, Jr.

The Alliance of American Insurers is a major national trade association of more than a hundred property and casualty insurance companies. Our member companies provide a full range of property and casualty insurance coverages in all 50 states and the District of Columbia.

This statement is provided to the Subcommittee to set forth the Alliance position regarding the crime of arson and arson-for-profit. We are seriously concerned about the vicious, deadly, and rapidly spreading cancer of arson and arson-for-profit in the United States. Arson is a killer. It is the root cause of widespread misery, death and destruction of momentous proportions, and, as your hearings have illustrated, no state or city is immune to its corrupting influence. Arson has become a major contributor to the destruction and decay of major sections of our urban neighborhoods. However, while blighted central city areas have become the most serious troublespots, arson is also rapidly moving to the suburbs and to some rural areas of our country. Despite the fact that arson has become a menace to all of us, it goes virtually unchecked, undetected and unnoticed.

The Alliance has vigorously supported the hearings launched, by the U.S. Senate Permanent Subcommittee on Investigations, on their major inquiry into arson-for-profit as well as, the December, 1978 hearings held by the Senate Subcommittee on Intergovernmental Relations on arson-for-profit and its impact on states and localities.

Our association and the Property Loss Research Bureau, an affiliate of the Alliance, have been actively involved in studying the scope of arson, its causes and effects and the development of strategies and resources to help decrease the deadly consequences of arson and arson-for-profit, particularly during the past decade.

We applaud the report by the Aerospace Corporation, a research institute, entitled "Arson and Arson Investigation, Survey and Assessment." The Aerospace Corporation's research was commissioned by the National Institute of Law Enforcement and Criminal Justice (LEAA) and it found that the probability of arson conviction depended on three essential factors: One, proper detection that the fire was deliberately set; two, necessary investigation to link available evidence to the perpetrator(s);

and three, successful prosecution. The report emphasized that firesetters were principally encouraged today by the absence of any expected punishment.

We are convinced that the number and severity of incendiary fires would be reduced significantly by increasing the certainty of swift justice and stiff penalties as well as conviction of known arsonists. Increase the probability of apprehension, conviction, and punishment and the incidence of arson will decrease.

The Alliance of American Insurers, without reservation, has supported the legislative efforts of Senator John Glenn of Ohio to have the crime of arson re-classified from a Part II to a Part I offense in the Uniform Crime Reports (UCR) published by the Federal Bureau of Investigation.

This, we believe is the most effective way to combat arson. Currently, crime reported by the FBI is divided into two groups, Part I and Part II offenses. Arson is now a Part II offense, along with such miscellaneous offenses as counterfeiting, vandalism, gambling, drunkenness, and disorderly conduct. Classifying arson as a Part I crime would place it in the same category as

criminal homicide, forceable rape, robbery, aggravated assault, burglary, larceny, theft, and automobile theft. It is important to note that law enforcement officials contend they consider Part I and Part II crimes with equal seriousness; the difference being that statistics compiled for Part I offenses include data on volume, trend, rate, clearances, persons arrested, persons charged, and the nature of the offense by territory. These types of statistics are extremely valuable in coping with the arson problem especially from an enforcement standpoint. Only arrest information is now reported on Part II offenses. We are confident that if arson were classified as a Part I offense that: One, the increased factual reporting about arson would exert an important influence on the public, legislators, prosecutors, judges and the insuring industry to develop more attention and resources to combat the seriousness and high cost of arson; two, police and fire authorities would become more aware of arson and more involved in coping with its unchecked and cancerous growth. This would promote cooperation and answer questions of jurisdictional responsibility, encouraging better relations among fire departments, police departments, private industry and

others; three, re-classification of arson also could encourage the Federal Government itself, and particularly the Law Enforcement Assistant Administration to develop and support anti-arson programs to a greater degree.

In summary, re-classification of arson from a Part II to a Part I offense would stimulate those concerned with the problem to reset priorities on a real world basis to reflect the true impact of arson upon society and our economy at large.

The Alliance has also sanctioned the actions of Senator Charles H. Percy in requesting the Office of the Comptroller General of the United States (GAO) to investigate one; federal research and development of arson detection techniques and arson investigator training, (PSAD 78-88, dated April 24, 1978), two; federal law enforcement agencies activities to detect, investigate and prosecute arson offenders, (GGD 78-47, dated April 5, 1978) as well as three; the extent to which the Federal Riot Re-insurance Program and the Fair Access to Insurance Requirements Plans (FAIR Plans) established by the states may provide an incentive for arson related insurance fraud (CED 78-121, dated May 31, 1978).

Evidence is abundant in our large urban cities which indicates that arson-for-profit is growing like a cancer. We know that Senator Percy has grave concerns that FAIR Plans (established under the Urban Property Protection and Re-insurance Act of 1968) may be providing an incentive for arson. Specifically, the concern is that under FAIR Plans, fire insurance may often be made readily available to all comers including potential arsonists and that insurers are hampered in underwriting fire risks due to Federal guidelines for the administration of such programs. This provides a means for unscrupulous and financially pressed landlords to apply the torch to their own buildings and profit from the destruction, particularly in our urban cities.

At present, FAIR Plans operate in 28 states, with some Plans statewide and others providing insurance only within the urban area of the state. Let's examine to what extent FAIR Plans could be influencing the increase of arson-for-profit within these urban centers.

First, one must recognize that managers of these state FAIR Plans are presently required to adhere to underwriting

criteria dictated by the Federal Insurance Administration (FIA), in order to participate in the Riot Re-insurance Program. In the past, FIA has made it difficult for insurers to perform a complete and essential underwriting function prior to placing coverage. We believe that the most rational underwriting approach is to identify the arson prone risk and/or unsafe building prior to issuing fire insurance coverage. This, we are convinced would help eliminate or screen out many of the arson-for-profit "schemers."

Conversely, Mr. J. R. Hunter, Deputy Administrator of FIA has suggested that insurers offer coverage to all who request it, and attempt to deny a claim only after the arson had occurred, using post claim underwriting. He recently stated that "the very real and ubiquitous problem of "arson-for-profit" can be successfully attacked, through post claim review and rigorous prosecution of the culprits as opposed to attempts to combat it through (underwriting) screening and selection practices." We, in the insurance industry, continue to adhere to the prevailing wisdom of the old adage which reminds us that "an ounce of prevention is worth a pound of cure", parti-

ularly when it comes to combating arson.

Another problem which we want to bring to the attention of the Subcommittee concerns the restrictions placed on insurers in attempting to obtain necessary information on FAIR Plan insurance applications, (as a consequence of existing laws, i.e. Unfair Claims Practices Act, Valued Policy Laws, Privacy Act of 1974, Freedom of Information Act and the use of Blind Trusts). In a recent report "Arson-for-Profit: More Could Be Done to Reduce It" the General Accounting Office discusses the extent to which the Federal Riot Re-insurance Program, which is administered through FIA/HUD, and the FAIR Plans actually provides incentives for arson related insurance fraud. In that report, GAO concluded that arson is and has now reached epidemic proportions in some urban areas. It is increasing at a rate that could exceed 25% annually, while the total number of arson losses is now equal to or greater than the total number of burglary and auto theft losses. Two principal recommendations were made by GAO to help reduce the incidence of such arson. In particular, the GAO Report found:

- o Certain Fair Access to Insurance Requirement Plans

(FAIR) are over-insuring some properties, creating incentives for arson-for-profit. In such cases, insurance is provided at inflated market values or at values in excess of property value based on replacement costs.

- o FAIR Plan managers believe they need greater underwriting authority from the Federal Insurance Administration to deny or limit insurance coverage to high risk property owners. (The Federal Insurance Administration (FIA) oversees these plans (i.e. underwriting criteria/procedures) through its review of eligibility for federal riot re-insurance.
- o Although there are certainly valid reasons for refusing coverage altogether, almost every FAIR Plan is providing such insurance when requested.

According to GAO, "FAIR Plan officials believe that the character and attitude of the (potential) insured be considered in the Plan's determination to grant coverage. Such information could include the owners' history of fires, their personal or business financial condition, tax arrearages, and other (possible) moral hazard factors.



**CONTINUED**

**5 OF 6**

GAO concluded that the Federal Insurance Administration should play a leading role in helping the FAIR Plans to reduce arson and protect insured property, and that FIA's administration of the plans needed to be revised to achieve that end.

HUD Study of FAIR Plans

The Housing and Urban Development Department (HUD) was directed by the Congress, in September of 1977, to undertake a study on state FAIR Plans and the effect their administration has had on the availability and affordability of insurance.

In its report, Insurance Crisis in Urban America, HUD incorrectly asserts that the ready availability of insurance under FAIR Plans is not a cause of increasing arson for profit cases. We wish to cite testimony by the Bronx District Attorney who stated that most of the torching in the Bronx was instigated by landlords in order to collect fire insurance. In 1975 alone, the New York FAIR Plans paid out \$10 million to South Bronx landlords. In fact, one landlord there who was indicted for arson, owned six buildings and had filed \$125,000.00 in insurance claims.

The HUD report in addition to its position on arson and the FAIR Plans supported the Holtzman Amendment, Section 307(b) of S.3084, the Housing and Community Development Amendments of 1978.

The Alliance in conjunction with the property and casualty insurance industry vigorously supports the very valid concerns that Senator Glenn expressed during these hearings regarding the Holtzman Amendment as contained in S.3084 (legislation which amends and extends certain Federal laws relating to housing, community and neighborhood development). Section 307(b) of S.3084 requires that properties insured in the FAIR Plans be written at the same rate as those properties in the voluntary market. However, we believe that high risk properties should be rated by insurers in accordance with their exposure to loss and that underwriters must have the ability to rate and underwrite properties as the statistics and their experience dictate.

#### Insurance Affordability

The affordability of property insurance has become a problem for some homeowners due to causal factors outside the insurance system. Fire and homeowner coverage have become unaffordable

for a growing number of inner-city and rural residents, and these high premiums are a direct reflection of many factors completely beyond the control of insurance underwriters. High property insurance premiums are, in fact, a direct function of spiralling costs for construction (new buildings and renovations), rising property values that outpace inflation, and the growing incidence of arson and arson-for-profit.

We would like to make another important point concerning insurance affordability. It is contended by some that insurance underwriters should individually inspect each residential property to make certain these properties meet the companies' underwriting criteria, and to assure that good risk (sound, well-maintained) homes can obtain necessary coverage. At the present time many insurance carriers do conduct such inspections as do some of the state FAIR Plans. However, to properly inspect a residence and reinspect it at appropriate intervals is a very expensive undertaking and such inspection costs must be added to existing underwriting charges which inevitably increases insurance premiums.

We recognize that insurance has become a necessity in our

society. Further we understand that in view of the tremendous demands placed on our industry by society through individual expectations and by our overall economic growth, the function of insurance has had to change and adapt. Increasingly, this means that our business is being looked upon to perform social functions that are no longer consistent with sound business practices. For example, some observers believe we should provide insurance for individuals and properties which it is not logical to insure.

Reaction to Charges Levied at Insurers

I. ALLEGATION: Insurers have a disincentive to resist arson since the cost of paying for arson losses is passed on to the insuring public in the form of higher premiums.

ANSWER: This is a common misconception. More and more insurance companies are systematically investigating fraud/arson cases to thwart arson-for-profit schemes now than at any time in the past. We refer you to the indictments handed down in Boston, Massachusetts and Tampa, Florida.

Much of the evidence that was taken to the Grand Juries in these jurisdictions came from files and cases investigated by insurance companies. Possibly the accusation that insurance companies appear to have little incentive to do anything about arson stems from evidence that the majority of deliberately set fires are prompted by reasons other than financial gain. These would include vandals, transients, revenge motivated fires, fires set to conceal other crimes, fires set by the mentally disturbed etc. We, as insurers, have no defense under the provisions of the standard fire insurance policies for fires which are not set for the purpose of defrauding insurers. These are solely law enforcement problems and as such, insurers have an obligation to settle with their policyholders promptly and equitably. Statistics point to the fact that 80% of all deliberately set fires are fires which have been set for reasons other than financial gain.

We should also point out that the insurance industry has launched major publicity campaigns to make the public aware of the presence and magnitude of the crime of arson, and is investing substantial sums of money in training their adjusters to become more alert and aware of the potential of fraud fires. The fact that we are submitting this testimony reflects our sincere concern.

ALLEGATION: The insurance industry is too liberal in its claims paying practices and pays its claims too quickly.

ANSWER: We know of no company that makes a policy of paying a claim if the adjuster becomes suspicious or discovers that the cause is other than accidental.

Each time an insurance adjuster investigates a loss he becomes the eyes and ears of the home office claims department. Unfortunately, because it is difficult to identify, not all

adjusters have the expertise to detect the presence of arson. Because of this, insurers have embarked on programs to train their adjusters to become more proficient in cause and origin investigations. The Alliance and its affiliate, The Property Loss Research Bureau has, for example, intensified its efforts to train representatives of member companies, non-member companies, independent insurance adjusters, firefighters and law enforcement officers in detecting the presence of arson as well as providing them information on other anti-arson activities.

If after investigating a fire, the insurer has no reason to suspect arson, there is no reason to delay adjustment of the loss. In fact, failure to do so may subject the insurance company to litigation and an investigation by state insurance regulators who look out for policyholders interests. At this point, continued

investigation becomes a law enforcement problem and the status of this investigation into the identity of the responsible party should have no bearing on the company's obligation to pay the loss.

We should also point out that several states have enacted Unfair Claims Settlement Practices Acts. In some jurisdictions, these Acts obligate insurers to pay their claims within a certain stipulated time after proof of loss has been filed by the insured, (Time limit is usually 15 days). Companies operating in these states are bound to pay losses at the earliest appropriate time.

Consumer groups and legislators have been pressing for quick claim payment but we recognize that there is a need to educate them so that they are aware of the consequences of having to pay suspicious claims before they have been thoroughly investigated.

ALLEGATION: Insurance adjusters are paid to collaborate with arsonists, or arson conspirators.

ANSWER: There are isolated instances in which some insurance adjusters have overpaid claims for the purpose of splitting the excess claim amount with dishonest insureds and contractors.

We believe that such adjusters are certainly not prevalent in our industry and when they are caught, i.e. by an insurance company's audit procedures, they are fired.

ALLEGATION: Insurers are not diligent enough in checking the background of their applicants (prospective insureds), or of inspecting the properties they insure.

ANSWER: Commercial Risks

Although we, as a trade association, do offer our member companies a multitude of services in property and casualty matters, we are not involved in the actual underwriting of fire insurance. Nevertheless, we are generally conversant with

the underwriting procedures typically followed by insurers in the field of property insurance. Our experience convinces us that this assertion is not true, particularly with regard to the underwriting of commercial risks.

Commercial risks are individually, physically inspected because of their inherent diversity regarding loss exposure, and the large amount of insurance that is usually requested for such properties. Details concerning construction, occupancy, exposure to adjacent structures, and protection are vital to properly insure such risks. In addition to data kept of file in rating bureaus on a buildings' construction, and loss exposure, underwriting applications and financial reports are also submitted concerning an applicant's financial condition, previous loss history, etc. Up-to-date knowledge of an applicants' financial condition is often a requirement prior to granting coverage for a specific risk.

If the building that houses the applicants' business also houses a number of other businesses it is not unusual for insurers to also obtain information concerning these other occupants.

Specific data is developed on internal protection, such as fire alarm systems, fire doors, automatic sprinkler systems and the like. This also includes public fire protection furnished by the city fire departments. Often times insurers will send loss prevention engineers to the applicants' properties to personally determine whether or not the risk to be insured is adequately protected.

In summary, ample evidence exists to demonstrate that insurers are exercising sound underwriting prerogatives in connection with commercial risks.

Habitational Risks (Personal Lines)

With regard to habitational risks, inspecting each dwelling unit would be extremely est-

pensive and the cost of this would have to be passed on to the insuring public in the form of higher premiums. This does not mean that we are abdicating our personal lines underwriting prerogatives. Insurers do request their agents to fill out lengthy applications which generate information concerning owners, property age, and condition etc. If the amount of insurance requested by the applicant is over a certain limit or if the dwelling is beyond a certain age, this often triggers an inspection of the risk to make certain that the risk comes up to minimum underwriting standards.

In summary, habitational risks are not physically inspected to the same degree as commercial risks. However, where there is adequate reason to do so, risks are inspected and credit reports are obtained providing insurers the background information they need.

ALLEGATION: Agents are not inspecting properties on which they write applications.

ANSWER: Here too, if independent agents were required to inspect all properties on which they wrote applications, their costs could increase commensurately putting pressure on commissions and insurer expenses ; costs that would have to be passed on to the insuring public.

Few insurance agents can accurately appraise a properties' real market value or replacement cost. They frequently have to rely on the applicant to give them the value of this property or they rely on a real estate appraiser for such value. Who is in a better position to know the value of this property than an applicant who has purchased the property and seeks insurance on it?

The high cost of inspections preclude or at least discourages agents from inspecting each property upon which they write an application.

Summary

In order for the insurance industry to continue to be diligent in contesting suspicious claims, and to head off arson profiteers we believe a better attitude of the courts is needed.

We cite the recent example of the fraudulent marine case where the wife collected after her husband transferred their property to her name in order to evade creditors then admittedly torched the property.

The recent increase of arson control activity is strong evidence that incendiary fire has moved to a front-burner position among the priorities of concerned public and private entities. Yet, despite the many positive programs now being implemented, there is a danger that the overall effectiveness of these programs may be diminished by a lack of coordination.

Recognizing that each involved organization or agency has special strengths and responsibilities for arson control, we acknowledge the following seven areas as being of major concern in controlling arson:

- (1) Jurisdictional and Operational Structures;
- (2) Training and Education;

- (3) Statistics, Data Collection and Research;
- (4) Legislative and Regulatory (Administrative) initiatives;
- (5) Public Relations and Public Awareness;
- (6) Funding; and
- (7) Establishment by the insurance industry of an All-Industry Committee for Arson Control.

We believe, in the attempt to control the crime of arson, the objective should be to assess the unique contribution which can be made by each organization--whether federal, state or local government, private or an interdisciplinary group representing diverse interests, and to stimulate coordination of these independent efforts, in solving arson problems.

The Alliance of American Insurers and its affiliate, the Property Loss Research Bureau, have provided extensive research into arson problems.

We are enclosing, for your review and consideration, the following:

- "Target Arson" - a series of recommendations adopted by the All-Industry Committee for Arson Control.
- Alliance Arson Information Kit

The Alliance of American Insurers will continue to support your efforts and objectives to reduce arson throughout the United States.

We respectfully request that this statement be made a part of the hearing record of the Subcommittee.

I do hereby swear the statements made in this report are true to the best of my knowledge.

*James E. Jones, Jr.*  
James E. Jones, Jr.

Subscribed to and Sworn before me

on this 6<sup>th</sup> day of October 1978

*Dannette A. Corbin*  
Dannette A. Corbin  
Notary

My Commission Expires January 1 1980

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**END**