

**CRIMINAL REDISTRIBUTION SYSTEMS AND THEIR
ECONOMIC IMPACT ON SMALL BUSINESS**

HEARINGS
BEFORE THE
SELECT COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE
NINETY-THIRD CONGRESS
SECOND SESSION
ON
**CRIMINAL REDISTRIBUTION (FENCING)
OF GOODS STOLEN FROM LEGITIMATE
BUSINESS ACTIVITIES AND THEIR EF-
FECT ON COMMERCE**

PART 3

APRIL 30 AND MAY 2, 1974



Printed for the use of the
Select Committee on Small Business

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ECONOMIC IMPACT ON SMALL BUSINESS

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FECT ON COMMERCE

PART I

APRIL 26 AND MAY 7, 1954



Printed by the Government Printing Office
Washington, D.C.

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON, D.C.

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C.

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CRIMINAL REDISTRIBUTION SYSTEMS AND THEIR ECONOMIC IMPACT ON SMALL BUSINESS

Criminal Redistribution (Fencing) of Goods Stolen From Legitimate Business Activities

TUESDAY, APRIL 30, 1974

U.S. SENATE,
SELECT COMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 1224, Dirksen Senate Office Building, Senator Alan Bible (chairman) presiding.

Present: Senator Bible.

Also present: Chester H. Smith, staff director and general counsel; Ernest P. Evans, chief investigator; John O. Adams, minority counsel; and Duncan Chappell, consultant.

Senator BIBLE. The hearing will come to order.

Today this committee begins another phase of its vigorous campaign directed against the activities of the criminal receiver or fence. Last year during our hearings, we learned much about the immense damage caused small businessmen and the public at large by these criminals who provide a redistribution system for the billions of dollars worth of property stolen each year in this country—\$16 billion is the per-year cost of property theft, according to a Commerce Department survey.

Were it not for this redistribution service of the fence, many thieves, burglars, boosters, robbers, and muggers would find it extremely difficult to stay in business. As it is now, countless fences and their clients not only prosper mightily from the profits obtained from the sale of stolen goods, but do so at the direct expense of legitimate business and the consumer. Obviously the losses sustained from theft and other property crimes are passed on ultimately to the community through the pricing structure of goods, adding to the strong inflationary pressures which currently trouble our society.

Part of the blame for the ease with which it appears fences can at present market stolen goods must rest with legitimate business itself. As the Chamber of Commerce of the United States stated in its recent and admirable publication, "White Collar Crime: Everyone's Problem, Everyone's Loss," "too many businessmen are supporting and encouraging a variety of crimes against property." Just as the Los Angeles District Attorney said before this committee in 1973: "Too many legitimate businessmen are willing to buy hot merchandise, if it assures them of a higher profit. It is impossible to believe

that businessmen do not know that they are supporting a multi-million dollar, illegitimate industry."¹

It is clear that the major responsibility for initiating action against the fence rests with the various agencies of the criminal justice system, and particularly, the police. If the "Uniform Crime Reports," published by the FBI, and other official statistics are any guide, this police action has in the past been neither extensive nor persistent. Apparently, very few offenses of criminal receiving come to the attention of law enforcement agencies around the country each year. Even when offenses are detected by the police, very few fences are successfully prosecuted for the crime of criminal receiving. National conviction data are not available.

How can law enforcement agencies begin to make a significant impact upon the activities of the fence? This is one of the principal issues we intend to address in these hearings. Today we shall receive testimony from representatives of the city of Miami Police Department who during the past 2 years have been conducting a most interesting experiment within that department in the area of criminal receiving. This experience should be of direct relevance and assistance to the thousands of police agencies around this country whose duty it is to protect citizens against criminal receiving.

On Thursday, we shall hear evidence from representatives of the Department of Justice about their Federal role in the enforcement of the laws relating to criminal receiving. Their responsibilities are obviously broader and extend to regional and national efforts to interdict the market in stolen goods.

In 1967, the President's Commission on Law Enforcement and Administration of Justice noted:

Little research has been done on fencing, despite its central role in professional crime. More information is needed about the nature of the market for illicit goods and the extent to which demand for various types of goods affects the incidence of theft. More should also be learned about the relationship of legitimate and illegitimate markets. Little is known about the pattern of distribution of stolen goods. It would be desirable to have more information about the organization and operations of large-scale fencing operations to aid in the development of better methods of law enforcement.

We hope that the continuing efforts of this committee are helping to bridge this information gap in the fencing area. We shall also be hearing today from an economist, who is also an expert in criminal justice, about current efforts on the part of researchers to provide hard data upon which can be based effective measures to deal with the fence. It is through the combined and sustained work of groups like businessmen, legislators, law enforcement agencies, and researchers that we hope to energize some telling and debilitating blows against the criminal receiver, and the other parasites he supports.

The committee has subpoenaed one witness today. The committee has initiated these hearings pursuant to authority granted to it by the Senate. Specific authorization to hold these hearings was granted, pursuant to the rules of the Select Committee, at an executive session

¹ See also "An Analysis of Criminal Redistribution Systems and Their Economic Impact on Small Business," staff report prepared for the Select Committee on Small Business, U.S. Senate, Oct. 26, 1972, 93 pages.

on February 1, 1973; and formal notice placed in the Congressional Record on April 22, 1974. In accordance with rule 3(d) of the standing rules of this committee, any witness summoned to a public or executive hearing may be accompanied by counsel of his own choosing, who shall be permitted, while the witness is testifying, to advise him of his legal rights.

I first will call upon Bernard L. Garmire, chief of police of the city of Miami Police Department; accompanied by Dr. R. Kenneth Keenan, Loraine Strait Petersen, and Lt. Connie M. Woods.

If those four people would come forward, I will administer the oath to you. Please remain standing while I am administering this oath. Would you please raise your right hands.

Do you, Bernard L. Garmire, R. Kenneth Keenan, Loraine Strait Petersen, and Connie M. Woods, solemnly swear that the testimony you are about to give before the Select Committee on Small Business of the U.S. Senate shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GARMIRE. I do.

Dr. KEENAN. I do.

Ms. PETERSEN. I do.

Lieutenant WOODS. I do.

Senator BIBLE. Please be seated.

Mr. Garmire, I am going to call upon you first. I want to thank you very much for the cooperation that you and those with you have given to this committee in your attendance here today. We are sure that your testimony here will be most helpful in our continuing struggle to help the small businessmen. That is our goal.

Mr. GARMIRE. It is good to see you.

TESTIMONY OF BERNARD L. GARMIRE, CHIEF OF POLICE, CITY OF MIAMI POLICE DEPARTMENT, MIAMI, FLA., ACCOMPANIED BY DR. R. KENNETH KEENAN, THE MITRE CORPORATION, TECHNICAL ADVISOR TO THE CITY OF MIAMI POLICE DEPARTMENT; LORAIN STRAIT PETERSEN, ESQ., LEGAL ADVISOR, FENCE UNIT, CITY OF MIAMI POLICE DEPARTMENT; AND LT. CONNIE M. WOODS, PROJECT MANAGER, FENCE UNIT, CITY OF MIAMI POLICE DEPARTMENT

Mr. GARMIRE. Thank you, Senator. It is a real privilege to appear before you here today. We appreciate the efforts that you and your committee are making on behalf of a better America in which to live. We of the police service hope to be able to make some contribution to this.

Today I would like to share with you some of the observations that we have made about a program that is unique, and one that we believe can serve as a prototype for other agencies across the Nation in the future.

In October of 1972 the city of Miami was awarded a grant by the Law Enforcement Assistance Administration of the Department of Justice. The grant was unique. Its stated purpose was to establish a

specialized unit—of eight police officers, one sergeant, one lieutenant, an accountant, and an attorney—to concentrate on suppressing the activities of persons and businesses buying stolen goods. The theory, simply stated, was that by eliminating the fence, the thief would no longer be able to convert stolen property into cash and would be forced to cease his activities. The effectiveness of arresting fences was to be measured, in part, by its effect on the incidence of the underlying property crimes supporting fencing.

It was anticipated at the outset that the constraints implied by the existing laws on receipt of stolen property and entrapment would engender the most difficult problems in arresting fences. The two primary requirements of the law—that technically, the property was stolen and the person receiving it knew it was stolen—forecast our later operational procedures. It was to become apparent that informant testimony is essential to prove knowledge, that positive identification of property must be made to establish its stolen nature, and that a law enforcement officer is precluded by law from utilizing stolen property which has come into his custody to establish a case against a fence.

The fence unit started its activities by asking each officer of the city of Miami Police Department to supply the name of known or suspected fences. A training session on surveillance techniques, use of equipment, accounting procedures and the law relating to receiving stolen property, entrapment, and searches was conducted. Daily pawnshop information reports were analyzed. City ordinances relating to occupational licenses, reporting procedures, and other business regulations were compiled. Other agencies—local, State, and Federal—were contacted, advised of the existence of the fence unit and asked to supply information on fences in the city of Miami. Instructions were given that a fence unit member be called whenever a burglar or shoplifter was arrested. Other police departments across the country were solicited for information concerning their procedures for dealing with fences. Prior cases where fences had been convicted were reviewed. The process of developing informants began. Data on programs for identifying personal property were sought.

The fence unit began its existence with several assumptions, most of which have been thoroughly disproven by subsequent experience. One basic assumption held by unit members was that the city of Miami contained a limited number of fences upon whom the efforts of the unit could easily be concentrated. A preliminary estimate was in the area of 20 to 40 fences; this estimate has been changed to several hundred. Information obtained from members of the police department and from informants indicates that each thief probably has several fences. In one instance, an informant who had been arrested for shoplifting indicated that he had one fence. As time went by, he gradually told us about eight other fences—all but one of whom were arrested—and, it is thought, would have supplied information on more fences had he not been rearrested for grand larceny in another part of Dade County. It is interesting to note that all of

these fences were conveniently located in the areas where he shoplifted, reducing the time for disposition of the stolen merchandise to minutes.

It was also assumed that fences dealt primarily in large quantities of items or extremely valuable items that could not be disposed of on the street. On discovering the large number of fences, we also discovered that many fences deal in shoplifted goods; these are supplied in smaller quantities and are not easily traceable. Some corner grocery store owners supplement their inventories with shoplifted razor blades, hot combs, travel clocks, toasters, and radios. If unable to use the items in their stores, they sell them to other merchants. The apathetic attitude with which the general public and some elements of the business community regard the purchase of stolen property reinforces this practice and encourages the proliferation of fencing. The thief is regarded as the real criminal and the fence as someone who merely takes advantage of a bargain.

It was also determined that the fence is a far more important individual than was originally imagined. The fence was initially viewed as a passive conduit who, having made his presence known to appropriate persons, funneled illicit merchandise to final purchasers at a rate determined by the thief's activities. The fence, however, was found to be a key manipulator of both the nature and incidence of property crimes. By ordering goods, he determines what types of items will be stolen and when the thefts will occur. Two examples are illustrative of this finding: a motel owner and fence in the city of Miami employed several prostitutes—who were also addicts—to purchase television sets with stolen credit cards which he supplied. In return, the prostitutes were provided with living quarters in one of his motels and enough money to buy drugs. The sets were delivered to another motel and from there presumably delivered to a storage place, as no sets could ever be found in the motel. When a sufficient quantity of sets had been accumulated, they were shipped to South America. No arrests were made in this case. Our informant refused to testify, and independent investigation and surveillance failed to produce sufficient evidence to prosecute.

The second example emanates from a survey initiated by Dr. R. Kenneth Keenan, MITRE Corporation consultant, serving in the capacity of LEAA field site representative to the Miami Police Department, and Loraine Strait Petersen, the fence unit attorney—co-authors of the report "On Fencing," which has been submitted to this committee. In the undercover capacity of thieves, Dr. Keenan and Ms. Petersen indicated to several merchants—small store owners and pawnbrokers—selected at random, that they wanted to sell stolen radios. The proprietor of a religious articles store, while agreeing to take the radios at one-third of the retail price, stated that he preferred to buy color television sets. He subsequently placed his order in writing with Dr. Keenan and Ms. Petersen, offering a set price for as many color television sets of a particular size as they could provide.

The fence unit also arrived at significant conclusions concerning methods by which to apprehend a fence. On each occasion when a surveillance of a suspected fence's operation was instituted, it proved

fruitless and a costly expenditure of the fence unit's time. On one occasion, the fence unit received information concerning the fencing activities of a gas station owner—supposedly with organized crime connections. He allegedly received stolen merchandise at his station and sent it by means of cabdrivers to a gift shop in which he had an interest. A surveillance post was set up in a city-owned building across the street from the gas station and the surveillance revealed: Cabdrivers did come there; that two or three people were seen to carry small packages out of the station and place them in their vehicles; and several persons brought large parcels to the station. No identification could be made of these packages as stolen goods. An arrest was finally made of both the gas station owner and the gift shop proprietor, but only because an informant provided information requisite for a search warrant.

In another instance, information was received about a suspected fence in a downtown religious articles store. A surveillance of the front of the shop was set up across the street in a hotel room. No surveillance was possible of the shop's back door which opened into an alley, where the owner kept his car. The surveillance revealed: The owner left and closed the store for considerable periods during the day; many people were seen going into the store with packages and coming out without them; two known thieves were seen entering the store with property and, when questioned, indicated that the owner did buy stolen property but that they would not testify. Several unsuccessful attempts were made to follow the owner's car.

A coin laundry believed to be the drop for stolen goods was also owned by the fence, and placed under surveillance. No results of sufficient quality to file charges could be obtained.

Detailed information regarding the fence's operation, adequate to satisfy the requirements of the statute, can only be supplied by the burglar or shoplifter. The development and use of this type of informant has proved to be the only practical way to proceed in apprehending and prosecuting a fence. A thief is able to provide the data concerning the fence's method of operation, can testify to the fact that the fence knew the property was stolen and, in addition, is able to supply information on specific physical evidence in the fence's possession, for example, stolen goods which he has just sold to the fence. It is important in developing this type of informant that he be contacted as quickly after the sale as possible as the time in which the goods are disposed of by the fence is brief.

A difficult problem encountered even when the informant is the thief is the positive identification of the goods by the owner and the thief. In the case of burglarized goods, the owner appears to be in a better position to identify his property because through use he has oftentimes altered it in some identifiable way. Where shoplifted or new goods are involved, the problem of identification is almost insurmountable. Department stores fail to keep serial numbers of serialized inventory items and, because nonserialized items bear no unique markings, no records are possible. Not only is the owner unable to identify his own property, but the thief cannot say with certainty that this was the precise item which he took.

Frequently, owners do not know when an item has been taken and cannot establish that a theft has occurred. This, in turn, affects the rate at which shoplifting offenses are reported and results in gross underreporting of such offenses. In this regard, there appears to be no compelling incentive to report such offenses as the losses are usually covered by insurance and/or are IRS deductible. On many occasions, an informant would advise us that he had taken hundreds of dollars of merchandise from a particular store during 1 week. Upon contacting the store, we were advised that the loss would only appear during a quarterly or semiannual inventory. On those rare occasions when a department store could document a loss, the article could not be positively identified due to absence or lack of a serial number record. I cannot emphasize enough the magnitude of the problem of failure to identify property and its influence in maintaining the unimpeded flow of stolen property. Remedial legislation and/or voluntary cooperation of manufacturers and merchants to identify property are essential if the distribution of stolen property is to be curtailed.

As I mentioned earlier, the fence unit encountered serious difficulty in working within the confines of the existing laws pertaining to fencing. Ms. Petersen, the fence unit attorney, will discuss this more fully with you. Dr. Keenan will then summarize and comment on the results of the fence unit activities, including the effect of these activities on the incidence of underlying property crimes.

In summary of my own observations, we found the number of fences in the city of Miami to far exceed our original estimates; we found that some otherwise legitimate businessmen are engaged in receiving stolen property; we found that the fence plays a greater role in the commission of the original theft of the property than we had initially assumed. The use of thief-informants was demonstrated to be the only efficacious method for acquiring evidence necessary to prosecute a fence.

Presently, we are using these findings in our continuing efforts to suppress fencing and the crimes which sustain fencing. The success of the grant activities has convinced us of the utility of maintaining a fence unit.

Senator BIBLE. Thank you, Chief Garmire, for a very fine statement.

Preliminarily, let me ask you just a few questions about your own police department in the city of Miami. No. 1, how large is the city of Miami?

Mr. GARMIRE. The city of Miami is approximately 350,000 people.

Senator BIBLE. That figure embraces just the city of Miami?

Mr. GARMIRE. That is right.

Senator BIBLE. You have no jurisdiction over the metropolitan area?

Mr. GARMIRE. No, sir; I do not.

The metropolitan area consists of approximately 1,300,000 people.

Senator BIBLE. As I recall it, you have rather a novel system of government in Dade County, do you not?

Mr. GARMIRE. It is called Metropolitan Dade County, sir.

Senator BIBLE. Refresh my memory. Do you have a government that controls all of the area within that million-plus figure?

Mr. GARMIRE. Dade County controls many of the services that are administered to the constituents of that county. They do not, however, have jurisdiction—they have jurisdiction, but do not exercise it in police matters, fire matters, sanitation, public works matters, and a number of other activities. They do assume responsibility for health services. And I would guess it is an approach to the two-tiered-type government that we hear so much about today.

The service industries, if you want to call them that, or the line services to the constituents are maintained generally by the political subdivisions within Dade County.

Senator BIBLE. You are answerable, then, to the city of Miami?

Mr. GARMIRE. That is correct.

Senator BIBLE. The city of Miami is governed by a mayor and city council; would that be a correct statement?

Mr. GARMIRE. No, sir.

We have a commission strong city manager type of government.

Senator BIBLE. You are answerable to the city manager?

Mr. GARMIRE. Yes, sir, that is correct.

Senator BIBLE. How many people do you have in your police department?

Mr. GARMIRE. We have a gross of 1,000 people; of which, approximately 800 are sworn, and the balance are civilian employees.

Senator BIBLE. 800 sworn police officers—men and women?

Mr. GARMIRE. Yes, sir; that is correct.

Senator BIBLE. Has that figure been fairly constant over the last several years?

Mr. GARMIRE. No. We have been increasing the number of police personnel gradually over the past few years. I could not give you the percentage of increase; but we have a few more people today than we did last year, and so on.

Senator BIBLE. Where do you rank, statistically, in the number of crimes per thousand in the city of Miami?

Mr. GARMIRE. Very high, sir—if you are referring to the Uniform Crime Reports.

Senator BIBLE. I am referring to the Uniform Crime Reports.

We have to face it; all cities are having an increase in crime. I am not picking on any particular city. In my own State, the city of Las Vegas is no particular model or example. This is true nationwide, wherever you look.

For many years I was the so-called ex officio mayor of the city of Washington. We did not achieve much. We tried hard; we increased the police force and tightened it up, but crime seemed to flourish and increase. I do not know where it stands now. I am sure there is much left to be done.

Do I understand you correctly that the total number of people that you assigned to this specialized unit was a total of eight police officers, one sergeant, one lieutenant, an accountant and an attorney?

Mr. GARMIRE. Yes, sir.

Senator BIBLE. They operated from October of 1972 until what period of time?

Mr. GARMIRE. Realistically, it was from the first of 1973, through the year.

Senator BIBLE. It was a calendar year, in effect?

Mr. GARMIRE. Practically speaking.

Senator BIBLE. The experience you are relating here?

Mr. GARMIRE. Yes, sir.

Senator BIBLE. That particular grant from LEAA, is that still in effect?

Mr. GARMIRE. No, sir, it is not.

Senator BIBLE. Is there any particular reason why it was not renewed?

Mr. GARMIRE. After our experience, we decided to integrate the fencing unit—to maintain its viability—but integrate it with our burglary unit within the department. It seems to make sense. It is not currently funded.

Senator BIBLE. It is not currently funded, but you are still carrying on some of the activities that were carried on by this unit during the calendar year 1973, now merged into your Burglary Unit?

Mr. GARMIRE. That is correct.

I might modify that statement by saying that we have subsequently received a grant which is denominated by the acronym of STOP Burglary. This is being supported by LEAA funds, and it is using some of the techniques and findings that we made during the life of the original fencing unit.

Senator BIBLE. Is it your opinion, based on this 1 year experience, that this special effort against fencing should be continued?

Mr. GARMIRE. Yes, sir.

Senator BIBLE. You mentioned a surprising discovery by your department's fencing unit of several hundred fences in the city of Miami. Can you provide any estimate to this committee of the proportion of these fences who deal in large quantities of stolen goods and extremely valuable goods?

Mr. GARMIRE. I would estimate that somewhere up to 10 percent of the gross number of fences operating in our area are probably dealing in valuable goods, and maybe large quantities. They become extremely sophisticated, and admittedly, our operation during the first year was one of gathering experience and information which would enable us, hopefully, in the future to become more sophisticated in our activities.

To answer your question, it is estimated that approximately 10 percent of the fences are dealing "big time," as they would say.

Senator BIBLE. Several hundred fences in the city of Miami is how many fences?

Mr. GARMIRE. I would say it would be a minimum of 200 operating.

Senator BIBLE. I understand that to date the fencing unit has made 18 arrests of suspected fences. How does this figure compare with arrests before the unit was established?

Mr. GARMIRE. We made one arrest during the prior year.

Senator BIBLE. The prior year?

Mr. GARMIRE. That is correct; 1972.

Senator BIBLE. How about the years before that; did you make any arrests?

Mr. GARMIRE. I do not have that information available; but let me say it is a real occasion in the average police department when they are successful in making an arrest on fencing.

Senator BIBLE. That has been the experience of this committee as we try to examine this problem nationwide. There are many difficulties involved in bringing the fence to justice, and I guess one of the main ones is the tremendous difficulty of proof.

Mr. GARMIRE. That is correct.

Senator BIBLE. This is a very, very hard type of case to prove when you take it to court.

Mr. GARMIRE. Yes, sir.

Senator BIBLE. Were the fences your unit did arrest—these 18—dealing in large quantities of goods or with very valuable goods?

Mr. GARMIRE. They were arrested in dealing, for the most part, in rather small items. Nothing of great value, as I recall, was really recovered or involved in this particular fencing operation.

Senator BIBLE. Did your fencing unit establish any investigative priorities such as only going after the big guy and not worrying about the small fry?

Mr. GARMIRE. Not necessarily. There were no real priorities established. We were faced with the rather parochial realities of prosecution. This is one of the things that causes a great deal of trouble, of course; because of this and other limitations, the perceived quality of the cases was a prime consideration. We were out to make good cases—learn by doing, you might say. And hopefully, the experiences, as I said before, gained from this type of operation will enable us to establish priorities in the future and develop a more sophisticated approach to this type of enforcement.

Senator BIBLE. You say you had 18 arrests of fences?

Mr. GARMIRE. Yes.

Senator BIBLE. How many of those arrested did you take to court?

Mr. GARMIRE. Five eventually got to court, that is, were either sentenced or found not guilty.

Senator BIBLE. Of the five, how many convictions did you obtain?

Mr. GARMIRE. A total of three convictions.

Senator BIBLE. What type of sentence was imposed in these three cases?

Mr. GARMIRE. They received probation.

Senator BIBLE. All three received probation?

Mr. GARMIRE. Yes, sir.

Senator BIBLE. With a stern lecture from the judge not to do it again?

Mr. GARMIRE. I assume so.

Senator BIBLE. There was not a single one of the three convicted who served time?

Mr. GARMIRE. Not to my knowledge.

Senator BIBLE. There was not a single one of the three who paid any kind of a fine?

Mr. GARMIRE. One fine.

Senator BIBLE. There was one fine?

Mr. GARMIRE. Yes, sir.

Senator BIBLE. Was that a substantial fine?

Mr. GARMIRE. \$1,000.

Senator BIBLE. How does the fencing unit work with other investigative units: the burglary squad, the pawn broking detail, the organized crime squad and so on?

Mr. GARMIRE. Very closely. Of course, as I pointed out in my statement, Senator, at the outset of the funding of the grant, a very deliberate effort was made on the part of Lieutenant Woods and members of his unit to contact literally every member of the police department, soliciting from them any knowledge that they might have on suspected fencing activities in their respective areas of the community. Every law enforcement agency in the area and, for that matter, many nationwide agencies were contacted, soliciting cooperation. Of course, the burglary unit, those units having to do with attempting to recover stolen property, were all consulted. The unit became sort of a catalytic approach to fencing activities, trying to impress upon the members of the department the importance of fencing activities as it pertains to the incidence of crime in our community.

Senator BIBLE. Was there resistance within your department as you moved in this new concept and had an independent fencing unit?

Mr. GARMIRE. I would not say that it was resistance, as much as it was a lack of knowledge of the importance of controlling the fencing activities in our community.

We are confronted, within the police service, to a certain extent, with the same amount, or at least a degree, of apathy when it comes to the enforcement of white collar crime control. It is much more glamorous, much more appealing, frankly, as a police officer, to arrest a burglar or a robber, than some innocuous fence.

It was a program of education, you might say. And through this program, we believe we have alerted our people to the magnitude of the problem and how it is contributing to crime on the streets.

Senator BIBLE. Very well; I can understand that from my background as a prosecuting attorney and as a long-time attorney general of my State.

How much stolen property has been recovered by the fencing unit during its period of operation?

Mr. GARMIRE. Comparatively little, sir. It may seem rather surprising, but comparatively little property was recovered. As I pointed out in my statement, it is extremely difficult to identify these things and return them to their rightful owner.

We were concentrating on developing experience, developing some idea of what the magnitude of the problem was; and admittedly, we took those most convenient and those who were dealing with comparatively small items so that we could facilitate as much activity as possible.

Senator BIBLE. Very well.

What impact do you believe that the arrests and prosecution of fences by the fencing unit has had on the incidence of burglary and theft in the city of Miami?

Mr. GARMIRE. We believe that there is some impact. We receive this information, of course, from informants. Informants told us that very frequently they were in turn informed by the fences that the heat was on and they were not going to buy anything now.

Senator BIBLE. How, in your opinion, could you improve the effectiveness of the Fencing Unit, based on almost a year and a half's experience with it?

Mr. GARMIRE. One of the ways, of course, that we can increase the effectiveness, is having a change of legislation. The restrictions imposed upon law enforcement, on police personnel today, in order to establish a case, make it virtually impossible for us to operate without informants. So, one of the things that must be done, in our opinion, to make us more effective in countering the crime, is to change the legislation. And to develop the ability, of course, to develop informants—informants, as I pointed out in my statement, are invaluable in the prosecution of a crime.

These two things would help a great deal.

In addition to this, I think we are going to have to have more cognizance of the importance of being able to identify articles. In many instances, we find that the wholesalers and the retailer-distributors never bother to report serial numbers, which, of course, are good identifying marks.

There must be some way, in our opinion, to make these articles more identifiable, so that once we become effective and successful in making an arrest, we can go into court and positively identify these articles. This is a must. Some way, either mandatorily or by cooperation, the manufacturers and distributors of merchandise should be required to identify these articles through some means—serial numbers in most instances. I believe eventually we are going to have to address the problem of putting some identifiable characteristic on practically every article that is retailed.

Senator BIBLE. Based on your experience, would you recommend the establishment of a fencing unit in other police departments?

Mr. GARMIRE. Yes, sir, very definitely. I believe that this is one crime that has not been adequately addressed in many areas of the country. We were not adequately addressing it before we conceived this idea. And our experience with the fencing unit has proven that our idea was a valid one. I believe that every department in the country should consider the establishment of a fencing unit.

Senator BIBLE. You have been with the police department of Miami for 4½ years. Prior to that, what was your police experience?

Mr. GARMIRE. I was chief of police of Tucson, Arizona, for 12 years.

Senator BIBLE. How long were you chief of police in Tucson, Arizona?

Mr. GARMIRE. Twelve years.

Senator BIBLE. Do they have any type of fencing unit there? You probably had some fencing problems, being close to the Mexican border?

Mr. GARMIRE. We had a few problems. We did not have a unit, per se. We did have a burglary unit which addressed the problem fairly successfully.

It is a problem, a universal problem.

Senator BIBLE. Would you enlarge the region that would be covered by the fencing unit? You say you are only responsible within the city of Miami; that is some 350,000 people, you said, and the total metropolitan area is something like 1,300,000. In order to be effective, should not the operation of the Unit be metro-wide, or Dade County-wide?

Mr. GARMIRE. I believe it should, sir. One of the reasons this came to our attention, the fencing cases had either their inception or termination outside of our jurisdiction. This required a good deal of cooperation, of course, on the part of the local jurisdictions.

But I believe for a program to be very effective, there should be an overall approach to it as far as jurisdiction is concerned. But this, in my opinion, should not preclude attention given by the individual jurisdictions within the county. A very cooperative effort is needed.

I believe that the county could maintain a simple repository of vital information so far as fencing is concerned, and should work hand in glove with the local jurisdictions.

Senator BIBLE. Well, what has been the cost so far of establishing and operating the fencing unit to which you allude in 1973?

Mr. GARMIRE. The grant that we received from the Law Enforcement Assistance Administration is approximately \$142,000.

Senator BIBLE. \$142,000?

Mr. GARMIRE. Yes, sir.

Senator BIBLE. Is stolen property, antiques and jewelry brought to the city of Miami for resale to other parts of the country?

Mr. GARMIRE. We have reason to believe from experience with informants that this is the case. Yes, sir.

Senator BIBLE. I think I understood you to say in your statement that much of the stolen property was shipped from Miami to places like Latin America.

Mr. GARMIRE. We have every reason to believe that. Yes, sir.

Senator BIBLE. What kind of property is shipped to Latin America?

Mr. GARMIRE. Our information is that color televisions are sought after a great deal. We have reason to believe that automobiles are being shipped. Jewelry and antiques are going south into South America for distribution.

At this moment I might interrupt, Senator, I would like to add that to the \$142,000 that we received in Federal funds we matched that. We plowed in, of our own in-kind match, \$142,000.

Senator BIBLE. It was about a \$300,000 project?

Mr. GARMIRE. Yes, sir. I do want to make that point.

Senator BIBLE. I am glad to have that amendment to it, because I do think it is important.

Has there been any coordinated attempts with other local, State or Federal authorities to suppress the interstate or international trafficking of stolen goods?

Mr. GARMIRE. We have worked in close cooperation with the Internal Revenue Service, the Federal Bureau of Investigation, the Federal Task Force, Dade County, Customs, Border Patrol. We have many Federal agencies represented. The Drug Abuse Administration. We work in close cooperation with other agencies when the

information which we obtain is pertinent to those agencies. We did on many occasions.

As I pointed out, in most instances when we received information on a fencing activity that either had its inception in our jurisdiction or its termination, it was implicit that we had to cooperate and work with other agencies. We find the cooperation on the Federal level to be very fine. The Department of Law Enforcement in the State of Florida is an excellent organization and cooperated with us in many instances. I do not believe that we have ever had an occasion when we did call for cooperation that we did not receive more than we really expected.

Senator BIBLE. Thank you.

What links, if any, have you been able to establish between the fencing industry in Miami and the major organized crime figures?

Mr. GARMIRE. To this point, Senator, we have not been able to establish any direct connections. As I pointed out before, our activities so far have been pretty well confined to the small operator. I am confident that once we arrive at a greater degree of sophistication and efficiency, that ultimately we will be led to organized crime involvement in fencing activities. There is no question in my mind about that.

Senator BIBLE. That has been our experience where we have explored the fencing activities in other major cities. I do not imagine that you have been lucky enough to avoid the tentacles of syndicated crime.

Thank you very much. Your testimony will be extremely helpful to us as we try to move forward and make some recommendations, and will be helpful in this general area.

Next, Dr. Keenan, I would like to hear from you.

Dr. KEENAN. Thank you, Senator.

I too am privileged to be here to contribute what I can to the subcommittee. I feel that it is appropriate for purposes of the record to preface my remarks with the observation that I am not with the Miami Police Department, per se. I am with the MITRE Corporation, which is a nonprofit systems engineering firm located in McLean, Va., and chartered to do business with Federal, State and local governments and nonprofit organizations.

Senator BIBLE. Where are your headquarters?

Dr. KEENAN. Our headquarters are at Bedford, Mass. I am with the Washington operation of the MITRE Corporation.

Senator BIBLE. That has its headquarters where?

Dr. KEENAN. McLean, Va.

Senator BIBLE. How long have you been engaged in this type of work, or how long have you been engaged in this particular project?

Are you a part of this LEAA grant that was given to the city of Miami?

Dr. KEENAN. No, sir. I am not a part of that grant.

Senator BIBLE. You are independent?

Dr. KEENAN. Separate. LEAA is a client of our corporation.

Senator BIBLE. Tell me a little more about MITRE Corporation? I know little about it.

What is it?

Who is it?

Dr. KEENAN. Let me see if I can name some analogues. The Rand Corporation. You have heard of Rand. It is a nonprofit think tank, Federal contract research center. Like Rand, we are chartered to do business with only governments and nonprofit foundations, and engaged in a wide spectrum of activities that includes law enforcement, HEW work, Department of Defense, the Federal Aviation Administration, the whole spectrum of government agencies.

Senator BIBLE. What money do you use to pay your salaries?

Dr. KEENAN. From our clients, which include, of course, LEAA. They retain our services.

Senator BIBLE. Tell me a little bit more about your own background.

Dr. KEENAN. Certainly. I graduated from the University of California in 1962 with a Bachelor of Science in engineering. In 1963 I graduated with a Masters of Science in electrical engineering from the California Institute of Technology.

Senator BIBLE. That is number one over MIT now.

Dr. KEENAN. In certain areas, yes.

Senator BIBLE. I wanted to see how far your college loyalty carried you. I think they are the leading two technological schools—MIT and California.

Dr. KEENAN. I would concur.

In 1967 I graduated from Monash University in Melbourne, Australia, with a doctorate in electrical engineering. I returned to this country, went into the aerospace industry for a time, went into entrepreneurial ventures for a time—Wall Street, that sort of thing—and decided that I would like to do something which I am truly interested in and joined the MITRE Corporation in 1971 and have been there since that time.

Senator BIBLE. Very well. You certainly have a very fine educational background, a fine background and experience. You may proceed.

Dr. KEENAN. Thank you, sir.

Under the auspices of a Law Enforcement Assistance Administration program, I have been a Law Enforcement Science Advisor at the city of Miami Police Department for over a year now. I have had the opportunity during that time to observe and study the operations of the fencing unit. I have collected data on burglary, burglary arrests, fencing and fencing arrests for 10 months of the year 1973.

My analysis of these data shows that, during that period in Miami, increased arrests of fences correlated more closely with decreases in burglary than did arrests of burglars. It also shows that increased arrests of burglars correlated more closely with increases in burglary than with reductions in burglary. In other words, burglary and burglary arrests tend to follow each other on a month to month basis, whereas fencing would appear to have the desired interdiction effect—that is, fencing arrests increase and burglary decreases.

The data used in the study are limited to the 10 month period and to the city of Miami. Direct extrapolation of the results to other

locales is not possible. In my personal opinion, however, replication of the Miami experiment and the analysis which is implicit in that experiment should be encouraged elsewhere to validate the Miami experience and to determine if the results are truly indicative of the apparent effectiveness of arresting fences as a deterrent to burglary.

Senator BIBLE. In other words, what you are saying is, you have to broaden the base before you come to a conclusion?

Dr. KEENAN. That is correct. The data are clean, but sparse, and replication and validation in other locales is highly desirable in my personal opinion.

Senator BIBLE. I would think that would be a correct conclusion.

Tell me this if you know. If not, staff could certainly find it out. How many grants has LEAA made to others throughout the United States to do work in the fencing area?

Dr. KEENAN. I would prefer that our client LEAA answer that question.

Senator BIBLE. They are the proper witness, of course.

Dr. KEENAN. Out of ignorance, frankly, I do not know.

Senator BIBLE. Our staff can find that out by calling LEAA. In fact, we have invited the Administrator of LEAA to testify at our hearings but we have had difficulty in arranging a mutually satisfactory date. If that cannot be arranged, then, without objection, we will request that the LEAA Administrator submit his testimony on the broad subject as well as the precise questions for the hearing record and such testimony will appear as if personally delivered.¹

Dr. KEENAN. I am cognizant of other programs of LEAA.

Senator BIBLE. I am sure they do it in other cities beside Miami. I am told there is only one other that we know of. We will verify that with LEAA.

Dr. KEENAN. The attacks on fencing, attempts to interdict the crime of fencing per se, are extremely rare. The literature is replete with speculation, but with respect to hard data there is practically nothing there. As a scientist and engineer, I operated pretty much in a vacuum, even though I attempted to reach out and talk to other agencies, et cetera. There was just not the data base available.

Senator BIBLE. Very well.

Dr. KEENAN. To continue with the prepared testimony, one indicator of the worth of the program directed towards fences by the MPD fencing unit is the effect which fencing arrests had on the incidence of related crimes. In order to provide this indication and for the purposes of comparative evaluation of arrest tactics, the measure of the incidence of burglary was selected.

The results are shown in the attached graph. The most important aspect of this graph is that each time the arrest pressure on fences was increased the incidence of burglary diminished. Also, each time the pressure on fences was eased, the incidence of burglary increased.

¹ See statement of Richard W. Veide, Administrator, Law Enforcement Assistance Administration, p. 535.

[The graph referred to follows:]

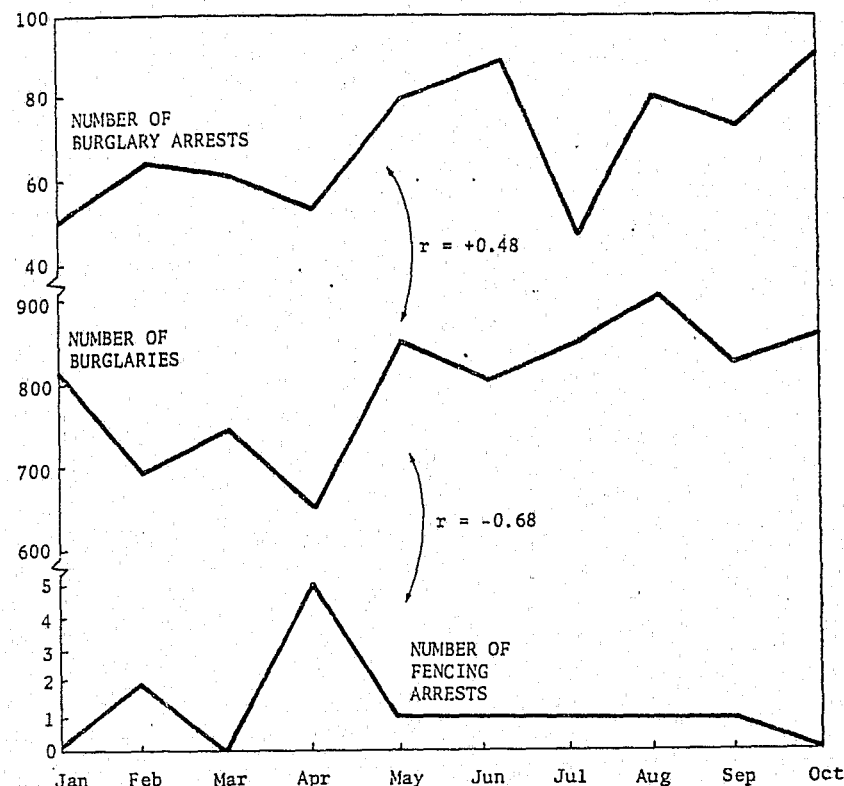


FIGURE 2
BURGLARY, BURGLARY ARREST AND FENCING ARREST DATA
FOR THE CITY OF MIAMI (1973)

Dr. KEENAN. In contrast to what appears to be a deterrent effect observed above, the relationship between the two upper curves in the figure—that is, the incidence of burglary and burglary arrests—suggests that, on the average, burglary arrests occur in proportion to the number of burglaries.

In addition to the analysis of the burglary and fencing data, a number of other observations can be made as a result of the work of the fencing unit. One of the more significant findings of the fencing

unit is that fencing activity is apparently much more widespread than originally thought. Prior to the program, it was believed that the fence population numbered perhaps in the several 10's range, whereas now, based on estimates which quite candidly are developed from the very brittle and incomplete data, it is believed that there are several hundred fences in the city, at least. To be specific, my own estimates, using the three different methods of analysis, result in a figure of 150 to 1,300, somewhere in that range.

I would concur with Chief Garmire. There is at least a couple hundred operating.

Senator BIBLE. Very well.

Dr. KEENAN. Now, of this several hundred, probably operating, investigative results indicate that most appear to be otherwise legitimate businessmen who use thieves as an adjunct to their normal wholesale suppliers. Some, as has been indicated by the chief, order specific stolen goods prior to a thief's commission of a burglary, shoplift, or other larcenous act.

An important implication of the finding that the number of fences is probably large is that the channeling effect—the ratio of the number of thieves to the number of fences—is smaller than might be inferred from what sparse previous literature even speculates on this matter.

Previous research appears to imply that the ratio of thieves to fences could be on the order of 100 to 1 or 1,000 to 1. Also, at least some of the literature tends to concur with the common public image of a man with a green eyeshade in the back of a pawnshop. This is not the most common type of offender. Ms. Petersen will elaborate on this.

The experience of the Miami Police Department indicates that the ratio of thieves to fences is perhaps in the range of 2 to 1 to 20 to 1, as opposed to the previous figure that I mentioned, 100 to 1 or 1,000 to 1.

Senator BIBLE. Translate that for me. You are saying that for one thief you have somewhere between 2 and 20 fences?

Dr. KEENAN. The inverse, sir. That is, for one thief—I beg your pardon—one fence serves perhaps 2 to 20 thieves.

Senator BIBLE. For one fence you have between 2 to 20 thieves?

Dr. KEENAN. Yes.

Senator BIBLE. Thank you.

Dr. KEENAN. Again, the data are very sparse, very difficult.

Senator BIBLE. It is just a guesstimate.

Dr. KEENAN. It is like six thieves to one fence. That is an average and there are wide variations. One fence may deal with 20 thieves. Another may deal with only a couple of them. This is what is said in the estimate.

Senator BIBLE. At least there are more thieves than fences?

Dr. KEENAN. That is correct. Interdiction of the crime of fencing can affect the property crimes committed by those 2 to 20 thieves that the fence served. There is a channeling effect, a leverage effect, if you like. It does not appear to be as large as would be inferred from previous literature.

As has been suggested before, the activities of many burglars can be affected by a relatively few fence arrests, but the numerical leverage does not appear to be as large as had been thought.

The Miami program has provided fresh insights, has broken new ground, and has suggested tactics which in my belief are worthy of future trials. In this regard and the regard that the incidence of burglary appears to have responded to arrests of fences, it would be a successful program.

I would like to add to my prepared testimony an attestation to the forward-thinking of the Miami Police Department, as manifested by the chief here. That they would have an outsider come in and, in effect, evaluate—for better or for worse—how they are doing in the fencing area, it is a very open-minded Department. It has been a pleasure working for them.

Thank you, Senator.

Senator BIBLE. Thank you very much.

A few questions. You apparently made your study based only on the impact of the Miami Police Department Fencing Unit on burglary.

Have you any data or study or conclusions that you have reached about the impact of that unit upon shoplifting?

Dr. KEENAN. Yes and no. The data are sparse with respect to shoplifting. To be specific, during the year 1972, approximately \$40,000 worth of goods was reported as being shoplifted.

A more realistic estimate which has developed using the Chamber of Commerce data and using national averages, Retailing Institute data, what have you, is that a closer approximation to the amount of shoplifted goods would be like \$5 million or over 100 to 1 over that which is reported. There are several reasons for this.

Number one, inventory time occurs relatively infrequently. No. 2, the Internal Revenue Service apparently—I would like to emphasize the word “apparently”—allows a 1 percent writeoff of gross sales for “inventory shrinkage.” If they do not know about inventory shrinkage, they cannot report it. My own estimates are at least 100 to 1 actual to reporting in the area of shoplifting.

The other reason for the apparent lack of correlation between shoplifting and arresting fences is that many of the shoplifted goods were not taken by professional thieves. They are taken by juveniles or housewives, otherwise respectable people who do not fence these goods. They take them for their own personal use.

So although shoplifting vis-a-vis fencing arrests was explored, the data are very messy and uncorrelated. It is very difficult to infer anything from the results of the correlation of these.

Senator BIBLE. Tell me this: Did you interview any fences about their problems in conducting business during the operational phase of the fencing unit activities?

Dr. KEENAN. No, sir.

Senator BIBLE. Did you conduct any interviews with burglars during this study period to determine whether or not they were finding it more difficult to fence stolen property?

Dr. KEENAN. Yes, sir, But there was a limited number of interviews that I personally sat in on—Ms. Petersen would be more competent to answer that.

Senator BIBLE. We will ask her.

Dr. KEENAN. There was an entrepreneur that would go into the department store with a trolley, a cap on, put 24 toasters on his trolley, and go to his fence, and not use his automobile. It was only a block away. That particular individual I remember quite well.

Senator BIBLE. Is there intense competition on matters such as pricing between the fences in the city of Miami?

I do not know how you would establish that. It sounds like a pretty good question.

Dr. KEENAN. Let me have a shot at it.

Senator BIBLE. You can all take a shot at it.

Dr. KEENAN. I defer to the chief and others. In my belief, no. The word "competition" implies free and open markets where information flows very freely. It has been our experience, at least with the relatively small-time people whom we have been dealing with, that they keep this fencing activity pretty close to their chest for obvious reasons. They are otherwise respected businessmen.

They have peers in the business community. They are not particularly proud of fencing. That is not to say that at least some fences do not have affiliations with other fences, but they are limited. Communications are limited. So the word "competition" and the necessary conditions for the information flow which would engender competition are just not there in my opinion.

I would like to defer to the chief and Ms. Petersen.

Senator BIBLE. Would either of you have an observation on that?

It would seem to be a little difficult to come to a conclusion on it. I would appreciate your comments on it, whatever they would be.

Ms. PETERSEN. Senator, may I just add that a number of informants that we interviewed indicated that certain fences were considered cheap in the thief community, and that they would be dealt with as a last resort. They would be dealt with as a last resort when nobody else was buying. They prefer not to deal, and would shop around or go to the people that they knew would give a higher price for their particular item.

Senator BIBLE. Very well.

Do you have specialization among fences in the city of Miami?

Is there a fence that I could go to if I wanted a color TV, if I wanted a transistor radio? Do they have specialties? Or do they deal in all kinds of stolen goods, whatever kind?

Dr. KEENAN. May I answer that?

First, with the observation that we took 20 fences, 20 known fences, studied them in detail, looked at their backgrounds, their criminal histories if any, what MO they use—the modus operandi—the thieves that they served. The primary method of delivering the goods was shoplifting.

Of these fences, these 20 fences, 14 specialized in goods which were saleable at their own place of business. That is 70 percent. Of those 14, 91 percent (13) specialized in goods *normally* merchandizable at

that particular place of business. The other fellow had so-called connections and he would take anything, and he would in turn sell it to other fences.

Senator BIBLE. Do you have any additional observations, Chief or Ms. Petersen, either one of you?

Mr. GARMIRE. I believe we should clarify one aspect of this discussion here this morning, Senator. We have been discussing shoplifters and burglars, and we have had a tendency to overlook the magnitude of the fraudulent credit card operation.

Senator BIBLE. Tell me about the fraudulent credit card operation.

Mr. GARMIRE. I am not that knowledgeable, except to say that at least in one case that we know of, a motel operator had a stable of prostitutes. He would supply these prostitutes with stolen credit cards and fake identification corresponding with the credit card name and identification, and send these prostitutes out with the expressed purpose of buying colored televisions, of course have them pick them up, bring them back. And he would then store them someplace. And we have reason to believe that once he got a sufficient quantity, these would be then sent to South America. This was one case that we ran across.

Senator BIBLE. You noted that in your statement.

Mr. GARMIRE. The magnitude of the credit card or fraudulent credit card operation is tremendous, and I believe that we would find more specialization in that area of operation than you would the catch-as-catch-can thief or burglar-type operation.

It is at that point that we start becoming involved in at least a modicum of organized crime application. These are areas that are extremely interesting, ones that are going to demand some of our attention, as much as we can give to them in the future, because these are a very difficult type of operation to successfully prosecute.

But we do believe it is a very high loss ratio as far as our constituents are concerned.

Senator BIBLE. Thank you.

Doctor, you said you examined, I think, 20 fences. Was that the figure?

Dr. KEENAN. In detail, yes. The data base is complete on these 20.

Senator BIBLE. They were fences behind what kind of business operation?

Dr. KEENAN. In the main, they were smaller retail outlets dealing in small appliances such as stereos, televisions, color television sets, things of that ilk. There were also some jewelry stores who dealt in jewelry, watches, what have you. There were also some gift-type stores. My vocabulary fails me to some extent here. They carry things like cameras, binoculars, and that sort of thing. It was a typical New York City kind of thing, a 42nd Street store where they have small stereos and cameras and binoculars.

Senator BIBLE. What you are saying is that the 20 fences that you examined in some detail were behind small business fronts. They were not behind large department stores or large operations of any kind.

Dr. KEENAN. That is correct. Those were the ones that we examined.

You see, putting myself in a position of a fence—which I do not intend to do, incidentally, but trying to do it psychologically—larger operations have bureaucratized purchasing departments. In any bureaucracy, there are checks and balances, and it is difficult to assess fenced goods, in my opinion. I recognize that stolen goods can be found in large department stores. But with respect to numerical instances of fencing, I believe it is largely concentrated in smaller retail establishments where the owner is easily accessible.

Senator BIBLE. Thank you very much.

Now I want to turn to Ms. Petersen. I wish you would tell me, as I asked the previous witnesses, a little bit of your background just by way of qualifying yourself as a witness. Would you do that?

Ms. PETERSEN. Good morning, Senator, yes. I am the attorney who was assigned to the fence unit. I graduated from William Smith College in Geneva, New York in 1965 with a bachelor of arts degree, and subsequently attended George Washington University Law School, from which I graduate with a juris doctor degree in 1968. Since that time I have been involved largely in litigation, and I have been at the city of Miami Police Department for approximately a year and a half.

Senator BIBLE. I find that I have to attend the Appropriations Committee, for a markup on an appropriations bill.

I suggest that we stand in recess at this point until 1:30. Does that inconvenience anyone?

Mr. GARMIRE. No, sir.

Senator BIBLE. We will stand in recess until 1:30.

(Whereupon, at 11:25 the committee recessed, to reconvene at 1:30 p.m. the same day.)

AFTERNOON SESSION

TESTIMONY OF BERNARD L. GARMIRE—Resumed

Senator BIBLE. The hearing will resume.

The first witness this afternoon is Loraine Strait Petersen, who told us a little bit about her background. We are happy to recognize her now.

Ms. PETERSEN. Thank you very much, Senator.

I would like to share with you a few of the findings that we made concerning the legal aspects of statutes regulating the receiving of stolen property.

The Florida statute prohibiting the receiving of stolen property is similar to statutes in force in other States: Any person who buys, receives or aids in the concealment of stolen property, knowing it to have been stolen, is guilty of a felony and subject to a prison sentence and/or a fine.

I should like to talk about the legal problems we encountered in arresting and prosecuting suspected fences in terms of specific cases in which we were involved. Over the grant period, the Fence Unit arrested 18 persons for receiving stolen property, or closely related offences. Of these 18 cases, six were dismissed—four for lack of positive identification of property, one for lack of evidence establishing knowledge, and one for failure of the victim to appear; two were

nolle prossed, one because the chief witness was disqualified and one because actual receipt of the property could not be established; three defendants pleaded guilty, each receiving 5 to 6 years of probation and one receiving a fine of \$1,000; one defendant was found not guilty after trial and six cases are currently pending.

In one of our first cases, we received information that a gas station owner was fencing. Our informant told us that he had recently sold approximately 60 shoplifted hot combs, numerous hot lather dispensers, TV's and radios to "A," the owner of the gas station, and that these items were usually stored in the back room of the gas station before being transported to "A's" gift shop.

Because he was not able to provide serial numbers or tell us of any distinguishing features of the objects, we were unable to apply for a warrant to search the station for these items. The informant finally advised us that he had earlier stolen an Emerson color portable TV set, with the number 75 scratched on the back panel, and sold it to "A." We sent him back to the station to determine whether the set was still there and found that it had been moved to the gift shop. Armed with a specific description of the property, we were then able to obtain a search warrant. The number 75 Emerson television set was not found. However, the informant identified a Panasonic portable TV set as one which he had previously sold to "A." This set was seized.

Both "A" and his partner were arrested, and were charged with receiving stolen property. Their cases were subsequently dismissed because the department store from which the informant took the television set could not identify it as having come from the store, as no serial numbers of inventory stock were kept by the store.

Other items in the gift shop were also identified by the informant as having been sold by him to "A," but because they were nonserialized consumer goods, it could not be established that they were stolen.

In this case, we were unable to establish one element of the offense—that the goods in possession of the defendants were stolen. Had we caught our informant or any other thief in the act of his theft—thus ameliorating the problem of owner identification of goods—and thereafter allowed the thief to fence the property, we could not have charged the fence with receiving stolen property. In Florida, the property, once having been returned to the custody of the owner or that of the police, immediately loses its character as stolen property. Therefore, that element of the offense cannot be proved.

Nor can the fence be arrested for conspiracy to commit the offence of receiving stolen property. The arrested thief now cooperating with law enforcement officers becomes a police agent and lacks the capacity to form the necessary intent for a conspiracy.

The latter two points are illustrated by the survey which Dr. Keenan and I made of downtown merchants. Even though the proprietor of the religious articles store, "J," agreed to purchase hot radios from us and ordered as many hot television sets as we could provide, he could not be prosecuted for a criminal offense.

The property which we offered him was not stolen. As we had no intent to ever sell him stolen property, he could not be guilty of forming a conspiracy with us.

An additional problem in this situation is that of entrapment. Had we, in fact, stolen property to sell and had we the requisite intent to conspire, a person in "J's" position could have claimed that we had "planted the seed" in his mind to commit the offense and prior to our contact that he had not considered such a criminal act.

Because I was employed as an attorney to the Fence Unit of the city of Miami Police Department and Dr. Keenan was associated with the same Department, "J" could have successfully asserted at trial that we were law enforcement agents and that he was entrapped into the commission of the offense.

Another of our cases involved a husband and wife who run a trading post, a business which buys secondhand furniture, tires and hub caps, and various other used goods. The Fence Unit arrested a truck driver employed by a rental company who had been diverting part of his truck loads of rental items to this trading post over a 2- to 3-month period. Hundreds of folding chairs, a number of wheelchairs, party utensils, and other rental equipment marked with the name of the rental company were found at the trading post. The thief advised the fence unit that some of the items were sold to the husband in the presence of the wife and that both knew the items were stolen.

The wife, at the time of sale, filled out and notarized statements to the effect that the items were not stolen, which the thief signed. The case against the wife was nolle prossed because one element of the offense could not be established—the actual purchase or receipt of the property by the wife. This element is also extremely difficult to prove in instances where all of the transactions are made over the telephone and the fence does not come into actual physical contact with the stolen merchandise. Constructive receipt may be proved, but this requires a strong showing of actual control over the goods.

By not being able to identify goods as stolen—and, as a consequence, not being able to find persons in possession of stolen property—the most difficult element of proof is often never reached: knowledge that the goods were stolen. This element is indeed the hardest to prove.

In the case just mentioned of the husband and wife trading post team, the husband was prosecuted and his case went to trial by jury. The owner identified the specific item which the defendant was charged with receiving—by serial number. Receipt was acknowledged. The thief testified that the defendant knew that the item was stolen. However, the thief was a former addict, and his drug involvement was minutely examined by the defense attorney. As a result, his credibility was impugned before the jury and the defendant was found not guilty.

Another case involving "B," the coowner of a small store, was also dismissed because knowledge could not be established. This individual had been present at the time when stolen goods—which "V," the coowner, had ordered—were delivered and had participated in receipt of them.

Because "B" did not participate in the conversation between the thief and "V" when the goods were received, no knowledge that these particular goods were stolen could be established. Earlier, a conversation had been overheard between "B" and the thief-informant where "B" placed an order for specific goods needed for the store's inventory. Conspiracy to commit the offense of receiving stolen property could not be charged based on this conversation because the thief was at that time working with a law enforcement agency in the capacity of informant.

One additional element of proof is required under the Florida statute of receiving stolen property—that of wrongful intent. For successful prosecution, it must be established that not only was stolen property knowingly received, but that the receiver had no intention of returning it to its rightful owner.

Once knowledge is shown, this element of proof is not ordinarily difficult. Where the individual has retained the property and made no demonstrable efforts to find the true owner, wrongful intent can thus be established.

As a result of the fence unit's experience, legislation has been proposed in Florida to require that merchants in both new and secondhand goods keep a record of the serial numbers of goods which they sell for a period of 3 years and also note the serial number on the customer's receipt. A pilot program has been suggested where a limited number of merchants would be involved in this kind of recordkeeping to determine the costs and effectiveness of such an approach.

A bill will be proposed to this session of the Florida Legislature making the offense of attempted buying, receiving, or aiding in the concealment of stolen property a criminal offense. The intent to buy stolen property—although the property has technically lost its stolen character or was not in fact stolen—would then become a crime.

In addition, bills have been proposed to provide a civil treble damage remedy for victims of theft—against persons found in possession of stolen property—and to create a presumption that a secondhand dealer who has made insufficient inquiry as to ownership of purchased goods and who is found in possession of stolen goods knew that they were stolen.

It is recommended that the concept of prohibiting the sale of stolen property be explored, that regulations concerning exportation of goods from the United States include a requirement that proof of ownership be exhibited for each item being exported, that economical methods of identification of goods be examined, and that the question of building stricter presumptions of knowledge into existing legislation be considered.

Senator BIBLE. Thank you very much. I think that is a very fine statement. I particularly like it because it is based on actual experience in the field. I think it is a helpful contribution to our efforts to do something in this general area.

I am not clear about these 18 persons that you have testified were arrested for receiving stolen property by the fencing unit.

How many convictions were actually secured of those 18?

Ms. PETERSEN. Three convictions were secured.

Senator BIBLE. They were by virtue of pleas of guilty, is that correct?

Ms. PETERSEN. That is correct.

Senator BIBLE. One received a \$1,000 fine, the others were put on probation?

Ms. PETERSEN. Correct. The person who received the \$1,000 fine also received a probationary sentence.

Senator BIBLE. Do you know whether or not these 18 persons have a record of prior convictions on this type of a crime or any other type of a crime?

Ms. PETERSEN. Let me say first as Dr. Keenan mentioned, a study of 20 suspected fences, which was an in-depth study and was done partially to determine this kind of configuration, to determine prior arrests, and particularly prior arrests for receiving stolen property was made. Of those 20 suspected fences, we found that 12, or 60 percent, had no prior record. Of the eight that had a prior record, only one had been arrested for receiving stolen property.

Senator BIBLE. Of that number, I assume, none had been convicted before?

Ms. PETERSEN. Of the eight who had been arrested before, I believe that there were some convictions, yes.

Senator BIBLE. Some convictions?

Ms. PETERSEN. Not for receiving stolen property.

Senator BIBLE. In other fields, other criminal fields?

Ms. PETERSEN. Yes.

Senator BIBLE. Were you required to get into plea bargaining in order to get the defendants to admit their guilt?

Ms. PETERSEN. In the three cases where the fences were convicted, there were plea bargains. In these three cases, the pleas came about this way. One person, immediately subsequent to his arrest for receiving stolen property—he was a small merchant in a drugstore—had a very serious heart attack. Therefore, it was questionable whether the judge would sentence him to any time at all.

In the second case, the interest of the defendant in pleading to probation and withholding of adjudication was to preserve his immigration status in this country.

In the third instance, the defendant pleaded because of personal reasons. He wished to avoid a trial where certain personal data accumulated pursuant to his arrest would be displayed to his wife.

Senator BIBLE. I see. I guess we all have our problems. I can understand that.

Ms. PETERSEN. The interest of the police department in recommending these pleas was, in the first case, a feeling that this person would not be given a very severe sentence because of his physical condition. The primary reasons in these three cases was the difficulty in identifying the property. In each of these three cases consumer items were involved. The thief was the informant who would be the chief witness. It would be upon his testimony alone that the goods would be identified. The thief, however, had no great powers of ESP or had no greater powers than the police officer in telling one toaster from another, one hot comb from another. And it was felt that if

these cases went to trial there was a possibility of a not guilty verdict. Therefore, these pleas were recommended by the police department.

Senator BIBLE. Did your fencing unit, in these cases that you have testified to, permit a defendant to plead to a lesser offense or have complete immunity from prosecution in exchange for intelligence?

Ms. PETERSEN. No.

Senator BIBLE. You did not permit them to plea bargain in exchange for intelligence information about other criminals?

Ms. PETERSEN. Of course, the police department can only recommend. The fencing unit did not recommend immunity for any of the fences that they had arrested in return for receiving intelligence information. The fences that they arrested were taken to court and prosecuted.

Senator BIBLE. What you are saying is that there were not any fences with whom you dealt in any type of a plea bargaining who gave you information on other fences?

Ms. PETERSEN. No. However, in many cases a recommendation of immunity was given for burglars who would give this kind of information concerning fences.

Senator BIBLE. You occasionally gave leniency to burglars who in turn gave you information on the fences?

Ms. PETERSEN. That is correct.

Senator BIBLE. What are the penalties for criminal receiving in Florida?

Ms. PETERSEN. For a first offense it is up to 5 years in the State prison, unless the amount of property taken or received was under \$100, in which case if restitution is made it becomes a misdemeanor offense, which carries a penalty of up to a year in jail and/or a \$1,000 fine.

Senator BIBLE. Do your Florida courts apply these penalties?

Ms. PETERSEN. No, they do not. They do not apply the maximum penalties.

Senator BIBLE. You mentioned that one contemplated reform of the Florida law was to make it an offense to attempt to buy or receive or aid in the concealment of stolen property.

What impact would such a change in the law have upon the operations of the Miami Police Department's Fencing Unit if that change were made?

Ms. PETERSEN. It would certainly reduce the difficulty now encountered in establishing one element of the offense—that is, the technical nature of the property, that it be in fact stolen. It would cover the situation where a thief may be arrested in the act of his theft and thereby sent on his way as he would have gone before to his fence. At the present time, if he sold the property to his fence the fence could not be arrested.

This kind of attempted receiving of stolen property would, therefore, allow us to arrest the fence for his attempt to buy the property which he thought was stolen.

Senator BIBLE. I understand.

Would the existence of stricter statutory presumptions concerning knowledge that goods were stolen, such as sale below a fair market value, make it easier to proceed against fences?

Ms. PETERSEN. Yes, I believe so.

Senator BIBLE. Which statutory presumptions would, in your view, be most effective in this regard?

Do you have now any knowledge on that?

Ms. PETERSEN. Yes. I believe there are two presumptions that would make it much easier to prosecute fences than at present—the failure to make sufficient inquiry of the source of the item in circumstances which would warrant a reasonable man's making such an inquiry would be a useful presumption. In addition, a presumption to be included in the statute making a prima facie case where an item is purchased below the fair market value of the item.

At present, these are factors to be taken in account by the trier of fact, to determine whether or not the offense has occurred. However, by including them in the statute as presumptions the burden would then shift to the defendant to come forward and rebut those presumptions. I think that would make the case of prosecuting fences much easier.

Senator BIBLE. Thank you.

Do you think that a civil treble damage remedy for victims of theft for persons found in possession of stolen property would be an effective deterrent in criminal receipt?

Ms. PETERSEN. Yes, I do.

Senator BIBLE. We passed a statute to that effect in the Senate. I guess it is still languishing over in the House side. It is in the House Judiciary Committee. I hope we can move that forward on the Federal level, at least before we adjourn out of this Congress.

To your knowledge are any civil suits for damages presently brought by victims of property theft against fences in the city of Miami?

Ms. PETERSEN. No.

Senator BIBLE. In what proportion of property crimes committed in the city of Miami does the victim recover his or her stolen goods?

Ms. PETERSEN. According to the 1972 uniform crime report, approximately 25 percent of goods are recovered. However, if one excludes stolen automobiles which are recovered, the percentage is reduced to approximately 4 percent.

Senator BIBLE. Four percent recovered if you exclude automobiles?

Ms. PETERSEN. Yes.

Senator BIBLE. Do victims and insurance companies on occasion buy back stolen goods from fences in burglaries in the city of Miami area?

Ms. PETERSEN. I believe that to be true. I was advised of one particular instance by an investigator of the Miami Police Department. He responded to a call made by the victim of a theft's sister. The sister advised the officer that the victim had purchased back her own TV from a person selling goods from the back of a truck in her area. She had located the person, she had identified her own TV set, and she paid \$10 to get it back.

However, the victim in this case, after telling the officer all that and soliciting his help in apprehending this person who had sold her back her own TV set, refused to testify and refused to come to court. Therefore, nothing could be done about it.

That is one instance that I am personally aware of.

Senator BIBLE. Thank you.

Lack of positive identification of property has been mentioned by you as a serious barrier to effective law enforcement measures against the fence.

What procedures would you recommend to improve property identification?

Ms. PETERSEN. As Chief Garmire has said, the most sophisticated property identification measures in the world can be created, can be developed. However, without any motivation to use the identification measures, they are really useless. I think there has to be an economic and/or a legislative motivation in order to implement these property identification measures. We have begun a program similar to other identification programs where social security numbers or license numbers are etched on property of homeowners.

We have also proposed a bill requiring merchants to keep serial numbers and provided a civil penalty where the person who fails to keep the serial number would be liable for the value of the item to any person suffering a theft.

Senator BIBLE. I notice your mention of that on the fourth page of your statement. I am wondering what kind of practical problems that might create, apart from the difficulty of getting it through a legislature.

What is the status of that legislation?

Is it before a committee?

Ms. PETERSEN. The status as far as I know is that it is not going anywhere this session.

Senator BIBLE. Languishing in committee?

Ms. PETERSEN. It did not go anywhere last year. It is not going anywhere this year, primarily because of the opposition of merchants to this type of recordkeeping.

Senator BIBLE. I can understand that. This committee, as a matter of fact, is constantly raising fuss about the myriads of bookkeeping and redtape that the small businessman meets in the Federal field of procurement. It seems to me that the merchants might very justifiably make that same type of objection.

It is designed for their protection, but maybe the cost of keeping books and of identifying and marking inventories is really burdensome.

Ms. PETERSEN. That is why we have thought possibly a project on a very limited level would be useful in order to answer these very questions, both to the merchants' satisfaction and to our satisfaction.

Senator BIBLE. As a practical politician, I would be a little apprehensive of that possible solution to your problem, as much as we are trying to come to grips with it. I can see retail merchants coming to the legislature en masse and all types of problems from the chambers

of commerce that feel it is an invasion of privacy and everything else.

Ms. PETERSEN. I can understand that as well, Senator. It was felt in proposing this legislation that because the merchants are in a position to keep these records and have the resources in most cases to keep the records, that this would be a suitable place to place the burden.

Senator BIBLE. Thank you very much. You made some very helpful contributions.

Ms. PETERSEN. Thank you, Senator.

Senator BIBLE. I will defer to you, Lieutenant Woods, for any type of statement.

Lieutenant Woods. What we would be interested in putting across here is how we first came about arriving at the assumption and our conviction that the man you have subpoenaed here is an active fence.

Senator BIBLE. Very well.

Lieutenant Woods. Our attention was first drawn to this man on the 6th of December 1972. On a routine traffic violation, the driver of the car was apprehended, and he had several trays of jewelry, rings, which were taken in Boward County. Of course, he was brought into the station and interrogated. He was a drug addict and he agreed to take the rings to the fence that he was en route to when he was apprehended for the traffic violation if we would not charge him with the theft at that time.

Our primary concern was in fencing, and we said we would do what we could so far as the recommendation went. However, this was before Ms. Petersen had come to the unit, and I researched the State statutes on this and found that the property loses its stolen character once it is in police custody. So we were unable to proceed.

He did indicate, however, that the fence is the same individual you have subpoenaed here.

On April 1, 1973, we received a call from the Miami Beach Police Department that they had arrested a shoplifter on Miami Beach, and, of course, the reason they contacted us, it was known throughout the county, was that we had formed a fencing unit. We receive many calls when information would arise about a fence.

And this man he had arrested wanted to talk about a fence in the city of Miami. So I sent two of my men over there and this informant indicated that he had fenced stolen property with the same individual on numerous occasions. He had taken cameras there and the fence had indicated to him that he would prefer color television sets. However, he did deal in cameras and most anything of value.

On the 1st of May 1973, another informant was arrested on a burglary of a camera store. We took a sworn statement from him that one of the cameras that was stolen in this burglary was fenced through this same individual.

However, when we went to the burglarized merchant, he was unable to identify the camera and said he would not be able to go into court and definitely say that that camera was his. So, of course, we did not make a case.

On the 22d of February we started our surveillance of this subject, and after approximately 10 days our surveillance indicated to us that the establishment that he was operating was not self-supporting, that is, the trade which he indicated by the merchandise in his store. However, it is obvious that if we had gotten sufficient evidence for a search warrant we would have gone and made a case around him, gone ahead into the store with a search warrant.

Our problem in this case, as in most of them, was that you do not normally get the shoplifter or burglar immediately after he has taken something to a fence. Therefore, by the time that you talk to him, a week or two would have elapsed, and the judge will not issue a search warrant on this time lapse.

We did conduct a surveillance on both his places of business and his financial records indicate to us that, along with this confidential informants' testimony from three different people, he is operating as a criminal fence. However, as I stated earlier, we do not have the evidence to go into court because the two of them would not testify in court. The other one would, but the goods that he had put in there, the timelag indicates to us that it is probably not on the premises, and we never did make a case against the individual.

Senator BIBLE. Very well. I think that probably is an adequate summary. There may be some additional foundation that should properly be laid, either by Ms. Petersen or the chief.

Did you have anything to add to that, Ms. Petersen?

Ms. PETERSEN. No.

Senator BIBLE. By way of laying the foundation, before calling Mr. Daire?

Ms. PETERSEN. I believe Lieutenant Woods has some further information concerning financial matters.

Senator BIBLE. You may place that in the record.

Lieutenant Woods. Our investigation of the individual indicated that he maintained, at the time of our investigation, two checking accounts and one savings account for the year 1973. His deposits and withdrawals from these accounts were as follows: In checking account No. 1 he deposited \$24,656.28, withdrew \$22,616.22, leaving an end-of-the-year balance of \$4,247.87.

In checking account No. 2, his deposits totaled \$11,500.91; withdrawals totaled \$11,572.81, leaving an end-of-the-year balance of \$510.89.

His savings account showed deposits in 1973 of \$3,265.06, no withdrawals for that year, with a balance at the end of the year in the savings account of \$5,418.40.

The Florida State Revenue Commission for Sales Tax indicated for 1973 his gross receipts for his place of business were \$9,591.83. For the company that we surveilled in the downtown area, the rental on this building where he maintained his livelihood was \$5,116.80, approximately, since part of that was estimated.

It indicated to us that, with this operation of \$5,000 rental for the year and \$9,000 gross profit, he was not operating his business on a very good profit basis. The official land records in Dade County

indicate that on September 12, 1973, this individual purchased a residential duplex for \$20,000. Since there is no mortgage of record, it is assumed that this was a cash transaction. The next day, September 13, 1973, he purchased a single-family residence for \$21,500. In this case the mortgage was satisfied and there was no new mortgage of record. Again, this implies a cash transaction.

Approximately 5 weeks later this property was resold for \$24,500.

There is another business that he operates in the Cocoanut Grove area, but it is a coin laundry and we have no concrete evidence on the profit and loss of this business. We did surveil it. It appeared to be a normal coin-operated laundry as far as customers.

Based on the observation that this gentleman had no social security card until 1974, it would appear to us that he did not file an income tax return prior to that since a social security number is required on your income tax form.

Senator BIBLE. Very well.

Is there anything further to be said by way of foundation?

Ms. PETERSEN. Yes, Senator.

Senator BIBLE. Ms. Petersen?

Ms. PETERSEN. In my statement I refer to Dr. Keenan's and my experiment when we attempted to sell a stolen radio, one that we claimed was stolen. One of the persons that we contacted was "J," the person that you have subpoenaed here today. He agreed to take a \$25 radio and 23 others, indicating that the wholesale price was approximately \$14, and he would buy all 24 radios for 7 dollars apiece.

Senator BIBLE. How did he indicate that?

Ms. PETERSEN. He told us.

Senator BIBLE. He told you.

Ms. PETERSEN. He told us as well that he was interested in buying color television sets, 19 to 21 inches.

Senator BIBLE. He told that to whom?

Ms. PETERSEN. He told that to Dr. Keenan and myself.

Senator BIBLE. The two of you?

Ms. PETERSEN. Yes.

In fact, he placed an order in writing for television sets of this size. He told us that he would give us \$100 apiece for each television set 19 to 21 inches in size, \$80 for any set of lesser dimensions.

I have here the back of a bank envelope in which the prices are listed, as well as the card which he gave us for future contact when we had the television sets. We indicated that we would have no problem getting them.

Senator BIBLE. This is a card that who gave you?

Ms. PETERSEN. Mr. Juan Daire gave to me.

Senator BIBLE. That Mr. Juan Daire gave to you in his store?

Ms. PETERSEN. That is correct.

Senator BIBLE. What day?

Ms. PETERSEN. The latter part of May or the beginning of June.

Senator BIBLE. 1973?

Ms. PETERSEN. Correct.

Possibly Dr. Keenan would have something to add.

Senator BIBLE. Do you have any additional way of laying the foundation here before I call Mr. Daire?

Dr. KEENAN. I do not believe so, sir. I believe Lieutenant Woods and Ms. Petersen have laid the foundation.

Senator BIBLE. Were you with Ms. Petersen at the time of this incident?

Dr. KEENAN. I have a photograph here. We dressed in a manner slightly different than the way we are dressed today.

Senator BIBLE. If Mr. Daire would look at you today he would not recognize the two of you as being the same people that he saw in the store on the end of May or the first of June 1973.

Dr. KEENAN. I do not know. You would have to ask Mr. Daire.

Senator BIBLE. You were dressed differently than you are now?

Dr. KEENAN. Yes, sir. As is indicated by the photograph.

Senator BIBLE. You were dressed this way?

Dr. KEENAN. That is correct.

Senator BIBLE. I think I would probably recognize at least you. You do not look too much different.

Dr. KEENAN. Fortunately or unfortunately, the photograph tends to obscure that I had a 3-day growth of beard.

Senator BIBLE. Ms. Petersen looks the same. The hair is done a little different. I do not know if anybody could recognize the difference or not. I do not think you would have qualified for a masquerade anyway.

This is the way you looked at the time that you went into Mr. Daire's door?

Dr. KEENAN. That is correct. That photograph was taken on that day.

Senator BIBLE. Without objection, that will be marked exhibit 1, since it is the only exhibit we have so far that has been properly identified. This is the exhibit.

Dr. KEENAN. That is correct.

[Whereupon, the item referred to was marked exhibit No. 1 for identification. The information referred to follows:]

EXHIBIT 1.—Photograph of Loraine Strait Petersen, Esq., and Dr. R. Kenneth Keenan



Senator BIBLE. Likewise the card which you have handed to me which, as I understand it, you told me that Mr. Daire handed to you.

Dr. KEENAN. That is correct. That is a business card.

Ms. PETERSEN. At that time the name was not crossed out.

Dr. KEENAN. Certain parts of that card were obliterated by myself because there was an earlier draft of a report that myself and Ms. Petersen did in which the card was reproduced. Again, we were not in the process of making a case on it. We wanted to obscure the actual address and name of the "drop." At the same time we wanted to offer some evidence of communication. We did have the evidence, the bank envelope, the deposit card that you have there.

You will see the figures "7 X 24." We represented that we had 24 radios in order to get maximum mileage from our one radio.

Senator BIBLE. First you identify this Cocoaann Grove Bank card. I guess this is a deposit slip of some kind.

Dr. KEENAN. Deposit envelope, I believe.

Senator BIBLE. Whatever you want to call it.

What is the significance of this?

Is this something that you had with you?

Dr. KEENAN. It is a piece of paper that Mr. Daire had in his store.

Senator BIBLE. In his store?

Dr. KEENAN. Yes.

Not to his discredit, he does not speak English very well, and we were negotiating a business deal. That is, we were negotiating at what price we would sell him the 24 radios which we represented we had.

Senator BIBLE. Who wrote the "24", the "7", the "168"?

Dr. KEENAN. Mr. Daire.

Senator BIBLE. This is Mr. Daire's writing?

Dr. KEENAN. That is right.

Senator BIBLE. What is the significance of the other writing?

Dr. KEENAN. I think you will see a figure, "80."

Senator BIBLE. I see two figure "80"'s. One looks like \$80, and the other 80.

Dr. KEENAN. Both are meant to be \$80. He indicated those were for the lesser dimensioned TV's. He also stated a figure of \$100, which was for 23 inches or 21 inches or above.

Senator BIBLE. Color television sets?

Dr. KEENAN. Yes.

Senator BIBLE. The significance of the 100 and the "80" and the "7" are, those are the prices that he was willing to pay you for these three articles?

Dr. KEENAN. That is correct.

Senator BIBLE. Is that a correct statement?

Dr. KEENAN. He was competitive with the rest of the people that would buy the stolen items.

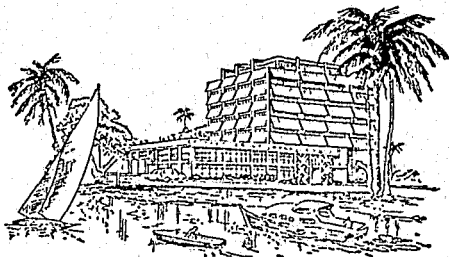
Senator BIBLE. For the purposes of the record, this exhibit, which will be made in connection with the case of Mr. Daire, will be marked as part of the record.

[Whereupon, the item referred to was marked as exhibit No. 2 for identification. The information referred to follows:]

EXHIBIT 2.—Bank deposit envelope of the Coconut Grove Bank, and business card, as submitted in evidence by Dr. R. Kenneth Keenan

Name _____
 No. _____ Date _____
 No. of Hours _____
 Reg. Amt. \$ _____
 Overtime _____ Amt. \$ _____
 Gross Earnings \$ _____
 FICA _____
 Withholding _____
 Misc. _____
 Tot. _____
 Ded. \$ _____
NET EARNINGS \$ _____

Prompt, Courteous Loan Service
 For AUTOMOBILES, BOATS
 See Our Family Banking Specialists
 9:30 A.M. to 4:30 P.M.
 Monday thru Friday

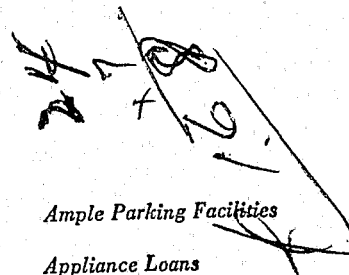


DRIVE-IN TELLER WINDOWS
 7:30 A.M. UNTIL 6:30 P.M.
 MONDAY THROUGH FRIDAY
 MEMBER F.D.I.C.

Coconut Grove Bank
 2701 SOUTH BAYSHORE DRIVE
 TEL: 443-5271

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 700
 80.00
 80

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 Commercial Loans
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Senator BIBLE. I think that is all I have from you people from the Miami Police Department. I do not think there will be any subsequent questions. I cannot anticipate any.

I defer momentarily to staff if they think there would be anything else that might be asked.

Staff advises me that they feel there is no reason why you cannot be excused at this time. I want to tell you how grateful I am to you for coming out of sunny Florida up to even sunnier Washington, D.C.

Mr. GARMIRE. Thank you, Senator.

Senator BIBLE. Each of you may be excused at this time, and I want to thank you for coming here and giving us this information.

I am informed that Mr. Daire, because of his possible inability to understand all of the questions which might be asked of him, should properly have the benefit of an interpreter. That being true, I would ask Mr. Seidenman to come forward at this time and be sworn.

Let me lay a little foundation for my presenting to you the oath.

First, would you please state your name?

Mr. SEIDENMAN. Neil Seidenman.

Senator BIBLE. Where do you reside?

Mr. SEIDENMAN. I live in Silver Spring.

Senator BIBLE. You are employed by whom?

Mr. SEIDENMAN. By the State Department.

Senator BIBLE. Here in Washington, D.C.

Mr. SEIDENMAN. Yes.

Senator BIBLE. Have you been so employed for a number of years?

Mr. SEIDENMAN. Yes. I have worked for the State Department for 15 years.

Senator BIBLE. In what capacity?

Mr. SEIDENMAN. As a staff interpreter.

Senator BIBLE. As a staff interpreter?

You are proficient in interpretation of what languages?

Mr. SEIDENMAN. Spanish, Portuguese, and Italian.

Senator BIBLE. Have you been used in this capacity in interpreting Spanish, Italian, and Portuguese in other instances?

Mr. SEIDENMAN. Yes, sir.

Senator BIBLE. All I am trying to do is lay a background for your qualifications. You appear to me to be qualified.

May I administer the oath to you?

Would you please raise your right hand?

Do you, Neil Seidenman, solemnly swear that you will well and truly interpret unto this witness, Juan Daire, the oath which will now be administered to him, so help you God?

Mr. SEIDENMAN. I do.

Senator BIBLE. Thank you very much. If you would remain standing.

And do you, Neil Seidenman, solemnly swear that you will well and truly interpret unto this witness, Juan Daire, the questions which will be propounded to him by this committee, that you will well and truly interpret unto this committee the testimony that should be delivered by this witness, Juan Daire?

Mr. SEIDENMAN. I do.

Senator BIBLE. Now you may be seated in the front row.

Now, Mr. Juan Daire, would you come forward.

My understanding is that you are accompanied by counsel, Mr. Daire. Is that correct?

Mr. DAIRE. Yes.

Senator BIBLE. The answer is yes.

Would counsel please identify himself?

Mr. COWAN. My name is Bernarr C. Cowan. I am an attorney at law in Miami, Fla., at 126 Southeast Second Street.

Senator BIBLE. Are you able to handle Spanish as well?

Mr. COWAN. No, Senator, I am not.

Senator BIBLE. You need the interpreter just as well as your client does.

Mr. COWAN. Yes, sir.

Senator BIBLE. You may be seated there, and I will administer the oath to Mr. Daire.

Mr. Juan Daire, your appearance here today is in response to a subpoena of this committee dated April 22, 1974. Before I administer your oath and begin questioning you, will you please provide your correct name and address for the record?

Mr. DAIRE. Juan Daire. My address is 814 Monterey, Coral Gables, Miami, Fla.

Senator BIBLE. Thank you.

Now, will you please stand and raise your right hand.

Do you, Juan Daire, solemnly swear that the testimony that you are about to give before the Select Committee on Small Business of the U.S. Senate shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DAIRE. I do.

Senator BIBLE. You may come up and be seated and have your counsel with you.

TESTIMONY OF JUAN DAIRE, PROPRIETOR, NORMA ELECTRIC JEWELRY, MIAMI, FLA., ACCOMPANIED BY BERNARR C. COWAN, COUNSEL; AND NEIL SEIDENMAN, INTERPRETER

[The following testimony of Mr. Juan Daire was had through the interpreter, Mr. Seidenman.]

Senator BIBLE. Mr. Daire, do you own and operate a retail business by the name of Norma Electric Jewelry, located at 227 NE. First Avenue, Miami, Fla.?

Mr. DAIRE. I respectfully refuse to answer the question on the grounds that it may tend to incriminate me.

Senator BIBLE. Do you also own and operate a business concern known as Mighty Oaks Coin Wash located at 2852 Oaks Avenue, Coral Gables, Fla.?

Mr. DAIRE. I respectfully refuse to answer on the ground that it may tend to incriminate me.

Senator BIBLE. When did you begin these businesses?

Mr. DAIRE. I respectfully refuse to answer on the grounds that it may tend to incriminate me.

Senator BIBLE. Are you the sole proprietor of these businesses?

Mr. DAIRE. I respectfully refuse to answer on the grounds that it may tend to incriminate me.

Senator BIBLE. You have just heard the testimony of Lieutenant Woods and Ms. Petersen.

For the record, is it correct that you are actively engaged in the fencing and receiving and distributing and selling or brokering of stolen property?

Mr. DAIRE. I respectfully refuse to answer on the grounds that it may tend to incriminate me.

Senator BIBLE. For what crime do you believe your answer might lead to the prosecution?

Mr. DAIRE. I respectfully refuse to answer on the grounds that it may tend to incriminate me.

Senator BIBLE. You heard Ms. Petersen's testimony that she and Dr. Keenan approached you with merchandise that was represented to be stolen. At that time you directly offered to purchase 24 FM radios for \$7 each, and further, you negotiated this order in writing. Is this correct?

Mr. DAIRE. I respectfully refuse to answer on the ground that it may tend to incriminate me.

Senator BIBLE. Did you order specific stolen goods from thieves?

Mr. DAIRE. I respectfully refuse to answer on the grounds that it may tend to incriminate me.

Senator BIBLE. Did you order stolen television sets from Ms. Petersen and Dr. Keenan when they approached you with the stolen radio?

Mr. DAIRE. I respectfully refuse to answer on the grounds that it may tend to incriminate me.

Senator BIBLE. Do you normally purchase goods for your store such as this at less than the wholesale fair market value?

Mr. DAIRE. I respectfully refuse to answer on the grounds that it may tend to incriminate me.

Senator BIBLE. Do you normally purchase from thieves?

Mr. DAIRE. I respectfully refuse to answer on the grounds that it may tend to incriminate me.

Senator BIBLE. How much do you pay, for example, for a small new color television set?

Mr. DAIRE. I respectfully refuse to answer on the grounds that it may tend to incriminate me.

Senator BIBLE. Are you familiar with those dealing and selling goods in the city of Miami?

Mr. DAIRE. I respectfully refuse to answer on the grounds that it may tend to incriminate me.

Senator BIBLE. Do you conduct business with these individuals when you receive merchandise which is not salable to either of your two businesses?

Mr. DAIRE. I respectfully refuse to answer on the grounds that it may tend to incriminate me.

Senator BIBLE. As the proprietor of these businesses, do you declare to the State of Florida that you had sales of \$9,591 at Norma Electric Jewelry, and you collected sales tax on this amount?

Have you also filed appropriate business or personal Federal income tax returns?

Mr. DAIRE. I respectfully refuse to answer on the grounds that it may tend to incriminate me.

Senator BIBLE. Did you file returns for 1972?

Mr. DAIRE. I respectfully refuse to answer on the grounds that it may tend to incriminate me.

Senator BIBLE. Lieutenant Woods has testified that the public records of Dade County indicate that during 1973 you made two large real estate transactions which apparently involved large amounts of cash on the order of \$20,000. These transactions do not appear to be reflected in your local bank accounts.

Do you maintain a safe deposit box or more than two checking accounts?

Mr. DAIRE. I respectfully refuse to answer on the grounds that it may tend to incriminate me.

Senator BIBLE. For the record, Mr. Daire, let me make it clear that the testimony here this morning and this afternoon has impugned your reputation. It has been alleged that you are engaged in the fencing, the receiving and distributing, the selling and brokering of stolen property. You now have an opportunity to answer these accusations. You have chosen to remain silent.

We can only conclude that by your acquiescence in the statements that have been made about you, that you believe that the accusations to be substantially accurate.

Is that correct?

Mr. DAIRE. I respectfully refuse to answer on the grounds that it may tend to incriminate me.

Senator BIBLE. It is certainly your constitutional right to take the fifth, as we all know. I have no further questions, and you are excused as far as I am concerned.

Thank you very much.

Our next witness will be Miss Marilyn E. Walsh, doctoral candidate, School of Criminal Justice, State University of New York at Albany.

If you would please come forward and please be seated.

Senator Javits has sent me a note asking me to apologize for him at his not being able to be here to receive your testimony personally. He did want to thank you for taking the time to share with this committee your experience and your research in the fencing area and commend you for such a thorough and concise statement.

Coming from a man of as great distinction as Senator Javits and from your State of New York, and a fellow member of this committee, and the ranking Republican on the committee, I think that is a very fine compliment to you, and I am going to look forward to hearing your statement.

Your full statement will be submitted in full in the record. You did sit through the testimony this morning, you might highlight the statement just in your own way.

[The prepared statement of Miss Walsh follows:]

STATEMENT BY

MARILYN E. WALSH

DOCTORAL CANDIDATE, SCHOOL OF CRIMINAL JUSTICE, STATE UNIVERSITY OF NEW YORK
AT ALBANY, 1400 WASHINGTON AVENUE, ALBANY, NEW YORK, 12222

BEFORE THE SENATE SMALL BUSINESS COMMITTEE

APRIL 30, 1974

MR. CHAIRMAN AND DISTINGUISHED SENATORS:

I want first to thank you very much for your invitation to speak here today and for your interest in my work. I hope that the information I have to offer can be of assistance to this committee in its endeavor to interdict the activities of the criminal receiver of stolen property.

I should explain that my statement is based upon a three year investigation of criminal receiving in one urban area of the United States. It has been accomplished with the help and assistance of a police department and a district attorney's office and only the major findings will be summarized here.

The fencing industry investigated handles approximately \$8 million dollars worth of stolen property per year in a metropolitan area consisting of one and one half million persons. One need only multiply this volume of the fencing industry for every American city to get some idea of the scope of the theft problem supported and facilitated by the receiver of stolen property.

In my work, three main kinds of fences (as the receiver is colloquially called) were discovered: businessmen-fences, criminal entrepreneur-fences, and independents. By far the largest group in the industry is represented by businessmen-fences, comprising nearly 67 percent of the sample of fences studied. These individuals are all proprietors of legitimate businesses and handle stolen property either through them directly or by using the resources

Walsh statement (2)

of these businesses for such purposes. The primary types of businesses involved are presented in Table 1 (attached). Although fences tend to cluster in certain trades, it is apparent that the status of being "in business" is more important to a trade in stolen property than is the particular nature of the business one is in. Some of the businessmen-fences in the sample are, of course, fairly marginal entrepreneurs, but some are indeed successful and respected businessmen in the community. Few of these individuals can be considered "full-time" fences and most show a commitment as well to the health and well-being of their legitimate endeavors.

Businessmen-fences tend to divide into three groups: A. those who only handle stolen property consonant with their legitimate lines of merchandise, (a furniture and appliance dealer handling stolen televisions, for example); B. those who handle disparate goods in large volume, (the restaurateur handling stolen office equipment in large quantities); and C. those who deal in high unit value property items distinct from their illicit line, (the construction contractor handling stolen jewelry, for instance). Each of these groups displays a different place held by the receiving trade in the business portfolio of the businessman-fence. For example, individuals in Group A seek to blend stolen goods with a licit line of merchandise, allowing the legitimate business to define the illicit trade. Those in Group B tend to exploit the facilities of the legitimate business for illicit purposes. And those in Group C use the legitimate enterprise to generate revenue for illicit commercial investments.

Because of the prominence of the businessman-fence in the industry, he is estimated to be responsible for the largest volume of stolen property handled, in the widest assortment, from the widest range of thieves, from the drug addict to the professional burglar.

Walsh statement (3)

Criminal entrepreneur-fences are those individuals alleged to be members of a crime superstructure, i. e. organized crime. They comprise 12 percent of the industry in the metropolitan area studied. Criminal entrepreneur-fences are drawn from both the "executive" (managerial) and the "operative" ranks of criminal superstructures. Thus, known fences in this group ranged from the operative level "enforcer" (i.e., the hired tough man associated with loan sharking and other illicit goods and services industries) to the big time racketeer for whom such operatives might work. Table 2 (attached) lists the primary criminal avocations of the criminal entrepreneurs in the sample.

The criminal entrepreneur-fence's receiving trade is built upon the dimensions of status and power accruing from his affiliation with an organized criminal network, and not upon the foundation of a legitimate or quasi-legitimate commercial setting. Depending upon his status in the criminal organization, the criminal entrepreneur fence will exercise power in different ways. The enforcer (occupying an operative's status), for example, displays power directly and often brutally, usually employing what is known as the "shake-down" in order to acquire stolen property. This consists in the extortion of property from thieves through the use or threat of violence on the thief's person. Generally the operative "shakes-down" burglars for property items he may want for himself or for friends.

Persons of middle range management status in crime superstructures, presiding over their own, pre-existing criminal endeavors (loan sharking, narcotics, gambling or vice operations, for example), will more subtly display power in the pursuit of stolen property. Thus the loan shark can be found to extract goods or "favors" from persons indebted to him (a common example being the extraction of a promise of assistance from a truck driver in a

Walsh statement (4)

hijacking); or the narcotics dealer will be found willing to accept merchandise in exchange for drugs. In these cases the power relationship between the criminal entrepreneur fence and his client is implicit and essential, and yet remains submerged below other tying arrangements. Still more subtle and more influential are members of the higher echelons of criminal organizations whose power and status bring clients to them for the purposes of mediating disputes or of making use of their extensive contacts and resources. Thus other fences might be seen to come to the criminal entrepreneur if and when special transportation and storage facilities or arrangements are needed for stolen property. A theft of paintings in the city studied, for example, ended up (authorities believe) in Germany with what is believed as well to be the assistance of the local crime superstructure. At a completely different level, the burglar, vulnerable to the "shake-down" of the enforcer, is likely to offer stolen property to the racketeer in exchange for protection.

It is interesting to note, however, that the criminal entrepreneur was not found to be a major outlet for stolen property in the city studied. Instead his larger role is played in the setting-up of thefts (particularly hijackings) and in the arranging for special transportation functions to be performed. This finding is similar to what Vincent Teresa, in his book My Life in the Mafia, reports when he notes that even where the criminal syndicate with whom he was involved had engineered a hijacking, the goods generally went to unaffiliated fences.¹ Because of the special position occupied by the criminal entrepreneur-fence in the theft microcosm and in crime generally, nearly any type of thief can become his client. And because of the extensive resources on which the criminal entrepreneur can call, no specific product lines are characteristic of his operations.

Walsh statement (5)

Independent fences make up approximately 15 percent of the industry studied and are divided into two groups. The first group, employees, work for others in a wide range of legitimate occupations, ranging in the city studied from truck driving to local government service. As a sidelight, however, these individuals engage in a receiving trade generally selling from their homes to a small set of customers. The second group of independent fences is made up of persons with no visible means of support except the fencing trade. These individuals account for the industry's full-time fences. In this latter group we find the street and bar peddler and more small-time residential fencing operations.

The independent fence has neither a sophisticated front nor the power of an organization behind him. His brand of criminal receiving is dominated by a personal style often involving face to face meetings, ^{not only} with the thief but also with the customer. The most frequent clients of the independent are the drug addict and the shoplifter and his favorite product lines are clothing and entertainment equipment.

The rest of the industry studied was populated with miscellaneous (i.e. unclassifiable) persons or more notably with thieves or former thieves. Interestingly enough, thieves are some of the least successful of criminal receivers. Their disabilities in this area seem to lie with three factors. First, thieves have a high level of visibility to enforcement authorities. The burglar, for example, is much more likely to have an arrest record than is the fence. Thus many of his activities may attract a degree of monitoring and surveillance uncommon for the average fence. The more attention the thief-turned-fence attracts; the less successful he can become in his new venture. Second, the burglar rarely establishes himself in a legitimate occupation as he pursues his theft career; and he is even less likely to

Walsh statement (6)

have retained extensive amounts of capital from his theft activities. Without an occupation or his own business in which to store or cover property, and without the capital to either purchase such facilities or property itself from other thieves, the burglar becomes extremely vulnerable to police property recovery efforts. Finally, the competitive structure within the property theft industry suggests that functionaries in the industry (particularly the fence) have something of a stake in maintaining the burglar in an operative rather than a managerial theft role. Since it is the better burglar who decides to turn fence (as the years creep upon him), countervailing pressures within the industry are likely to try to discourage such a career shift. Thus, the burglar may be put at a disadvantage by those whose self-interest is best served by his remaining a thief.

Products Handled

Table 3 (attached) lists the products handled by the fences studied in order of frequency. It was interesting to find that receivers tend to limit themselves if not to specific products at least to product lines. For example, while a fence may not limit himself to televisions he will often confine his activities to the broader area of "entertainment equipment", i.e. televisions, stereos, radios and records. Similarly, rather than handling only men's suits, a fence may instead limit himself to the product line "clothing". Some fences do, of course, specialize within product areas handling only women's dresses or televisions or diamonds, for example.

There are two strong and major trends in the fencing industry relating to products. The first of these is the tendency of fences to specialize along product lines rather than within such lines. Thus, fences appear more likely to carry a full line of products rather than specific items from a line. The most frequent case finds the fence limiting his illegal goods

Walsh statement (7)

to either one or two full lines of products, a pattern found in nearly 59 percent of the sample studied. Although some fences are known to carry three or more specific lines of products, ^{their numbers} are relatively small; and those individuals designated as generalists, connoting the handling of products so wide-ranging and changeable as to defy specificity, comprise a mere 6 percent of the sample.

The second trend to be found in the industry relates to product specialization. Here the dominant tendency is for the receiver to concentrate his activities on but one product. The one-product fence is to be found in 12 percent of the cases, exactly doubling the frequency of the generalist. The fence who carries two or more unrelated products is not a significant figure in the industry, being found in only 3.5 percent of the sample. The dominance of the one-product fence tends once again to emphasize the apparent preference of the illicit middleman for the product line rather than for individual products; for once the fence expands beyond the handling of one product, his tendency is towards the establishment of a full line rather than the addition of similar or unrelated individual items.

The Fence and The Thief

The volume of stolen property handled by the fence, the nature of that property, and the condition in which it will be accepted (i.e., whether new or used), will determine the kinds of thieves with whom the fence will do business. Thus, the fence who deals in diamonds and expensive jewelry is more likely to do business with the professional burglar than with the drug addict thief. Similarly, the receiver who deals in volume merchandise is likely to be handling goods for lesser skilled thieves than the professional who prefers to steal in quality rather than quantity.

Perhaps the more important dimension to the relationship between the fence and the thief, however, relates to the kinds of fences known by the

Walsh statement (8)

burglar for they will determine his theft activities. Thus if a thief only knows of fences who handle stolen televisions and stereos, he is likely to limit his thefts to such items. This is because the fence is the reward mechanism for the thief and by manipulating the prices he pays for merchandise he can influence the stealing behavior of many thieves. Of course the fence's "direction" of the thief is not always so implicit or subtle as this. Many fences, by virtue of their occupations and businesses are in an excellent position to develop information important to the commission of a theft. By sharing such information with thieves, they can exactly direct the thieves' behavior and be sure as well of the nature and volume of the property they will be receiving. In such cases of course it is assumed that the stolen goods will revert to the fence who has supplied the important information, with the terms of exchange agreed upon before hand. Some examples of the fence in this role of "set-up man" and information provider are the estate appraiser who "sets-up" the theft of an estate after he has evaluated it and before he handles an auction of its contents, and the insurance salesman who "sets-up" clients after having inventoried their household possessions.

In cases such as these the receiver is in effect the engineer, the prime mover, behind a theft and the thief merely an operative for the former's plans. In all instances of thefts of property, however, the fence performs the very critical service of allowing the thief to divest himself of incriminating property. For this service the fence is duly rewarded. In the city studied, thieves tended to receive on the average 10 to 15 percent of the retail value of merchandise from the fence. This is with the exception of the professional thief who negotiates in terms of wholesale prices, sometimes receiving as much as one third to one half of the wholesale value de-

Walsh statement (9)

pending upon the nature of the property in question. It is extremely unlikely however that the thief will receive any exchange price from the fence that more closely approximates the actual value of the merchandise.

It is clear, then, that the criminal receiver of stolen property can acquire property rather cheaply from the thieves with whom he deals. What may not be so obvious, however, is the manner in which he derives his price policy when he goes to resell such goods. It has generally been assumed that the fence has a single, uniform pricing policy which is to mark all goods down from their legitimate market prices. In the industry studied, however, that was not found to be always true. Instead the price the fence quotes for his wares will often depend upon the circumstances under which he sells them. For example, the businessman-fence selling stolen property through his own retail outlet will price that merchandise in a manner similar to his licit goods. If he is a discount merchandiser, the stolen goods will carry discount prices; but if he is a normal market price retailer, those goods will carry those prices. Thus the jeweler does not price stolen diamonds as cut-rate stones. To do so would reflect on the quality of his other merchandise and bring some suspicion to him.

It is also likely that the fence's customer may influence the price he asks for stolen merchandise. Thus the "knowledgeable" customer would expect to be offered goods at bargain prices; while the naive customer might become suspicious were these same prices offered to him. The exact nature of the market for stolen property and its sources of demand remains an area we know very little about and needs some important investigative work.

Summary and Recommendations

It is not known, of course, how representative the fencing industry

Walsh statement (10)

studied is of fencing industries elsewhere in the country, although information I have received from other cities suggests that many of the same patterns emerge across the country. If this is so, then we should begin to look very carefully at steps to be taken to interdict such illicit distribution systems. In doing so, we should remember first that we are not dealing with a group of amateurs, but with persons possessing a great deal of expertise in the area of the marketing of goods generally and of stolen items in particular. Many of the fences studied hold legitimate positions in channels of distribution while others have extensive quasi-legitimate contacts in licit channels. We should be additionally concerned at the ease with which stolen property appears able to mesh in legitimate channels with legitimate goods and to find ready markets. And finally we should approach the problem of theft in full awareness of the fact that in the final analysis it is the fence and not the thief who directs the course of theft in this society, by creating the incentive for it and in many cases the opportunity as well. In designing strategies for the prevention and/or successful intervention in the property theft area, then, it is the fence who must be kept uppermost in mind. The recommendations suggested here are directed to the fence specifically rather than to the thief.

1. It is clear that if anyone has information relating to the fence, it is police departments. The dilemma is that responsibility for enforcement efforts against the fence is a task rarely doled out in police units. Instead traditional policing in the area of theft is directed toward the thief. Given the base of information that undoubtedly exists about the fence, it is recommended that enforcement efforts in the form of actual "fencing squads" be developed in police agencies at all levels. Such

Walsh statement (11)

squads should draw upon existing expertise in the theft area found in more traditional police details such as auto theft, burglary, narcotics, pawnbroking and special frauds. The goal of such squads should be the compilation and processing of all theft information in the agency with a view toward setting enforcement priorities. In addition it should generally work toward the recovery of property rather than the arrest of thieves which is the more common approach of theft enforcement efforts. If and when the criminal receiver attracts the kind of enforcement resources commensurate with his importance, I believe we will be able to present a much better record of action taken against him than we can at the present time. We may also have a better idea about what specific strategies would most effectively act to curtail the receiver's activities. In the interim, if fencing squads are to have any real chance of impacting on the fence, some changes in the environment must occur. These changes form the body of our final three recommendations.

2. Perhaps the most important step that can be taken in the area of property theft is a program of public education. In this regard this committee is extremely important and is doing an excellent job. It is surprising to find out how few people actually know anything about the fence, if indeed they understand just who he is and what he does. Most of the public conceives of the criminal receiver as a little man on 42nd Street in New York City with watches on his sleeve. They can not begin, therefore, to appreciate the critical role played by the receiver in the support and facilitation of the thief's activities. That is one of the reasons why receiving cases are so difficult to prosecute. The court room is not a setting in which criminology can be taught and yet the district attorney must not only prove a fence's guilt but also show that what was done was a

Walsh statement (12)

crime in the first place. I have watched a district attorney try to do this and it is indeed a formidable task. It is critical, therefore, that the public be made aware of the important role of the criminal receiver and the importance he bears on the security of their property.

3. Essential to any program in the area of property theft must be the design and implementation of better systems for the identification of property. It is almost inconceivable that in such a complex and developed society ~~as~~ as ours that the bulk of our possessions are anonymous in nature, that is, that they possess no individual identities. Very often the potential for such individual identification does exist but is not utilized. Thus mass-produced goods are often serialized in production, but such serialization is not retained when the products are sent into transportation channels. Similarly, relatively few are the property owners who keep records of the serial numbers of their possessions or who mark such items themselves.

Recently a program that was initiated in Monterrey Park, California is being replicated across the country. This program, called "Operation Identification", encourages property owners to borrow engraving devices and to mark and keep records of property items. Such programs should be encouraged and extended for only in this way will enforcement authorities have the best chance of recovering property stolen. In order to further encourage such programs, it is recommended here that insurance companies be allowed to offer rebates to clients who participate in such efforts and place on file with them records of their identified goods.

4. Finally, it is recommended that both manufacturers and other commercial property owners, shipping in interstate commerce, be required to maintain systematic and individual records of the property contained in all such

Walsh statement (13)

shipments. In this way we should be better able to trace and recover property stolen in transit or from transport facilities and learn the channels used by fences in the cargo theft area.

Once again let me thank the Committee for the opportunity to speak here, and I hope that I have been able to be of assistance to you in this matter of importance to all of us.

REFERENCES

-
- ¹ Vincent Teresa, My Life in the Mafia. (Garden City: Doubleday, 1973), p. 134 ff.

ATTACHMENT 1

TABLE 1

Business Establishments of Fences Arranged
in Order of Frequency (includes all those with an n 1)

<u>Business Category</u>	<u>number in sample</u>
Antique dealer, art appraiser, auctioneer	8
Furniture/appliance stores	7
Restaurants	7
Bars/Taverns	6
Light construction/remodeling companies	6
Grocery stores	5
Novelty stores/second-hand merchandising	5
Salvage and junk companies	4
Jewelers/jewelry manufacturing firms	4
Auto parts/repairs/ service stations	3
Moving and storage/ Trucking companies	2
Pool Rooms/Bowling alleys	2

N = 59

ATTACHMENT 2

TABLE 2

Primary Avocations of the
Criminal Entrepreneur-Fence, N = 14

<u>Main Income Source</u>	<u>N</u>
Bookmaking	3
Narcotics traffic	1
Pimping	1
Loansharking	2
Enforcer/labor racketeering	2
Syndicated gambling/racketeering	3
Hood	2

ATTACHMENT 3

TABLE 3

Products and Product Lines
Handled by Criminal Receivers
(listed in order of frequency)

Single Products

Televisions
Cigarettes
Stereo sets
Tape players
Watches
Automobiles
Cameras
Records

Product Lines

Jewelry
Clothing
Office equipment
Metals
Appliances
Furniture
Furs
Liquor
Antiques
Coins
Mens' clothing
Power Tools
Art objects
Auto parts
Guns
Paintings
Stamps

STATEMENT OF MISS MARILYN E. WALSH, DOCTORAL CANDIDATE,
SCHOOL OF CRIMINAL JUSTICE, STATE UNIVERSITY OF NEW
YORK AT ALBANY

Miss WALSH. I would first like to thank you very much for your invitation to speak here today and for your interest in my work. I hope that the information I have to offer can be of assistance to this committee in its endeavor to interdict the activities of the criminal receiver of stolen property.

I should explain that my statement is based upon a 3 year investigation of criminal receiving in one urban area of the United States. It has been accomplished with the help and assistance of a police department and a district attorney's office and only the major findings will be summarized here.

The behavior of the people that I observed in receiving stolen property was an industry, an industry receiving \$8 million worth of property yearly in a metropolitan area. One need only multiply this volume of fencing for every American city to get some idea of the scope of the theft problem supported and facilitated by the criminal receiver.

The fencing industry I observed was composed of three main kinds of fences: businessmen-fences, criminal entrepreneur-fences, and independents. By far the largest group in the industry is represented by businessmen-fences, comprising nearly 67 percent of the sample of fences studied. These individuals are all proprietors of legitimate businesses, and handle stolen property directly through them or by using other resources.

Attached to the written statement is a listing of the primary types of fences involved. Although fences tend to cluster in certain trades, it is apparent that the status of being "in business" is more important to a trade in stolen property than is the particular industry that one is in. Some of the businessmen-fences in the sample are, of course, fairly marginal entrepreneurs, but some are indeed successful and respected businessmen in the community.

Businessmen-fences tend to divide into three groups: first, those who handle stolen property that is consonant with their legitimate lines of merchandise, the example, a good example being the furniture and appliance dealer who handles appliances, entertainment equipment, television, stereos, and this is by far the largest group, comprising 48 percent of the businessmen.

The second group are those who handle disparate goods in large volume, a good example of this being a restaurateur handling stolen office equipment in large volume, particularly from hijackings.

Third, those that deal in high unit value distinct from their licit line, a good example of that being a construction contractor who deals in stolen expensive jewelry and gemstones.

Each of these groups displays a different place held by the receiving trade in the business portfolio of the businessman-fence. Because of the prominence of the businessman-fence in the industry, he is estimated to be responsible for the largest volume of stolen property

handled, in the widest assortment, and from the widest range of thieves, ranging from the drug addict to the professional burglar.

Criminal entrepreneur-fences are those individuals alleged to be members of a crime superstructure, that is, organized crime. They comprise 12 percent of the industry studied. Criminal entrepreneurs are drawn from both the "executive," that is, the managerial, and the "operative" ranks of criminal superstructures. Thus, known fences in this group ranged from the operative level, enforcer, that is, the hired tough man associated with loan sharking and other illicit rackets, to the big time racketeer for whom such operatives might work. Again, the written statement includes a list of the primary criminal vocations of the criminal entrepreneurs in the sample.

The criminal entrepreneur-fence's receiving trade is built upon the dimensions of status and power accruing from his affiliation with an organized criminal network, and not upon the foundation of a legitimate or quasi-legitimate commercial setting. Depending upon his status in the criminal organization, the criminal entrepreneur-fence will exercise power different ways. The enforcer, for example, displays power directly and often brutally, usually employing what is known as the "shakedown" in order to acquire stolen property. This consists in extortion of property from thieves through the use or threat of violence on a thief's person. Generally the operative shakes down burglars for property items he may want for himself or for friends.

A case of that did occur at the data site, and the district attorney prosecuted the enforcers for extortion.

Persons of middle range management status in crime superstructures, presiding over their own, preexisting criminal endeavors, that is, people who are loan sharks, or pimps, or narcotics traffickers, will more subtly display power. Thus, the loan shark can be found to extract goods or more importantly, "favors," from persons indebted to him, a common example being the extraction of a promise of assistance from a truckdriver in a hijacking scheme. Still more subtle or more influential are members of the higher echelons of criminal organizations whose power and status bring clients to *them* for the purposes of mediating disputes or making use of their extensive contacts and resources. Thus, other fences might be seen to come to the criminal entrepreneur if and when special transportation and storage facilities or arrangements are needed. A theft of paintings in the city studied, for example, ended up in Germany with what is believed to be the assistance of the local crime superstructure. At a completely different level, the burglar, vulnerable to the shakedown of the enforcer, is likely to offer stolen property to the racketeer in exchange for protection.

It is interesting to note, however, that the criminal entrepreneur was not found to be a major outlet for stolen property. Instead, his larger role is played in the setting up of thefts, particularly hijackings, and in the arranging for special transportation functions to be performed.

Because of the special power position occupied by the criminal entrepreneur-fence in the theft microcosm, and in crime generally,

nearly any type of thief can become his client. And because of the extensive resources on which the criminal entrepreneur can call, no particular product lines are characteristic of his operations.

Independent fences make up approximately 15 percent of the industry studied and are divided into two groups. The first group, employees, work for others in a wide range of legitimate occupations, ranging from truckdriving to local government service. As a sideline, however, these individuals engage in a receiving trade generally selling from their homes to a small set of customers.

The second group of independent fences is made up of persons with no other means of support except the fencing trade. These individuals account for the industry's full-time fences. In this latter group, we find the street and bar peddler, and more small-time residential fencing operations.

The independent fence has neither a sophisticated front nor the power of an organization behind him. His brand of criminal receiving is dominated by a personal style which keeps his operation small, and often involves face-to-face meetings not only with the thief, but also with the customer. The most frequent clients of the independent fence are the drug addict and the shoplifter and his favorite product lines are clothing and entertainment equipment.

The rest of the industry studied was populated with miscellaneous, that is, unclassifiable, persons or more notably with thieves and former thieves. Interestingly enough, thieves are some of the least successful of criminal receivers.

We have an industry with different sorts of people—

Senator BIBLE. Why would thieves be such unsuccessful fences? Do you have a conclusion on that?

Miss WALSH. Yes.

There seem to be about three factors relating to this which may give us some clue as to what kinds of activities we might take against fences. First of all, thieves have a high level of visibility to enforcement authorities, much more than do fences. Out of a sample of 115 fences, only 1 had ever been arrested for criminal receiving, and about 70 percent had never been arrested for anything but traffic offenses.

Burglars, on the other hand, have a mean arrest rate of six offenses. They are much more visible.

Senator BIBLE. Translate that for us.

Miss WALSH. Most burglars have an average of six arrests.

Senator BIBLE. Repeaters.

Miss WALSH. Yes.

The fence, if he is arrested at all, is very unlikely to ever be rearrested. Fences have no record, so they are very invisible to law enforcement authority, which is not true of most burglars.

Then, too, thieves are notorious for not saving money—they make money and get rid of it as fast as they make it. They never invest it. They do not purchase a business front, so they do not have the kind of setting that can "explain" possession of property.

We had a situation in which a very good safe artist decided to turn fence and bought 20 televisions from other thieves. And he had them

in his apartment. The police just came in and seized them. They could not make an arrest because there was no legal search, but he was out his money, he was out the TV's. He could not explain possession as the businessman could in the course of his business. That is the problem.

Senator BIBLE. Do you draw the conclusion that he did better at safecracking than he did at being a fence?

Miss WALSH. Definitely. He is getting older, also, as he tells the police. Also, because of the competitive structure of the industry it is apparent that fences are much more interested in people like the individual staying thieves rather than becoming competitors to them. The competitive state of the industry is such that with a lot of the entrepreneurial ventures of the thief, the police receive anonymous tips to that effect. It is assumed that many of these anonymous tips are coming from fences.

Senator BIBLE. Very well, you may proceed.

Miss WALSH. Attached to the written statement is a list of the products handled by the fences studied in order of frequency, that is in order of the number of fences known to handle these different goods.

Senator BIBLE. I read those exhibits that you are talking about.

Miss WALSH. The most popular individual items are television and cigarettes. The most popular product lines are jewelry and clothing. These same items appear to hold across the industry nationally from the information I have been able to get from other cities.

There appear to be two strong and major trends in the fencing industry relating to products. The first of these is the tendency of fences to specialize along product lines rather than within such lines. Thus, the fence is more likely to carry a full line of liquor rather than just scotch or bourbon or whatever. The most frequent case finds the fence limiting his illegal goods to either one or two full lines of products, a pattern found in nearly 59 percent of the sample.

Although some fences are known to carry three or more specific lines of products, their numbers are relatively small; and those individuals designated as generalists, connoting the handling of products so wide-ranging and changeable as to defy specificity, comprise a mere 6 percent of the sample.

The second trend in the industry relates to product specialization. Here the dominant tendency is for the receiver to concentrate his activities on but one product. The one-product fence is to be found in 12 percent of the cases, exactly doubling the frequency of the generalist. The dominance of the one-product fence tends to emphasize the apparent preference of the illicit middleman for the product line rather than for individual products, for once the fence expands beyond the handling of one product, his tendency is toward the establishment of a full line rather than the addition of similar or unrelated items.

Thus, the fence of office equipment will go into entertainment equipment if he is going to branch out, rather than adding TV's or stereos.

The volume of stolen property handled by the fence, the nature of that property, and the condition in which it will be accepted, that is whether new or used, will determine the kinds of thieves with whom the fence will do business. Thus, the fence who deals in diamonds and expensive jewelry is more likely to do business with the professional burglar than with the drug addict thief. Similarly, the receiver who deals in volume merchandise is likely to be handling goods for lesser skilled thieves rather than the professional who prefers to steal in quality rather than quantity.

The more important relationship between the fence and the thief relates to the kinds of fences known by the burglar, for they will determine his theft activities. Thus, if a thief only knows of fences who handle stolen televisions and stereos, he is likely to limit his thefts to such items. This is because the fence is the reward mechanism for the thief, and by manipulating the prices he pays for merchandise he can influence the stealing behavior of many thieves. Of course, the fence's "direction" of the thief is not always so implicit or subtle as this. Many fences, by virtue of their occupations and businesses, are in an excellent position to develop information important to the commission of a theft. By sharing such information with thieves, they can exactly direct the thieves' behavior and be sure as well of the nature and volume of the property they will be receiving. In such cases, of course, it is assumed that the stolen goods will revert to the fence who has supplied the important information, with the terms of exchange agreed upon before hand. Some examples of the fence in this role of "setup man" and information provider are the estate appraiser who sets up the theft of an estate after he has evaluated it and before he handles an auction of its contents; and the insurance salesman who sets up clients after having inventoried their household possessions.

In case such as these, the receiver is in effect the engineer or the prime mover behind the theft, and the thief is merely an operative for the farmer's plans. In all instances of thefts of property, however, the fence performs the very critical service of allowing the thief to divest himself of incriminating property. For this service the fence is duly rewarded. In the city studied, thieves tended to receive on the average of 10 to 15 percent of the retail value of merchandise from the fence. This is with the exception of the professional thief who negotiates in terms of wholesale prices, sometimes receiving as much as one-third to one-half of the wholesale value, depending upon the nature of the property in question. It is extremely unlikely, however, that the thief will receive any exchange price from the fence that more closely approximates the actual value of the merchandise.

It is clear, then, that the criminal receiver can acquire stolen property cheaply from the thieves with whom he deals. What may not be so obvious, however, is the manner in which he derives his price policy when he goes to resell such goods. It has generally been assumed that the fence has a single, uniform, resale price policy which is to mark down all goods from their legitimate market prices.

In the industry studied, however, that was not found to be always true. Instead, the price the fence quotes for his wares will often depend upon the circumstance under which he sells them. For example, the businessman-fence selling stolen property through his own retail outlet will price that merchandise in a manner similar to his licit goods. If he is a discount merchandiser, the stolen goods will carry discount prices; but if he is a normal market price retailer, those goods will carry those prices.

It is also likely that the fence's customer may influence the price that he asks for stolen merchandise. Thus, the "knowledgeable" customer would expect to be offered goods at bargain prices; while the naive customer might become suspicious were these same prices offered to him.

In summary, we have an industry of disparate persons performing the same function, that is, redistribution, on a wide range of stolen merchandise. Despite the variations within the industry, however, it is a very organized one in which specialization and long-term illicit associations are the rule rather than the exception.

Given such an organization, we must look very carefully at steps taken to interdict such distribution systems. We must remember, first, that we are not dealing with a group of amateurs, but with persons possessing a great deal of expertise in the area of the marketing of goods generally, and of stolen items in particular. Many of the fences studied hold legitimate positions in channels of distribution, while others have extensive quasi-legitimate contacts in such channels. We should be additionally concerned at the ease with which stolen property can mesh into legitimate channels with legitimate goods and find ready markets.

We should approach the problem of theft in full awareness of the fact that, in the final analysis, it is the fence, and not the thief, who directs the course of property theft in this society by creating the incentive for it and in many cases the opportunity as well.

Senator BIBLE. That was a splendid statement.

Do you actually go out in the city of New York, and do you know fences of your own knowledge?

Miss WALSH. This was not in the city of New York; it was in another city in the State of New York.

Senator BIBLE. I guess the environment outside New York City shelters a pretty girl better than big Manhattan.

Miss WALSH. To answer your question, the data I used was intelligence material generated by a detective squad, burglary and safe squad, and by the district attorney's organized crime strike force, that indicted 44 persons after convening a special grand jury on organized crime; and I had access to their informants—one in particular, a very professional thief—and all of the intelligence material.

Senator BIBLE. You did not actually work with the raw material; you worked after the arrests had been made of the fences?

Miss WALSH. With the DA's material; with the police department, I worked with their intelligence material.

Senator BIBLE. You did not get out into the field and go into a fencing operation, things of that kind?

Miss WALSH. That was a strategy that could not be employed, precisely, because I had worked with materials of an intelligence nature and could not compromise the police or the district attorney. I could not associate afterward with individuals who might very well be interested in that material in those police files.

Senator BIBLE. You are engaged in a delightful study, and I am pleased to note that you will soon become a Ph. D., and then will go into God's country in the Far West, into Seattle, Wash., to be associated with the Battelle Law and Justice Study Center. I am familiar with Battelle's work and the fine things they have done. Our consultant, Dr. Duncan Chappell, who has been very helpful to us, is the director of the Battelle Law and Justice Study Center in Seattle. So you will have a great tour of duty there.

I hope the next dissertation or doctorate that you are going to work on—when you get one Ph. D., maybe you will get another—is tell us what we can do about it all.

Miss WALSH. I did include in the written statement a couple of suggestions.

Senator BIBLE. Why do you not give them? I think I know the problem; the trouble is, I do not know the answer.

Miss WALSH. First of all, it is clear that if anyone has information relating to the fence, it is police departments. The dilemma is that the responsibility for the enforcement efforts against the fence is a task rarely given out specifically in police units. Instead, traditional policing in the area of theft is directed toward the thief. Given the basic information that undoubtedly exists about the fence, it is recommended that enforcement efforts in the form of actual fencing squads, such as the one described in Miami, be developed in enforcement agencies at all levels. Such squads should draw upon existing expertise in the theft area found in the more traditional police details, such as auto theft, burglary, narcotics, pawnbrokering, and special frauds.

The goal of such squads should be toward the recovery of property rather than the arrest of thieves—the latter being the more common approach to theft enforcement.

If and when the criminal receiver attracts the kind of enforcement resources commensurate with his importance, I believe that we will be able to show a much better record of action taken against him than we can at the present time.

If a fencing squad like this is to operate, it is clear that the environment has to change somewhat, particularly in the area of public education. In this regard, your committee is doing a very good job, and it is very important. It is surprising to find out how few people know anything about the fence, if indeed they understand who he is and what he does. Most of the public conceives of the criminal receiver as a little man on 42d Street in New York City, with watches on his sleeve. They cannot begin, therefore, to appreciate the critical role played by the receiver in the support and facilitation of the thief's activities. That is one of the reasons that I think

receiving cases are so difficult to prosecute. The courtroom is not a setting in which criminology can be taught, and yet the district attorney must not only prove the fence's guilt but also the fact of a crime—so I think public education is important, because that is one of the problems of trying to prosecute, that the jury just does not understand how this businessman who has never been arrested did anything wrong. It is very hard for a district attorney to not only prove the crime, but also the guilt. It is a hard situation.

The other thing is, as everyone has stressed, property identification. This is critical. It is inconceivable that in this country, as developed and complex as we are, that we have so much anonymous property that has no individual identity. And I think perhaps one of the ways that this situation might be improved is that identification systems might be encouraged, that insurance companies be encouraged and/or required to offer rebates to clients who participate in such identification schemes.

Secondly, I think legislation in the area of interstate commerce would be helpful; such that all manufacturers and other commercial property owners who are shipping interstate commerce be required to maintain systematic and individual records of the property contained in those shipments.

Senator BIBLE. That is very fine. You have been very helpful to the committee.

We are going to keep working on this. I am convinced that the more spotlights that we can keep on the problem of fencing, the better off the Nation will be, and we all will be.

One thing of which I have always been curious—I have been told that antique shops are one of the business firms that are used by fences. Do you encounter that experience?

Miss WALSH. Yes; in fact, a business that was found in many cases, in 8 of the sample of 115, were antique dealers and art appraisers and estate auctioners. Apparently, it is because the legitimate line of such businesses is hard to determine; what, after all, is an antique and what is not? They are technically second-hand merchants. It is so broad, and it can encompass an awful lot of property. Plus, they have access to information about the property people own because they are asked often to appraise estates. They can develop this information, share it with thieves—that happens time and time again in the sample study—and get the property that way. So they have access to information about people's property, and they have a business in which the normal product line is not easily determined, so they can handle just about anything.

Senator BIBLE. That seems to make a very logical explanation. I appreciate your being here today. I wish you good luck and I hope you enjoy Seattle, Wash., as I am sure you will.

Miss WALSH. I am sure I will.

Senator BIBLE. We will stand in recess until Thursday morning at 10 o'clock.

[Whereupon, at 3:05 p.m., the committee recessed, to reconvene at 10 a.m., Thursday, May 2, 1974.]

[The statement of Richard W. Velde, Administrator, Law Enforcement Assistance Administration follows:]

STATEMENT

OF

RICHARD W. VELDE
ADMINISTRATOR

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

SUBMITTED TO

THE

SENATE SELECT COMMITTEE ON SMALL BUSINESS

CONCERNING

THE SCOPE AND IMPACT OF THE CRIMINAL REDISTRIBUTION SYSTEM

SEPTEMBER, 1974

Mr. Chairman, I would like to thank you and the members of the Senate Select Committee on Small Business for the opportunity to testify on the scope of the criminal redistribution system and its impact on both legitimate business and Federal law enforcement efforts.

The hearings before your Committee have served to highlight the significant losses to American shippers of over \$1.5 billion dollars annually because of cargo theft alone. These stolen goods are generally channeled through the criminal redistribution system. In addition, our studies indicate that fencing operations serve as major distribution systems for goods obtained from burglary, shoplifting, and larceny, as well as a significant portion of auto theft. When all of these sources of stolen property are included, it is estimated that approximately \$2.2 billion dollars of stolen merchandise and goods are channeled through fences for resale each year. Therefore, total direct and indirect losses to legitimate business and the general public could exceed \$11 billion dollars when allowance is made for both non-reporting of theft and the additional administrative costs incurred by business in the recovery or replacement of stolen property. This does not include the escalating incidence of theft in securities -- which involves a particularly sophisticated form of fencing. Recent estimates place the value of stolen securities as high as \$50 billion dollars per year.

The total costs of the criminal redistribution system are significant not only in terms of their impact on legitimate business but also because these losses are passed on to American citizens in the form of crime inflated prices.

The Law Enforcement Assistance Administration (LEAA) recognizes that the development of effective deterrents to fencing could be of great merit to the law enforcement community in its efforts to check the spiraling incidence of crimes against property. At present, the successful investigation and prosecution of fencing is very costly per case in terms of the resources available to Federal, state, and local law enforcement agencies. Extensive undercover work is frequently required because of the lack of suitable, cooperative witnesses. Proof that the property involved was actually stolen is usually difficult because of problems in definitive identification. Further, many agencies do not fully pursue the investigation and prosecution of fencing because of limited resources, the lack of needed intelligence information from other jurisdictions, and most importantly because of a lack of concern on the part of the citizen and the business community. Fencing is regarded as a non-violent, "white collar" crime in spite of the fact that in many cases it involves extensive contact with organized criminal operations. Industry and business tend to regard these losses as a normal cost of operations, and are often reluctant to bear the additional costs of tightened security or property accountability.

LEAA ACTIVITIES

Since its inception in 1969, LEAA has supported a number of programs directed at fencing, organized crime, crimes against business, and property theft through its block, discretionary, and other grant programs.

In particular, LEAA has:

- assisted regional, state, and local agencies in establishing special enforcement, investigation and prosecution units to deal with fencing and organized crime's involvement in the redistribution of stolen property,
- aided state and regional efforts in the development of information and intelligence systems that are useful in the control of fencing,
- provided funding for training relevant to this area,
- sponsored research on fencing, organized crime, and relevant equipment systems, and
- promoted property identification programs in order to prevent theft and facilitate the recovery of stolen property.

I would like to comment more specifically on our activities in each of these areas:

*Police

LEAA has supported a number of police oriented anti-fencing programs at the local level. The city of Miami project is one familiar to the Committee. A Miami Police anti-fencing task force was successfully established to apprehend known fences using surveillance and informant techniques. The currently available report on "Criminal Fencing in Miami, Florida" was produced through LEAA's National Institute of Law Enforcement and Criminal Justice. As a result of its success, the anti-fencing task force was incorporated into the Miami Police Department's Stop Burglary Unit and is continuing its operations. This program has received wide recognition across the country, and other cities such as Portland, Oregon, are adopting these procedures for their anti-burglary police activities.

The city of Atlanta, Georgia, through the LEAA High Impact Program, developed an Anti-Robbery/Burglary Project which included a major anti-fencing component. Recently the city requested an extension of this project, but will separate the robbery and burglary activities. The anti-fencing component used informant and stake-out techniques and is presently recovering an estimated \$2000 dollars in stolen goods per week.

In each of the anti-burglary campaigns sponsored by the California Crime Specific Program, LEAA supported a major anti-fencing activity which included police surveillance, inspections of businesses and the publishing of lists of stolen goods. The current phase of this program ends this summer. Finally, LEAA is sponsoring a project in Alameda County, California, to enhance the investigative functions of police which should lead to the increased apprehension of fences.

*Organized Crime

From Fiscal Years 1969 through 1973, LEAA has provided over \$41 million dollars in funding for organized crime prevention and control programs and projects. During Fiscal Year 1974, over \$8 million dollars in LEAA discretionary funds will be used to improve state and local criminal justice operational capabilities for controlling organized crime. LEAA programs in this area have recognized the key importance of criminal redistribution and fencing as part of the operations of organized crime.

LEAA programs in this area have stressed the need for an overall, integrated approach for dealing with organized crime activities including fencing. Strategies involving coordinated enforcement, investigation, and prosecution efforts have been found to be effective in countering organized crime's heavy involvement in the redistribution and sale of stolen property.

As an indication of efforts in regard to organized crime:

- LEAA has provided extensive support for the promotion and establishment of State Organized Crime Prevention Councils to assist in both assessing the nature of organized crime problems within the states and determining the resources and strategies necessary to impact on the problem.

- LEAA has provided funding for the establishment of state, regional, and national organized crime intelligence systems for the purpose of providing local agencies with rapid access to information required for enforcement, investigation, and prosecution.

- In addition, LEAA has supported the establishment of organized crime task forces at both the state and municipal level that can provide for the coordinated investigation and prosecution of organized criminal operations including fencing.

For example, LEAA initiated and continues to support an organized crime unit in the Minnesota Attorney's General Office. This unit with the cooperation of federal, state and local law enforcement was able to identify and convict the leaders in a large organized fencing operation in Minnesota. This successful operation has led to the development of interest and support in other local jurisdictions in regard to similar programs.

*Cargo Theft

LEAA has also been involved in developing and testing procedures and strategies for the prevention of cargo theft. In a collaborative effort with the Department of Transportation, LEAA developed a "deskbook" for management and law enforcement on "Cargo Theft and Organized Crime" which has been published and distributed nationwide. It describes the role of organized crime in cargo theft and the subsequent disposition of stolen goods and indicates management techniques and procedural steps that business executives can take for cargo theft prevention.

In line with this effort, LEAA is presently planning to fund a \$600,000 dollar project that will establish cargo theft prevention and investigation units in 15 major port cities. An initial training program for law enforcement personnel and prosecutors will be followed by ongoing support for the implementation of cargo theft prevention units in the 15 cities.

*Training

LEAA has provided extensive support for seminars, workshops, and formal courses for criminal justice personnel at all levels which are devoted to means of controlling, investigating, and prosecuting multi-jurisdictional and organized crimes. This training frequently involves a focus on fencing and cargo theft. As one example, a program is presently being carried out with the National Association of District Attorneys, in which Federal prosecutors are providing guidance to

members of 15 county district attorney's offices on effective strategies in the prosecution of economic crimes including fencing and cargo theft.

A key segment of the cargo theft action program mentioned previously involves an initial training program for law enforcement personnel and prosecutors. This training emphasizes both the prevention of cargo theft and effective investigation and prosecution techniques for its control.

Numerous other training programs have been conducted throughout the country which provided an opportunity to highlight programs relating to organized crime and fencing. Indications are that LEAA sponsored seminars and instruction in this area have encouraged local and state agencies to establish similar kinds of training programs.

*Information and Intelligence Systems

Through the multi-million dollar Comprehensive Data Systems Program, LEAA's National Criminal Justice Information and Statistics Service (NCJISS) is promoting the development of state information collection and retrieval systems capability that should be valuable in the investigation of criminal redistribution. These systems should be able to furnish local anti-fencing units with relevant information on fencing activities both within and across state jurisdictions. For example, this system will provide information on criminal offenders who are known to be involved in fencing activities.

Also through the NCJISS, LEAA has recently funded a project to increase the efficiency and utility of national computerized files of stolen and/or lost property. Special attention will be given to the use of these files by local law enforcement agencies.

LEAA is also providing funds to states and major metropolitan areas to develop information systems that are designed to be useful in the identification of stolen cars, guns, boats, securities, and other items involved in the criminal redistribution process.

*Property Identification Programs

Property identification programs have become increasingly popular in recent years due to their relatively low cost. There is evidence that these programs are successful in reducing burglary and in controlling the redistribution of stolen goods.

LEAA has been instrumental in providing funding for a large number of such programs at both the local and national level including its \$500,000 dollar support for the National Sheriff's Association's Neighborhood Watch Program which includes a major property identification component. In addition, a number of the LEAA High Impact Program cities have established property identification programs and evaluations conducted in Denver and St. Louis have highlighted their benefits. For example, burglary rates were extremely low for participating households and for those few homes victimized, identified property was usually not stolen.

LEAA recently funded a study which compared the utility of various numbering systems for identifying and recovering stolen property. While no perfect system exists, one approach would involve the promotion of a single number for social security, state driver's license, and property identification.

*Equipment

LEAA is presently developing truck anti-hijack systems which alert authorities when a truck has been stolen or unauthorized entry of the van has been attempted, and which provide a determination of its location during and following a theft. An important facet of the system is its automatic operation since in some cases, drivers serve as an accomplice to the theft. Other equipment developments including more effective sensor devices and burglary alarms as well as the formulation of security standards are being supported through the LEAA. Many of these have important consequences for cargo security and the prevention of property theft.

*Research

While research on fencing has been limited, the LEAA has supported research that has important implications for the prevention and control of fencing operations. For example, LEAA studies conducted in Albuquerque and Denver demonstrated the value of using marketing concepts to describe fencing operations as a distribution process for stolen goods. In 1973, a more detailed examination of fencing and law enforcement activities in Miami suggested a direct link between burglary and fencing operations, with a decrease in burglary being related to increased arrests of fences while being unrelated to arrest rates for burglars themselves. The Miami study also addressed special legal problems involved in the arrest and prosecution of fences, and LEAA gave further attention to these issues when the Institute's own research staff responded to a request from your Committee and developed a questionnaire addressing the problems which federal attorneys face in this area.

The National Institute is currently planning to fund a major project that will examine the issues outlined above and will deal with the total fencing problem in much greater depth. The study will be conducted by Drs. Roselius and Benton of Colorado State University who (as you note in your October, 1972 report*) are among the few researchers who have addressed this topic. The Colorado research team will study police records and investigation practices, district attorney and court requirements and procedures, general business and commercial operations, and activities of known or suspected offenders (including both the fences and the thieves who supply them). The purpose of the research is to identify distinct types of fencing operations and to develop model programs and effective strategies for the prevention, investigation, and prosecution of different types of criminal redistribution systems. Guidelines for such strategies will be disseminated to law enforcement departments nationwide.

Finally, of related importance, is research which the National Institute is conducting on the prevention of property crimes through the utilization of architectural principles in the design of physically secure environments. LEAA concurs with your Committee's position (presented in its May, 1973, report) that this approach to property crime prevention offers great promise. Accordingly, the National Institute will conduct a \$2 million dollar research and demonstration program utilizing environmental design concepts to secure commercial, residential, and several other types of settings against crime. Used in conjunction with an effective program of anti-fencing law enforcement and prosecutorial strategies, such physical security programs should provide a substantial deterrent effect on the property crimes which constitute a major threat to legitimate small business operations.

LEAA POLICY AND ACTION RECOMMENDATIONS

LEAA believes the problem of the redistribution of illegal goods should be addressed through an approach that is comprehensive in nature. Program components should focus on the co-operation and co-ordination, of law enforcement efforts that can impact on the problem of fencing. This avoids the duplication and fragmentation of activities by police, investigators and prosecutors and increases the level of information sharing between all law enforcement participants.

LEAA also believes that program efforts should deal with the activities and response of the public and the business community as well as the operations of the criminal justice system in relation to the problem of fencing.

Our judgements concerning the appropriate methods of controlling the crime of fencing are reflected in the ongoing programs mentioned earlier. We would add that these efforts will be expanded and brought into sharper focus by what we have learned to date, to ensure that there is an appropriate balance in the following kinds of activities:

•Cooperative Investigation/Intelligence Operations

A permanent law enforcement capability should be established for the coordination of investigation and prosecution efforts in areas of concurrent jurisdiction. Existing Federal/State Law Enforcement Committees can serve as useful mechanisms in this regard. The experience of the Minnesota Committee highlights the impact on fencing that is possible through this approach to the problem.

•Training

Investigators should be thoroughly schooled in fencing operations, normal channels of distribution, and methods of inventory control. This training should give particular attention to the major problems relating to the investigation and prosecution of fencing activities.

•Establish Standards and Procedural Guidelines for Cargo Security

The practicality and cost effectiveness of cargo security systems and techniques should be demonstrated and efforts undertaken to encourage the cargo industry to apply new security procedures.

•Continued Development of Methods Of Property Accountability

Because the lack of proof of ownership seriously hampers the prosecution and conviction of known fences, property identification programs should be encouraged, and increased efforts made to improve the utility and effectiveness of relevant computerized criminal justice data and retrieval systems that can be used to control fencing.

•Improved Security Hardware

Significant improvements in reliability and reduced costs are required for wider acceptance of security equipment and devices to prevent property theft.

•Continued Study of Fencing Operations

Research and surveys of the national traffic in stolen goods and patterns in fencing should be expanded to provide a better data base for developing appropriate prevention and control strategies.

*Continued Legal Research of Statutory Requirements

Constitutional means of addressing the evidentiary requirements for establishing proof of knowledge and possession are needed to facilitate more successful prosecution and conviction of fencing operators.

*Education of the Public

The scope of fencing and its relationship to all forms of theft should be publicized in order that the general public and the business community understands the impact of this problem and their role in regard to its prevention and control.

All of these activities will continue to serve as the points of focus for ongoing LEAA program operations in this area. In addition, however, these activities will be consolidated in a LEAA's New Initiative Program on Crimes Against Business which will include an emphasis on fencing operations. This New Initiative effort will involve the development of programs that can be implemented at the Federal, state, and local levels. Program plans relevant to this area are being developed through LEAA's participation in the Inter-Departmental Committee on Crimes Against Business.

As part of this effort, LEAA will develop special guidelines and model programs to assist criminal justice personnel in investigating and prosecuting fencing operations. These guidelines and model programs will be based on evaluations of current anti-fencing efforts as well as on LEAA's and other research findings in this area. Prescriptive Packages will be developed that can be used in the planning and implementation of police anti-fencing programs.

Through the New Initiative Program on Crimes Against Business, funds will be made available to state and local criminal justice agencies in order to establish programs that address problems relevant to criminal redistribution. Efforts will also be made to encourage the business community to assume a major, active role in the prevention and control of fencing operations.

We believe this type of concerted program effort can be useful in highlighting the major problems in this area and in mounting a comprehensive attack on the impact of criminal redistribution.

Mr. Chairman, this concludes my formal statement. I would be glad to answer any questions the Committee may have.

CRIMINAL REDISTRIBUTION SYSTEMS AND THEIR ECONOMIC IMPACT ON SMALL BUSINESS

Criminal Redistribution (Fencing) Systems and Their Effect on Legitimate Commerce

THURSDAY, MAY 2, 1974

U.S. SENATE,
SELECT COMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The committee met, pursuant to recess, at 10:05 a.m., in room 1318, Dirksen Senate Office Building, Senator Alan Bible (chairman) presiding.

Present: Senators Bible and Clark.

Also present: Chester H. Smith, staff director and general counsel; Ernest P. Evans, chief investigator; John O. Adams, minority counsel; and Duncan Chappell, consultant.

Senator BIBLE. The hearing will come to order.

At our hearings earlier this week we learned a great deal about the complex legal and investigative problems confronting local police agencies in their efforts to combat the activities of fences. The fence was shown to be a wily and elusive criminal to snare in the law enforcement net. Even when caught, the fence often escapes conviction by the courts because of technicalities and loopholes in the criminal law.

The highly informative testimony presented this committee by representatives of the City of Miami Police Department provided an insight into what can be done by local police agencies willing to devote resources to investigate fencing. Unfortunately, very few such agencies are currently following the lead set by the Miami Police Department. As I understand it, with most local police agencies around this country, the fence is an almost completely ignored offender. In preference to undertaking the often lengthy and painstaking investigation required to uncover stolen property distribution systems, police typically pursue easier and safer targets like burglars and thieves. The quantity rather than the quality of arrests represents the normal criteria upon which the efficiency and effectiveness of these law enforcement efforts are measured.

Today, in our hearings, we shall be learning something of the quantity and quality of Federal activity directed against criminal receiving. We know that fences, like many of their clients, are no respectors of boundaries established by local and State criminal justice agencies. Vast amounts of stolen property are regularly transported across State and even National borders of this country as part

of the redistribution system developed by fences. The construction and coordination of efforts to control this nationwide flow of stolen goods represents a challenging and urgent task to Federal authorities. We are grateful to representatives of the Department of Justice for their presence here today to tell us of the progress being made toward achieving this task.

My understanding is that our chief witness will be Kevin T. Maroney, Deputy Assistant Attorney General of the Criminal Division, U.S. Department of Justice, Washington, D.C.; accompanied by James Featherstone, Deputy Chief of the Organized Crime Section, and Ralph Culver, a staff attorney in the Criminal Division.

Gentlemen, we are happy to have each of you here today, and it is very fine of you to come down and share your thoughts with us.

Mr. Maroney.

(The prepared statement of Mr. Maroney follows:)



Department of Justice

STATEMENT

OF

KEVIN T. MARONEY
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

SELECT COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

CONCERNING

THE

CRIMINAL REDISTRIBUTION SYSTEM (FENCING)

MAY 2, 1974

My name is Kevin Maroney and I am a Deputy Assistant Attorney General for the Criminal Division. Attorney General Saxbe was unable to appear as a witness before the Committee this morning because of a prior commitment. It is a pleasure to be before you this morning to discuss the area of crime relating to fencing activities and the actions that this Department is undertaking to curb such activities. As you may know, the Department is vitally concerned with the problem of fencing as it encourages such offenses as cargo thefts, security thefts and auto thefts and I welcome the chance to assist you in whatever way I can. I would like to take this opportunity at the outset, Mr. Chairman, to commend you and the other Committee members for the extensive investigations you have made in this important area of crime. Also, I would like to refer especially to the great efforts you have undertaken to deal with cargo thefts and other similar crimes which profoundly affect the business community.

This nation has been confronted with an ever-increasing number of thefts in recent years. Such an increase in theft of property presents a matter of grave concern for the Department of Justice as well as state and local law enforcement authorities. In particular, this Department has recently

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concentrated its efforts in combatting cargo thefts, securities thefts and auto thefts.

I would like to talk to you today about the actions we are taking in these areas of crime and the effect of such actions on illegal fencing activities.

As you know Mr. Chairman, it was the attention and intensive study that you, members of your committee and the committee staff gave to the cargo theft problem that resulted in the commencement of the Federal cargo theft program in June of 1971. From the outset this Department has actively participated in this program. As a member of the Interagency Committee on Transportation Security, the Department of Justice has aggressively attempted to encourage Federal, state and local prosecutors to become more active in the prosecution of cargo theft cases.

As I am sure you recognize, the Federal Government shares jurisdiction with the several states relative to the investigation and prosecution of cargo thefts. This is so because cargo theft is one of those offenses for which the Federal and state governments have concurrent jurisdiction and responsibility for law enforcement. Therefore, effective enforcement in this area of criminal activity requires that the several states and the Federal Government join hands as partners in law enforcement.

Shortly before the commencement of the Federal cargo security program, it was determined after discussions with members of your staff that a need existed for the Department to take action to assure that no lapses exist in the investigation and prosecution of cargo thefts between the states and the Federal Government.

On October 20, 1971, the Deputy Attorney General requested all United States Attorneys to contact their state counterparts and endeavor to enter informal agreements with those officials so as to eliminate any lapses in the investigation and prosecution of cargo thefts. The responses of the United States Attorneys to this request indicated that the United States Attorneys in approximately 80% of the Federal Judicial Districts were successful in entering agreements with their state counterparts for the investigation and prosecution of cargo thefts.

We were sufficiently encouraged by this success in the informal agreement effort to undertake action to implement this approach further on a continuing basis. On November 30, 1970, the Deputy Attorney General by letter urged all United States Attorneys to explore the feasibility of establishing permanent Federal-state law enforcement committees to focus upon and adhere to the needs of law enforcement within their states.

Such committees as envisioned would consist of key state and local law enforcement officials and appropriate Federal representatives. We felt that such an enforcement committee could do much, through regularly scheduled meetings, to achieve a long-term coordinated effort by the state and local authorities and the Federal Government which would provide effective criminal law enforcement in those areas where we share concurrent jurisdiction.

At this point, it should be noted, Mr. Chairman, that your efforts did much to support the Department in its program to establish these Federal-state law enforcement committees. In this regard, you found the concept for these committees sufficiently meritorious with reference to cargo theft and the fencing problem that you endorsed this concept in letters addressed to all 50 state Governors.

To date the United States Attorneys' responses to this Department regarding the establishment of these Committees have disclosed that in 36 states one or all of the United States Attorneys have either established these Federal-state Law Enforcement Committees or they are presently in the process of establishing these committees. In this regard, certain United States Attorneys have replied to the effect that while the need for communication with state law enforcement officials

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exists that such a need can be met by existing arrangements without a new formalized committee.

While progress has been made in the establishment of these committees, much remains to be done before we can achieve a meaningful and cooperative Federal, state and local law enforcement effort. Indeed, such an effort is needed if we are going to eliminate any lapses in the enforcement of concurrent jurisdiction offenses such as cargo theft. Further, it is through such continued law enforcement efforts that positive programs can be undertaken at the working level of law enforcement to deal with all areas of crime.

To achieve the law enforcement effort sought in this area, the Department of Justice must insure that these committees or similar groups are provided sufficient support to enable each of these groups to become fully functioning entities on a continuing basis. Toward accomplishment of this goal, the Department of Justice, through the Law Enforcement Assistance Administration, has called upon the state law enforcement planning committees in all 50 states and all LEAA regional offices to fully support these Federal-state law enforcement committees. Also, the Attorney General has recently sent to all United States Attorneys a packet containing a detailed statement setting forth the functions of

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these committees and progress made by them up to the present date. Further, this packet contains 15 suggested topics for discussion at these committee meetings relating to concurrent jurisdiction offenses which are fully documented as to content. Additionally, to encourage anti-fencing efforts by these groups, we have forwarded to the United States Attorneys all of the excellent reports on Criminal Redistribution Systems which have been issued by this committee and its staff.

I should point out that the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco and Firearms, through their field offices are actively supporting and participating in these committees. Also I should note that the Board of Directors of the National District Attorneys Association has endorsed these committees and has pledged its support in obtaining the cooperation of its members.

Mr. Chairman, at this time, I would like to introduce into the record a copy of the letter of the Attorney General and the packet that I have just discussed.

The Federal involvement which, like the exercise of all Federal law enforcement powers, is intended to be supplemental to the efforts of the individual states. In this regard, the Federal government has actively attacked those criminal systems

which are organized to a point beyond the jurisdiction of the individual states. However, many professional fencing operations operate independently of such organizations. Further many of the activities of these operations constitute violations only of state and local law. Regardless of the varying interests of the Federal, state and local authorities, a cooperative effort by all such authorities is needed to deal adequately with the problem.

For instance, such a combined cooperative effort by Federal, state and local law enforcement officers can often yield vital fragments of information from these governmental sources. Such bits of information when made available and pieced together by several participating law enforcement agencies often lead to the identity of fences and shed light on their illegal redistribution activities.

Mr. Chairman, we understand that United States Attorney Robert G. Renner of Minneapolis who has been conducting such an effort is scheduled to appear as a witness before this committee later this morning and testify regarding the role that the Federal-state law enforcement committee in his state has played in combatting fencing activities.

At this time I would like to discuss a program in which the Department of Transportation and this Department is undertaking to establish Cargo Security Working Groups in fifteen large metropolitan areas throughout the nation. At the present time two of these cargo security working groups are being established in Chicago and Philadelphia. It is expected that these working groups will be commenced in the remaining 13 metropolitan areas within the near future.

These cargo security working groups will consist of United States Attorneys, their local counterparts, representatives of the FBI and other Federal and local investigative agencies, and representatives of the transportation industry. While these working groups will provide a forum for discussion between law enforcement and business representatives, they will perform important functions of monitoring the processing of cargo theft cases on a case by case basis. Also, as a part of the working group's functions, security surveys will be conducted of shippers and carriers on a voluntary basis. Further, copies of reports of theft will be routed through a central reporting center and each report then will be analyzed to ascertain such information as the types of goods stolen, the places of theft, the pattern of theft and the known lapses in security and accountability which

facilitated the theft or prevented early detection of the theft.

Such analyses should be extremely helpful to any law enforcement effort against those who would engage in the redistribution of stolen goods. Certainly, one of the working groups' efforts should encourage industry to work with them wherever possible to develop means of cargo identification to facilitate the recovery of stolen goods and the prosecution of those responsible for their theft and redistribution. In passing, I should note that the cargo security working group in Chicago is presently undertaking such a project relating to the identification of cargo.

Mr. Chairman, with your permission I would like to introduce into the record a copy of the recent letter from the Attorney General forwarding the Action Plan for the establishment of Cargo Security Working Groups.

No greater truism has been highlighted in this committee's extensive hearings on cargo theft and fencing than the fact that law enforcement working alone cannot get the job done in this area of crime. The transportation industry must assume the responsibility for preventing thefts and accounting for the goods left in its care for transfer. Without industry's help, law enforcement's job of apprehending and successfully

prosecuting thieves -- not to mention the fences who induce and encourage thievery -- is a most difficult task at best.

A perfect example of ineffectual security measures resulting in a loss occurred recently in Newark, New Jersey, where members of a ring conspired to steal 270,000 pounds of tin ingots moving in foreign commerce. The tin was removed on a Friday from International Terminal Operations in Port Newark by use of falsified documentation and its absence was not discovered until the FBI requested on the following Monday that a check be made, following physical surveillance of the stolen property. Meanwhile, the fence had already arranged for the tin to be sold to persons who "broke down" the ingots for commercial use.

As you are aware, successful prosecution is very unlikely where persons are found in possession of stolen goods, and the shipper, carrier or terminal operator cannot account for the goods as missing and very often cannot even identify the goods or the last person responsible for them.

This is clearly illustrated by a recent case where a trailer load of aspirin worth over \$80,000 at wholesale price was shipped piggyback by railroad from the laboratories in an Eastern city to a warehouse in a midwestern city. At its destination the truckload of aspirin was hijacked from the Penn Central yards by parties unknown. Only six of these cartons

of aspirin could be positively identified as part of the shipment and this identification required detailed and rather complicated testimony. The other cartons according to the markings thereon could have been a part of the shipment or could have been from shipments to other destinations. The first trial of this case -- lasting five weeks, resulted in a hung jury. The second trial lasting nine weeks resulted in conviction of the four defendants but the conviction of one defendant was reversed on appeal because of the doubt expressed by the appellate court concerning the identification of the goods and other problems which arose during this lengthy trial.

This whole occurrence may well have been avoided if the cargo had been stamped by the originating carrier or shipper legibly marking on the cartons the designation of the consignee and the date of the shipment. If such identification would not have resulted in discouraging the theft it may have nevertheless resulted in the apprehension and successful prosecution of all those who tried to fence the aspirins.

In contrast to the case just discussed, I would like to turn to a case which recently was brought in the Northern District of Iowa involving the theft of 12,000 pounds of farm chemical. Following this theft, the stolen chemical was fenced

to local farmers. However, since the chemical stolen was adequately packaged and serialized, it was all recovered and the defendants involved were successfully prosecuted.

The general consensus among investigators and prosecutors concerning industrial efforts at preventing thefts is that such efforts are poor. The businessman usually prefers not to spend money on security measures. He will often make such expenditures only after a major theft from his business has occurred. At the same time, he considers the problem of theft to be one solvable only by the use of criminal sanctions. This view assumes not only sufficient evidentiary leads but the existence of investigators and prosecutors who can devote time enough to bring each case of cargo theft, major and minor, to courts which have sufficient time to hear each and every complaint. It also assumes a penal system able to handle the endless numbers of those who would be convicted of stealing. These assumptions are false and also self-serving. The burden of dealing with the related problems of cargo theft and fencing must be accepted more and more by industry (both management and labor), especially in the prevention of theft by employees or authorized personnel. It has, unfortunately, been the industry's failure to take adequate security measures and to establish and/or abide by procedures for documenting the information needed for investigation of thefts

which has in large part prevented the recovery of stolen goods. For instance, the 1972 Uniform Crime Reports published by the Federal Bureau of Investigation indicate that, nationwide, 81% of burglaries remain unsolved to the point of arrest. Eighty percent of instances of larceny remain unsolved.

The most effective orthodox means of tracking fences' activities are dictated by the manner in which they operate. Fences who distribute high valued goods often will do so without ever coming close to those goods himself. Such a fence is a promotor, who acts as a broker in finding the right buyer for the goods he knows to be available. He does this in person and on the phone, and hence the important part to be played in these investigations by the investigative use of electronic surveillance, such as phone-tapping. Most of the United States and Strike Force attorneys indicated that such surveillance was extremely important in locating the stolen goods, the places where the goods are stored, and the places where the buys are to take place. The use of informants in such investigations is also necessary, since without them it is often impossible to identify the fence, and find out when a wiretap may be justified. These two means of investigation, informants and wiretaps, are two of the most helpful means of obtaining direct information on the fence.

One mode of obtaining evidence on the fence is to make a purchase from him, after gaining his confidence. Problems inherent in this approach involve the large expenditures necessary in money and people. The government usually does not have sufficient money available to buy back stolen goods, and some form of industrial support would be extremely helpful. Unfortunately, industry has usually refused to make available such monies and/or people to make the buys. In this regard, when federal agents make an arrest while purchasing stolen property (a "buy-bust"), it completely destroys the agents' cover and other agents have to be used in the future.

For instance, in a recent case in Jacksonville, Florida, three men pleaded guilty to charges of stealing from interstate shipment 37,000 pounds of swinging beef quarters. Arrests were made in a "buy-bust" where FBI agents posed as buyers, inspected the beef, received an inventory, and arrested the defendants, who all pleaded guilty but received only probationary sentences. Of course, once the bust was made, the agents' cover was completely blown.

One further problem in getting to the fence by only prosecuting the thieves is the necessity of frequent plea bargain agreements. Such agreements end the prosecution and destroy

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any further leverage against the defendant which might lead to his identification of the fence involved.

As opposed to this approach it should be the practice of prosecutors to endeavor to obtain the identity of the fence involved. To achieve this end, plea bargaining should be premised on the promise to so cooperate whenever the circumstances warrant. Of course, a similar means of obtaining the identity of the fence is to grant immunity to the thief. Such decisions must be firmly predicated on the knowledge that the criminal immunized has done less injury to society than has the fence.

At this time, I would like to review briefly the activities of several Organized Crime Strike Forces relating to the prosecution of major fencing cases. Of course, it should be recognized from the outset that the connection between fences of commercial goods and those members of Organized Crime properly the subjects of Strike Force Activity is often indirect. In this regard, our recent reports show a number of convictions of such fences for violations other than those usually associated with fencing. Of course, the most important thing, once a fence is identified, is to stop him by prosecution under any of the statutes he violates. Aside from the offense of receiving stolen property, such violations may involve such offenses as failure to report taxable

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income, weapons violations, perjury, aiding the commission of thefts and interstate transportation of stolen property. With this background in mind, a brief summary of the recent prosecutions by several of the Strike Forces directly involving statutory violations concerning fencing activities include the following:

In Baltimore	4 persons were convicted for fencing \$150,000 worth of stolen printing machines.
In Kansas City	4 persons were convicted for fencing stolen securities. 1 for fencing a large shipment of watches.
In Philadelphia	1 longtime fence of various goods was convicted for possession of \$25,000 in stolen sporting goods, 3 other alleged major fences of clothing have been indicted but not yet tried.
In Brooklyn	2 major syndicate fences of securities and commercial goods were convicted, 2 fences of liquor and \$60,000 in clothing were convicted.
In St. Louis	1 person was convicted for unlawful dealing in firearms
In Cleveland	2 fences of dealing in stolen securities.
In Detroit	1 person was convicted for dealing in musical instruments and clothing which was stolen from interstate shipments.
In Boston	Two men were convicted for fencing \$150,000 worth of stolen jewelry, 7 fences were convicted for dealing in large volumes of stolen securities, 2 major fences were convicted for dealing in commercial goods, and 1 other such fence was convicted for theft of machine guns from an armory.

Mr. Chairman, I have a more complete statement regarding the above-mentioned cases for your consideration which I would like to now offer to be included in the record. In addition to the strike force activity just discussed, I should point out that the Atlanta Strike Force Office has just completed an extended and successful investigation and prosecution of a vicious ring of thieves and fences which has been stealing merchandise throughout the Southeastern states and fencing the goods to a number of stores. A court-authorized usage of electronic surveillance provided probable cause for search warrants, executed by several cooperating authorities, Federal and state, resulting in the recovery of over \$500,000 in stolen merchandise. Governor Carter of Georgia has hailed the effort as the most important of its kind in the last 15 years. Further related trials are pending in a different Federal district.

For the past year and a half the Chicago Strike Force has had a program aimed at major fences in the Chicago area. These fences include those dealing in stolen corporate securities, jewelry and government bonds. As a result of developing a program with the major theft squad of the Chicago FBI and, through the use of informants, the Chicago Strike Force has recovered nearly thirty million dollars in stolen securities in the past two years.

Individuals arrested included major organized crime associates from Chicago and New York City. 20 persons have been convicted and another 10 are either awaiting trial or indictment.

Five investigations on major fences have been undertaken in the Chicago area. Four of these are open at this present time. One was successfully concluded recently with the recovery of over \$30,000 worth of stolen jewelry. One of the items recovered was a \$5,000 watch stolen from the entertainer Liberace in Texas in February 1974. This particular recovery was the result of electronic surveillance pursuant to Title III of the Omnibus Crime Control and Safe Streets Act of 1968.

The combination of federal investigative efforts with those of local law enforcement agencies often results in both federal and state prosecutions. One reason offered for the success of this investigative method is that Strike Force attorneys, under less daily litigative pressure than Assistant United States Attorneys, can more carefully direct the combined investigative forces. In addition to Chicago, this approach has been used in Boston, where it helped solve the theft of \$500,000 in shrimp, in Baltimore, Maryland, and other cities.

However, the most formalized attempt made by the Department of Justice to work together with local law enforcement is taking

place in New York City. There, working together under a Federal grant, the Manhattan Strike Force office, New York County District Attorney's Office and the New York City Police Department have operated as a Joint Strike Force for the past six years. One of the most difficult things about such an effort is the development of trust among the participants. In New York this hurdle has been cleared, as illustrated by the Joint Strike Force effectiveness in a recent 18-month investigation known as "Operation Fraulein."

By way of introduction, it is to be noted that the investigation was initiated by the District Attorney's Office. However, the Joint Strike Force was asked to participate in the investigation because of the obvious interstate aspects of the case and the need for LEAA financing. Significantly the sum of \$35,669.39 was expended for such items as travel and per diem of local law enforcement officers, undercover work of local law enforcement agencies and all transportation and per diem of witnesses. In addition, approximately \$10,000 was expended for the purchase of certain photographic and electronic surveillance equipment.

This investigation has resulted in convictions of, or guilty pleas from 27 persons, including Vincent Rizzo who was charged with having transported \$18 million of stolen and counterfeit securities in interstate and foreign commerce

involving violations of section 2314 of Title 18. Of the sixteen defendants in this particular case, seven are European subjects who are not extraditable.

Rizzo, who is reputed to be a capo in the Genovese New York Organized crime family, was sentenced to five years, execution of sentence suspended. Rizzo is serving up to 20 years on related convictions gained through this investigation.

While this Joint Strike Force has not recently prosecuted fences of commercial products, some explanation lies in the fact that Manhattan has few, if any, truck terminals located in it. Further, it has no airports, which have had major cargo theft problems. The redistribution of stolen securities has become a major problem in Manhattan and deserves much of the Joint Strike Force's attention.

I would now like to discuss the efforts of Federal investigative agencies designed to prevent the fencing of stolen commercial goods. For instance, the Bureau of Alcohol, Tobacco and Firearms of the Treasury Department (ATF), has launched a nation-wide crackdown against the swelling tide of gun thefts. ATF is asking all major trucking companies, trucking firms and trucking facilities to report all thefts of gun shipments. This program follows their concern over estimates that more than 1,000 firearms

are stolen or hijacked every month. Reports of stolen weapons will be filed with the National Crime Information Center (NCIC).

The Federal Bureau of Investigation is keenly aware of the large numbers of crimes against property committed annually. As mentioned before, the Federal effort against those who redistribute stolen goods must be premised on giving high priority to the investigation of reported incidents. The FBI's commitment to such efforts takes the form of a program affording concentrated investigative coverage of burglars, armed robbers, and fences whose activities are of such a pattern, magnitude, or modus operandi to indicate that they are actual or potential violators of Federal law. The ultimate objective is the development of evidence sufficient to convict these individuals in either state or federal court. Accordingly, close cooperation with other Federal agencies and appropriate branches of local law enforcement has been encouraged as a means of unifying and strengthening an overall federal-state effort. The benefits resulting from this intensified effort at identifying and investigating major thieves and fences have

been two-fold: the subjects have been prosecuted by either state or federal agencies, and the cooperation between their investigative agencies has been increased. Particular instances include: the arrest of three individuals on theft from interstate shipment charges, one of whom is a major fence, dealing in trailer load quantities of merchandise, and the recovery of 1,225 major brand radial tires and a tractor trailer. The combined value of the recovery was \$60,000.

There also resulted the arrest of seven subjects by local authorities and the recovery of numerous drawings and paintings valued at \$102,250. Subjects were charged locally with burglary and criminally receiving stolen property.

Another serious area of crime confronting the business community and law enforcement is the sale, transfer and use of stolen securities. It has been estimated in testimony before the Permanent Subcommittee on Investigations of the United States Senate Committee on Government Operations that over \$50 billion worth of stolen and spurious securities are in circulation within the United States. This problem has been accentuated by the lack of proper physical security measures by the business community concerning the storage, shipping and accountability of securities. Significantly, the fencing

of stolen securities has been fostered by the failure of the business community to use adequate validation at the time such securities are presented for sale, pledging or when such securities are used in a manner to obtain other forms of monetary credit.

Due to the profound impact that these stolen and spurious securities can have on the national and international economics, the Criminal Division has focused particularly on facilitating and coordinating Federal prosecutions involving securities offenses. Efforts are being made by the Criminal Division to encourage the financial community to improve its practices and procedures in regard to the handling of securities. Should the financial community fail to take the necessary voluntary measures, legislation may be necessary to vest regulatory authority in the Securities Exchange Commission or other Federal agency. Regulations issued under such authority could require reasonable validation procedures for securities at the time of transfer, sale or exchange. Such validation could be accomplished through the use of a privately owned or government owned centralized computer data bank for lost, stolen, or counterfeit securities. Upon request, the National Crime Information Center now provides such service relative to stolen

securities through law enforcement agencies to financial institutions, and computer banks exist in the private sector which will provide this service direct to financial institutions for a nominal fee. However, industry has been reluctant to avail itself of these services.

Aside from cargo thefts and securities thefts, auto thefts also constitute a serious area of fencing activities which should be brought to the attention of this Committee. In 1972, 881,000 motor vehicles were reported stolen in this country. One source estimates that the total value of all cars stolen in 1972 is \$797 million. Although the number of reported auto thefts in 1972 reveals a decline of 6% from the 1971 statistics, the commission of car thefts by professionals for resale or stripping is on the rise. The security devices recently built into automobiles are reducing the total number of offenses because the activities of inexperienced juvenile joyriders are being curtailed. Since juveniles are stealing fewer cars, a higher percentage of cars are being stolen by professionals, including rings. Accordingly, the recovery rate of stolen automobiles was approximately 90% in the mid-1960's, but went down to approximately 80% in 1972.

Auto theft is a highly profitable form of crime which carries little risk of jail for offenders. In this regard, only 17% of the cars stolen in 1972 were cleared by the arrest of a suspected offender.

The rate of automobile thefts in this country results in a fencing operation for the distribution of automobiles and automobile parts of enormous proportions. In this regard, in testimony before this Committee, during its hearings on "Criminal Redistribution Systems", the District Attorney for the County of Los Angeles, Joseph P. Busch, stated that imported automobiles is one of the commodities which most frequently moves through "channels of illicit distribution" (Hearing 3). As is the case in other areas of fencing, the illicit movement of stolen automobiles and automobile parts is frequently facilitated and encouraged by the cooperation or connivance of small businessmen. Car dealers often fail to make a simple inspection of vehicle identification numbers (VIN) that would uncover a stolen vehicle.

The Criminal Division and the Federal Bureau of Investigation are diligently attempting to help solve the auto theft fencing problem. We have previously drawn up standards which, if they were to become law, would help curb two very important methods

of disposing of stolen vehicles -- the adoption of the certificates of title from junked vehicles for stolen vehicles and the exportation of stolen vehicles from the United States. These standards have been submitted to the Department of Transportation for its consideration and possible congressional enactment into law pursuant to the National Highway Traffic Safety Act of 1966, 23 USC 402, as amended by the Highway Traffic Safety Act of 1973, section 229 (P.L. 93-87). The Criminal Division has also recently implemented 18 USC 5001 so that auto thieves under 21 years of age can now be returned to the jurisdiction in which the vehicle is stolen by the U.S. Marshals Service at federal expense. It is our view that limited federal resources will have the greatest impact upon this area of crime by our continued concentration upon the prosecution of auto theft ring cases. Accordingly, the number of cases under active investigation by the FBI has recently risen from 125 to 225. In addition, the Criminal Division is now actively exploring with the Department of Transportation the possibility of establishing an interagency auto theft committee in order to generate a comprehensive auto theft program.

Looking toward the future, we see a need for the enactment of our aforementioned standards, either as federal law or as a uniform state statute. In order to meet the challenge of the present automobile fencing problem, it is also necessary that national uniform standards be established for both VIN's and automobile certificate of titles. There must be more cooperation and interchange of information between the Departments of Motor Vehicles in each state. Finally, private citizens and used car dealers must be adequately informed regarding the identification of stolen vehicles.

It is my understanding, Mr. Chairman, that you desire that I include any legislative recommendations to strengthen federal laws as to fencing activities.

As you know, the Department has expressed its support for the general principles of S. 13, a bill "To amend Title 18 of the United States Code to provide civil remedies to victims of racketeering activity and theft, and for other purposes." This bill which has passed the Senate provides a civil remedy for the recovery of treble damages from persons guilty of violations of 18 U.S.C. 659 and 1972. Indeed, this is a step in the right direction since a stiffening of the applicable

criminal statutes alone will not eliminate fencing of stolen goods. The civil remedies, especially for violations of 18 U.S.C. 659 which forbids theft and/or receipt of stolen property moving in interstate or foreign commerce, will hit the fences and those who do business with them where it hurts most, in the pocketbook. It is the Department's position that only through a two-fold approach -- criminal and economic -- will a dent be made in distribution of stolen goods. At this time I would like to hand up to the Committee for insertion in the record the full text of the Department's comments on S. 13 made in November, 1973.

Further, it should be noted that the revision of the Federal Criminal Code proposed by the Justice Department and introduced on March 27, 1973, as Senate Bill 1400 by Senators Hruska and McClellan, contains in pertinent part a complete revision of the various theft and larceny statutes in Title 18. Among other things, this bill simplifies and unifies the many "fencing" statutes, eliminates the place of theft as an element of the receiving offense, adds an attempt provision, and facilitates proof of knowledge that the received goods were stolen, to mention only a few of its effects. With the

Chairman's permission I would have inserted in the record at this point a comprehensive statement by the Department on the effectiveness of the Federal Criminal statutes as they pertain to criminal redistribution systems with particular discussion of the corrective provisions of the proposed revised Federal Criminal Code.

We share with you the desire to find effective and useful measures to deal with this problem. We at the Department of Justice will endeavor to give the Committee full assistance in this area.

This is the end of my statement, Mr. Chairman, I would be pleased to answer any questions the Committee may ask.

STATEMENT OF KEVIN T. MARONEY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY JAMES FEATHERSTONE, DEPUTY CHIEF, ORGANIZED CRIME SECTION; AND RALPH CULVER, STAFF ATTORNEY, CRIMINAL DIVISION

Mr. MARONEY. Thank you, Mr. Chairman.

My name is Kevin Maroney, and I am a Deputy Assistant Attorney General for the Criminal Division. Attorney General Saxbe was unable to appear as a witness before the committee this morning because of a prior commitment. It is a pleasure to be before you this morning to discuss the area of crime relating to fencing activities and the actions that this Department is undertaking to curb such activities.

I am accompanied at the table this morning by James Featherstone, deputy chief of the Organized Crime Section, and by Ralph Culver, a staff attorney in the Criminal Division.

I have prepared a rather lengthy statement for submission.

Senator BIBLE. Without objection, that will be included in full in the record. You can develop the statement and highlight it, or brief it in any manner that you care to.

Mr. MARONEY. As I go through it, I propose to eliminate about one-third, if that is acceptable.

Senator BIBLE. That sounds fine.

Mr. MARONEY. As you may know, the Department is vitally concerned with the problem of fencing as it encourages such offenses as cargo thefts, security thefts, and auto thefts, and I welcome the chance to assist you in whatever way I can.

I would like to take this opportunity at the outset, Mr. Chairman, to commend you and the other committee members for the extensive investigations you have made in this important area of crime.

Senator BIBLE. We are only touching the surface. I am not satisfied with what we have done yet. It takes constant attention. The more I get into this problem, the more I study it, the more I am convinced that you just have to continue and keep the spotlight on it as much as anything. Probably public opinion would be as helpful in this area as any. I recognize the legal dilemmas of coming to grips with this problem. This is a tough area in which to work. Every witness has testified to that effect. It becomes clearer and clearer that this is a difficult thing to take to court and secure a conviction on under the tools that you have to work with at the present time.

I am grateful for your commendation, but I do think we have to do a terrific lot more. Thank you. You may proceed; you have been very helpful to us.

Mr. MARONEY. Thank you, sir.

As I am sure you recognize, the Federal Government shares jurisdiction with the several States relative to the investigation and prosecution of cargo thefts. This is so because cargo theft is one of those offenses for which the Federal and State governments have concurrent jurisdiction and responsibility for law enforcement. Therefore, effective enforcement in this area of criminal activity

requires that the several States and the Federal Government join hands as partners in law enforcement.

Shortly before the commencement of the Federal cargo security program, it was determined after discussions with members of your staff that a need existed for the Department to take action to assure that no lapses exist in the investigation and prosecution of cargo thefts between the States and the Federal Government.

On October 20, 1971, the Deputy Attorney General requested all U.S. attorneys to contact their State counterparts and endeavor to enter informal agreements with those officials so as to eliminate any lapses in the investigation and prosecution of cargo thefts. The responses of the U.S. attorneys to this request indicated that the U.S. attorneys in approximately 80 percent of the Federal judicial districts were successful in entering agreements with their State counterparts for the investigation and prosecution of cargo thefts.

We were sufficiently encouraged by this success in the informal agreement effort to undertake action to implement this approach further on a continuing basis. On November 30, 1970, the Deputy Attorney General by letter urged all U.S. attorneys to explore the feasibility of establishing permanent Federal-State law enforcement committees to focus upon and adhere to the needs of law enforcement within their States. Such committees as envisioned would consist of key State and local law enforcement officials and appropriate Federal representatives. We felt that such an enforcement committee could do much, through regularly scheduled meetings, to achieve a long-term coordinated effort by the State and local authorities and the Federal Government which would provide effective criminal law enforcement in those areas where we share concurrent jurisdiction.

At this point, it should be noted, Mr. Chairman, that your efforts did much to support the Department in its program to establish these Federal-State law enforcement committees. In this regard, you found the concept for these committees sufficiently meritorious with reference to cargo theft and the fencing problem that you endorsed this concept in letters addressed to all 50 State governors.

To date, the U.S. attorneys' responses to this Department regarding the establishment of these committees have disclosed that in 36 States one or all of the U.S. attorneys have either established these Federal-State law enforcement committees or they are presently in the process of establishing these committees. In this regard, certain U.S. attorneys have replied to the effect that while the need for communication with State law enforcement officials exists, that such a need can be met by existing arrangements without a new formalized committee.

While progress has been made in the establishment of these committees, much remains to be done before we can achieve a meaningful and cooperative Federal, State, and local law enforcement effort. The Department of Justice must insure that these committees or similar groups are provided sufficient support to enable each of these groups to become fully functioning entities on a continuing basis.

Toward accomplishment of this goal, the Department of Justice, through the Law Enforcement Assistance Administration, has called upon the State law enforcement planning committees in all 50 States

and all LEAA regional offices to fully support these Federal-State law enforcement committees. Also, the Attorney General has recently sent to all U.S. attorneys a packet containing a detailed statement setting forth the functions of these committees and progress made by them up to the present date. Further, this packet contains 15 suggested topics for discussion at these committee meetings relating to concurrent jurisdiction offenses which are fully documented as to content.

Senator BIBLE. When was this all done?

Mr. MARONEY. It was done the 23rd of April.

Mr. Chairman, concerning this packet that was sent just a week or so ago, we have a copy for submission to the committee.

Senator BIBLE. Without objection, that will be incorporated and made part of the record in full. I think that it would be helpful information for the use of the committee and its further work in this field.

Mr. MARONEY. Thank you, sir.

[The information referred to follows:]



Office of the Attorney General
Washington, D. C. 20530

April 23, 1974

To : All United States Attorneys
Subject: Federal-State Law Enforcement Committees

With reference to my telegram of February 28, 1974, to all United States Attorneys, I am pleased to forward to you the attached packet, prepared by the Criminal Division, to serve you as a guide in your continuing efforts in establishing a permanent vehicle for the coordination of Federal law enforcement activities with those of the state and local agencies.

The above-mentioned packet contains a statement (enclosure 1) describing the functions, progress and goals of Federal-state law enforcement committees, enclosures (2 through 16) setting forth topics which might warrant discussion at your next meeting with your state counterparts, and a Staff Report prepared for the United States Senate Select Committee on Small Business together with Parts 1 and 2 containing reports of Hearings before that Committee relating to the Criminal Redistribution (Fencing Systems).

We are aware that many of you are presently members of existing committees which might well serve our goals and consequently the need to establish a new committee is minimal. Wherever such existing formal vehicle of communication is adequate to insure the interface here envisioned (see enclosure 1), such vehicle may be utilized whether it be city-wide, district-wide or state-wide. However, lines of communication which are totally informal and unstructured will be unlikely to provide the support and coordination of law enforcement as envisioned by this Department. Consequently, you should at the very least meet periodically with state and local counterparts to familiarize them with the Federal approach on substantive areas, examples of which are contained in the packet. If you have not already held a meeting in 1974, it is requested that such be held by July 1, 1974 and that the packet be used as the basis for your agenda, subject to your own additions. *

The Law Enforcement Assistance Administration has taken a particular interest in this program and has committed itself to the full support of these Committees. Attention is invited to enclosures 19 and 20, consisting of letters from the Deputy Administrator of the Law Enforcement Assistance Administration addressed to the state law enforcement planning agency and the regional administrator. Letters identical in content are being sent to the law enforcement planning agency in your state and the regional administrator for your district. Additionally, the Board of Directors of the National District Attorney's Association has pledged its support in obtaining the cooperation of its members.

While I do not request nor expect a report from each Federal State Law Enforcement Committee or similar group relating to matters discussed, I do request that you, in your capacity as United States Attorney, inform me by May 31, 1974, of the date of your next meeting with local authorities and a copy of the agenda of the matters to be discussed at such meeting. Further, I request that each of you brief me by letter regarding any matter discussed, including your recommendation for any action that this Department may take to assist you in your endeavors, or which may be of benefit to the overall law enforcement effort. In particular, I request that you forward to me any suggested topics for discussion at these meetings.

It is further requested that you characterize your efforts in the establishment of these committees by indicating your Federal-state relationships by designation in a letter of reply one of the following categories: (a) Full formal meetings at the state level; (b) Organized relationships established at Federal judicial district level or local level but less than state-wide participation; (c) The dialogue between Federal and state authorities is not meaningfully organized by agenda or formal meetings; and (d) Political conflicts exist at state level which have thwarted previous efforts to establish a Federal-state law enforcement committee.

Finally, let me once again assure you of the Department's continuing support in the preparation of these meetings and of our belief in the growing need to depend upon and work with the state and local law enforcement agencies. Such cooperation can be built only on an understanding of what problems are faced by each, and should also be predicated on Federal efforts encouraging local prosecution, not only of those cases with minimal Federal interest, but of all cases with strong state or local interest.

William B. Saxre

WILLIAM B. SAXRE
Attorney General

FEDERAL-STATE LAW ENFORCEMENT COMMITTEESI. INTRODUCTION

In the first Annual Report by the Attorney General on Federal Law Enforcement and Criminal Justice Assistance Activities, then Attorney General Richard G. Kleindienst dedicated the Department of Justice to a nation-wide cooperative effort in crime reduction with state and local government.

The purpose of this statement is to explain the background, the goals and modus operandi of Federal-State Law Enforcement Committees consisting of federal and state prosecutors and investigators. These committees are being formed to pinpoint precisely the limits of responsibility to be exercised in the field of concurrent jurisdiction offenses and to suggest ways in which the problems inherent in such situations may be avoided.

The establishment of these committees was reported to the President by the Secretary of Transportation as an extension of the efforts of the National Cargo Security Program. The President's response indicated encouragement by the report, especially since industry has apparently agreed that government cannot solve the problem of cargo theft alone.

This program envisions Committees dealing with not only the problems of cargo theft but those related to any offenses prosecuted by both Federal and state governments. However, the need for those governments to define their proper and varying roles remains.

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II. EXISTING PROBLEMS

Problem areas surrounding the investigation and prosecution of violations of both federal and state laws include:

- (1) Duplicious investigative efforts by federal and state agencies where it is unknown which prosecutor will present the case.
- (2) Declination of prosecution by both federal and state offices, because of restrictive prosecutive policies dictated by limited manpower. The problem is further aggravated by misunderstandings in the federal office as to what types of cases will or will not be prosecuted in state courts and vice-versa.
- (3) Strained relations between federal and state offices, investigative and prosecutive, due to the desire of each to handle the larger, more important cases. Federal prosecution is often premised on high dollar value, resulting in an emphasis by both federal and state offices on such cases and occasional competition for the prosecution thereof.
- (4) Expectation of federal prosecution from the federal presence, which is made manifest by the many federal services available to state officials, including the NCIC, and federal criminal laboratory assistance.

Similar problems develop when, for example, either Federal investigators or information from case-files, or both, are needed to present evidence in prosecution by the state, and vice-versa. There are often valid fears that the identity of informants may become the subjects

of discussion. Guidelines to protect such valid federal interests, while already existing, are often not known or understood by state officials.

Another area of ignorance and consequent dissension exists because of the frequent desire of state authorities to have Federal investigators locate and return to state custody fugitives (oftentimes a divorced parent) charged with a felony (kidnapping). While Federal statutes (the Fugitive Felon Act) may appear to grant jurisdiction, consideration must also be given to the extent of agreements, signed by the states, which delineate interstate extradition responsibilities.

The problem of jurisdiction over juveniles charged with a Federal offense is many sided. Many states have declined prosecution of youthful auto thieves because of the expense involved in transporting the defendant back from the site of arrest. Federal efforts at encouraging state prosecution has resulted in recent guidelines for U.S. Marshals to transport, at federal expense, the defendants back to the involved state for prosecution.

III. HISTORY OF PROGRESS

The Department of Justice has been aware of these problems (among others) which result from the concurrent exercise of jurisdiction over criminal offenses and has worked hard to provide a forum whereby such problems may be met. In November 1972, the Department issued a memorandum to all United States Attorneys which was prompted by a desire to effect

an improvement in the coordination and liaison between Federal and state authorities and which urged the consideration of establishing permanent Federal-state law enforcement committees. The Department had earlier asked that the United States Attorneys enter informal agreements with their state counterparts to promote interlocking prosecutive policies in certain specified areas of concurrent jurisdiction. Encouraged by the response of the United States Attorneys, which indicated that such informal agreements had been established in 80% of the Federal Judicial Districts, and aware of the many other problems resulting from concurrent jurisdiction discussed above, the Department asked that results of the United States Attorneys' efforts be given to the Department by February, 1973. Enclosed with the memorandum was a copy of a letter addressed to all 50 state Governors and signed by Senator Alan Bible, Chairman of the United States Senate Select Committee on Small Business, in which the Governors were asked to cooperate in the establishment of permanent Federal-state law enforcement committees. The Department of Justice concurred with Senator Bible's belief that the cargo theft area would be an excellent starting point for a Federal-state law enforcement committee, and included with the memorandum materials relative thereto. The response of national representatives of the transportation industry to the Department's efforts was positive and immediate. The Trucking Industry Committee on Theft and Hijacking (of the American Trucking Associations) asked nation-wide support from

its members in the form of positive contact regarding the committees with the United States Attorney(s) in the various states. There have been similar reactions from the rail industry. Hopefully, industrial representatives will play an active part in the conduct of these meetings, at least on an occasional basis. Since the problem of theft from the transportation system is so great, transportation executives might be well advised to make known to the prosecutors their support and also find out how to supplement the law enforcement effort by tighter security.

Responses from the United States Attorneys has been positive also and has indicated that in 36 states one or all of the United States Attorneys have either pledged to establish new Federal-state law enforcement committees, or have replied that, while the need for communication with state law enforcement counterparts exists, that need can be attended to without a new formalized committee since vehicles of communication already exist. United States Attorneys in 4 other states are waiting for an opinion from their state counterparts before answering. Negative responses, received from only 3 Districts, were based solely on the belief that cooperation was already in high gear and could not be helped.

IV. PARTICULAR COMMITTEES

Federal officials in Texas have been some of the most enthusiastic and cooperative in the effort to establish a statewide committee. Cooperation from local officials was originally solicited in March of 1973 for a Texas State Cargo Security Conference by representatives from the

Departments of Transportation and Justice. Texas officials recognized the magnitude and national scope of the problem of theft of cargo from the transportation system and joined in the planning of such a statewide conference which was held in August, 1973. The conference was organized around reports of local cargo security problems and activities, an attempt at analysis of those problems, and a statement of law enforcement efforts in this field. Texas law enforcement officials were so impressed by the apparent need for cooperation between law enforcement agencies that within a few months they had organized themselves, behind the predominant impetus of William S. Sessions, United States Attorney, San Antonio, Texas, into the Texas State-Federal Law Enforcement Coordinating Committee. Consisting of 21 members, the committee held its first meeting in the office of Texas Attorney General John L. Hill, who directed his remarks to the need for cooperation between Federal and state investigative agencies. Other topics of particular interest to Texas law enforcement were addressed, including drug-related offenses, organized crime, and obscenity prosecutions. The next meeting is scheduled for early June, 1974.

In Minnesota, law enforcement officials have already utilized their committee as a strike force to combat a particular local problem. United States Attorney Robert G. Renner met with Minnesota Attorney General Warren Spannous to form a Federal-State Law Enforcement Committee aimed particularly at those who fence stolen property in the Twin City

area. Federal and local agents were selected to work together in this effort. LEAA funds were made available to the state to form an investigative team. The first target was a major fence who had operated for 20 years without arrest. The state's investigative team gathered wiretap evidence that the fence was being protected by public officials. Federal agents from six investigative agencies combined efforts with state agents to list major areas fences and shoplifters, from whom information was sought. Joint surveillance resulted in search warrants being obtained, searches conducted, property identified, and the major fence's operations halted by arrest, conviction, incarceration for 10 years and fine of \$10,000.

Federal agents were careful to include local officers in search parties and to attribute major credit to the state agents for purposes of the extensive press coverage.

This committee, while preparing a thrust on another major fence, is now also investigating gambling enterprises and liquor establishments. United States Attorney Renner has pledged that his office will "demonstrate the need and value in breaking down traditional areas of reticence in the sharing of information and mutual effort in our collective war on crime."

One of the more encouraging conclusions to be drawn from the reports received thus far of the meetings already held is that law

enforcement officials have correctly judged this program to be one aimed at the myriad and diverse problems encountered from one area of the country to another. For example, while Montana's committee had dedicated two of its meetings to relations with the Indian nation, the Northern District of New York has spent its time on cargo theft and narcotics violations. Meanwhile, Tennessee has considered auto theft as more worthy of discussion. Whatever the problem, the Federal-State Law Enforcement Committees will provide a forum whereby Federal and state officials may seek solutions.

V. FURTHER AREAS OF INVOLVEMENT

The areas in which these Committees can make contributions are expanding beyond simply working out agreements in the areas mentioned above. For instance, an analogous effort at ameliorating the sometimes unhappy relations between the state and Federal judicial systems has been enjoying increasing success. Behind the vocal sponsorship of Chief Justice Warren Burger, the State-Federal Judicial Councils are today operative in forty-six states. While continuous interaction between a Federal-State Law Enforcement Committee and a State-Federal Judicial Council located in a particular state would not be possible, each group would have direct interest in any agreements reached or directions taken and consequently some inter-exposure would seem helpful and appropriate.

Another area of output possible from such a committee would be in the area of legislative proposals to be made to both the Congress and the state legislatures, especially regarding statutes in the areas of concurrent jurisdiction.

VI. SUPPORT

The National District Attorney's Association, with a membership of approximately 5000, has indicated a strong desire to make the program known to its members and to ask their support.

It is visualized that state District Attorneys from each state along with the United States Attorneys will express to the State Planning Agency, the local recipient of all LEAA block grant funds, their interest in such a program and their desire to have the committee meetings funded by LEAA. The individual applications presented to the SPA's will in all essential respects express the goals and procedures expressed herein. The LEAA will urge each SPA to support the allocation of funds to sponsor regular meetings of the Federal-State Law Enforcement Committee in its state. The agenda for each meeting will be drawn up, with help and suggestions from the Department of Justice and the National District Attorney's Association, by a person or persons designated by the State Planning Agencies. In order that all necessary topics be included, the United States Attorney shall have the right to review the agenda and thereafter include areas of discussion not listed by the person or persons designated by the SPA. Experienced consultants will be made available to

help organize such agendas and reports of meetings held. The LEAA shall support these committees by urging state law enforcement planning agencies (SPA) to allocate funds, to assist in initial meeting organizing activities, when requested by appropriate state and local prosecution and investigation agencies. LEAA will directly support the committee program by providing staff support to efforts to organize committees. Appropriate guidance materials for organizing committees might be developed as a result of this experience. Finally, LEAA will plan and conduct an evaluation of the Federal-State Law Enforcement Committee program to determine its effectiveness in meeting program objectives.

The Executive Office for the U.S. Attorneys, the FBI, DEA, other appropriate Federal law enforcement agencies, the National Association of Attorneys General, and the International Association of Chiefs of Police are cooperating with this program.

FIREARMS AND EXPLOSIVES CASES

The Department of Justice will not be seeking major legislative authority in the firearms and explosives area within the foreseeable future. Accordingly, it is important that United States Attorneys take advantage of every possible means to tighten up enforcement of the firearms and explosives laws within the existing statutory and regulatory framework. One important step is to achieve a relationship with state and local officials in which firearms and explosives cases will carefully be reviewed to determine whether or not a particular case is to be investigated and prosecuted locally or federally.

In that regard the United States Attorney should stress to local officials that simple firearms' receipt and possession cases such as those arising out of the illegal receipt of a firearm by a felon (18 U.S.C. App. Section 1202) should be prosecuted by state or local authorities where there is a parallel state or local statute. In those cases, however, where there is no similar state or local statute, or where the offender is of more than usual concern to local law enforcement authorities, the United States Attorney should offer his

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assistance to local authorities by considering possible Federal prosecution under section 1202 or 18 U.S.C. 922. Such Federal prosecution may be of substantial value where no other means of apprehending and prosecuting a major criminal figure are available.

Major interstate firearms and explosives cargo theft cases continue to be of prime importance to the Department of Justice and generally should be prosecuted Federally. Although the monetary value of such thefts is often minimal, the importance of such thefts to law enforcement efforts is obviously great. In addition, cases involving the illegal sale of firearms and explosives by dealers and other licensees (18 U.S.C. chapters 39 and 40) should also receive high Federal priority.

AIRCRAFT HIJACKING RELATED CRIMES

There is presently a significant need for mutual cooperation and understanding between federal and local law enforcement authorities at our nation's airports. Oftentimes, both federal and local investigators respond to the same incident and similarly, at the prosecution level, there is often concurrent statutory jurisdiction for aircraft hijacking related crimes. In some jurisdictions federal and local authorities have already worked out operational plans for the assignment of these cases, while in many other jurisdictions there is no such clarity.

The federal arsenal of statutes that covers these crimes is at this time inadequate. There are no statutes which provide for a civil penalty for hijacking hoaxes or for carrying a weapon aboard an aircraft and accordingly, in those instances where there are mitigating factors, no appropriate penalty exists for the aforementioned crimes. Carrying a weapon at an airport is not a federal crime where the actor is not a ticketed passenger. In such cases it is particularly incumbent upon the local authorities to assume the prosecution responsibilities.

By way of summary the following quote is provided which is from the Department of Justice's December 5, 1973 "Guidelines for Enforcement of Certain Related Hijacking Offenses:

. . . . To the extent local law enforcement authorities exercise jurisdiction relative to these types of offenses, you (U.S. Attorneys) should of course, take the appropriate steps to assure that the local authorities are fully exercising their law enforcement capability in this area of crime, including non-passengers who are arrested during the preboard screening process. In

ENCLOSURE 3.

those instances where local prosecution is not initiated, your office should initiate federal prosecution where jurisdiction exists and prosecution is required in the interests of justice.

COMMUNITY INVOLVEMENT IN INNOVATIVE
REHABILITATION PROGRAMS

United States Attorneys should inform themselves of innovative rehabilitation programs utilized in their respective state jurisdictions. New approaches in the area of corrections such as pre-trial diversion, parole release and furlough programs have proliferated in recent years. The standards relating to the prosecution function and the defense function, developed and issued by the American Bar Association project on standards for criminal justice, explicitly calls upon prosecutors and defense counsel to explore the availability of non-criminal dispositions and the use of community resources for diversion of cases from the criminal process.

A variety of programs for the diversion of offenders into community-oriented rehabilitation programs have been utilized by state and city criminal justice systems. Projects such as the Court Employment Project in New York City and Project Crossroads in the District of Columbia consist of deferred prosecution concurrent with employment, education and social counseling under the auspices of a community-based service apparatus. A limited pilot program of deferred prosecution in Federal District Court originally begun in New York in cooperation with the Court Employment Project has prompted extensive examination of the possible role to be played by such programs in the Federal system, and has resulted in the experimental use thereof in several districts. Legislation is now pending before Congress which would authorize pre-trial diversion programs in all Federal courts. Accordingly, the practical experience of operational state and city programs might well benefit United States Attorneys in their own implementation of pre-trial diversion, to whatever extent it does now and may later exist.

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CORRUPTION OF OFFICIALS AND PROGRAMS

Greater coordination is needed between Federal, state and local prosecutors if meaningful action is to be taken to eliminate corruption. To effectively deal with such corruption, it is necessary that state and local authorities be encouraged to assist the Federal Government in this area of criminal activity.

Federal resources are limited. As a result, United States Attorneys necessarily are forced to concentrate on impact cases, cases which, because of the prominence of the defendants or Federal programs involved, will receive substantial publicity. Less noteworthy cases are often declined. In many instances, such cases could be prosecuted by state and/or local authorities, but are not because of a lack of communication between such authorities and the United States Attorney.

Some effort is being made to encourage state and local prosecutors to take a more active, aggressive role in detecting and prosecuting corruption. The National District Attorneys Association, with LEAA funds, has embarked on a project to improve the capability of state and local District Attorneys to deal with sophisticated "white collar" crimes.

A pilot program underway in the San Diego, California District Attorney's office illustrates what can be accomplished. There, the District Attorney has expressed his willingness to consider prosecution of matters referred to him by the United States Attorney. An aggressive program which concentrates on detection of crime, rather than reaction to

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crime, has been adopted. There is a substantial exchange of intelligence information between the District Attorney's office and Federal agencies. A cooperative atmosphere is being cultivated.

By encouraging such programs as the one in San Diego, we recognize that prosecuting only impact cases is not enough. Federal programs are not adequately protected when "minor" violators are permitted to continue to ply their trade. Often, state and local authorities will have jurisdiction. We should seek their cooperation.

BANK ROBBERY AND KIDNAP CASES

Usually States have statutes which fully parallel Federal bank robbery and kidnap statutes. Therefore in each case it becomes necessary to decide whether such offenses should be investigated and prosecuted locally or federally. Some of the factors which should go into such a calculus are: whether or not the State is interested in proceeding; whether the State has sufficient manpower to accomplish the task; the relative sentences which would be imposed following state or Federal prosecution; the presence of an informant, the use of electronic surveillance, or other exceptional technique being used which might present disclosure problems in another jurisdiction; and the pendency of other criminal charges against the defendant in a particular form. In general, however, the central question is generally which jurisdiction can get to trial the fastest with the most effective prosecution, and achieve the greatest in terms of imprisonment or deterrence.

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CONTROLLED SUBSTANCE
INVESTIGATIONS AND PROSECUTIONS

Many persons who violate the provisions of the Controlled Substance Act (21 U.S.C. 801 et seq.) simultaneously commit similar state offenses. In such instances a decision must be made as to whether prosecution is to be in a federal, state or local court. United States Attorneys follow no uniform policy in declining prosecution in favor of local or state prosecution. Local and state prosecutors, in deciding whether to prosecute referred cases, also follow varying standards. Actually, the lack of uniform standards is not unusual since prosecutive decisions are necessarily influenced by numerous factors. For example, a United States Attorney, before deciding to indict a defendant, will consider among other things the strength of the evidence, the degree of culpability, the gravity of the offense, and the climate of public opinion. He will also consider the relative importance of the offense as contrasted with the competing demands of other cases on the time and resources of his staff. Any court backlog will also be taken into consideration. In deciding whether to refer a controlled substance case to local or state prosecutors a United States Attorney considers such factors as the effectiveness of state and local prosecutors, their willingness to prosecute cases investigated by federal agents, the kind of drug involved (also, its amount and purity), the length of time required to try a drug case in state or local courts, the type of penalties provided by state and local law, and the sentencing policies and practices of local and state judges. Still another factor often considered

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is the type of charge which seems proper. Often the available evidence will permit the bringing of both misdemeanor and felony charges. However, a state or local prosecutor may prefer to lodge only misdemeanor charges. Also, some prosecutors may be disinclined to charge conspiracy, even though there is enough evidence to prove that crime.

Apart from referral of federal cases for local or state prosecution, there are instances where state or local authorities may request a United States Attorney to prosecute a case which has been investigated by state or local law enforcement officers. An example of this would be a situation where local or state law does not make illegal the activities involved but federal law does.

It may be noted that, in some state and local offices there are administrative problems such as lack of money, limited manpower, etc. which lead to a reluctance to prosecute cases which are referred by United States Attorneys.

It is realized that uniform national standards relating to federal, state and local prosecution of controlled substance cases are difficult, if not impossible, to establish. Conditions vary too much from one area of the country to another for uniform standards to function effectively. What is desirable is that United States Attorneys in different parts of the country confer with their local and state counterparts and establish local or regional guidelines which will apply to prosecution of controlled substance cases. This should lead to more vigorous and effective enforcement of the drug laws and also deal a telling blow to drug trafficking.

Regarding the federal-state teamwork approach to controlled substance trafficking contemplated by Congress, see §503 of the Controlled Substances Act (21 U.S.C. 873).

REFERRAL OF JUVENILES TO STATE
AUTHORITIES FOR LOCAL DISPOSITION

The Federal Bureau of Prisons is not equipped to deal with juveniles. In this regard, United States Attorneys should undertake to assure that their state and local counterparts are familiar with the provisions of the "Diversionary Statute," 18 U.S.C. 5001. Further, United States Attorneys should encourage their state and local counterparts to utilize the statute whenever the opportunity should present itself.

On November 20, 1973, the Department of Justice effectuated the procedural implementation of 18 U.S.C. 5001 in auto theft cases. Essentially, section 5001 provides for the transporting at Federal expense by the United States Marshals Service of persons under twenty one years of age to a state or local jurisdiction whose law they appear to have violated, where they have already been charged with a Federal offense. Upon the execution of the above, the Federal authorities dismiss the Federal offense with which the juvenile is charged. Section 5001 is however limited to situations in which the receiving local authorities agree to proceed against the juvenile in accordance with the law and where either the juvenile consents to being transported or the executive authority of the receiving state makes a demand for the juvenile's return. Thus, through the joint efforts of the Federal Government and local jurisdictions involved, a youth who steals an automobile in one state and

ENCLOSURE 8

transports it to another state, where he is apprehended, can be returned to the place of theft to face judicial process. Attached is a copy of the United States Marshals Service Instructions to its field offices, in which the procedures are stated in greater detail. Also attached for your information and that of your local counterparts is a copy of an article reproduced from the April 1974 issue of The Police Chiefs magazine with the permission of the International Association of Chiefs of Police entitled, "Should Young Auto Thieves Go Unprosecuted."

In general, United States Attorneys presently have a great deal of discretion in deciding which juvenile offenders to refer to state authorities. While such guidelines will be more clearly delineated in the future, at the present time the United States Attorneys should consider not only auto theft offenses, but also any offense involving juveniles in which adult prosecution is not authorized by the Department. In addition, United States Attorneys should give consideration to referral of juveniles in those cases where authorization from the Department is likely, but the state law provides an adequate penalty for the offense. It should be noted that state law often makes a Federal "juvenile" an adult.

United States
Department of Justice



Change

[USM 1000.01 CHG. 20]

Cancellation
Date: AFTER ACTION

Subject: UNITED STATES MARSHALS MANUAL

1. Purpose. This CHANGE provides special instructions for handling certain interstate auto theft arrestees, pursuant to the provisions of 18 USC 5001.

a) a teletype notice establishing this procedure was sent to all U. S. Marshals on November 9, 1973.

PAGE CONTROL CHART

REMOVE PAGES	DATE	INSERT PAGES	DATE
		623.09	February 26, 1974
		623.10	February 26, 1974

Wayne B. Colburn
WAYNE B. COLBURN
Director

Distribution:

Initiated by:

Special Instructions Covering Certain Interstate Auto Theft Arrestees

Under authority of 18 U.S.C. 5001 the Federal government will detain and return certain interstate auto theft arrestees to the jurisdiction where the offense was committed. In order to take advantage of this policy the following factors must be present:

- (a) the arrestee must be under 21 years of age
- (b) the case does not fall within the guidelines of the Department of Justice prosecution policy under Title 18 U.S.C. 2312
- (c) the local authorities at the place of arrest prefer prosecution in the place of theft
- (d) either the arrestee must be willing to be returned to the place of theft for prosecution by the authorities there or those authorities must provide a written demand for the arrestee's return
- (e) the authorities in the place of theft must agree to initiate such prosecution if the arrestee is returned to their jurisdiction.

The United States Marshals Service has been given important implementation responsibility under this policy which will be defined in chronological steps:

1. The Federal Bureau of Investigation will advise the U. S. marshal when a subject is apprehended within their jurisdiction who is suspected of violating Title 18 U.S.C. 2312, is under 21 years of age and is not under the U. S. Attorney's guidelines for prosecution in federal court. They will also advise the U. S. marshal where the vehicle was stolen.
2. The U. S. marshal will contact the local authorities at the place of arrest and determine if they wish to prosecute. If the answer is negative the marshal will proceed under the subsequent instructions.
3. The U. S. marshal, through the authorities in place of arrest, will ascertain if the arrestee is willing to be returned to the locality where the theft occurred under provisions of 18 U.S.C. 5001.

The Marshals Service will provide pre-printed consent forms (USM 131) for the subject to sign. These forms will also provide space for the U. S. Magistrate to confirm consent at time of arraignment.

February 26, 1974

4. The U. S. marshal will then contact by telephone the state or local authorities where the original theft occurred and determine their willingness to prosecute if the marshal returns the arrestee under the provisions of 18 U.S.C. 5001. If so, the marshal will request written confirmation (telegram) including information as to where the subject will be delivered and the person to be notified.
5. If the arrestee refuses to sign consent for a voluntary return the marshal will contact by telephone the state or local authorities where the original theft occurred and determine their willingness to prosecute if the marshal returns the arrestee under the provisions of 18 U.S.C. 5001. If so, the marshal will request written confirmation of intent to expeditiously obtain a written demand for the return of the juvenile from the executive authority of the state in accordance with section 5001. However, the marshal is not to proceed further until the appropriate executive demand is received.
6. When the U. S. marshal has obtained the requisite written agreements from both the prosecuting authorities and the arrestee he will obtain arrest and investigative reports from local authorities where the arrest was made.
7. The marshal will contact the U. S. Attorney and on the basis of the data obtained from the local authorities request that a complaint be issued for a violation of 18 U.S.C. 2312. The marshal or deputy charged with this responsibility will sign the complaint.
8. After the complaint is issued the marshal will assume custody of the arrestee from local authorities. Subject will then be arraigned before a U. S. Magistrate who will confirm the voluntariness of his/her consent and will direct the U. S. Attorney to issue written instructions to the marshal directing return of subject to the local jurisdiction where the theft occurred.
9. The U. S. marshal will follow Marshals Service regulations to effect the transfer of subject as directed by the U. S. Attorney.

February 26, 1974

DOJ-1974-03

By Alan L. Seifert

Should Young Auto Thieves Go Unprosecuted?

As the Chief of Police of a small eastern city, you have encountered a rash of auto thefts by youthful offenders who are apprehended at distant communities in the western part of the United States. The federal authorities and the local authorities where these youths are found have declined prosecution. Your funds to defray the expense of returning these youths for prosecution are severely limited. A little known but seldom used federal statute may offer the solution to your problem.

OFTEN youthful auto theft offenders are not prosecuted because they are found at places which are distant from the scene of their crimes. Local law enforcement authorities of jurisdictions in which thefts occur are usually unable to seek the return of these youthful offenders because of the expense involved.

The federal government is willing to be of service to local law enforcement authorities by placing federal detainers on youthful auto theft offenders under twenty-one years of age and returning them at federal expense to the jurisdictions where the offenses were committed, provided the requirements of 18 U.S.C. 5001,¹ to be hereinafter discussed, have been evidenced in writing.



ALAN L. SEIFERT, 5375 Duke Street, Alexandria, Virginia 22304, is an attorney with the Honor Law Graduate Program, United States Department of Justice, Criminal Division, Washington, D. C. He holds a B.A. degree from the State University of New York at Buffalo and a J.D. from the University of Cincinnati, College of Law. He is a member of the D. C. Bar.

Under these requirements, the youthful auto theft offender in custody must either signify his willingness in writing to be so returned, or there must be a demand in writing from the executive authority of the state seeking his return supported by an indictment or affidavit. It is important to note that the federal government will not initiate such action to return youthful auto theft offenders until the above-mentioned requirements of 18 U.S.C. 5001 have been evidenced in writing.

The return of youthful auto theft offenders at federal expense under the conditions described above, does not mean that the federal government is relinquishing its present prosecutive policy for auto theft offenses. On the

¹Whenever any person under twenty-one years of age has been arrested, charged with the commission of an offense punishable in any court of the United States or of the District of Columbia, and, after investigation by the Department of Justice, it appears that such person has committed an offense or is a delinquent under the laws of any State or of the District of Columbia which can and will assume jurisdiction over such juvenile and will take him into custody and deal with him according to the laws of such State or of the District of Columbia, and that it will be to the best interest of the United States and of the juvenile offender, the United States Attorney for the district in which such person has been arrested may forego his prosecution and surrender him as herein provided.

"The United States marshal of such district upon written order of the United States attorney shall convey such person to such State or the District of Columbia, or, if already therein, to any other part thereof and deliver him into the custody of the proper authority thereof.

"Before any person is conveyed from one State to another or from or to the District of Columbia under this section, he shall signify his willingness to be so returned, or there shall be presented to the United States Attorney a demand from the executive authority of such State or the District of Columbia, in which the prisoner is to be returned, supported by indictment or affidavit as prescribed by section 3182 of this title.

"The expense incident to the transportation of any such person, as herein authorized, shall be paid from the appropriation 'Salaries, Fees, and Expenses, United States Marshals.'"

contrary, action is being taken to supplement this prosecutive policy by the elimination of lapses in the enforcement of auto thefts involving interstate transportation. In this regard, United States attorneys have recently entered into informal agreements with local law enforcement authorities within approximately 80 percent of the federal judicial districts relative to the investigation and prosecution of auto thefts involving interstate transportation.

BACKGROUND

Local law enforcement authorities in distant communities where these auto theft offenders are found are usually unable to prosecute these individuals because of the high cost of doing so. Since the victim of an auto theft does not reside in the distant community where the youthful auto theft offender is found and the prosecution of the offender could involve substantial travel costs for out-of-state witnesses, it is understandable why law enforcement authorities in these distant communities are not usually interested in prosecuting these offenders. In short, these out-of-state auto theft crimes have little or no impact on the distant community where the auto theft offender is found.

The present federal prosecution policy under the National Motor Vehicle Theft Act, 18 U.S.C. 2312, 2313, generally restricts the prosecution of youthful auto theft offenders to recidivists, or to those instances where they are participants in interstate auto theft rings or aggravated cases. Indeed, the restriction on the federal prosecution of auto thefts involving interstate transportation does not stem from lack of federal interest or concern for this area of crime. Rather, the issuance of this restricted prosecution policy was necessitated by crowded federal prison facilities, the heavy workload of federal probationary personnel, the large federal criminal docket, and the limited federal prosecutorial and judicial manpower resources available.

Experience has shown that most auto thefts—even those in which the stolen motor vehicle is transported in interstate commerce—are substantially local in nature. Usually, the impact of the crime of auto theft is felt by a local car owner or merchant and most of the witnesses to the crime, including the suspect and the victim, usually reside reasonably near the locality where the offense took place. Thus, such offenses, particularly those involving juveniles, are more appropriately tried at the locality where the offense is committed rather than in a distant federal or local court where the offender was apprehended but where no impact of the

crime has been felt. In this regard, a recent survey shows that 77 percent of those arrested for auto theft are under twenty-one years of age. The prosecution of these youthful offenders in the locality where the offense was committed would ordinarily permit the youth to remain in his home community and be supervised by local authorities and his parents.

PROCEDURAL OPERATION

Once an auto theft offender under twenty-one years of age has been arrested and charged with a violation of the National Motor Vehicle Theft Act, 18 U.S.C. 2312, 2313, or other federal offense and after investigation by the Department of Justice, it appears that such person has committed an offense or is delinquent under the laws of any state or the District of Columbia, the United States attorney concerned, acting under the provisions of 18 U.S.C. 5001, may forego prosecution and arrange for the return of the offender at the expense of the federal government to the jurisdiction where the offense was committed, provided certain conditions have been met.

Not only must the return of the offender to the jurisdiction where the auto theft was committed be conditioned on the fact that the youthful offender has committed an offense or is a delinquent under the laws of the state requesting his return, but the receiving state must be willing to assume jurisdiction of the offender and deal with him according to the laws of such state.

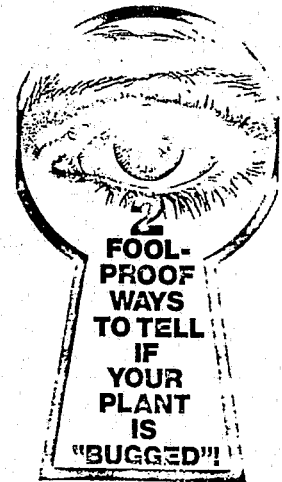
Role of United States Marshals Service. In practice the procedural steps for the implementation of 18 U.S.C. 5001 would commence at the time that the case is presented for a prosecutorial determination to the United States attorney within the federal judicial district where the youthful auto theft offender is taken into custody. If that United States attorney determines the case is not within the Department of Justice's prosecution guidelines, then the United States attorney will so inform the FBI. The FBI will notify the United States marshal at the district where the youthful offender was apprehended. That United States marshal will contact the local authorities at the place of arrest and determine if they wish to prosecute. If the local authorities at the place of arrest wish to prosecute, then there is no reason to proceed further under 18 U.S.C. 5001 in an effort to return the youth to the place of theft, but if they do not, then the United States marshal will contact the youth in an effort to obtain his consent to be transported to the place

where the theft occurred. The marshal will then contact the local authorities in the jurisdiction where the theft occurred. If the youth has expressed a willingness to return voluntarily in writing, the marshal will request from those authorities an indication in writing of a willingness to prosecute. Should the youth have refused to consent, then the marshal will inquire whether the local authorities intend to expeditiously obtain a written demand from the executive authority of the state as has been previously described in this article and are willing to provide a written statement of this intent to the marshal. If at the time these conditions are met no federal charges have been filed against the youthful offender in the federal judicial district where he is in federal or local custody, then the United States attorney must proceed to file an appropriate complaint. The youth will then be arraigned, at which time his consent will be verified and the United States attorney will issue an order authorizing the conveyance of the youth by the United States marshal, who will take custody of him until he is released into the custody of the requesting authorities. Any previously filed federal charge will then be dismissed by the United States attorney in the district where the youth was arrested.

Local law enforcement officers who have any questions concerning the implementation of 18 U.S.C. 5001, may contact the United States marshal within the federal judicial district in which the law enforcement agency is located for guidance. This official holds detailed instructions relating to the implementation of this statute.

CONCLUSION

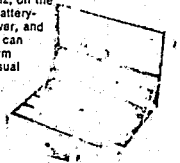
Indeed, the return of youthful auto theft offenders to the scene of their crimes for prosecution in local or state court is more appropriate in terms of future deterrence and rehabilitation of such young individuals. The exceptions are those who are hardened and habitual offenders. Moreover, the economic and social impact of these auto thefts is ordinarily felt most acutely by local citizens (car owners and merchants) at the place where these thefts occur. Of course, federal assistance will continue to be available in locating and apprehending perpetrators who cross the state lines. Additionally, in those instances where 18 U.S.C. 5001 applies, the local authorities should take timely action to request the return of these offenders. In the event the requirements of this statute are evidenced in writing, these offenders will be returned to the scene of their crimes at federal expense. ★



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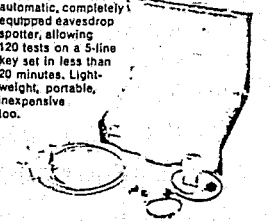
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IMMIGRATION

It is unlawful for any alien illegally in the United States to be found here. The Immigration Service, by reason of inadequate staffing, is incapable of coping with the vast numbers of illegal aliens who enter and remain in the United States each year; the number of such violations is increasing at a sharp rate and promises to get completely out of hand unless extraordinary measures are undertaken. While close cooperation between local police and Immigration authorities exists along the border areas, particularly the Southwest Mexico-United States border, the possibility of improving the cooperation and coordination of those authorities elsewhere should not be overlooked. Indeed, in the Southwest, the majority of illegal aliens are apprehended not by the border patrol but by local police officers, who turn them over to Immigration authorities. Perhaps there can also be closer cooperation on the Federal-state level in other areas of the country and this would seem particularly desirable in those areas, such as Chicago and Detroit, etc., where large congregations of illegal aliens are found at great distances from the border. This subject was included as a proposed item for discussion because it is very likely that an increase in cooperation between the respective state and Federal authorities would result in a substantial deterrent to aliens coming to this country to engage in employment. Should this problem be a particularly acute one within your state, it is suggested that you contact the Government Regulations Section of the Criminal Division for further information and assistance.

ENCLOSURE 9

LABOR DISPUTES

Since the recent United States Supreme Court decision in the case of Enmons v. United States, 410 U.S. 396, the jurisdiction of the Federal Government to investigate or prosecute violence related to labor disputes is extremely limited in nature. In this regard, Enmons, supra, held that when a labor union is seeking a legitimate objective in a labor dispute, the use of violence to obtain that objective -- though a violation of state law -- is not a violation of the Federal Anti-racketeering Statute (18 U.S.C. 1951). Since this decision was handed down, the only jurisdictional basis for Federal investigation or prosecution arising from violence during a labor dispute is when other Federal statutes are violated or when violence continues after an injunction has been issued by a Federal court.

The Criminal Division has proposed an amendment to the Federal Anti-racketeering Statute which would bring the activities mentioned above within the coverage of the statute. However, unless and until this amendment has been enacted into law, state and local officials should be made aware that Federal authorities have extremely limited jurisdiction to intervene or assist in violent labor disputes.

ENCLOSURE 10

OBSCENITY

Under the decision in Miller v. California, 413 U.S. 15 (1973), the Supreme Court reinvigorated the authority of state and local jurisdictions to regulate the exhibition, sale, and distribution of obscene matter within their jurisdiction, and establish as fulfilling constitutional requirements the principle that local standards of candor are the ones by which juries or judges are to determine the obscenity vel non of the material. The Court, in addition, gave examples of provisions which by either express statutory enactment or by authoritative judicial construction would fulfill the principles articulated by the Court. In view of the Miller decision, the responsibility and authority of local prosecutors for the suppression of obscene matter within their own jurisdictions was substantially infused with new life. The reaction to this development on the part of district attorneys all over the country has varied with (1) their awareness of the essential holding of Miller (2) the personal aggressiveness of the particular district attorney in enforcing the laws generally and particularly with respect to any obscenity measure within his responsibility, and (3) the climate or environment existing within his area pertaining to the attitude with which the bulk of citizens residing therein regard pornography and the aggressiveness of the citizenry to communicate their opposition to the display of offensive matter where it exists.

The federal role has always been to focus upon the major producers and distributors interstate of pornography while leaving to the local jurisdictions the responsibility to deal with local exhibitions and sales. This policy has not always met with complete acceptance and understanding

ENCLOSURE 11

by the citizens of particular communities who are confronted with offensive matter and find their own local prosecutor lacking in initiative and aggressiveness in dealing with it; but it has served generally as a complementing approach to the efforts of the local prosecutors, who are regarded as having the primary obligation to deal with such materials.

Local prosecutors, however willing and anxious to undertake local litigation to deal with obscene matter in their districts, frequently experience difficulty because of several factors, notably a lack of expertise in the field, lack of support by the community and/or its officials, and as in all areas of law enforcement, perhaps lack of necessary funds with which to deal with these violations. In these circumstances, the United States may provide, through its own prosecutive efforts, the assistance so urgently needed by prosecutors at the local level and at times undertake prosecutions not falling precisely within its own guidelines. Conversely, local authorities dealing with obscene material being distributed within their area may develop evidence of interstate distribution which at times the Federal Government finds very difficult to acquire; in such instances, the local prosecutor can be highly productive in making such evidence available to the federal authorities for use against the distributor or manufacturer.

ORGANIZED CRIME ACTIVITIES

Insofar as the laws with which the Organized Crime and Racketeering Section is concerned, states generally exercise concurrent jurisdiction over violations with which we are involved. Some illegal gambling activities are violative of state law but are not covered by Federal statute. On the other hand, in some states there is either no usury law or no effective usury laws, and loansharking operations are better handled by the Federal Extortionate Credit Transaction statute, 18 U.S.C. 891-896. Obviously, depending on the facts of individual cases, cases may fall within state jurisdiction as well as federal.

As you know, most states do not have electronic surveillance statutes. And some states, e.g., Pennsylvania, forbid the use of electronic surveillance information. Consequently, a Federal Title III that may disclose state as well as Federal violations cannot be utilized by state agencies.

In a number of areas where we have entered upon joint cooperation with state and local authorities in the gambling, loansharking, stolen securities, etc., areas, we have generally worked out on an ad hoc basis which jurisdiction the indictment should proceed under, state or Federal. This is an ideal arrangement and affords maximum efficiency when there is interest, professionalism, and competence on all sides, as in the New York area. Those conditions are obviously not universally prevalent. Any declination of Federal investigation or prosecution in favor of state or local action must be predicated upon a certainty that such officials are able and willing to administer the law.

ENCLOSURE 12

MISSING PERSONS AND FUGITIVE FELON ACT POLICIES

United States Attorneys often receive requests from state district attorneys to furnish Federal assistance in cases where a parent, a divorced spouse not having received custody of his child, takes such child out of the particular state court's jurisdiction. While the FBI will normally render assistance to state authorities seeking to locate and apprehend fugitives, the Department's policy precludes FBI intervention in parental kidnapping cases of minor children absent a showing of imminent physical harm to the child.

United States Attorneys often receive requests from local law enforcement officials and others for assistance in requesting an FBI investigation under the kidnaping statute in missing person cases. The Criminal Division has recently instituted a policy whereby the Bureau has been instructed to furnish to the Criminal Division copies of communications it receives in "questionable missing person cases which may involve a possible violation of the Federal kidnaping statute" wherein the FBI is not conducting an investigation. The Criminal Division will review such information, and if deemed warranted, will request the FBI to immediately commence an investigation.

Enclosure 13

In this regard, United States Attorneys should attempt to make clear to local officials the proper role to be played by the FBI in parental kidnaping and missing person cases. However, United States Attorneys should bring to the attention of the Criminal Division such cases which are not being investigated by the FBI wherein the United States Attorney believes that the circumstances warrant such investigation.

SOUND RECORDING PIRATES

By enactment of Public Law 92-140, which became effective February 15, 1972, a copyrighted recording fixed and published after the effective date of that amendment is protected from infringement for profit through the operation of the misdemeanor criminal sanction contained in the Copyright Law (17 U.S.C. 104). The amendment by its terms being prospective only, it has not been applied to sound recordings protected prior to February 15, 1972.^{1/} Some 22 states have not enacted their own anti-piracy statutes, an increase of about a dozen since the Federal amendment was enacted. In those jurisdictions which have state laws complementing the Federal prohibition, exchange of information concerning the distribution and sale within their areas would be extremely helpful. The Federal law preempts post-February 15, 1972, materials and, up to now, we have assumed that the states having statutes on the subject were authorized to regulate pre-February 15, 1972, matter. If this situation is continued, there is obviously a mutuality of interest and concern inasmuch as most pirates deal in both federally protected and non-federally protected recordings.

Attached for your information is a booklet entitled, Copyright Protection of Sound Recordings. This booklet contains a definitive monograph on the subject of sound recording infringement which may be of assistance to your state or local counterpart. While much of this

^{1/} Two circuit courts have not held that it is a violation of the Federal Copyright Law to duplicate a pre-February 15, 1972, article (Duchess, CA 9, Edward B. Marks Music Corporation v. Colorado Magnetics, Inc., et al. CA 10); the Department is studying these decisions but has not yet accepted the view advanced by the industry that these two decisions justify prosecution by the United States of both pre- and post- February 15, 1972, productions.

ENCLOSURE 14

handbook addresses exclusively federal issues, the techniques of investigation there described and the procedures for verifying the existence of a copyright for the article and acquiring the necessary evidence for prosecution would seem very helpful to the state or local prosecutor. On the other hand state or local prosecutors and police forces are undoubtedly in possession of much useful and accurate information as to who within their areas is producing or distributing such matter on a substantial scale. The receipt of such information from state or local authorities would greatly enhance the effectiveness of the federal effort while allowing the state or local jurisdictions the free exercise of their own authority.

WHITE SLAVE TRAFFIC ACT

The White Slave Traffic Act, 18 U.S.C. 2421, et seq., prohibits the interstate transportation of a woman for prostitution or debauchery. The federal policy is to emphasize the prosecution of the major violators on an interstate level, i.e., organized commercial rings which promote prostitution on a substantial level. The states or local authorities are looked to to prosecute the individual prostitute and/or pimp for engaging in this business. Obviously, when the state or local authorities generate "heat", prostitutes and their sponsors necessarily depart from the area, if only temporarily, to seek a more acceptable environment. Not infrequently, these moves have involved interstate travel and the use of interstate facilities to carry on the business, and thus involve federal jurisdiction. It is perhaps unnecessary to reiterate here that there has always been a tradition of mutually exchanging information between local police officers and F.B.I. agents as to the operations of those engaged in this business particularly where a new hustler in town is found to have been transported from some other area of the country. Nonetheless, it is useful here to enumerate this area as one in which state-federal cooperation can be especially effective and useful.

ENCLOSURE 15



UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
OFFICE OF THE DEPUTY ADMINISTRATOR
WASHINGTON, D. C. 20530

April 15, 1974

TYPICAL LETTER SENT TO STATE DIRECTORS.

Mr. Robert Davis
Director
Alabama Law Enforcement
Planning Agency
501 Adams Avenue
Montgomery, Alabama 36104

Dear Mr. Davis:

During the past year the U. S. Attorneys at the urging of the Attorney General of the United States have formed Federal-State Law Enforcement Committees together with state attorneys general and district attorneys. The purpose of the committees is to establish regular procedures for coordination of Federal law enforcement activities with those of State and local agencies, as well as to engage in appropriate coordinated programs of crime reduction. We are aware that some of you are already members of committees in your states or are familiar with the activity of such committees. Since crime reduction is first of all a State problem, I urge you to assist in the activation of such committees and where possible appropriately participate in their work.

Criminal acts are often State and Federal crimes at the same time and criminals have little concern for boundaries or jurisdictions. Therefore to work effectively against crime, all law enforcement authorities should develop a regular structure for cooperation. As Attorney General Saxbe stated in a February, 1974, telegram to all U. S. Attorneys, "These committees can do much to enhance mutual understanding between principal State and Federal law enforcement officials as well as victimized businessmen in each state by focusing their attention on the enforcement of concurrent jurisdiction offenses such as cargo thefts, auto thefts, robberies, weapons violations and other problems associated with these areas of mutual interest existing between the states and the Federal government." Existing active committees are working in these and other areas.

ENCLOSURE 19

LEAA has been cooperating with the Department of Justice efforts to assist the committees and shall begin bringing you word of their progress through our monthly Newsletter and other appropriate media. We would appreciate your keeping the State Representative and LEAA Regional Office advised of any supportive activities that you give to the committees.

If you would like additional information concerning Federal-State Law Enforcement Committees, your Regional Office is ready to supply it.

Sincerely yours,

Charles R. Work
Deputy Administrator for Administration

UNITED STATES GOVERNMENT

*Memorandum*DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

DATE: APR 17 1974

TO : Regional Administrators
State Representatives

FROM : Charles R. Work *CCW*
Deputy Administrator for Administration

SUBJECT: Federal-State Law Enforcement Committees

On November 30, 1972, the Department of Justice urged all U. S. Attorneys to endeavor to establish Federal-State Law Enforcement Committees for the purpose of improving cooperation between prosecutive and investigative agencies. LEAA has supported and kept in close touch with this effort and we have been pleased to note that a number of SPAs, such as Texas and Minnesota, have been active supporters of Committees that have already accomplished much.

The attached copy of a letter from me to each SPA Director has been sent out with the hope of stimulating additional efforts by state and local authorities to promote the establishment and activation of Committees. In addition to the letter, I am sending you further explanatory material concerning the Committees. Please use it as soon as possible to help your states to build active committee programs.

Mr. Irv Slott, Office of National Priority Programs, has responsibility for liaison between LEAA and the Criminal Division, which is leading this program for the Department. He will be contacting you soon for a report of Committee activity in your states.

cc: Henry Petersen
K. Paul Haynes
Joseph Nardoza

ENCLOSURE 20

Mr. MARONEY. The Federal involvement which, like the exercise of all Federal law enforcement powers, is intended to be supplemental to the efforts of the individual States. In this regard, the Federal Government has actively attacked those criminal fencing systems which are organized to a point beyond the jurisdiction of the individual States. However, many professional fencing operations operate independently of such systems. Further, many of the activities of these operations constitute violations only of State and local law. Regardless of the varying interests of the Federal, State, and local authorities, a cooperative effort by all such authorities is needed to deal adequately with the problem.

At this time I would like to discuss a program in which the Department of Transportation and this Department is undertaking to establish cargo security working groups in 15 large metropolitan areas throughout the Nation. At the present time, two of these cargo security working groups are being established in Chicago and Philadelphia. It is expected that these working groups will be commenced in the remaining 13 metropolitan areas within the near future.

These cargo security working groups will consist of U.S. attorneys, their local counterparts, representatives of the FBI and other Federal and local investigative agencies, and representatives of the transportation industry. While these working groups will provide a forum for discussion between law enforcement and business representatives, they will perform important functions of monitoring the processing of cargo theft cases on a case-by-case basis. Also, as a part of the working groups' functions, security surveys will be conducted of shippers and carriers on a voluntary basis. Further, copies of reports of theft will be routed through a central reporting center and each report then will be analyzed to ascertain such information as the types of goods stolen, the places of theft, the pattern of theft, and the known lapses in security and accountability which facilitated the theft or prevented early detection of the theft.

Such analyses should be extremely helpful to any law enforcement effort against those who would engage in the redistribution of stolen goods. Certainly, one of the working groups' efforts should encourage industry to work with them wherever possible to develop means of cargo identification to facilitate the recovery of stolen goods and the prosecution of those responsible for their theft and redistribution. In passing, I should note that the cargo security working group in Chicago is presently undertaking such a project relating to the identification of cargo.

Mr. Chairman, with your permission I would like to introduce into the record a copy of the recent letter from the Attorney General forwarding the Action Plan for the establishment of cargo security working groups.

Senator BIBLE. Without objection, that will be incorporated in the record at this point.

[The letter referred to follows:]



Office of the Attorney General
Washington, D. C.

DATE: April 22, 1974

TO : United States Attorneys, listed below
SUBJECT: Cargo Security Working Groups

Law enforcement authorities often do not receive the credit due for the fine job they are doing in the investigation and prosecution of cargo thefts because members of the transportation industry either are not aware of the many cases that are promptly and successfully processed by law enforcement authorities or they are not aware of the difficulties confronting law enforcement authorities which often delay or prevent the successful investigation and prosecution of these cases. A better understanding by industry of the law enforcement function and the problems confronting it would of course pave the way for an improved effort by law enforcement agencies.

The cargo security working groups are designed to provide a forum whereby law enforcement representatives may discuss deficiencies in security or accountability procedures attributable to industry which have affected the successful investigation and prosecution of certain cargo theft cases. In this regard, the routine security surveys to be conducted of certain carriers and shippers on a voluntary basis would serve to provide the representatives of industry with information as to general areas where security and accountability could be improved. Further, the cargo security working groups will provide the representatives of law enforcement and industry with an opportunity to meet for the purpose of discussing the status of particular cases and at such time law enforcement representatives could answer any specific questions which industry representatives may have concerning the status of these cases.

As indicated in my telegram of February 28, 1974, relating to Federal-state Law Enforcement Committees and these working groups, this Department and the Department of Transportation are participating in a program to establish Cargo Security Working Groups in the cities mentioned below. These cities were chosen by industry and government as cities with severe cargo theft problems. To facilitate the establishment of a Cargo Security Working Group in the city indicated below within your district cognizance, I am forwarding an Action Plan to be followed by you and other officials participating in this effort.

The Department of Justice has computer capabilities to reflect the status of all cases filed by statute and by offender. The availability of such records from state or local authorities is more limited. If you or your group have questions concerning the possibility of utilizing presently existing local or federal computer capabilities in order to reflect the law enforcement response to the cargo theft problem in your city, please call Department of Justice attorneys at extensions 2609 and 3745 for further advice.

It is apparent that the success of these working groups will require the full support of industry, as well as the participating Federal, state and local governmental agencies. Any expenses involved will be borne by the agencies participating in each city. Should activities undertaken or completed by state and local authorities as a result of their participation in these working groups appear to qualify for funding by the Law Enforcement Assistance Administration, it is suggested that such areas of activity be brought by the group's members to the attention of the law enforcement planning agency within their state.

In September 1974, the Third National Cargo Security Conference will be held in Chicago, the second day of which will be devoted to reports by members from the cargo security working groups in existence at that time. United States Attorneys and others from those cities will be called upon to present the histories of those groups, their accomplishments and recommendations.

I will expect to receive monthly reports from you by letter commencing May 1, 1974, as to the progress of your group's efforts at becoming a functioning entity.

Wm B Saxbe

WILLIAM B. SAXBE
Attorney General

Philadelphia
Chicago
San Francisco/Oakland
Detroit
Los Angeles
Houston
Atlanta
Dallas
Miami
Seattle
New Orleans
San Juan
Baltimore
Boston
New York - Eastern District
New York - Southern District

ACTION PLAN FOR
CARGO SECURITY WORKING GROUPS

I. Background

The effect of cargo theft on the national economy is so damaging and so direct -- in terms of its inflationary results -- that it might be expected that such effects could be closely measured. The startling truth is, according to the Department of Commerce, that the financial drain can only be estimated. The Senate Select Committee on Small Business has guessed the national cost of property thievery to be \$16 billion per year. Theft-related cargo losses from air, rail, truck and maritime carriers are estimated to cost the nation \$1.5 billion per year.

Such estimates reflect a situation which is clearly intolerable. Although transportation is one of the nation's most regulated industries, it faces the spectre of still further regulation unless it takes immediate self-help measures to prevent thefts and to maintain accountability for goods in transit.

Eighty-five percent of the theft of cargo takes place during normal working hours by transportation employees or other authorized persons who have access to transportation facilities. Much of the theft takes the form of pilferage -- often in caseload lots -- of the goods while in the transportation terminals.

In addition, over 86% of this cargo theft is reported as "shortage" as reflected by the Quarterly Loss and Damage Reports submitted to the

Interstate Commerce Commission by Class I motor carriers for the year 1972. Less than 15% of theft was reported as hijacking, theft, and pilferage. In effect, shortage means the transportation company does not know who, when or how the cargo was lost, let alone who might have been responsible.

Certainly, the criminal justice system has a vital role to fulfill in applying its sanctions to those who commit thefts and are thereafter apprehended. However, other sectors of society -- particularly the transportation industry -- must assume the major responsibility for preventing such thefts. Experience has shown clearly that inadequate prevention and accountability measures encourage cargo thefts, and make law enforcement's job of apprehending and successfully prosecuting these thieves a most difficult task. For example, successful prosecution is unlikely where persons are found in possession of stolen goods but the carrier or terminal operator cannot account for the goods as missing and very often cannot even identify the goods or the last person responsible for them.

With a view towards correcting this situation, representatives of the Criminal Division of this Department and representatives of the Department of Transportation have since early 1973 undertaken a program at the local level which is designed to encourage the transportation industry to examine closely its security efforts and to improve upon such efforts.

The Department of Transportation is communicating with members of the business and labor community regarding this program, and will also send letters to the mayor of your city and the mayors of the other cities involved in this program (see below). Copies of such correspondence will be forwarded to you as they become available. A copy of this action plan will be attached to each of the DOT letters sent to representatives in your community. It is suggested that you contact these representatives and obtain their assistance and cooperation in organizing your program.

II. Local Cargo Theft Program and Goals

The program is centered around the establishment of a small group, consisting of people affected by cargo theft, which will meet as needed and take steps to prevent future thefts and improve law enforcement's efforts in combatting these thefts. These groups will be established in 15 cities, chosen by industry and government, which have the worst problems in cargo theft. They will be composed of prosecutors and investigators, Federal, State or local, and representatives of industry, shippers, carriers, receivers, manufacturers, and laborers, i.e. representative groups with direct influence over the prevention and prosecution of cargo theft violators.

Essentially, these cargo security working groups are intended to accomplish two basic goals:

1. To improve and coordinate efforts of Federal, State and local authorities in the investigation and prosecution of cargo thefts; and

2. To encourage the transportation industry to increase and improve security measures and develop more effective accountability procedures, and thereby prevent future thefts.

III. Actions and Procedures

The establishment of effective cargo security working groups would be facilitated by general adherence to the following checklist, subject to the contingencies of each city's requirements and capabilities which may be expected to result in the need to devise and improvise.

A. United States Attorney

1. Make contact with local representatives of the transportation industry to explain the goals and nature of the group and to schedule its first meeting. A list of such people in your city is enclosed. At the meeting, a co-chairman selected from the business community should be elected. His role will be to coordinate the participation of the business community and serve as the identifiable spokesman for their interests.

As part of the presentation made at the initial meeting, consideration might be given to the showing of a film recently produced by the American Trucking Association (ATA) entitled "The Hijacker," a 20-minute exposition of the problem of theft by fence and the measures needed to protect one's business. Information about this film can be gained by contacting Mr. Jerry Buckman of the ATA at 202-797-5243. Mention of this particular film is merely suggestive; other vehicles of instruction may also be available.

2. Ensure the cooperation of cognizant state and local prosecutors and investigators. Arrange for the participation of those Federal agencies charged with the investigation of violations of the various statutes involving cargo theft.

3. All carriers should be called upon to indicate their willingness to report every instance of theft from their shipments. Insofar as possible these reports should continue to be made in the same way and to the same investigative agencies as has been the practice in the past. There should be no disruption of the reporting practices developed by years of contact between investigative agencies and the industrial public. Pre-selected and named representatives from each mode of transportation would be responsible for informing every carrier of the purposes of the program and soliciting cooperation.

4. A reporting form should be developed by the working group for use by industry as a guide in reporting cargo thefts to the same law enforcement agencies as usual. A copy of the reporting form completed by the law enforcement agency for each reported theft should be made available by that agency on a weekly basis to the designated representative of the United States Marshals Service. An example of a form already worked up is attached and your attention is invited to it, but only as a suggestion.

5. The United States Attorney should clearly indicate that the program is aimed at helping the industry and should encourage industry's representatives to take the initiative and formulate the group's activities so as to serve industrial interests, not solely those of law enforcement. Ultimately, law enforcement officials are members of the group in order to provide assistance to industry and to magnify the group's picture of where the industry needs help, and therefore the industrial representatives should be encouraged to exhibit leadership wherever possible.

B. United States Marshals Service

The Director of the United States Marshals Service in cooperation with the Department of Transportation has made the services of certain designated United States Marshals available to the cargo theft working groups to accomplish the following:

1. Collect copies of the cargo theft form from Federal, state and local law enforcement agencies participating in the program on a weekly basis. The copies of these forms will represent all of the cargo thefts reported to the participating law enforcement agencies during the weekly period.

2. Following the collection of the copies of the cargo theft reporting form, the designated U.S. Marshal will analyze these forms for the purpose of determining such factors as the identity of victim, type of goods stolen, the place of theft and the circumstances under

which the theft was committed. This analysis will be conducted pursuant to the instructions issued by the Director, Office of Transportation Security, Department of Transportation.

It is apparent that such analyses will have dual possibilities. First, they will expose to the industrial eye the factual story of how and why that industry is losing money through cargo theft and consequently where existing security measures fail most notably. Getting the transportation industry to make such positive efforts to prevent cargo theft is without question the prime purpose of this program. However, those same analyses will be extremely helpful to the law enforcement effort against those who redistribute stolen goods (fences). One of the problems inherent in the investigation and prosecution of fences is the difficulty in tracing stolen property to the fence, who unlawfully redistributes the goods. When the U.S. Marshals' analyses start identifying high-loss commodities, carriers, areas, etc., within the general confines of a city, investigators will have further means of identifying the patterns of theft involved and be better able to trace stolen goods to the fence.

3. During the working group meetings, the designated U.S. Marshal will provide statistical data gleaned from the reports. However, such statistical data will not include specific mention of any particular carrier or participant in the program, unless so authorized by such carrier or participant.

4. Prior to the date of the scheduled meeting, the designated U.S. Marshal will contact each of the industrial representatives of the working group to obtain any questions that those representatives may have concerning the status of any case previously reported as a cargo theft.

5. The designated U.S. Marshal will assure that all inquiries obtained from the industry representatives are brought to the attention of the investigating agency or prosecutor concerned within sufficient time so that such inquiries can be fully responded to at the working group meeting.

6. During the meeting of the working group, the designated U.S. Marshal will take steps to assure that records are kept to reflect the inquiries of industry concerning the status of certain cases, the response of the law enforcement representatives to the questions of industry representatives and other important matters such as any security or accountability deficiencies discussed at the meetings. In this regard, the United States Attorney should assure that stenographic assistance is available to assist the designated U.S. Marshal in maintaining and preparing minutes of the meetings. The original record or minutes of the meeting will be delivered to the United States Attorney, and the co-chairman.

7. While the designated U.S. Marshal will initially only perform the duties of coordinator as discussed above, it is

contemplated that after receiving adequate formal training in cargo security from the Department of Transportation, the designated U.S. Marshal could also be available to assist industry by conducting routine security surveys of certain carriers on a voluntary basis, as well as conducting pre-arranged surveys of transportation companies which are shown by Quarterly Loss and Damage Reports to have cargo theft problems.

C. All Prosecutors and Investigators

1. Prosecutors and investigators will provide explanations of what evidentiary problems most often prevent successful prosecutions of cargo theft cases. For example, the analyses provided by the U.S. Marshals are likely to indicate the need for more complete systems of identification of goods. Investigators and prosecutors should encourage industry, and work with them wherever possible, to develop means of cargo identification to facilitate the recovery of stolen goods and the prosecution of those responsible for their theft and redistribution.

2. Prosecutors will be faced with inquiries concerning declination policies. Consequently, interlocking agreements based on such factors as (a) whether or not the stolen goods are being distributed outside the area covered by state or local police and investigative agencies, (b) whether or not it is necessary to transport or bring witnesses from outside the local area, or (c) which government can get

to trial first with the maximum punishment available. Such interlocking agreements between Federal, state or local offices are helpful means of insuring adequate prosecutive consideration for all reported incidents.

3. Responses should be made to the inquiries of industry regarding the status of particular cases without disclosure of potentially confidential or prejudicial information. If the case provides a good example of the problems faced in successful investigation and prosecution of cargo theft, it should be used as an instructional means to be disseminated to all participating carriers.

D. Investigation Agencies

1. Prepare posters or other suitable means to draw industrial attention to this effort to combat cargo theft. Specific reporting instructions should be included. Cooperate with industry in ensuring that dissemination is as wide as possible.

2. When taking reports of cargo theft, assure that copy of report form is fully completed by the information supplied. Prepare copy for U.S. Marshals Service.

3. Respond, at working group meetings, to inquiries of industry as to the status of matters reported, without disclosing potentially prejudicial or confidential information.

Theft of freight should be reported immediately by telephone to the Philadelphia Police Department together with all available information. This form should be filled in immediately and copies sent to pertinent agencies.

RECORD OF SHIPMENT INVOLVED

Pro. No. _____ Date of Pro _____ Date of this Report _____
 Shipper _____ Origin _____
 Consignee _____ Destination _____
 Description of shipment _____
 _____ Estimated Value _____
 Complete transit record of shipment _____

 Complete details as to commodity believed stolen and all circumstances indicating theft: _____

RECORD OF TELEPHONE REPORT TO PHILA. POLICE DEPARTMENT

Name of employee making telephone report _____
 Date theft discovered _____ Date and Hour Reported to Phila. P.D. _____
 Location of Phila. P.D. Office _____ Phila. P.D. Phone _____
 Name of Policeman receiving call _____
 Results of this preliminary report _____

 What further action is to be taken? _____

(Name of Carrier)

(Address of Reporting Party)

RAILROADS

Calif. Leroy E. Lyon
 Gen Council Calif R.R. Ass.
 11th and I Building
 Sacramento, California 95814

Fla. W. Robert Fokes
 Special Rep.
 Suite 250
 Barnett Bank Building
 Tallahassee, Florida 32302

Ga. Hershel W. Parmer
 Assistant to Pres.
 Len S.B. Coastline
 1800 First National Bank Building
 Atlanta, Georgia 30303

La. Harry H. Richardson
 Gen Counsel
 La. R.R. Ass.
 335 Austin Street
 Bogalusa, Louisiana 70427

Mass. Sidney Weinberg
 Attorney
 Boston and Main R.R. Corp.
 150 Causeway St.
 Boston, Massachusetts 02114

Md. Mathew J. Smith
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 Maryland R.R. Ass.
 421 Anneslie Road
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Mich. William A. McClintic
 Ex. Dir. Mich, R.R. Ass.
 1030 Washington Square Building
 Lansing, Michigan 48933

RAILROADS

- 2 -

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Fla. C.A. Gertner
Man. Dir.
Florida Trucking Ass'n Inc.
704 Gilmore St
Jacksonville, Fla 32204

Ga. Charles L. Skimer
Man. Dir.
Ga. Motor Trucking Ass'n Inc.
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Atlanta, Georgia 30308

La. Edmund C. Bacon
Executive Director
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P.O. Box 1326
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Mass. John M. Bresnahan
Security Dir, Exec, Vice Pres
Massachusetts Motor Truck Ass'n Inc.
262 - Washington St.
Boston, Massachusetts 02108

Md. Albert J. Mascaro
General Manager
Maryland Motor Truck Ass'n Inc.
3000 Washington Blve
Baltimore, Maryland 21230

TRUCKING

- 2 -

N.Y. Frank Scotto
Executive Director
New York State Motor Truck Ass'n
111 - 4th Ave
New York, New York 10003

Texas Terry Townsend
Executive Director
Texas Motor Transportation Ass'n
P.O. Box 1669
Austin, Texas 78767

Wash William E. Hicks
Managing Director
Washington Trucking Ass'n
4101 - 5th Ave S.
Seattle, Washington 98134

MARITIME

1. Capt Lionel de Santy
Port Warden
Port of Los Angeles
P.O. Box 151
San Pedro, California 90733
2. Miriam E. Woff
Port Director
S.F. Port Commission
Ferry Bldg,
San Francisco, California 94111
3. Mr. William A. Sparling, Jr.
Employee Relations Officer
Port of Oakland
66 Jack London Sq.
Oakland, California 94607
4. M.O. Benett
Mgr, Marine Terminal
Port of Seattle
P.O. Box 1209
Seattle, Washington 98111
5. Capt. Robert Herzog
Troop F Mass. State Police
Logan International Airport
East Boston, Massachusetts 02128
6. Mr. Walter Lee
Super. of Port Authority Police
Port Authority of New York
and New Jersey
World Trade Center
New York, New York 10048

MARITIME

- 2 -

7. Mr. Phil Weinfeld
Chief of Security
The Maryland Port Authority
Baltimore, Maryland
8. Mr. Robert Waldron
Port Director
Dade Co. Seaport
1015 N. American Way
Miami, Florida 33132
9. Edwin G. Pritchard, Jr.
Superintendent Harbor Police
Port of New Orleans
P.O. Box 60046
New Orleans, Louisiana 70160
10. C.G. Seaman
Superintendent of Safety and Security -
Port of Houston Authority
P.O. Box 2562
Houston, Texas 77001
11. San Juan, Puerto Rico
Julio Maymi
Executive Director
Puerto Rico Port Auth
P.O. Box 2829
San Juan, Puerto Rico 00936
12. Mr. Ward Schultz
Director of Security
Die. Wayne Co
Port Commission
Vutronic Memorial Building
151 W. Jefferson
Detroit, Michigan 48226

AIRLINES

- Dallas Harry L. Pizer
Director of Security, Braniff International Airline
P.O. Box 35001
Dallas, Texas 75235
- Miami Ernest H. Dunham
Director - Loss Prevention, Eastern Airline
Miami International Airport
Miami, Florida 33148
- Los Angeles Joseph L. Schmit
Vice President, Audits and Security, American Airlines
633 Third Avenue
New York, New York 10017
- Atlanta Eugene H. Stewart
Director - Corporate Security, Delta Airlines
General Offices
Hartsfield Atlanta International Airport
Atlanta, Georgia 30320
- New Orleans Joe E. Davis
Director of Security, Southern Airways
Hartsfield Atlanta International Airport
Atlanta, Georgia 30320
- Boston John S. Steele
Corporate Director of Security, TransWorld Airlines
605 3rd Ave.
New York, New York 10016
- Detroit Lloyd H. Nelson
Manager - Security Central, TransWorld Airlines
O'Hare International Airport
P.O. Box 66222
Chicago, Illinois 60666

AIRLINES

- 2 -

New York Joseph A. Sullivan
Executive Director, Airport Security Council
97-45 Queens Boulevard
Forest Hills, New York 11374

Oakland John Fatseas
90 World Airways
Oakland International Airport
Oakland, California

San Francisco Robert T. Bauter
Corporate Security Director, AirWest
3125 Clearview Avenue
San Mateo, California 94402

Seattle James M. Miles
Director of Investigation and Security, United Air
P.O. Box 66100
Chicago, Illinois 60666

Houston E.V. Taylor
Director of Security, Texas International Airlines
P.O. Box 70188
Houston, Texas 77034

Mr. MARONEY. No greater truism has been highlighted in this committee's extensive hearings on cargo theft and fencing than the fact that law enforcement working alone cannot get the job done in this area of crime. The transportation industry must assume the responsibility for preventing thefts and accounting for the goods left in its care for transfer. Without industry's help, law enforcement's job of apprehending and successfully prosecuting thieves—not to mention the fences who induce and encourage thievery—is a most difficult task at best.

The general consensus among investigators and prosecutors concerning industrial efforts at preventing thefts is that such efforts are poor. The businessman usually prefers not to spend money on security measures. He will often make such expenditures only after a major theft from his business has occurred. At the same time, he considers the problem of theft to be one solvable only by the use of criminal sanctions. This view assumes not only sufficient evidentiary leads, but the existence of investigators and prosecutors who can devote time enough to bring each case of cargo theft, major and minor, to courts which have sufficient time to hear each and every complaint. It also assumes a penal system able to handle the endless numbers of those who would be convicted of stealing. These assumptions are false and also self-serving. The burden of dealing with the related problems of cargo theft and fencing must be accepted more and more by industry—both management and labor—especially in the prevention of theft by employees or authorized personnel. It has, unfortunately, been the industry's failure to take adequate security measures and to establish and/or abide by procedures for documenting the information needed for investigation of thefts which has in large part prevented the recovery of stolen goods. For instance, the 1972 Uniform Crime Report published by the Federal Bureau of Investigation indicate that, nationwide, 81 percent of burglaries remain unsolved to the point of arrest. Eighty percent of instances of larceny remain unsolved.

The most effective orthodox means of tracking fences' activities are dictated by the manner in which they operate. Fences who distribute high valued goods often will do so without ever coming close to those goods himself. Such a fence is a promoter, who acts as a broker in finding the right buyer for the goods he knows to be available. He does this in person and on the phone, and hence the important part to be played in these investigations by the investigative use of electronic surveillance, such as phone tapping. Most of the United States and strike force attorneys indicated that such surveillance was extremely important in locating the stolen goods, the places where the goods are stored, and the places where the buys are to take place. The use of informants in such investigations is also necessary, since without them it is often impossible to identify the fence, and find out when a wiretap may be justified. These two means of investigation, informants and wiretaps, are two of the most helpful means of obtaining direct information on the fence.

Senator BIBLE. When you come to that conclusion, do you go to the court to get a court order for a wiretap? And all of this is done with a court-approved wiretap?

Mr. MARONEY. That is correct; title III.

Senator BIBLE. You follow that section regularly and religiously? In other words, you do not wiretap without a judicial sanction?

Mr. MARONEY. Absolutely not; not in this area; no, sir.

Senator BIBLE. All right.

Do you do it in other areas?

Mr. MARONEY. National security.

Senator BIBLE. Other than national security?

Mr. MARONEY. Only in national security.

Senator BIBLE. All right. I just want to keep the record clear on that.

Mr. MARONEY. With the possible exception of consensual microphone, where an informer or an undercover agent—what we call a consensual microphone, which is a microphone worn by a consenting party—either an informant or an undercover agent—recording a conversation to which he is a party; which, of course, the Supreme Court has held does not violate the fourth amendment.

Senator BIBLE. Very well; you may proceed.

Mr. MARONEY. One mode of obtaining evidence on the fence is to make a purchase from him, after gaining his confidence. Problems inherent in this approach involve the large expenditures necessary in money and people. The government usually does not have sufficient money available to buy back stolen goods, and some form of industrial support would be extremely helpful. Unfortunately, industry has usually refused to make available such money and/or people to make the buys. In this regard, when Federal agents make an arrest while purchasing stolen property—a “buy-bust”—it completely destroys the agents’ cover and other agents have to be used in the future.

Senator BIBLE. Do you run into a problem of entrapment in that particular area where you try to gain the confidence of the fence, and then later on try to get his conviction? Is there an element of entrapment that bothers you?

Mr. MARONEY. Sometimes you do have an entrapment argument. The investigative agencies obviously try to operate in such a way as to insure that there is no entrapment present, because, really, entrapment depends on the agent of the Government being the initiating party in the illegal transaction, giving rise to the idea of the unlawful transaction.

Senator BIBLE. I have noted in cases that I have heard, that have been recited before this committee, that that is one of the problems that law enforcement officers mention, the fact that that defense is frequently used. Whether that is sustained by the court, I do not know. At least that is the defense that is frequently made.

Mr. MARONEY. That is one of the purposes frequently in mind in using a consensual microphone on an undercover agent or informant, to forestall the claim of entrapment; because the recording of the conversation would clearly show whether or not it was the defendant or the agent who was initiating the idea.

Senator BIBLE. Thank you.

Mr. MARONEY. One further problem in getting to the fence by only prosecuting the thieves is the necessity of frequent plea bargain

agreements. Such agreements end the prosecution and destroy any further leverage against the defendant which might lead to his identification of the fence involved.

As opposed to this approach it should be the practice of prosecutors to endeavor to obtain the identity of the fence involved. To achieve this end, plea bargaining should be premised on the promise to so cooperate whenever the circumstances warrant. Of course, a similar means of obtaining the identity of the fence is to grant immunity to the thief. Such decisions must be firmly predicated on the knowledge that the criminal immunized has done less injury to society than has the fence.

At this time, I would like to review briefly the activities of several organized crime strike forces relating to the prosecution of major fencing cases. Of course, it should be recognized from the outset that the connection between fences of commercial goods and those members of organized crime properly the subjects of strike force activity is often indirect. In this regard, our recent reports show a number of convictions of such fences for violations other than those usually associated with fencing. Of course, the most important thing, once a fence is identified, is to stop him by prosecution under any of the statutes he violates. Aside from the offense of receiving stolen property, such violations may involve such offenses as failure to report taxable income, weapons violations, perjury, aiding the commission of thefts and interstate transportation of stolen property.

Our formal statement sets forth a very brief outline of a number of fencing cases which have been brought in several of the strike force cities over the past year or two.

Senator BIBLE. Does this represent the totality of the Federal effort in coming to grips with the fencing problem? I see you have had convictions in Baltimore, in Kansas City and Philadelphia, Brooklyn, St. Louis, Cleveland, Detroit, Boston. Is that the total package, as far as violations concerning fencing activities, or are there others?

Mr. MARONEY. This is not the totality. We have not set forth the Los Angeles cases—and I think one or two of the other strike force cities. Moreover, there are a number of cases brought by the U.S. attorneys against fencing operations that are not strike force cases. For example, I think some of the cases that Mr. Renner will talk to you about this morning are cases that he has helped with.

Senator BIBLE. Apart from the strike force?

Mr. MARONEY. Apart from the strike force.

Senator BIBLE. Very well.

Mr. MARONEY. We have a more complete statement regarding the cases which are set forth in the statement which we would propose to submit for the information of the committee at this point.

Senator BIBLE. Without objection, that will be included in the record at this point.

[The material referred to follows:]

STRIKE FORCE FENCING PROSECUTIONS

The Organized Crime and Racketeering Section obtained the indictments, in June 1973, of Stanley A. Makowski, Clifford B. Baines, Lewis Jacob and George M. Parker for violations of Title 18, United States Code, Sections 2314, 2315 and 371 which proscribe the transporting and receiving in interstate commerce of stolen property valued in excess of \$5,000.

The defendants were charged with causing the transportation in interstate commerce of printing machines stolen in approximately twelve burglaries of printing plants in Denver, Colorado, between July and November, 1972, to the District of Maryland. The defendant Baines, after receiving the merchandise from the burglars and paying them in Baltimore, distributed it to the other defendants who kept it for use in their own printing business or sold it to other printers. After two trips to Baltimore, the burglars were thereafter directed what types of machinery to steal and whom to deliver it to upon their arrival back in Baltimore. Approximately \$150,000 in printing machinery and supplies were stolen in this conspiracy and approximately \$75,000 has been recovered.

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Baines was sentenced to seven years imprisonment. Parker received four years sentence, suspended, and five years probation. Jacob and Makowski received three years sentence, suspended, and four years probation.

The Strike Force in Kansas City, Missouri, recently obtained the conviction of Henry Tager and James Kenys, a Kansas City attorney, and a Las Vegas casino executive for attempted fencing of stolen \$100,000 United States Treasury bills.

Also, Jake Klein was convicted of unlawful possession of watches stolen from interstate shipment in violation of 18 United States Code 659.

Further, James Garofalo and Alphonse Patrizzi were convicted on April 6, 1973 of interstate transportation of approximately one million dollars in stolen securities.

In Philadelphia, Nicholas Gregario, Jr. was believed to be a major fence in the Philadelphia area dealing in stolen goods of all types. He was the subject of a Title III electronic surveillance in June, 1973, seeking evidence for violations of Title 18, United States Code, §§2314, and 659. Evidence secured by the Title III established that he was selling property which had been part of an interstate shipment

stolen from Brooks Sporting Goods in New Jersey. Total value was in excess of \$25,000. The FBI acting under search warrants recovered a quantity of identifiable merchandise from a garage which was being used by Nick Gregorio and an additional quantity of identifiable goods was received at his home in South Philadelphia. In addition, a quantity of methamphetamine was also recovered at the Gregorio residence. Nick Gregorio was indicted in November, 1973, by a Federal grand jury in the Eastern District of Pennsylvania for violating Title 18, U.S.C. §659 for possession of goods stolen from interstate shipment, and on December 12, 1973, the defendant, with the understanding that the Government would make a recommendation of ten years' incarceration at the time of sentence, pleaded guilty to the indictment and is presently awaiting sentencing on that charge. The trials of three other alleged major fences of stolen clothing are presently pending.

In Brooklyn, New York, Cosmo "Gus" Cangiano, an alleged major fence of stolen securities and counterfeit perfume, was convicted of obscenity law violations.

Also, John Cosares pled guilty to conspiracy to sell counterfeit money. Reputed to be one of the major hijackers and fences in the New York area, he was sentenced to 52

weekends. Further Salvatore Dagnone pled guilty to the possession of \$14,000 worth of stolen gin, while John F. Galante was convicted of possessing \$60,000 in stolen ladies' and men's apparel. In St. Louis, Missouri, the Strike Force completed its prosecution of Demetric Kabbaz, a member of the Syrian underworld and an associate of the late Paul Ricca, Chicago Underworld figure, through an investigation by Bureau of Alcohol, Tobacco and Firearms agents.

Kabbaz was a major fence in St. Louis who also dealt in narcotics. He was initially indicted on seven counts charging various firearms violations. On his plea of guilty to two of the counts charging unlawful dealing in firearms, 18 U.S.C. §§922(a)(1), and conspiracy, 18 U.S.C. §371, Kabbaz was sentenced to two concurrent five year terms of imprisonment. The Cleveland Strike Force reports that Kermit Gable has pleaded guilty to, and Robert Halson was convicted of, charges arising from the wholesale distribution of stolen United States Saving Bonds and stolen checks transported in interstate commerce.

In Detroit, Anthony Attard pleaded guilty to receiving property stolen from interstate shipment (women's clothing and musical instruments), in violation of 18 U.S.C. 659.

In Boston, in November, 1970, Illario Zannino, number two reputed organized crime figure in Boston, and Peter Limone also a reputed organized crime member were convicted along with associates Joseph Balliro and Lewis Straus for the fencing of \$150,000 worth of stolen jewelry. The defendants had transported the jewelry in interstate commerce. This was the most significant conviction of organized crime figures since Raymond Patriarca was convicted.

In September 1971, in Connecticut, a reputed organized crime member Dave Lacovetti and his associates Robert Cardillo, Phil Waggenheim, William V. Dentamaro and Anthony Derosa, from Maine and Chicago, respectively, were convicted in Federal court in Miami for transporting and receiving stolen securities in interstate commerce. The chief government witness was Vincent Teresa, developed by the Boston Strike Force. Cardillo was probably the major fence in New England.

In March, 1972, Pete Najarian was convicted of uttering and publishing U.S. Savings Bonds. Najarian was the largest reputed fence of stolen savings bonds in New England.

In June, 1971, Worcester, Massachusetts, reputed organized crime member Carlo Mastrototaro was convicted in Baltimore

for transporting stolen securities in interstate commerce. The main government witness was Vincent Teresa.

In Rhode Island, in July 1971, reputed organized crime members Dennis Raimondi, Joseph DiCarlo, Teddy Bigos, and Nick Pari were convicted of theft from an interstate shipment. DiCarlo was one of Raimondi's principle fences while Bigos was a major fence in the Fall River, Massachusetts area.

Irwin Priest, a reputed fence and close associate of Raymond Patriarca, was under indictment for tax evasion when he died in June, 1972.

In December, 1972, Renaldo Dipietrantonio was convicted of possession of counterfeit currency. Dipietrantonio is a reputed fence and strong arm man for organized crime.

In August, 1973, Joseph Argencourt was convicted of loan sharking. Argencourt, an associate of LCN member Danny Raimondi, is a fence.

In Connecticut in December, 1972, William Marrapese and Nicholas Zinni were convicted for violating the National Firearms Act in connection with the theft of machine guns from an armory. Marrapese was allegedly one of Rhode Island's biggest fences.

Mr. MARONEY. I would like to discuss the efforts of Federal investigative agencies designed to prevent the fencing of stolen commercial goods. For instance, the Bureau of Alcohol, Tobacco and Firearms of the Treasury Department—ATF—has launched a nationwide crack-down against the swelling tide of gun thefts. ATF is asking all major trucking companies, trucking firms and trucking facilities to report all thefts of gun shipments. This program follows their concern over estimates that over 1,000 firearms are stolen or hijacked every month. Reports of stolen weapons will be filed with the National Crime Information Center—NCIC—and these reports will be used as a basis for intensive ATF investigations into possible violations of the Federal firearms statute.

The Federal Bureau of Investigation is keenly aware of the large numbers of crimes against property committed annually. As mentioned before, the Federal effort against those who redistribute stolen goods must be premised on giving high priority to the investigation of reported incidents. The FBI's commitment to such efforts takes the form of a program affording concentrated investigative coverage of burglars, armed robbers, and fences whose activities are of such a pattern, magnitude, or modus operandi to indicate that they are actual or potential violators of Federal law. The ultimate objective is the development of evidence sufficient to convict these individuals in either State or Federal court.

Another serious area of crime confronting the business community and law enforcement is the sale, transfer and use of stolen securities. It has been estimated in testimony before the permanent Subcommittee on Investigations of the U.S. Senate Committee on Government Operations that over \$50 billion worth of stolen and spurious securities are in circulation within the United States. This problem has been accentuated by the lack of proper physical security measures by the business community concerning the storage, shipping and accountability of securities. Significantly, the fencing of stolen securities has been fostered by the failure of the business community to use adequate validation at the time such securities are presented for sale, pledging or when such securities are used in a manner to obtain other forms of monetary credit.

Due to the profound impact that these stolen and spurious securities can have on the national and international economics, the Criminal Division has focused particularly on facilitating and coordinating Federal prosecutions involving securities offenses. Efforts are being made by the Criminal Division to encourage the financial community to improve its practices and procedures in regard to the handling of securities. Should the financial community fail to take the necessary voluntary measures, legislation may be necessary to vest regulatory authority in the Securities Exchange Commission or other Federal agency. Regulations issued under such authority could require reasonable validation procedures for securities at the time of transfer, sale or exchange. Such validation could be accomplished through the use of a privately owned or Government-owned centralized computer data bank for lost, stolen or counterfeit securities. Upon request, the National Crime Information Center now provides such service relative to stolen securities through law enforcement

agencies to financial institutions, and computer banks exist in the private sector which will provide this service direct to financial institutions for a nominal fee. However, industry has been reluctant to avail itself of these services.

Aside from cargo thefts and securities thefts, auto thefts also constitute a serious area of fencing activities which should be brought to the attention of this committee. In 1972, 881,000 motor vehicles were reported stolen in this country. One source estimates that the total value of all cars stolen in 1972 is \$797 million. Although the number of reported auto thefts in 1972 reveals a decline of 6 percent from the 1971 statistics, the commission of car thefts by professionals for resale or stripping is on the rise. The security devices recently built into automobiles are reducing the total number of offenses because the activities of inexperienced juvenile joyriders are being curtailed. Since juveniles are stealing fewer cars, a higher percentage of cars are being stolen by professionals, including rings. Accordingly, the recovery rate of stolen automobiles was approximately 90 percent in the mid-1960's, but went down to approximately 80 percent in 1972.

Auto theft is a highly profitable form of crime which carries little risk of jail for offenders. In this regard, only 17 percent of the cars stolen in 1972 were cleared by the arrest of a suspected offender.

The Criminal Division and the Federal Bureau of Investigation are diligently attempting to help solve the auto theft fencing problem. We have previously drawn up standards which, if they were to become law, would help curb two very important methods of disposing of stolen vehicles—the adoption of the certificates of title from junked vehicles for stolen vehicles and the exportation of stolen vehicles from the United States. These standards have been submitted to the Department of Transportation for its consideration and possible congressional enactment into law, pursuant to the National Highway Traffic Safety Act of 1966, 23 U.S.C. 402, as amended by the Highway Traffic Safety Act of 1973, section 229, Public Law 93-87. The Criminal Division has also recently implemented 18 U.S.C. 5001 so that auto thieves under 21 years of age can now be returned to the jurisdiction in which the vehicle is stolen by the U.S. Marshals Service at Federal expense.

Looking toward the future, we see a need for the enactment of our aforementioned standards, either as Federal law or as a uniform State statute. In order to meet the challenge of the present automobile fencing problem, it is also necessary that national uniform standards be established for both VIN's and automobile certificate of titles. There must be more cooperation and interchange of information between the Departments of Motor Vehicles in each State. Finally, private citizens and used car dealers must be adequately informed regarding the identification of stolen vehicles.

It is my understanding, Mr. Chairman, that you desire that I include any legislative recommendations to strengthen Federal laws as to fencing activities.

Senator BIBLE. That is correct.

Mr. MARONEY. As you know, the Department has expressed its support for the general principles of S. 13, a bill "to amend Title 18

of the United States Code to provide civil remedies to victims of racketeering activity and theft, and for other purposes." This bill which has passed the Senate provides a civil remedy for the recovery of treble damages from persons guilty of violations of 18 U.S.C. 659 and 1972. Indeed, this is a step in the right direction, since a stiffening of the applicable criminal statutes alone will not eliminate fencing of stolen goods. The civil remedies, especially for violations of 18 U.S.C. 659 which forbids theft and/or receipt of stolen property moving in interstate or foreign commerce, will hit the fences and those who do business with them where it hurts most, in the pocketbook. It is the Department's position that only through a two-fold approach—criminal and economic—will a dent be made in distribution of stolen goods. At this time I would like to hand up to the committee for insertion in the record the full text of the Department's comments on S. 13, made in November 1973.

Senator BIBLE. That will be appreciated, and it will be incorporated in full in the record.

[The material referred to follows:]

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

NOV 28 1973

Honorable Peter W. Rodino, Jr.
Chairman, Committee on the
Judiciary
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Justice on S. 13, a bill "To amend Title 18 of the United States Code to provide civil remedies to victims of racketeering activity and theft, and for other purposes."

S. 13, as passed by the Senate, is identical to S. 16 of the last Congress and is aimed at broadening civil damages and injunctive relief available to victims of racketeering activity and theft. S. 16 of the Ninety Second Congress, as it passed the Senate in 1972, was a composite bill into which provisions of other bills and amendments had been consolidated. Prior to the consolidation of those bills, the Department of Justice did comment favorably on some of the proposals, and a representative of the Department testified generally before the Senate Subcommittee on those proposals. However, after consolidation, S. 16 contained some provisions which the Department had never considered, most notably in Section 2 of that bill. Since S. 13 presently before your Committee is identical to S. 16 as consolidated, and since it therefore contains provisions not as yet formally reviewed by the Department, this letter will undertake a complete review of the bill for the sake of clarity and comprehensiveness. It should also be noted that S. 13 is identical to Title IV of S. 800, and thus our comments bear in part on that bill which is also before your Committee.

Section 1 of S. 13 broadens the scheme of civil relief currently in section 1964 of Title 18 of the United States Code. Section 1964 now provides certain civil remedies for violations of section 1962, including proceedings by the United States in the district courts to prevent and restrain such violations, and suits for treble damages by persons injured in their business or property. Also it establishes collateral estoppel in such proceedings as to any judgment rendered in favor of the United States in a criminal proceeding.

Section I of S. 13 would adopt, with appropriate modifications and refinement, additional concepts and language from the antitrust laws, and by so doing, expand the available civil remedies. Section 1964 would be amended to permit any person to institute a civil proceeding to prevent or restrain violations and to authorize the court to grant immediate injunctive relief upon the execution of a bond against damages; now only the United States can institute injunctive proceedings. Also the United States would be empowered to sue for actual damages in any instance where it is injured in its property or business by reason of a violation of section 1962, without regard to the amount in controversy. An action by any person for treble damages without regard to the amount in controversy would also be permitted. The Attorney General would be empowered to intervene in any civil action or proceeding which he determines is a case of "general public importance". In the case of such intervention the United States would be entitled to the same relief as if it had instituted the action. Finally, the bill contains other important procedural provisions.

The Department of Justice favors enactment of the provisions of Section I of S. 13 with only one exception. The Department believes that the broadening of civil remedies to be accomplished by this bill would provide additional valuable tools with which to combat organized crime. Our experience has shown that a two pronged civil and criminal approach has proved successful in the antitrust area. Organized crime has continued to burden society because of the immense profits reaped by illegal racketeering. Criminal sanctions alone do not necessarily reduce these profits, but the creation of civil remedies aimed directly at the illegal financial gain of organized crime takes us that much closer toward the elimination of the problems.

Our only objection to Section I of S. 13 involves what we consider to be the overreach of subsection (g) in its provision for the conclusive collateral estoppel effect of judgments in favor of the United States. Presently, section 1964(d) establishes the collateral estoppel in section 1964 government civil proceedings of final judgments in favor of the government in criminal cases. This is nothing more than a codification of the traditional common law rule of collateral estoppel. However, under the proposed subsection (g), collateral estoppel would be extended to judgments in government civil suits, and would further allow private plaintiffs to assert such judgments, both criminal and civil, against defendants in subsequent private actions.

The Department feels that the expansion of collateral estoppel by Section I of S. 13 is unwise. By well accepted practice, government lawsuits are often settled by procedures by which a defendant does not contest the charges against him and acquiesces in the entry of judgment against him. (See: Rule 11, Fed. Rules of Crim. Pro.; Section 5 of the Clayton Act, 15 U.S.C. §16(a); McCormick on Evidence; §251 and the Proposed Rules of Evidence for the U. S. Courts, Rule 410.) In criminal prosecutions, the plea of *nolo contendere* is such a procedural device by which settlement of criminal cases is expedited; a formal plea of "no contest" to the charges is entered, and judgment is rendered accordingly. In civil cases, especially in the area of antitrust, consent decrees are often utilized to perform a similar quick settlement function. A defendant thereby agrees to an order enjoining the challenged activities, without an admission that the activities are illegal. But when a defendant does agree to entry of judgment by either of these procedures, his plea and that judgment does not constitute a formal admission of guilt or liability, and it therefore cannot be used against him in subsequent proceedings.

However, the proposed section 1964(g) is so broad that in such cases the final judgments would bind a defendant by conclusively preventing him from presenting any defense in subsequent private civil actions for treble damages and/or injunctive relief. The effect of this proposed collateral estoppel rule would be to make pleas of *nolo contendere* and consent decrees conclusive as to a defendant's guilt or liability. Faced with such an effect, defendants charged in government lawsuits will certainly be reluctant to compromise because such settlement would subject them automatically to large damage claims by subsequent treble damage plaintiffs. Instead, they will insist on fully litigating the charges against them, and prompt settlements of government lawsuits, both civil and criminal, will be lost and the courts would bear the added burden.

To prevent these unfortunate and obviously unintended results, the Department recommends that judgments, based on either pleas of *nolo contendere* or consent decrees, be excluded from the operative provisions of the proposed subsection 1964(g).

Section 2 of S. 13 would amend section 659 of Title 18 to provide civil remedies for victims of theft from interstate or foreign shipments. Presently section 659 contains only criminal penalties for such thefts. These substantive provisions would be restated in the proposed subsections (a), (b), (c), and (d) of section 659. The principle innovation of these substantive provisions is the change in the degree of knowledge required for the criminal fencing offenses of buying, receiving, or possessing stolen goods. While section 659 presently requires possession of stolen goods by a person "knowing" them to be stolen, the amended section 659 would prohibit possession by a person "knowing or having reason to know" the goods had been stolen.

The primary amendment of section 659 is accomplished by the proposed subsections (e) through (t). These additions make a full panoply of civil remedies available to victims of violations of section 659. The district courts are given jurisdiction to issue severe injunctive relief; the Attorney General is empowered to institute such proceedings for injunctive relief. Both the United States and any private person is given a treble damage remedy for injuries due to violations of section 659. In addition, various appropriate procedural amendments are made to implement the creation of these civil remedies. As can be readily seen, these provisions are virtually identical to the amendments to section 1964 which are found in Section 1 of S. 13.

The Department has previously approved of the concept of adding civil damage remedies to section 659. (See statement of Richard Velde, Associate Administrator, LEAA, before Subcommittee on Criminal Laws and Procedures of the Senate Judiciary Committee on November 30, 1971, Hearings "Victims of Crime" before the Subcommittee, 92nd Cong., 1st Sess., p. 158-161.) At that time Mr. Velde expressed the Department's general support of a similar bill creating such a civil remedy. As he stated, such a remedy could have a dual effect. First, an injured party would be able to more than recoup his actual loss through a treble damage action. Second, the mere existence of such a civil action might act as a strong deterrent against the theft, fencing and purchase of stolen property. Hopefully, this would reduce the profit of cargo theft by decreasing the market for stolen property. The Department still approves of the concept of a civil damage remedy for victims of theft. To the extent that Section 2 of S. 13 accomplishes this purpose, the Department supports the proposal.

However, the proposed amendment of section 659 in S. 13 contains provisions which we have never formally commented on, and to which we have serious objections.

Our primary objection is to subsection (e) of the proposed section 659 which would vest jurisdiction in the district courts to issue injunctive orders "to prevent and restrain violations of 659." We object to subsection (e) because the application of injunctive remedies, especially the severe remedies therein authorized, to single criminal acts violating section 659 is inappropriate.

Subsection (e) is patterned after 18 U.S.C. 1964(a) which authorizes identical injunctive relief against persons involved in "patterns of racketeering activity." A "pattern of racketeering activity" is defined in section 1961 as at least two acts violating enumerated criminal statutes, and the injunctive relief is available only if that pattern of racketeering activity yields income which is in turn invested or used in an enterprise engaged in, or affecting interstate or foreign commerce. Thus the statutory scheme contemplates a continuing and repeated course of conduct that results in a continuing use of illgotten funds in certain enterprises. Such a continuing or repeated set of facts is traditionally the type of situation into which equitable relief is appropriate.

In contrast, subsection (e) of the proposed section 659 would apply simply to single substantive offenses under subsections (a), (b) or (c), such as one act of theft from interstate commerce, or one act of receipt of such property. The thrust of such a remedy is unclear, but it would not appear to have any realistic application in preventing or restraining substantive violations. For example, to prevent or restrain the various enumerated offenses would require advance knowledge that such crimes were imminent, but even if such advance knowledge was available injunctive relief would seem totally inappropriate. After such crimes had been committed the injunctive relief authorized by subsection (e) is again inappropriate. Subsection (e) would authorize a court to issue orders of divestiture or orders regulating future conduct. Under this scheme, a long-shoreman convicted of one felonious act of pilferage could be prohibited from continuing his employment on the docks. Such relief, of course, would be inappropriate.

The faults of subsection (e) demonstrate vividly the convincing reasons why courts of equity have traditionally refused to enjoin violations of criminal acts. For such illegal acts, which are generally single intermittent events accomplished without prior knowledge, the criminal penalties are an adequate redress. Equitable relief is appropriate and useful only when the criminal activities are of a repeated, continuous, or permanent character as in the antitrust area or as in the scheme contemplated by 18 U.S.C. 1964. Indeed, in recommending the enactment of section 1964, the Report of the Senate Committee on the Judiciary felt that one isolated instance of "racketeering activity", i.e., a single criminal violation, was "insufficient to trigger the remedies provided under the proposed chapter, largely because the net would be too large and the remedies disproportionate to the gravity of the offense." (S. Rept. 91-617, 91st Cong., 1st Sess., p. 158 (1969)).

For these reasons the Department is opposed to the inclusion of subsection (e) in the proposed section 659.

Next, the Department questions the wisdom of limiting the application of the civil damage remedies to violations of section 659 alone. Theft of property and fencing is indeed a serious and widespread problem in our society. Presently the federal criminal law contains several statutes directed at various forms of theft and fencing. If a civil damage remedy is directed at the form of theft covered by section 659, it seems equally valid to extend this remedy to these other statutes. Therefore, the Department feels that the civil damage remedy should be extended to cover the statutes contained in chapter 113 of Title 18, as well as appropriate state law through incorporation by reference, to afford victims of such illegal activity the widest possible relief.

The Department also has difficulty with the proposed subsection (s) of 659 which adds two evidentiary inferences not presently contained in the statutory law. First, subsection (s) is meant to codify the long accepted judicial inference of guilty knowledge from proof of unexplained possession of recently stolen property. [See S. Rept. 93-88 on S. 13, 93rd Cong., 1st Sess., pp. 6-7 (1973).] The Supreme Court has recently sustained the constitutionality of this inference in Barnes v. United States, 41 U.S.L.W. 4917 (June 18, 1973). The Department does

not oppose its codification, but we do suggest that the statutory language closely follow the Supreme Court's opinion to avoid any confusion of challenge. The Court in Barnes used the following language: "Proof that a person was found in unexplained possession of money . . . [p]ermits the inference that such person knew that . . ." 41 U.S.L.W. at 4917.

Secondly, proposed subsection 659(2) would codify an inference of guilty knowledge based upon proof of a purchase of goods for consideration substantially below its fair market value. This inference is not one "deeply rooted in our law" as is the "unexplained possession" inference. Barnes v. United States, 41 U.S.L.W. at p. 4919. Rather, the "less than fair market value" inference is an attempt to deal with the sometimes difficult task of successfully prosecuting professional fences. In testing new statutory inferences the Supreme Court has promulgated some general tests. First, there must be a rational connection between the fact proved and the fact presumed. Gainey v. United States, 380 U.S. 63 (1965). Next, the presumed fact must be more likely than not to flow from the proved fact on which it is made to depend. Leary v. United States, 395 U.S. 6 (1969). Finally, and most recently, if a statutory inference submitted to the jury is sufficient to support the conviction, that is, it satisfies the reasonable doubt standard, as well as the more-likely-than-not standard, then it clearly accords with due process. Barnes v. United States, 41 U.S.L.W. at p. 4919. These standards together comprise the determination of whether a statutory inference satisfies due process.

The "less than fair market value" inference would seem to satisfy these general constitutional standards. It is worthy of note, however, that an inquiry into the validity of such an inference is essentially an empirical one, and the inference must be based on common sense and experiential fact finding, Leary v. United States, 395 U.S. 6 (1969). There is presently in the law persuasive authority in support of this inference. (See e.g., N.Y. Penal Code §165.55(2); Model Penal Code §223.6(2).) Moreover, this inference is virtually identical to that in S. 1400, the proposed Federal Criminal Code, (§1733). Therefore, the Department supports the codification of this inference, with our only recommendation being that the language of the inference be altered in the same manner as the "unexplained possession" inference above.

Also, the Committee may wish to add an attempt provision to the bill. There is no general Federal attempt provision and its addition, particularly in the area of the receipt of stolen property, would greatly facilitate the investigation and prosecution of professional criminals. (See, e.g., People v. Rojas, 55 Cal. 2d 252, 358 P. 2d 921 (1961))

One final general objection to S. 13, as a consolidated version of several proposals, concerns the unnecessary duplication of provisions in Section 1 and Section 2 of the bill. Both Sections contain several identical provisions which accomplish identical purposes differing only as to the statutes to which they apply. Such duplication is not an efficient method of accomplishing the purposes of this bill.

In the interest of legislative economy, therefore, it is our recommendation that the two sections of the bill be consolidated into one statutory scheme.

In summary, the Department of Justice is in favor of the general principles of S. 13, but we have some serious reservations about certain sections of the bill. If S. 13 is amended as suggested above, the Department would support enactment of this legislation.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Patrick M. McSweeney
Acting Assistant Attorney General

Senator BIBLE. What is the status of S. 13 in the House side? It has passed the Senate.

Mr. CULVER. Mr. Chairman, we understand that S. 13 is before the House Judiciary Committee at this time; it is pending.

Senator BIBLE. It is before them—what are they going to do with it? Have a hearing on it? Leave it die?

Mr. CULVER. We would hope that they would have hearings on it in the near future.

Senator BIBLE. The chairman of the House Judiciary Committee is pretty busy right now; you may have to wait until he finishes his present responsibilities and assignments. Do you have any assurance that they are going to move on this during this session?

Mr. CULVER. No, sir, we do not at this time.

Senator BIBLE. We will try to lend our efforts to that. I think S. 13 is a very important tool and should be enacted into law as passed by the Senate.

Mr. CULVER. Thank you, Mr. Chairman.

Senator BIBLE. You may proceed.

Mr. MARONEY. I might also briefly note that the revision of the Federal Criminal Code proposed by the Justice Department and introduced on March 27, 1973, as S. 1400 by Senators Hruska and McClellan, contains in pertinent part a complete revision of the various theft and larceny statutes in title 18. Among other things, this bill simplifies and unifies the many fencing statutes, eliminates the place of theft as an element of the receiving offense, adds an attempt provision, and facilitates proof of knowledge that the received goods were stolen, to mention only a few of its effects. With the chairman's permission, I would have inserted in the record at this point a comprehensive statement by the Department on the effectiveness of the Federal criminal statutes as they pertain to criminal redistribution systems with particular discussion of the corrective provisions of the proposed revised Federal Criminal Code.

Senator BIBLE. Without objection, that will be made part of the record.

[The material referred to follows:]

CRIMINAL REDISTRIBUTION SYSTEMS (FENCING) -
 THE RECEIPT, SALE OR POSSESSION OF
 STOLEN GOODS - DEFICIENCIES OF PRESENT
 STATUTES AND THE CORRECTIVE PROVISIONS
 OF THE REVISED CRIMINAL CODE

INTRODUCTION

One of the obviously integral components of theft of property from business is the role which the criminal middlemen play. Once goods have been stolen they must somehow be re-introduced into the stream of commerce and resold. It is the middlemen -- commonly called "fences" -- who perform this function by buying stolen property from thieves and reselling it at substantial profits. Without such fences widespread thievery could not be maintained. The detection, apprehension and prosecution of fences thus must become a central point of focus for law enforcement.

However, there are many inherent difficulties in the investigation and prosecution of fencing cases. The professional fence often studiously avoids any physical contact with the stolen goods himself, preferring instead to deal via the telephone or through numerous intermediaries. Furthermore, many fences operate under the cover of legitimate or seemingly legitimate business enterprises. In addition, if the fence is caught with stolen goods in his possession, he often has a well-prepared and documented explanation as to how he acquired the goods.

In order to combat this illusive type of criminal conduct, law enforcement authorities must employ sophisticated investigative techniques. Informants carefully schooled in the technicalities of particular fields of business enterprise must be cultivated who can provide information about the inner workings of a particular fencing operation. Also, court approved wire tapping and electronic surveillance can provide information needed for a successful prosecution that would otherwise be unobtainable.^{1/} However, sophisticated techniques of detection and apprehension are not sufficient unless the pertinent criminal statutes are flexible enough to allow successful prosecution of fences.

By appropriate legislation, the Congress can aid in the fight against the criminal redistribution activities in this country by closing loopholes and irrational technicalities in the existing federal criminal law. But, the amendment of the applicable criminal statutes will not alone eliminate fencing of stolen goods. As your Committee Report on the Effect of Cargo Loss and Theft in Maritime Commerce has pointed out, a simple stiffening of the criminal penalties provided for criminal middleman activities is not the answer since appropriate

^{1/} See 18 U.S.C. §2516 (1970) which permits interception of wire or oral communication for the investigation of offenses under 18 U.S.C. §659 and U.S.C. §§2314-2315.

penalties are adequately provided in the present law.^{2/} An effort directed explicitly at crime prevention rather than a stiffening of criminal laws or expansion of local police force is the most promising approach. However, a number of constructive legislative steps can be taken to insure that the federal criminal statutes have a maximum impact on the criminal redistribution systems in this country. What follows is a discussion of what can be done to improve the existing statutory framework as it pertains to the prosecution of fences.

Presently in Title 18 of the United States Code, there are a number of statutes which prohibit the receipt of various types of stolen property. Because of the jurisdictional restrictions on the Federal Government these statutes prohibit the receipt or possession of stolen property which has some sort of "federal" character. The discussion herein will be limited primarily to the seven most important "receipt" statutes of Title 18 which are of the widest application and which are the most frequently prosecuted.^{3/} If there is to be any effective attempt to

^{2/} United States Senate Select Committee on Small Business, The Impact of Crime on Small Business - Part III, The effect of Cargo Loss and Theft in Maritime Commerce based on Hearings before the Committee, July 23, 1969, June 24, 1970. S. Rep. No. 91-15470. 91st Cong. 2d Sess. 20 (1970).

^{3/} These statutes are: 18 U.S.C. §641 (receipt of property stolen from the United States); 18 U.S.C. §659 (receipt of property stolen from interstate or foreign shipments); 18 U.S.C. §662 (receipt of stolen property within the special maritime or territorial jurisdiction of the United States); 18 U.S.C. §1708 (receipt of property stolen from the U.S. mails); 18 U.S.C. §2113(c) (receipt of property stolen from a federally insured bank); 18 U.S.C. §2312 (receipt of a stolen vehicle moving in interstate or foreign commerce; and 18 U.S.C. 2315 (receipt of stolen goods, securities or moneys or fraudulent state tax stamps which are part of interstate or foreign commerce).

attack the serious problem of fencing, it is these statutes of more general application which must be improved upon.

It is to be noted at the outset that a comprehensive revision of the Federal Criminal Code has been recently completed by the Department of Justice. This revised Code, introduced on March 27, 1973, as Senate Bill 1400 by Senators Hruska and McClellan, contains in pertinent part a complete revision of the various theft and fencing statutes in Title 18. S. 1400 is the product of two years of intensive study by the Criminal Code Revision Unit of the Department of Justice, which was organized pursuant to a directive of the President. Prior to the work of the Code Revision Unit, the National Commission on the Reform of Federal Criminal Laws, created by Public Law 89-801, completed a two year review of the existing criminal law. Based on the conclusion of this Commission, the Department of Justice Code Unit studied all relevant reference material: the current statutory law; the case law under the current statutes; the draft formulations in the National Commission report and in its study draft; the three volumes of working papers produced by the Commission; the Model Penal Code and its explanatory contents; the law reviews and other legal periodicals; earlier proposals introduced in the Congress; and previous proposals of the Department of Justice. The Code Revision Unit also worked closely with the attorneys of the operating sections and division of the Department of Justice and of the United States Attorneys offices who are charged with the day-to-day prosecutions under the existing provisions of the law. Thus the proposals of the Code, including those

on theft and fencing, are well-considered provisions. The following discussion, therefore, will focus on the deficiencies of the present laws and the improvements or corrections which the proposed Code would accomplish. Pertinent evidentiary and constitutional considerations will also be discussed.

A. Consolidation and Uniform Treatment of Theft and Receiving Stolen Property

The most obvious objection to the current federal "fencing" statutes is their sheer number. Presently in Title 18 there are at least 13 statutes which essentially proscribe the same conduct. In addition to the multiplicity of statutes there are a bewildering array of confusing and overlapping terms which describe the prohibited conduct. Under the current statutes it is unlawful to "conceal", "retain", "carry away", "misapply", "use", "buy", "secrete", "receive", "possess", "obtain", etc. etc. The multiplicity of statutes and terms add only color to the law. More seriously, the language of the statutes can lead to technical defenses, as, for example, in Bennett v. United States,^{4/} where the offender was saved from a conviction for "stealing" because he "swindled" a bank instead.

The language of §1732 of the proposed Code would simplify and unify the group of statutes dealing with the various forms of receiving stolen property:

^{4/} 399 F. 2d 740 (9th Cir. 1968).

Section 1732. Receiving Stolen Property
(a) offense - A person is guilty of an offense if he receives, buys, possesses, retain, conceals, or disposes of property of another knowing that it has been stolen.

* * *

The elements "receives, buys, possesses" etc. are intended to cover crimes within the present additional terms "convert", "take", "misapply", "use", "secrete", and "obtain". Moreover, the phrases "knowing it has been stolen" simplifies the statutes dealing with the offender's knowledge which now require knowledge that property was "taken", "embezzled", "stolen", or "converted."

In the new Code, theft and its various derivations, on the one hand and receiving on the other, have been listed as separate offenses. Placing theft and receiving in separate sections will bring the federal law in line with distinctions presently recognized in the criminal codes of several states and of the District of Columbia.

B. Eliminating the "laundry list" approach to Federal Jurisdiction

Under section 659 of Title 18 there is an overlong list of places from which the received goods must have been stolen - viz., "any pipeline system, railroad car, wagon, motor truck, or other vehicle, or from any steamboard, vessel, of wharf, or from any aircraft, air terminal, airport, aircraft terminal or air navigation facility. . ." Such detailed enumeration of various types of illegal conduct and places of theft serves no real purpose, adds only unnecessary detail to the statute, and makes

possible very technical defenses to otherwise properly drawn indictments. Moreover, there is the requirement of proving, as an element of the offense of receiving, that the property in question was unlawfully taken from one of the specifically enumerated places or facilities. Indeed, it has been held that it is not a federal crime to steal goods from an interstate shipment of freight unless the goods are taken from one of the specifically enumerated places or facilities listed in 18 U.S.C. 659. See United States v. Manuszak, 234 F. 2d 431 (3d Cir. 1956). For example, when it is charged in an indictment that the goods were stolen from a "wharf" and it is discovered that the goods were actually stolen from a place several hundred yards from the wharf, there may be a fatal variance in the indictment.

The proposed new code would obviate some of the jurisdictional technicalities in this area with the following provisions in §1731:

- (d) JURISDICTION - There is federal jurisdiction over an offense described in this section if:
- (2) the subject of the offense is property other than services and:
 - (b) the property is moving in interstate or foreign commerce, or constitutes or is a part of an interstate or foreign shipment. . .

This new language would eliminate the misleading list of facilities of interstate commerce, and properly place reliance on the sizeable body of case law which has been built up over the past several decades concerning precisely when and where property is moving in interstate commerce.

C. Revision of the overly Strict Grading of Offenses under the present receiving statutes

In any revision of the federal fencing statutes one of the more complex and important subjects is that of the grading of offenses. Presently the sanctions in the federal criminal law against theft and related offenses are widely divergent. Under section 659, for example, receipt of property in excess of \$100 subjects the offender to a maximum penalty of \$5,000 and/or ten years' imprisonment.^{5/} Under 18 U.S.C. §662 (receiving stolen property within the special maritime and territorial jurisdiction of the United States) receipt of the same stolen property carries only a maximum \$1,000 fine and three years' imprisonment. In another variation contained in 18 U.S.C. §2315, the maximum penalty for receipt is identical to that of §659, but the value of stolen property must exceed \$5,000 in order to subject the offender to the maximum punishment.

In addition to these inconsistencies, the offenses are graded too strictly, with the unfortunate result that prosecutorial discretion is unnecessarily limited. The redistribution, or fencing, of stolen goods is a highly compartmentalized business involving a high degree of secrecy and a minimum of contact between the successive links in the chain of distribution.^{6/} Because of the very low \$100 limit for

^{5/} This \$5,000 minimum will be retained in the proposed Code, see discussion, *infra*, p. 11.

^{6/} See for example Select Committee on Small Business, The Impact of Crime on Small Business, Part IV The Effect of Cargo Loss, Theft and Hijacking in the Trucking Industry, S. Rept. 92d Cong. 2d Sess. 30 (1972); "The Crime in Focus elements: 1. Hijackers (sic) - paid for each job; 2. An expensive 'drops'; 3. Fence or middleman.

(Continued on following page)

a misdemeanor prosecution under §659 it is difficult for a prosecutor to plea bargain with a smaller operator so as to convince him to testify against a large criminal middleman.

The proposed Code would remedy the present inconsistencies in the grading of offenses, and would broaden the scope of misdemeanors under the theft and receipt statutes. First, the offense of receiving has been graded at the same level as the original theft. There is no good reason to differentiate between the gravity of the offense of receiving stolen property and stealing it in the first place. Both are substantially identical invasion of the owner's interest in the property, although each represent a different though interrelated type of disapproved societal conduct. This similarity of treatment follows that of current Federal statutes.

Secondly, the proposed Code grades the offenses of theft and receipt on the basis of the value of the property stolen.^{7/} This would

^{6/} (Continued from preceding page)

4. Unscrupulous Buyers." See also the testimony of Gilbert H. Meyer, Chief Special Agent, American Insurance Association before the Committee:

"The organized criminals do not participate in the actual stickups. They hire to go out and do these jobs. The participant is paid off as soon as the job is accomplished. He delivers the truck to an intermediary; The intermediary then delivers it to a warehouse. From the warehouse, it is disposed of and put into the channels of distribution."

Hearings on the Impact of Criminal on Small Business (Cargo-Theft Trucking Industry). Before the Senate Select Committee on Small Business, 91st Cong., 2d Sess., and 92 Cong. 1st Sess., pt. 3, at 635 (1971).

^{7/} No extended discussion is herein given to the initial consideration of whether monetary value is a proper way to grade theft and receipt

(Continued on following page)

make uniform the punishment for various offenses now treated differently. As §1731(c)(1)(A) of S. 1400 provides, the offense of theft or receiving is a Class D felony^{8/} if the property exceeds \$500 in value unless that property is one of several enumerated types, in which case the monetary limitation shall not apply. The effect of this scheme is to make all theft and receiving punishments dependent on the value of the stolen property, except if the property is of a special and serious nature (e.g. firearms, motor vehicle, files of the United States, or mail). Only in such specifically excepted cases would the offense be graded as Class D felony regardless of the monetary value.

Thirdly, the proposed Code would broaden the scope of misdemeanors under the receipt statutes. If the property which is subject to the

^{7/} (Continued from preceding page)

offenses. It is plausible to argue for example, that all thieves be treated alike, whether harshly or not, because it is the act of theft or receipt itself which must be punished. Value under this theory is therefore an insufficient means of evaluating the culpability of the offender. However, society has traditionally used value to measure the gravity of the invasion of a property interest, and the consequent degree of punishment. Moreover, there is validity to a different treatment between the thief or receiver of property valued at \$5.00 and the thief or receiver of \$10,000 worth of property. Although ultimately the distinction must be almost arbitrarily drawn, the law must nevertheless recognize some flexibility in treatment.

^{8/} A Class D felony allows a maximum \$50,000 fine and a maximum 7 year sentence.

offense has a value in excess of \$100 but not more than \$500 the offense would be a Class A misdemeanor, punishable by a maximum fine of \$10,000 and imprisonment for not more than one year. All other offenses, involving property valued less than \$100 would be Class B misdemeanors for which the authorized maximum fine would be \$5,000 and the maximum imprisonment would be six months. This division of misdemeanors would enlarge a prosecutor's plea bargaining power.

Finally, the proposed Code maintains the \$5,000 jurisdictional minimum used in 18 U.S.C. §§2314 and 2315. Section 2314 and 2315 prohibit the interstate transportation or subsequent receipt of stolen property which has a value of \$5,000 or more. In this area in which part of the jurisdictional predicate is the interstate transportation of stolen property or the receipt of stolen property after it has been transported in interstate commerce, increased flexibility might prove counterproductive. If the \$5,000 jurisdictional limit were eliminated, federal prosecutors would obviously be able to try fences and thieves who heretofore were beyond the reach of the federal criminal law. However, because of the breadth of such a statute, the United States Attorneys would be unable to handle all cases technically falling within it. Consequently, the Department of Justice would be forced to interpose policy limitations as to the kinds of cases appropriate for federal prosecution. These limitations could in turn lead to situations in which the U.S. Attorneys' state and local counterparts would be unwilling to take cases rejected by the

federal prosecutors when they clearly fall within the federal statute. Because of these considerations, and because federal court criminal dockets are already overcrowded, it would seem that on balance, the elimination of the \$5,000 jurisdictional limitation would be of dubious value. Consequently, the proposed new code retains the \$5,000 figure as part of the jurisdictional predicate for the offenses now covered by sections 2314 and 2315 of Title 18. (See 1731(d) (2)(c) and §1732(c) of the proposed Code.)

D. A General attempt statute to cover theft and receiving

The existing federal criminal code has no general statute covering criminal attempts. Thus many of the present statutes dealing with theft and fencing problems are inadequate in those situations in which early detection and apprehension have aborted the substantive offense. The proposed new code would solve this problem with the following general attempt statute:

Section 1001 Criminal Attempt

"(a) OFFENSE - A person is guilty of an attempt to commit an offense if, acting with the kind of culpability otherwise required for commission of an offense, he intentionally engages in conduct which, in fact, corroborates his intent to complete the commission of the offense.

"(b) DEFENSE PRECLUDED - It is not a defense to a prosecution under this section that it was factually or legally impossible for the actor to commit the offense, if the offense could have been committed had the circumstances been as the actor believed them to be.

E. Uniform Treatment of Dual Prosecution Problems

In section 659 of Title 18 the following language limits the situations in which fences and cargo thieves may be prosecuted federally: "A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts." It is interesting to note that a number of other Federal statutes covering concurrent jurisdiction offenses do not contain this specific limitation. See e.g., 18 U.S.C. §§2113, 2312, 2313, 2314, 2315.

The proposed new Federal Criminal Code embodied in S. 1400 does not retain the statutory prohibition against dual prosecutions which is written into U.S.C. §659. This is because there seems to be no satisfactory reason for treating the dual prosecution problems associated with thefts from interstate shipments any differently than when such problems arise in connection with other concurrent jurisdiction offenses.

In those cases in which there is no statutory bar against dual state and federal prosecution, it has been held that there is no violation of the double jeopardy prohibition of the due process clause where there are prosecutions of the defendant, both in the state and federal courts, based upon the same act or acts. Bartkus v. Illinois, 359 U.S. 121 (1959); Abbate v. United States, 359 U.S. 18 (1959). However, it should be emphasized that this Department does not regard this established judicial interpretation of the Constitution as a wholesale

license to prosecute individuals who have already been convicted or acquitted for the same acts in state courts. It has been the long standing policy of the Department of Justice that there should be no federal trial for the same act or acts unless it is determined that there are compelling federal interests involved.

The elimination of the bar against dual prosecution which is contained in 18 U.S.C. §659 would simply allow for the same prosecutorial discretion to be exercised in cases related to thefts from interstate shipments, which has long been exercised under numerous other statutes which cover concurrent jurisdiction offenses. In the very exceptional case in which subsequent federal prosecution would serve the interests of justice, the federal prosecutor would be able to act.

F. Proof of Knowledge that the Received Goods Were Stolen -- Evidentiary and Constitutional Problems

One of the more difficult problems in a fencing prosecution is the proof that the accused had knowledge that the property he received was stolen. The difficulty of proving this element is based on the peculiar nature of the offense. While it is often not difficult to establish by objective proof that an accused received or possessed the stolen property, proof of a defendant's mens rea, or knowledge of the character of the received property, is almost entirely a subjective matter, not easily shown by direct evidence. As Judge Learned Hand described this problem:

"The receivers of stolen goods almost never 'know' that they have been stolen, in the sense that they could testify to it in a courtroom. The business could not be so conducted, for those who sell the goods - the 'fences' - must keep up a more respectable front than is generally possible for the thieves. Nor are we to suppose that the thieves will ordinarily admit their theft to the receiver: that would much impair their bargaining power. For this reason, some decisions even go as far as to hold that it is enough, if a reasonable man in the receiver's position would have supposed that the goods were stolen. That we think is wrong . . . [T]hat the jury must find that the receiver did more than infer the theft has never been demanded, so far as we know; and to demand more would emasculate the statute, for the evil against which it is directed is exactly that: i.e. making a market for stolen goods which the purchaser believes to have probably been stolen." [Werner v. United States, 160 F. 2d 438, 441-2 (2nd Cir. 1947)].

As an example, the case of United States v. Vilhotti, et al. (District of New Jersey) 69 CR. 560, turned on the question of whether or not the defendants were aware of the stolen nature of the goods. Rudolph Vilhotti, Vincent Santa, Albert Mercurio, and John Malong were convicted after a jury trial of buying, receiving and having in their possession chattels stolen from an interstate shipment, and with conspiracy to do the same.

The FBI received information from a reliable informant that Vilhotti was using a one-story garage in the Bronx as a drop for stolen goods. Acting on the information, the agents initiated surveillance of the garage, having seen cartons of stolen cosmetics through a window. The next morning Vilhotti, Santa and Mercurio entered the garage and were arrested by the agents. While the agents

were searching the garage, Maloney entered and was arrested. A search of Maloney revealed three price lists, in his own handwriting, which were carbon copies of lists found with the goods remaining in the garage.

On appeal, the convictions of Vilhotti and Maloney on the substantive count were affirmed and the conviction on the conspiracy count was reversed. The convictions of Santa and Mercurio were reversed on both counts for lack of substantial evidence that they were other than merely present in the warehouse. The reversals here are good examples of the prosecutor's problem in proving that a person who has property in his possession actually knows that property to have been stolen.

The difficulties of proving a defendant's knowledge and further compounded by the fact that the various criminal statutes require proof of differing types of knowledge. The receiver must know that the property was "embezzled," "stolen, purloined, or converted," "feloniously taken," or "unlawfully converted." Here, the confusing and overlapping terms describing prohibited conduct are again used to describe the knowledge which an offender must have. And again, their use adds nothing constructive to the law.

First, the proposed Criminal Code improves the present law on the standard a defendant's knowledge. The general definition of the term "knowingly" in §302(b) provides:

"A person acts knowingly, or with knowledge, with respect to this conduct when he is aware of the nature of his conduct. A person acts knowingly, or with knowledge, with respect to circumstances surrounding his conduct when he is aware or believes the circumstances exist, or is aware of a high probability of their existence, or intentionally avoids knowledge as to their existence. A person acts knowingly, or with knowledge with respect to a result of his conduct when he is aware or believes that his conduct is substantially certain to cause the result."

It is the second sentence of this definition which applies most directly to the offense of receiving. Quite often dealers in stolen merchandise receive the goods under highly suspicious circumstances from highly suspicious people. More often than not, these merchants are aware that the goods probably have been stolen, or, they intentionally avoid knowledge as to the source and method of acquisition of the goods. Thus the standard of knowledge set forth in §302(b) of S. 1400 could comport with reality.

Secondly, section 1732 draws together under one term - "stolen" - the several descriptive words used to describe both the proscribed conduct and the nature of a defendant's knowledge. Under the proposed new section, the defendant need only have received property of another "knowing that it has been stolen." The consolidation of all the various forms of unlawful taking into the one term "stolen" performs the useful function of simplification without narrowing the scope of knowledge of the offender. The term "stolen" itself has been given a broad meaning by the Supreme Court to include all felonious takings with

intent to deprive the owner of the rights and benefits of ownership.

United States v. Turley, 352 U.S. 407 (1957): This characterization of the "stolen" as a term of art, having no settled common law meaning, and encompassing almost every conceivable type of unlawful taking, has already produced a comprehensive and understandable body of case law. This body of law is effectively adopted by the proposed §1732.

An additional problem to be considered briefly, relates to the evidentiary difficulties of establishing an offender's knowledge. Because of the difficulty of establishing this element, the courts have devised evidentiary inferences which can be utilized by the jury in considering the offender's knowledge.^{9/} The most frequently used of these inferences is that of "unexplained possession." By this inference the jury is permitted to infer guilty knowledge from the defendant's unexplained possession of recently stolen property. The determination of whether the property is recently stolen is a question for the jury considering all the circumstances including the nature of the property, its value, its size or amount, and its resalability in the legitimate market. That the possession must be unexplained means only that there is no straightforward, truthful, reasonable and satisfactory explanation consistent with the innocence of the defendant. This inference

^{9/} It has become fashionable to use the term "inference" and "presumption" interchangeably. However, the distinction between the two is "subtle but not unreal. A presumption . . . is an inference which the law directs the jury to draw if it finds a given set of facts; and inference is a conclusion which the jury is permitted, but not compelled to draw from the facts." McKnight v. United States, 309 F. 2d States, 309 F. 2d 660 (D.C. Cir. 1962).

seems to have been an established rule of law since time immemorial.^{10/}
Its origins can be traced far back in the English common law.

The proposed Code, S. 1400, would codify this inference in §1733(a) by providing:

§1733. Proof Under Section 1731 and 1732

"In a prosecution under section 1731 or 1732:

"(a) possession of property recently stolen permits the inference that the person in possession of the property knew it had been stolen or in some way participated in its theft.

The codification of this inference would recognize the strict limitations that the courts have imposed on its use to protect the rights of the accused. First, the jury must be instructed the inference is one which

^{10/} As Thayer, in his Preliminary Treatise on Evidence (1893) stated, in tracing the development of presumptions "running through a dozen centuries": "To be found in the possession of stolen goods was a serious thing; if they were recently stolen then one was taking with the mainor - a state of things that formerly might involve immediate punishment of guilt which in the absence of contrary evidence, justified a verdict, and at the present time is vanishing away into the mere judicial recognition of a permissible inference." As it is stated in Stephen's Digest of Criminal Law: "The inference that an accused person has stolen property or has received it, knowing it to be stolen, may be drawn from the fact that it is found in his possession, after being stolen, and that he gives no satisfactory account of the way in which it came into his possession." See also 2 East, Pleas of the Crown, p. 656 (1803).

may be drawn from the proof, not one which must be drawn. Moreover, the jury must be instructed that the inference does not lessen the prosecution's burden of proving beyond a reasonable doubt every essential element of the crime charged. Finally, the jury must also be cautioned that no presumption of guilt may be raised nor any inference of any kind may be given from a defendant's failure to testify and explain his possession. These limitations preserve a defendant's privilege against self-incrimination and his due process right to a conviction supported by sufficient evidence, both contained in the Fifth Amendment of the Constitution. The language of §1733(a) - that unexplained possession "permits the inference" - preserves these important safeguards.

A discussion of this inference would be inappropriate in this paper were it not for two recent unrelated developments - one judicial and one legislative. First, while this inference has been continually attacked in the federal courts on various constitutional grounds, until recently it has been upheld without exception.^{11/} However, on June 1, 1972

^{11/} Among the recent cases upholding the inference and appropriate instructions are the following: United States v. Karger, 439 F. ed 1103 (1st Cir.) (pledging stolen securities knowing them to be stolen); United States v. Lzzi, 427 F. 2d 293 (2d Cir.); United States v. Smith, 446 F. 2d 200 (4th Cir. (possession of stolen mail)); United States v. Winbush, 428 F. 2d 357 (6th Cir.), cert. denied, 400 U.S. 918 (possession of stolen mail); United States v. Woltenbarger, 426 F. 2d 992 (6th Cir.) (receiving a stolen car moving in interstate commerce) United States v. Hood, 422 F. 2d 737 (7th Cir.) cert. denied, 400 U.S. 820 (receipt and concealment of stolen automobiles); United States v. Dilella, 354 F. 2d (7th Cir.)(possession of goods stolen from interstate commerce); United States v. Higgins, 451 F. 2d 577 (8th Cir.) (possession of stolen mail); United States v. Marquez, 462 F. 2d 620 (9th Cir.)(possession of goods stolen from a foreign shipment; United States v. Baker, 444 F. 2d 1290 (10th Cir.) cert. denied, 404 U.S. 805 (possession of stolen mail); Pendergast v. United States, 416 F. 2d 776 (D.C. Cir.) (Robbery).

the United States Court of Appeals for the Fifth Circuit held the "unexplained possession" inference to be unconstitutional.^{12/} The Court there held that the inference was improper because it permitted the jury to infer the fact of knowledge, one element of the offense, from the fact of possession, the other element of the offense, and it improperly infringed the appellant's privilege against compulsory self-incrimination under the Fifth Amendment. However, the Supreme Court has recently sustained the constitutionality of the judicial inference of guilty knowledge from unexplained possession of recently stolen property in United States v. Barnes, 41 U.S.L.W. 4917 (June 18, 1973).

Secondly, the Senate has passed two bills which bear directly on the future status of the "unexplained possession" inference. These bills, S. 13 and S. 800, create in pertinent part a civil action for damages resulting from violations of 18 U.S.C. §659 which forbids theft and/or receipt of stolen property moving in interstate or foreign commerce. This civil remedy is accomplished by amendments of section 659 which restate the substantive criminal offenses presently contained therein, and which add the civil remedy and certain procedural and evidentiary material. Of the evidentiary material added, the following bears directly on the inference discussed herein.

^{12/} United States v. Cameron, 460 F. 2d 1394 (5th Cir. 1972).

Section 659

"(s) . . . Proof that a person was found in unexplained possession of any money, baggage, goods, chattels, or other property, recently embezzled, stolen, or otherwise unlawfully taken, carried away, concealed, or obtained by fraud or deception in violation of this section, shall be prima facie evidence that such person knew that such property was, or that such person had, embezzled, stolen, or otherwise unlawfully taken, carried away, concealed, or obtained by fraud or deception such money, baggage, goods, chattels, or other property in violation of this section."

The language of 659(s), by using the phrases "prima facie" is significantly different than the present judicial inference which would be codified in §1733(a) of the proposed new Code, i.e., that possession of recently stolen property "permits the inference" of guilty knowledge. In precise legal terms the difference is one of the degree of proof and the strength of the instruction which are given the jury. For a presumption, the jury is instructed that it must find one fact, X, to exist if it finds another, Y, to exist. For an inference to operate, the court must instruct that the jury may find fact X if it finds fact Y exist. But "prima facie evidence" means only that enough evidence has been submitted to take the case to the jury. The jury is not given any special instructions as to the conclusion which that can draw from this evidence. The phrase prima facie, therefore, does not result in an instruction that the fact Y established has any special probative force as to fact X. From the prosecutor's point of view this distinction is crucial since the choice of the phrase "prima facie" increases the difficulty of sustaining his burden of proof. This is especially so in a fencing case where the element of knowledge is most

difficult to establish by direct evidence. The absence of an instruction to a jury that it may infer guilty knowledge from unexplained possession is most important.

It is of course recognized that "in the federal criminal law as it stand today, these terms are not used with precision." The Senate Report on S. 13 uses the terms interchangeably in recommending the use of the terms in the now §659(s). Indeed, through the years even the Supreme Court's use of terms has been anything but precise. From this it could perhaps be argued that no matter what the strict definition, the "prima facie" language of S. 13 and S. 800 notwithstanding, it is recommended that the term "prima facie" be eliminated in favor of language similar to that of S. 1400, the proposed new Code. Because of the significant difference explained above, and because the language of S. 1400 more accurately codifies the traditional "unexplained possession" inference, it is to be preferred. The language of S. 1400 would thereby promote continuity and consistency in the law, and would ensure that the inference is properly used in future fencing prosecutions.

Finally, it is worthy of note that S. 1400 does make provision for civil remedies for victims of theft and fencing activities. Chapter 230 of Title III of S. 1400 provides remedies for victims of "racketeering activity" which, under §1861 of the new Code would be defined to include certain violations of §§1731 and 1732. These statutory provisions are essentially a recodification of existing law in this area. [See 18 U.S.C. §§1961, 1964].

With respect to the provisions for civil remedies in S. 1400, it should be noted that this proposed legislation is the product of an intensive and far-reaching effort to revise the substantive federal criminal law. Those revisions of a procedural nature, such as the civil remedies for victims of theft and fencing activities, are in the form of conforming amendments and are basically continuations of existing law.

The two pieces of proposed legislation referred to earlier, S. 13 and S. 800, contain comprehensive provisions for civil remedies for victims of theft and fencing activities. Hopefully, federal legislation can be enacted which will hit some of the fences where it hurts the most, in the pocketbook.

Senator BIBLE. What is the status of S. 1400?

Mr. MARONEY. The committee—I think a number of committees have been holding hearings on portions of the bill.

Senator BIBLE. That is on the Senate side?

Mr. MARONEY. On the Senate side.

I do not know of any hearings on the House side.

Senator BIBLE. Probably for the same reason; they are so occupied on one problem, they certainly cannot be getting into other problems, I assume, in the House.

Mr. MARONEY. I assume.

It is the most comprehensive type of bill; obviously it will not get through this session.

Senator BIBLE. I recognize that. Perhaps they could start on it this year, and finish it the next. That would be your hope?

Mr. MARONEY. Yes, sir.

We share with you the desire to find effective and useful measures to deal with this problem. We at the Department of Justice will endeavor to give the committee full assistance in this area.

This is the end of my statement, Mr. Chairman. I would be pleased to answer any questions the committee may ask.

Senator BIBLE. Thank you very much for a fine statement, and I appreciate your spirit of cooperation. I think you have been very helpful, and we are making some headway in this field. We hope we can make more.

A question has been suggested by staff, should one federal agency—for example, the FBI—have overall responsibility for coordinating all the federal activities in the fencing area?

You mentioned the various federal agencies that have a role in fighting or combating fences. My question is: Should one federal agency be the lead agency?

Mr. MARONEY. I would not think that that would be very feasible, especially to have an investigative agency coordinate the total federal response to the fencing problem. In the first place, you have the gun traffic problem, the stolen security problem, which fall within the gambit of other investigative agencies. The FBI, I do not believe, would be the kind of coordinating agency to direct the activities of other investigative agencies in their areas of responsibility.

Senator BIBLE. You do not think there should be one coordinating agency?

Mr. MARONEY. The department, insofar as we can, I think, along with the Department of Transportation, is trying to take a lead role in coordinating a federal response to this problem. Most of that is being done pursuant to discussions with other agencies that have responsibilities in this area, in an effort to bring those agencies together to discuss the problems, to share information, and to plan activities which will constitute a concerted federal response.

Senator BIBLE. You see no need whatsoever of any type of restructuring at this time?

Mr. MARONEY. That is right, sir.

Senator BIBLE. All right.

Is it intended that the organized crime strike forces step up their enforcement efforts against fences?

Mr. MARONEY. We do intend that those strike forces take a harder look at this problem, make greater utilization of the title III provisions for electronic surveillance under court order. I think that the experience that various strike forces have had in the past 1 or 2 years in this area has demonstrated to them the importance of the use of a title III wiretap, and has enabled them in a number of instances to bring a significant number of cases, in my opinion.

Senator BIBLE. It has been drawn to our attention that some thought has been given to either dissolving strike forces or restructuring strike forces.

Would you care to comment?

Mr. MARONEY. Well, of course I do not know what the particular plan on restructuring would be.

Senator BIBLE. I do not know either. Maybe there are no plans by the Department of Justice, the Attorney General's office, to restructure. I do not know whether there are or not.

Are there plans for restructuring the strike forces?

Mr. MARONEY. I think there is some discussion in the department with respect to the use of strike forces in various cities where they presently are, as to whether or not the United States Attorney might assume that function more directly. The Criminal Division's position, of course, remains that strike forces are necessary, that they are a helpful adjunct to the United States Attorney's office and to the total federal enforcement effort.

I am sure that the viability of a strike force concept is one that will be discussed in the department pro and con as long as there are strike forces.

Senator BIBLE. Tell me this: What impact do you feel that the strike forces have had in this battle against fences?

Mr. MARONEY. I think that it has really only just begun in the past year or two, largely as a result of the stimulus provided by this committee's inquiries and the department's followup efforts to focus to a greater degree on this area. And while I can only say at the present time that the impact on the fencing problem with respect to organized crime certainly has not been very substantial, we hope that through additional strike force activity in this area that it will become more substantial as time goes on.

Senator BIBLE. Will the new cargo security working groups have access to information on major fences and other theft personnel developed by the organized crime strike forces?

Mr. MARONEY. Of course, the federal representatives on the cargo security working groups will share intelligence information and other investigative information with the strike forces and receive information from the strike forces, and share it with the local prosecuting and investigative authorities as needed.

Senator BIBLE. Tell me this: Do you have any estimate as to the value of property stolen each year in this country—we have been using a figure of \$16 billion, which was given to us by various sources.

How much of that stolen property, whatever the dollar value, is redistributed through an interstate fencing system?

Do you have any handle on that or any statistics that would indicate what part of that was redistributed through an interstate fencing system?

Mr. MARONEY. No, we do not have any statistics or any really hard information on that. We have discussed that with the people at the FBI, knowledgeable in this area. It is their estimate that a relatively small percentage of that total \$16 billion would go into interstate transfer, that most of such property is fenced on a local basis.

Senator BIBLE. Dispensed within the State where it is stolen?

Mr. MARONEY. Yes.

Senator BIBLE. And then received?

Mr. MARONEY. Yes, sir.

Senator BIBLE. Do you have any handle on the number of fences that are operating in the United States today?

How many fences do we have in the United States?

Mr. MARONEY. I do not know if we could give any kind of an estimate in response to that question, sir.

Senator BIBLE. It is a pretty difficult question. Apparently, when I came up the law enforcement route, both the district attorney and attorney general, back in my day the only fences that we had, if my memory serves me well, were pawnbrokers. They were usually used as fences. The testimony that we had in the course of this particular series of hearings is that antique shops are one of the main business fronts, or whatever kind of front you want to call it, that are used for fencing. I do not know if you have any observations on that or not.

Mr. MARONEY. I do not see how you could possibly give any kind of estimate on the number of fences. Obviously, that \$16 billion in cargo theft is a lot of property. \$1.5 billion is cargo of the \$16 billion is still a lot of property. To get into the channels of commerce, obviously, there have to be a lot of fences to accomplish that.

Senator BIBLE. To what extent is the legitimate business community found to be the eventual market for property stolen in interstate commerce?

Mr. MARONEY. I would have to assume that the legitimate business community would not be aware of the cargo theft material that gets back into the flow of interstate commerce. But certainly, as far as to what extent that they are involved or are made to be involved by purchasing from someone in good faith, I would have to estimate, that any time that you had a large-scale theft of cargo, that the only feasible way of getting rid of it would be by getting it back into the mainstream of commerce, getting it back into legitimate retail outlets for disposal.

So I would say that most large-scale cargo thefts end up being sold by legitimate business enterprises.

Senator BIBLE. That may well be a correct conclusion. I really do not know. We have had testimony in our earlier hearings that some well-known and well-established business firms—not through their top management, but possibly through their purchasing agents—were buying stolen property and then selling it in the regular retail outlets. We had testimony to that effect, so I assume that there is

some type of use of legitimate business people, maybe unknowingly, as an outlet for stolen property. I assume that is a safe conclusion, and we had testimony to that effect.

The point being that I think that the business community should be more and more aware of this problem, because they can be most helpful in trying to eradicate this fencing racket. That is exactly what it is, a fencing racket.

It is very, very difficult to deal with.

Can you provide any estimate of the value and type of property stolen in this country which is redistributed to international fencing systems?

Mr. MARONEY. We could not make any estimate with respect to that, Mr. Chairman. In the area of automobile theft rings, we have had a number of cases indicating that a sizable number of stolen automobiles are exported from the country to foreign countries.

For example, we have had one ring that was exporting to Lebanon that involved the export of over 100 automobiles; 200 stolen automobiles to Lebanon. There have been stolen automobiles that were sent to South Africa and I believe to Mexico. But what percentage that is of the total picture, of course, we have no way of knowing. We just know that it does happen.

Senator BIBLE. Which overseas countries, then, from what you do know about the picture?

You mentioned Lebanon, Mexico, South Africa, as being countries that are markets for goods stolen in the United States.

Is that correct?

Mr. MARONEY. Yes, sir.

Senator BIBLE. Are there others?

Mr. MARONEY. Recently also there was a case involving a sizable quantity of tungsten cargo.

Senator BIBLE. What kind of cargo?

Mr. MARONEY. Tungsten carbide in excess of \$100,000 value, which was recovered partly in England, partly in Holland. There is no question that some of these goods do end up on the foreign market. Percentagewise we have no way of making an estimate.

Senator BIBLE. What particular measures do you take to interdict the international flow of international goods?

What does the Department of Justice do about this?

Mr. MARONEY. The only thing that we have done to date is to recommend to the Department of Transportation the establishment of standards with respect to exportation of automobiles, to try to have them require a more definitive identification process before an automobile can be exported from the United States.

The proposed standards that have been prepared in the Criminal Division and given to the Department of Transportation, we have a copy of this morning, and I would be glad to submit a copy for the committee.

Senator BIBLE. That would be helpful. Without objection, that can be incorporated into the record.

(The information referred to follows:)

PROPOSED NHTSA STANDARDS

1. Procedures shall be established to provide for the separate registration of every junked motor vehicle at the time such vehicle is junked, such registration to be required of every junked motor vehicle of a model year which is within five (5) years of the current model year, with title to be evidenced by an appropriately issued certificate of junk, essentially as follows:

(a) Any owner who sells a motor vehicle as scrap, or to be dismantled, destroyed or junked, or a wrecked vehicle which is to be rebuilt, shall assign the certificate of title thereto to the person to whom the vehicle is sold, but shall immediately return the certificate of title to the appropriate state motor vehicle department accompanied by an application for a certificate of junk, whereupon the department shall issue to the person shown as the assignee a certificate of junk, which shall authorize the holder thereof to possess, transport, or by endorsement, transfer ownership in such junked or dismantled vehicle, and the certificate of title shall be cancelled by the department upon its records and no certificate of title shall again be

issued for such motor vehicle in the event it is junked, scrapped, dismantled or destroyed.

(b) In addition to the certificate of title the owner of such junked or dismantled vehicle shall also forward to the department the manufacturer's identification number plates, owner's registration card and other proof of ownership, and the registration plates last issued for such vehicle, unless such registration plates are to be transferred to another vehicle of the same owner. In that event, the plates shall be retained and preserved by the owner for transfer to such other vehicle.

(c) Whenever a person who is engaged in the business of buying or selling automobile parts or equipment, or in a business requiring him to be licensed as a junk dealer or any other person owning a junk vehicle, including a junk vehicle which has been rebuilt, sells a motor vehicle for use on the public highways for which a certificate of junk is required, such person must apply to the department for a replacement vehicle identification number and for the issuance of a document evidencing proof of ownership for resale purposes. The application

for issuance of such document must be accompanied by proof of inspection of such vehicle by appropriate state authorities to determine that the vehicle is in fact the vehicle it purports to be and that it is in such condition and repair to render satisfactory and adequate service upon the public highway.

(d) The appropriate state motor vehicle department shall maintain a record of certificates of junk issued and may, after five (5) years from date of issue, at its discretion, destroy such records.

2. Procedures shall be established to provide for the requirement of proof of ownership and inspection of motor vehicles to be exported, essentially as follows.

No person whose business involves the preparation of the shipping order or dock receipt or bill of lading or other export papers for the transportation by water or by any other means of a motor vehicle outside the continental United States shall prepare such export papers unless he receives from the person sending such motor vehicle outside the continental United States a

photocopy or other facsimile of a transfer of registration or other proof of ownership for such motor vehicle indicating thereon the identification number of such vehicle. Upon receipt of such document, said person shall determine that the motor vehicle to be transported outside the continental United States is the same vehicle described in such proof of ownership and shall certify such fact upon the copy of the shipping order, dock receipt, bill of lading or other export paper for such vehicle which he retains for his records. Said person shall also establish contact with the appropriate law enforcement authorities and request that the vehicle identification number of such motor vehicle be checked through the stolen motor vehicle files of the National Crime Information Center.

The person who prepares such export papers shall maintain on file for a period of three years the photocopy or other facsimile of such transfer of registration or other proof of ownership together with the appropriate shipping order, dock receipt, bill of lading or other export paper.

Senator BIBLE. Currently the uniform crime reports published by the FBI contain only meager information about activities against fences.

Does the Department of Justice recognize the need to provide more realistic data about criminal receivers in the uniform crime reports?

Mr. MARONEY. The uniform crime reports do contain data about fences, involving receiving property and possession of receiving stolen property. It does not break it down into a fencing category. The FBI, I believe, feels that the only feasible way of maintaining or getting data specifically dealing with fencing would be by way of a survey, rather than just a statistical compilation with respect to violations of particular statutes.

Senator BIBLE. Thank you very much. Your testimony has been helpful.

Senator Clark?

Senator CLARK. Mr. Chairman, just a couple of brief questions. You mentioned \$16 billion or \$16.5 billion.

How does that break down, just in general terms to those losses?

Mr. MARONEY. I think—Mr. Culver can correct me if I am off-base here—\$1.5 billion is cargo theft. We had a figure of approximately—of a little under a billion dollars in automobile theft value. The balance would be primarily securities.

Mr. CULVER. Senator, as we understand, this amount was arrived at by the Department of Commerce, who had made a survey of the overall nationwide theft, which entered every phase of the business community, which would include of course, security thefts, which, as you recognized, have increased considerably in recent years, almost doubled, as I understand. This would include thefts in our stores, our businesses, furs and other high-priced items. It would even extend to the banking system. It is an overall estimate of theft in every facet of the Nation's commerce as we understand it.

Senator CLARK. The other question, Mr. Maroney. Has your office taken any new or unique measures in dealing with fencing, trying to deal with it more effectively?

Mr. MARONEY. I think that the unique thing that we have tried to do is the encouragement of the establishment of nationwide—in each Federal district of the State—Federal law enforcement committees to concentrate on this area as well as other areas of crime. And the establishment of the cargo security working groups which are designed to bring in representatives of industry. We feel that it is vitally important in this area of fencing for industry to assume a good part of the burden of marking their shipments, controlling their shipments, maintaining a security program with respect to their own employees, and people who have lawful access.

The best place to cut this back is to cut it off at the source, and we think that industry has the primary responsibility in that regard. We would like to encourage them to do it.

Senator CLARK. Thank you, Mr. Chairman.

Senator BIBLE. Thank you, gentlemen. I very much appreciate your appearance here today. We will feel free to call on you in the future as we develop more and more material and more help in this direction.

I hope specifically we can help you with the bill that has passed the Senate, and at the proper time try to talk to the chairman of the Judiciary Committee of the House and urge him to try to move that forward into enactment. That is another tool that would be helpful in trying to come to grips with this problem.

Thank you very much.

Mr. MARONEY. Thank you very much.

Senator BIBLE. Our next witness will be the U.S. attorney for the district of Minnesota, Mr. Robert G. Renner.

Mr. Renner?

STATEMENT OF ROBERT G. RENNER, U.S. ATTORNEY FOR THE DISTRICT OF MINNESOTA

Mr. RENNER. Mr. Chairman, members of the committee, my name is Robert G. Renner and I am the U.S. attorney for the district of Minnesota, an office I have held since August 1969.

In the seven county metropolitan area surrounding the core cities of Minneapolis and St. Paul we have many separate but contiguous municipalities, each with its own law enforcement department. We are not faced with the classic organized crime echelon-like organization as is found on the east coast.

We are confronted with locally organized gangs and fencing operations which very often can only be attacked by joint effort of the various government entities.

Pursuant to instructions which we received from the Department of Justice, I, in late 1972, met with the Attorney General for the State of Minnesota, Mr. Warren Spannaus, to join in a common quest seeking methods of crime control. We formed a Federal-State Law Enforcement Committee.

We decided that our main function would be to focus on "continuing crime." We would launch an immediate frontal assault on fences in the metropolitan area.

Security was a major consideration. It was a common rumor in Minneapolis that major operators were receiving protection from the police and the courts. It was agreed we would work with only a few local officers; those we felt could work within a framework of mutual trust.

There is no State police per se in the State of Minnesota. The highway patrol is charged with vehicular regulation. Law enforcement lies, for the most part, with autonomous local units.

The Attorney General, however, has been able, with an LEAA grant, to form an investigative team of four trained personnel headed by an ex-FBI agent.

This group had already commenced an investigation relating to one James Benjamin Freeman and his son James David Freeman. It had already confirmed the existence of an active stolen goods business selling openly behind legitimate-appearing store fronts.

James Freeman, Sr., had operated in this State for approximately 20 years without an arrest. He had approximately 200 boosters working for him.

Senator BIBLE. What is a booster?

Mr. RENNER. A booster is one who makes the initial theft.

If I may interpolate a remark, just last month one of these boosters we turned. He is now a Government informer. We had a theft in one of the many cities surrounding the two core cities, the city of Roseville. We had a whisky truck heist and he turned over to us the names of the thieves. We in turn passed the information to the Roseville police, who in turn contacted the other municipality where the thieves were. The arrests were made and part of the whisky was recovered.

This never would have happened if it had not been for the joint cooperative effort that eventually came out of the committee, the Federal-State Law Enforcement Committee.

Senator BIBLE. Thank you.

Mr. RENNER. He testified himself at his trial that his one store alone grossed more than \$220,000 in 1972. This did not include revenue from multiple illicit direct sales to legitimate retail and wholesale outlets.

The Freemans controlled a number of locally organized gangs whose members, according to informant boosters, were making as much as \$300 a day peddling their stolen merchandise to their fences.

An authorized State wiretap was secured. Conversations between Freeman and his "fixer" indicated continued attempts to fix cases.

The wiretap had ended by the 1972 Christmas holidays. At this point, the State staff had reached an impasse. It now appeared that a second wiretap was improbable and that only hard surveillance would provide the evidence to support a search warrant.

In our joint efforts to attack the problem, we had to proceed with caution. It was widely known that many policemen were wearing Freeman suits. The wiretap showed that leading citizens from all walks of life were buying the illicit merchandise. It even evolved that the number of citizens included judges, city councilmen, and even the mayor of St. Paul. I am not suggesting that these people made these purchases knowingly. I am suggesting that they were all buying suits at very reduced prices from which all labels and identifying marks had been removed, and that there were strong rumors throughout that the goods were hot.

With the merging of the Federal effort, the pursuit of probable cause picked up. The U.S. attorney's office secured the aid of the following Federal agencies:

The U.S. Postal Service agreed to provide a mail cover if interstate mailings were involved.

The Bureau of Narcotics and Dangerous Drugs began an immediate canvass seeking information as to known addict boosters.

The Bureau of Alcohol, Tobacco, and Firearms immediately assigned five agents to the effort since it was known the organization involved known gun-carrying felons.

The Internal Revenue Service, alerted to make jeopardy assessments when untaxed income would appear, ultimately received records which showed income five times as large as declared on income tax returns.

The Drug Abuse Law Enforcement Unit pursued addicted boosters known to be associated with the Freeman organization.

This joint effort resulted in a master list of approximately 15 major metropolitan and out-of-town fences, as well as many professional burglars and shoplifters. Never before had such a list been assembled.

Extensive joint surveillance was commenced. Known burglars were seen furtively loading clothing and electrical goods at remote drops. On February 23, 1973, search warrants were served on the Freeman residences, stores, and warehouses.

Great amounts of stolen property were recovered. Suits, apparently from two major local department stores—Dayton's and Penney's—were found in gross amounts. All identification had been removed.

Both defendants were convicted of the crime of receipt of stolen property. One received a sentence of 10 years in prison and the other 5 years. Both were fined \$10,000. James Freeman, Sr., was also convicted of the Federal offense of possession of a firearm by a felon. Convictions of many professional burglars have also been accomplished.

Senator BIBLE. That is an interesting case history. Mr. Freeman was operating for about 20 years. You say you secured a conviction. Was that a jury trial?

Mr. RENNER. Yes, it was.

Senator BIBLE. In the course of the conviction, was there testimony brought forth showing the total amount of stolen property which Freeman, father or son or both or a group of them, had received?

Mr. RENNER. I am sure there was not, although I cannot say that from personal knowledge. That was a State charge, and I have no personal involvement.

Senator BIBLE. He was convicted on the State charge for the crime of receiving stolen property?

Mr. RENNER. Yes, sir.

Senator BIBLE. He was convicted on a Federal charge of possession of a firearm by a felon. There is no doubt that if he operated for 20 years he disposed of a whole lot of stolen property through his fencing operations.

Mr. RENNER. No doubt whatsoever.

Senator BIBLE. Compliments are due to you and to the prosecuting attorney.

Where was the prosecution, Minneapolis or St. Paul?

Mr. RENNER. Because of the publicity received in Minneapolis, the case was moved up to northern Minnesota, to a small town, and tried up there.

Senator BIBLE. Thank you.

Mr. RENNER. Presently we have other fencing operations under investigation. It is anticipated that we shall be making more arrests shortly.

It has become clear that one of the reasons these gangs can continue to exist is the lack of metropolitanwide police control and supervision. They prey at will from community to community.

I might mention, in the Freeman instance, it later developed that there was a pattern that could be viewed. Freeman would never let

his boosters hit one city too hard or one area of a city too hard, so as to incur public outcry. In other words, he not only purchased the goods from the fence, but he ordered the locality and directed them to take them from certain areas in certain localities.

Senator BIBLE. Thank you.

Mr. RENNER. Local authorities have tended to ignore the problem because of a lack of personnel, equipment and investigative personnel. State agencies, at least in Minnesota, are ill-equipped to coordinate local efforts. In the past there have been insufficient contacts with Federal agencies.

It is clear that the pursuit of the major criminal can bridge parochial gaps that might otherwise exist between Federal agencies; between metropolitan agencies, State agencies, and local departments.

We have seen this type of offense grow by leaps and bounds in our State. We see it reaching out into our rural areas. The freeway system has made smalltown businesses vulnerable to metro-area thieves.

It is no longer uncommon to have resorts and summer homes in northern Minnesota ripped off. Outboard motors and snowmobiles have acquired great value in the illegal marketplace.

We have been amazed at the extent of communication between fences in Minneapolis, Kansas City, Miami, Milwaukee, and many other cities. The movement of hot items in interstate commerce is extensive.

In the Freeman case, merchandise worth \$20,000 was deliberately divided into lots worth \$3,000 for mailing to a fence in San Jose, Calif. Other goods of comparable value were mailed back in return.

Conversations overheard on the wiretap indicate an awareness of the \$5,000 Federal jurisdictional amount. On more than one occasion, we heard they did not want the "Feds" coming after them. The value of each package was deliberately kept below the \$5,000 figure to keep out the FBI.

An ongoing investigation indicates movements of stolen merchandise back and forth to another major city. These shipments are being handled by their own people with the use of rented U-Haul vehicles.

We have discovered that the fence not only disposes, but he proposes—he runs his stable of thieves—what to steal, where to steal, and how to deliver.

He is tough to apprehend and tougher to prosecute. To convict we must prove not only the original theft, but also knowledge that the property was stolen. To do this the identity of the goods has to be established. Identification of the property is extremely difficult.

Suits without labels, for instance, are almost impossible to trace. Again, in the Freeman case, there were truckloads of clothing stolen from Dayton's Department Store which could not be identified.

Approximately 100 suits from Penney's could be, but only because of a particular mark placed in the suit by the manufacturer. Even then it was necessary to bring a designer from New York who could testify as to the markings. This demonstrates the need for compulsory serialization.

We have to prove not only that the merchandise was stolen, but from whom. If the manufacturer for some reason cannot mark his merchandise, the merchant should be forced to do so.

The underworld has recognized the police limitations in the megalopolis. Burglary rings are being directed by skillful manipulators so as to avoid overworking particular areas. They are aware of the dangers of public outcry.

We have seen the value of a State wiretap. A fence cannot survive long without some police protection. A tap is one of the few ways this can be rooted out. Ours is patterned after the Federal statute. It has the same regard for due process and the right of privacy. It works. Unfortunately, some States do not allow their use.

The criminal is very much aware of the clout of Federal law enforcement agencies. He wants to avoid them if at all possible. He is aware that enforcement of State law is the responsibility of local government. He knows there is no State agency that can effectively handle him. This is true not only in Minnesota, but in many States.

Should the attorney general of this State lose his Federal grant, there will be no State agency with whom we can cooperate.

I am convinced that our joint enterprise is eminently workable. More than that, the alliance is absolutely necessary. As of now, it is the only way in this State to get the job done.

Senator BIBLE. Thank you very much.

Mr. RENNER. We have a Democrat in the office of State attorney general. I am a Republican in the office of U.S. attorney. We are cooperating to fill a void, a vacuum which has previously been occupied by the underworld. There is a void by reason of jurisdictional statutory lapses. There is a void in our case by reason of geographical limitations, the megalopolis being composed of many, many units of government. The problem of fencing, of burglaries, of theft, overlap these geographical boundaries and makes it extremely difficult for the local units of government to confront.

Senator BIBLE. You have made a splendid statement, Mr. U.S. attorney, and I also compliment you on the effective work you are doing and the effective cooperation you have brought about with the attorney general of your State and the other law enforcement officers.

Has fencing been a pattern of life or way of life for many criminals in the Minneapolis-St. Paul region for a period of years?

Mr. RENNER. It has developed because of the ability of fences to survive the police; out of apathy more than anything else. I might interject here that our Minneapolis Police Department is a good one. We have no apologies for their reputation.

But when the police see people in public walks of life, the people in higher statuses, trading with these fences, they see the fences openly operating, and knowing their limitations as far as money, personnel, and capabilities—they feel inadequate. I fear, as a result, fences have become quite blatant in their operations.

Senator BIBLE. You mentioned that they receive police protection, I guess in the Minneapolis area.

Have there been any confessions of police officers involved in protecting fences?

Mr. RENNER. Perhaps that word is a little strong. There has undoubtedly been some protection. Apathy I mentioned. There is protection to the extent that police, like the FBI, use boosters, use known criminals as informants. They try to protect them.

There has been protection as demonstrated on our wiretap. We have heard the allegations from the fixer as to people he has contacted. There was an investigation by the State bar association as to the conduct of a district judge. He resigned. It was primarily a State offense, if any existed. It was not a Federal offense. There have been no State charges against any particular police.

Senator BIBLE. I see. I hope that if there is this type of protection, if that is the right word, that should be stopped by proper legal means. I am sure that you share that view.

Is it peculiar in your area up in Minneapolis that you have the same apathy—you used the word "apathy"—by police in the outlying parts of Minneapolis-St. Paul, or whatever, toward fencing?

Mr. RENNER. I think a good cause for the apathy is their built-in inability to handle the problem. They just do not have the resources. The best example that I can think of; a month or so ago we had a kidnaping. A banker's wife was kidnaped. It is a seven-county area. She was kidnaped in Anoka County in the north. They transported her through Ramsey County, Hennepin County, down into Dakota County.

The sheriff's office in Anoka County just is not equipped to investigate that kidnaping. Surely, the FBI went in and investigated it, but it is not a Federal offense. There was no interstate transportation of the body.

This is true of hot goods. They are just not equipped to handle it. The burglars are not dumb. They are not going to be thieving from their neighbors if they can avoid it and can get it from someone 10 miles down the road.

Senator BIBLE. What you are saying, if I understand you correctly, is largely fencing activities in your area are pretty much intrastate in order to avoid the intervention of the Federal Government?

Mr. RENNER. That is a major aspect, although we were amazed, and still are, at the amount of interstate communication. They would get a hot shipment, for instance, of furs or leather goods. Leather goods were sent to San Jose. Furs are a good example. They would use the U.S. mails to get hot goods that otherwise may be too dangerous to handle in the local market in the other area.

Senator BIBLE. One fence in one area of the country would exchange articles with fences in the the other areas of the country simply to avoid prosecution where they received the stolen goods, that is what you are saying?

Mr. RENNER. Yes, sir.

Senator BIBLE. Thank you.

I understand you say that you feel that you do have an effective Federal-State-local law enforcement group working closely together today?

Mr. RENNER. I do indeed.

Senator BIBLE. All right.

What do you perceive to be the Federal role in dealing with a fencing operation?

Mr. RENNER. I approve of the remarks that Mr. Maroney previously addressed to the committee. It is obvious to me that the U.S. attorney's offices throughout the country are just unable, for lack of staff, to handle the problem by themselves.

I think that the efforts are going to have to be addressed to the States. The Federal Government is going to have to be in a position to cooperate, as we did, once we found that there were gun-carrying felons. We sent the A.T. & F., and they did long, hard 24-hour-day surveillance work. We are going to be in the position and expect to be in the position henceforth to give the State that kind of cooperation. I think that that is the Federal effort required.

I agree that the passage of the legislation that has been suggested will help; however in our district we have 11 attorneys, myself and 10. We handle all the civil litigation and appellate work, all the criminal work for the Federal Government in the State of Minnesota.

We work our tails off. There is only so much we can do well. But this, I think, is a good approach.

Senator BIBLE. Thank you.

Based on your experience—and you have been U.S. attorney for 5 or 6 years—do you think that the responsibility for investigating fencing operations and proceeding against them should be vested with you or that it should become primarily the responsibility of a strike force?

Mr. RENNER. I really think, speaking only for Minnesota—I realize every district has different problems—speaking for Minnesota, I think it should be vested in me. I have a greater feel for the problem, a greater feel for the agencies, State and Federal, a better overview of the situation than any task force would have.

A task force comes in, zeroes in on one area. You cannot handle this problem by zeroing in on one area. I just mentioned in passing the Roseville liquor heist. A task force would not have that information available. If so, they would not know to whom to communicate it.

In Minnesota, I do not believe we could justify a continuing task force. They would be in 1 month, they would be gone the next.

Senator BIBLE. Thank you.

You described the Freeman case, and in describing that case, the knowledge that the fences have of the value limits of Federal jurisdiction in interstate shipment of stolen goods.

Do you think that there is need for a revision of the Federal criminal statutes to change those value limits?

Mr. RENNER. I think that is a simplistic approach. I really do not think that is going to help. As I mentioned, I really think what you would be doing here, you would just be overworking already-overworked U.S. attorneys.

Senator BIBLE. If you lowered the limit—

Mr. RENNER. If you dropped it—

Senator BIBLE [continuing]. It would really not help any?

Mr. RENNER. No.

Senator BIBLE. You testified to the problems encountered in identifying stolen goods. You suggested a need for compulsory serialization of property items.

Could you elaborate briefly on that?

What form would that take?

Mr. RENNER. The problem in any type of receipt of stolen goods case, one of the major problems is identification. An automobile requires licensing, therefore you can trace it. Even though they remove the VIN number, there is usually a way to trace it. There are efforts thieves make from time to time that are extraneous to this matter, to conceal identification. But if the problem—if an item is one of a fungible character, it is difficult, also, of course, if it is something that can be made more or less fungible.

I make mention of outboard motors and snowmobiles that are of great value in our area, resort, tourist-type operations being a substantial part of the economy. Even though these have serial numbers, serialization by itself will not help on an individual basis. However, when you take major fences or you take a cargo theft you are talking usually about new merchandise. Take the Freeman case. A brand-new suit stolen from warehouses from which all the labels had been removed. Maybe there is something to be said for compelling anyone selling a suit without that kind of identifying label to explain his ownership. Maybe a label should be inserted, as you have on mattresses, for instance. This is something that might be considered. It comes from the top of my head and, therefore, it might not be worth very much.

You take a shipment of soap, for instance. If they would have on those boxes of gross amounts, the date, the year, the month, the hour, and the name of the manufacturer, then they have something that could be identified. Of course, once the seal is broken and the individual cartons are distributed you have lost them. But there has to be a sense of practicality also. I realize that.

Senator BIBLE. Thank you very much, Mr. Renner. Your testimony is helpful.

We hope we can continue our search for the correct answers in this very troublesome field. It is nice of you to be here.

Our next witness is Richard R. Hellstern, first assistant to the U.S. attorney for the District of New Jersey.

Mr. Hellstern, we appreciate your coming to Washington and sharing your experiences with us today.

Mr. HELLSTERN. It is a real pleasure to be here before this committee today.

Senator BIBLE. Please proceed.

(The statement of Mr. Hellstern follows:)



Department of Justice

STATEMENT

OF

RICHARD R. HELLSTERN
1st ASSISTANT TO THE U.S. ATTORNEY FOR
THE DISTRICT OF NEW JERSEY

BEFORE

THE

SELECT COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

CONCERNING

CRIMINAL REDISTRIBUTION SYSTEMS (FENCING)

MAY 2, 1974

HIJACKING-FENCING OPERATION CASE HISTORY

U. S. Attorney's Office for the District of New Jersey

In terms of transportation the State of New Jersey occupies a rather unique position when compared with her sister states. New Jersey is first a corridor state, through which virtually all land traffic moving north and south to and from New York must pass. It is a crossroads state, sandwiched between New York and Pennsylvania, the Southeast and New England. It is a port state, sharing with New York the train yards, truck depots, port facilities, wharfs and piers which are under the jurisdiction of the Port of New York Authority, as well as hundreds of private depots and yards sprinkled liberally throughout the state. New Jersey is also heir to three problems common to metropolitan areas: dense population, miles of highway, and decaying cities ridden with crime. Taken as a whole, the Garden State provides a fertile ground for those who are desirous of earning a living by hijacking, pilfering, or fencing merchandise which passes through the state. In the past several years, the F.B.I. and the United States Attorney's Office have had the opportunity to deal with this hijacking, pilfering, and fencing in a variety of effective ways. A lot of knowledge of the inner workings of the criminal enterprise has been gained with the cracking of several major hijacking rings within the District.

One of these rings, perhaps the most active in recent years, is typical of the operation of the larger hijacking rings. Broken up into two "departments", the ring used a number of their group, led by one man, to do the actual hijackings, and one member who did no hijacking, to do the fencing. Thus, the business of the group was compartmentalized as to acquisition and distribution. Indeed, the distribution end was so organized that it acquired loads hijacked by others which it distributed through its own channels.

In the ordinary format the group would choose tractor-trailers at random, and the members of the gang would split up. Two members would usually accost the driver at gun point, one or two would follow behind in a car, and the rest would wait at the "drop" to unload the goods as they came in.

Some sixteen truckloads of cargo, worth over one-half million dollars in wholesale value were stolen by the gang in this manner, most of it at gun point, between May and July of 1971. The booty included over 500 cases of stainless steel flatware, a truckload of AM-FM radios, and over two hundred General Electric televisions, as well as stereo players, cash registers and 1,260 cases of beer.

The normal hijacking procedure was for three to five of the gang members to go out in a rented car in search of a tractor which appeared to be towing an expensive load. One member of the team would stop the truck to ask for a ride, or to advise the driver that his rear door was ajar, or the gunman merely would open the door and step into the truck. Almost invariably, the driver would be confronted with a pistol. He would be instructed by the gunman, or sometimes his partner who joined him, where to drive. He was told to keep his face forward and obey orders. Forcing the driver to turn over his wallet, the gunmen, once armed with the driver's money and identification, warned the driver that if he "talked", they now knew where he and his family lived, and they would come and "get" them.

After a time of directed driving through various streets, the driver would be forced to stop his vehicle and leave his truck. Handcuffs were then placed on the driver's wrists, his eyes were taped, and a blanket was thrown over his head. In eighty and ninety degree heat, during the months of May, June and July, each driver, including one sixty-two-year-old man, was thrown into the trunk of an ever-present red Ford and driven around for four to six hours in suffocating heat. One driver, a thirty-one-year-old man, was indeed suffocated, or strangled to death, during the course of being

kidnapped by the gang. All of the other drivers, fortunately, save for the one, were released unharmed from their mobile coffin. All stepped forward to volunteer all information and whatever description they had available.

Meanwhile, as the drivers were ferried around in the rear of the sedan in order to prevent them from reporting the theft, the hijackers were driving the stolen trailer back to the "drop" where the goods would be unloaded and temporarily stored. Only after the goods had reached the "drop" and the trailer disposed of, were the drivers released.

At the drop the goods were catalogued and inventoried under the supervision of the person in charge of distribution, that is, the gang's resident fence. After determining the number, quality, and type of goods hijacked, the gang's distributor would determine through sources the true value of the goods, and would then take samples to his various buyers in order to bargain for the best possible price. The typical buyer would normally have as a front a legitimate business in which he was apparently primarily engaged. The stolen beer, for instance, was sold to a tavern owner located in the heart of one of New Jersey's larger cities. Hijacked sweaters and coats were sold to the owner of a shop selling wearing apparel. Some of these buyers would in turn redistribute the stolen merchandise to other, smaller shops, or to "runners" who would

go store to store selling on the street.

The elements of the hijacking conspiracy began to piece together when agents of the F.B.I. interviewed tens of witnesses and related informant information into the pattern which was developing. From that juncture on, the F.B.I. worked closely with the United States Attorney's Office, which obtained a grand jury grant of immunity for the key witness in the case. Armed with the knowledge of an insider, the identities of the gang members as well as purchasers of the stolen merchandise were soon revealed. Based on this and other information, the grand jury returned indictments against the gang members and the various buyers. They and most of the buyers have been convicted and sentenced to substantial terms of imprisonment.

**STATEMENT OF RICHARD R. HELLSTERN, FIRST ASSISTANT TO
THE U.S. ATTORNEY FOR THE DISTRICT OF NEW JERSEY, U.S.
DEPARTMENT OF JUSTICE**

Mr. HELLSTERN. I had initially planned to get into three major areas of discussion this morning. My first was to discuss a few of the critical techniques that we have used in New Jersey which have resulted in the successful prosecution of major hijacking rings and fences in our jurisdiction. Secondly, I was going to discuss statutory problems which inhibit the successful prosecution of hijackers and fences, to contrast the success with some of the negative sides of prosecution in this area.

I understand the committee is going to have some questions that it will probably want to ask in the area of statutory modification. I am going to bypass that for purposes of the direct presentation and I can respond more precisely to the questions of the Chair.

Senator BIBLE. Very well. As you desire, your statement in full has been incorporated in the record.

Mr. HELLSTERN. The third area I had planned to discuss, and I will make some brief comments on, is the concept of industry self-help, what they are doing as contrasted with some of the views in New Jersey as to what they should do.

In the course of this morning's testimony, we have heard basically about the success that the use of wiretaps and the use of informant information brings to bear in the area of the development of cases against fences. These are critical elements in the development of the investigation. I would like to focus a little bit further along that path toward the successful prosecution of hijackers and fences—namely, what do you do when you suspect you have got a bundle of people that are involved in various levels of the episode, the various levels of the enterprise.

How do you get someone to come around to your side so you have the direct kind of evidence necessary to convict?

You can well know what is going on, but that is not going to put the people that have violated the law away for a while.

The two critical tools that we have used and used fairly successfully, are the concepts of plea bargaining and immunity. Both of these concepts are like spices. They should be used sparingly and in appropriate amounts—plea bargaining to be used in the small situation, immunity only to be used when the immunized party can deliver to the Government major information of the operation.

In the case of the *United States v. Picone et al.*, both the technique of plea bargaining and the technique of immunity paid massive dividends to us. We had 10 defendants in the *United States v. Picone*. Two of the defendants turned and became witnesses for the Government. There was a grant of immunity given to one defendant who was in a position to wrap up the entire ring and more. And there was an agreement with respect to a second defendant which let him plead guilty to two separate felony counts in lieu of the entire indictment, let the probation department know of his cooperation, and place him in protective custody. The protective custody feature is very important with respect to the immunity.

In many of these cases we are dealing with the roughest types of people imaginable. Threats on lives of witnesses, direct attempts made on lives of witnesses, and even in one of our cases a successful murder of one of our prospective witnesses. We are dealing with the basest of the base when we are dealing in this area. So protective custody becomes critical.

Picone illustrates what can be done with the techniques of plea bargaining and immunity. For a number of years in the New York metropolitan area newspapers indignantly ran stories of how goods hijacked by professional criminals were appearing on the shelves of local businesses. It seems now that a good deal of that indignation has subsided, and we think part of the reason for it has been the success that we have had on the hijacking and the fence fronts, stemming initially from the case of the *United States v. Picone*.

Senator BIBLE. What was the date of that case?

Mr. HELLSTERN. 1971.

Senator BIBLE. That led to a successful conviction?

Mr. HELLSTERN. In that case, the fact that we were able to turn two of the defendants in that case not only resulted in the eight other defendants in the *Picone* case short a trial—

Senator BIBLE. They took pleas?

Mr. HELLSTERN. They took pleas. The evidence that we were able to amass—

Senator BIBLE. What type of sentence did they receive?

Mr. HELLSTERN. They received substantial sentences ranging from 3 to 8 years, depending on the degree of the culpability.

Senator BIBLE. What type of ring was it?

Mr. HELLSTERN. It was a combination. It was really the whole package. It was a group that initially set up the target for the hijack, the group that executed on the target—

Senator BIBLE. What did they hijack, what kind of goods?

Mr. HELLSTERN. There were some 16 truckloads of cargo that were hijacked, 16 separate events comprised this whole *Picone* episode. The truckloads of cargo were worth over \$1½ million in wholesale value. They were stolen by the gun in a 20th century Jesse James kind of manner, which is somewhat bizarre. It seems unreal, but it was the real world with respect to this whole situation.

They chose tractor-trailers at random. Members of the gang would split up. Two members would usually accost the driver at gunpoint. One or two would follow behind in a car, and the other would wait at the "drop" to unload the goods as they came in.

As I indicated, most of this was done at gunpoint between May and July 1971. It included over 500 cases of stainless steel flatware, a truckload of AM-FM radios, over 200 General Electric televisions, as well as stereo tape players, and a variety of other merchandise.

The normal hijacking procedure was for three to five of the gang members to go out in a rented car in search of the trucks which appeared to be towing an expensive load. In Jesse James style, one member of the team would stop the truck to ask for a ride or would advise the driver that his door was ajar, or use some other ploy to get into the truck. From there, it was all in the hands of the hijacker.

The driver was told to keep his face forward and obey orders and drive around for a while and get into different neighborhoods. After a time in each of these instances, the driver would be directed through various streets and would be forced to stop his vehicle and leave the truck. Handcuffs were placed on the driver's wrists, his eyes were taped, a blanket was thrown over his head in 80 or 90 degree heat during the months of May, June, and July of 1971.

Each driver, including one 62-year-old man, was thrown into the trunk of the ever-present red Ford vehicle and driven around for 5 to 6 hours in suffocating heat. One driver, a 30-year-old gentleman by the name of Charles Young was, indeed, suffocated and strangled to death during the course of this whole episode.

Senator BIBLE. Did you charge in that particular case—was that a murder charge?

Mr. HELLSTERN. We had a charge that was equally successful in terms of its impact, namely, kidnapping. It was a situation where you had a kidnapping involvement within the hijacking fence operation.

Senator BIBLE. That carried a real stiff penalty?

Mr. HELLSTERN. It carries an exceptionally stiff penalty.

Senator BIBLE. I am curious, now, just to complete your scenario—it is a very interesting story—did you handle this case yourself?

Mr. HELLSTERN. I did not handle this case myself.

Senator BIBLE. It was handled by the U.S. attorney in this particular district?

Mr. HELLSTERN. That is correct.

Senator BIBLE. How did they dispose of these truckloads of cargo which they hijacked?

How about the "drops"? Tell me about that.

Mr. HELLSTERN. If I can, Mr. Chairman, I have something that the staff put together which may graphically demonstrate this to you. Only the eye sometimes can appreciate the nature of a mass conspiracy and effort such as this.

This diagram is really broken up into three parts. The basic hijacking conspiracy with the 16 truckloads comprises the first portion on your immediate left, Mr. Chairman. These 16 items [Indicating] represent the 16 hijackings that I have described. The lines up from them indicate the nature of their "drop" points and how the merchandise flowed out in varying directions from the hijack. At that point, the chart also demonstrates how merchandise flowed to various fences at different locations up into these areas here [Indicating].

Senator BIBLE. What does that say?

Does that give us the name of the fence?

Mr. HELLSTERN. That is correct.

Senator BIBLE. And the location of the fence?

Are these all in the New Jersey area?

Mr. HELLSTERN. All in the New Jersey area, that is correct.

From this point over, Mr. Chairman [Indicating], the remaining portion of the diagram reflects cases not directly involved in this episode but involving many of the same people that are in this

episode that were made by the two defendants in the Picone episode that our office managed to turn.

Senator BIBLE. Other hijackings?

Mr. HELLSTERN. Other hijackings.

Senator BIBLE. In which they were involved?

Mr. HELLSTERN. That is correct.

We have, aside from the Picone convictions, completely eliminated the second major hijacking group in the State of New Jersey, which is the Ruth and de Benedictus ring. As a matter of fact, the last member of that crew was just convicted the day before yesterday, and I understand this morning that another trial we had going on in one of these ancillary matters went to the jury yesterday; we had a successful conviction there. The two major hijacking groups have now been eliminated, and four major fencing operations that dealt with these major hijacking groups have been eliminated as well.

For a couple of years now in New Jersey, we have not had major hijacking problems. Rather, our problems have become problems of pilferage from the docks and the piers and the like.

Senator BIBLE. You have had that problem for a long time.

Mr. HELLSTERN. That is correct.

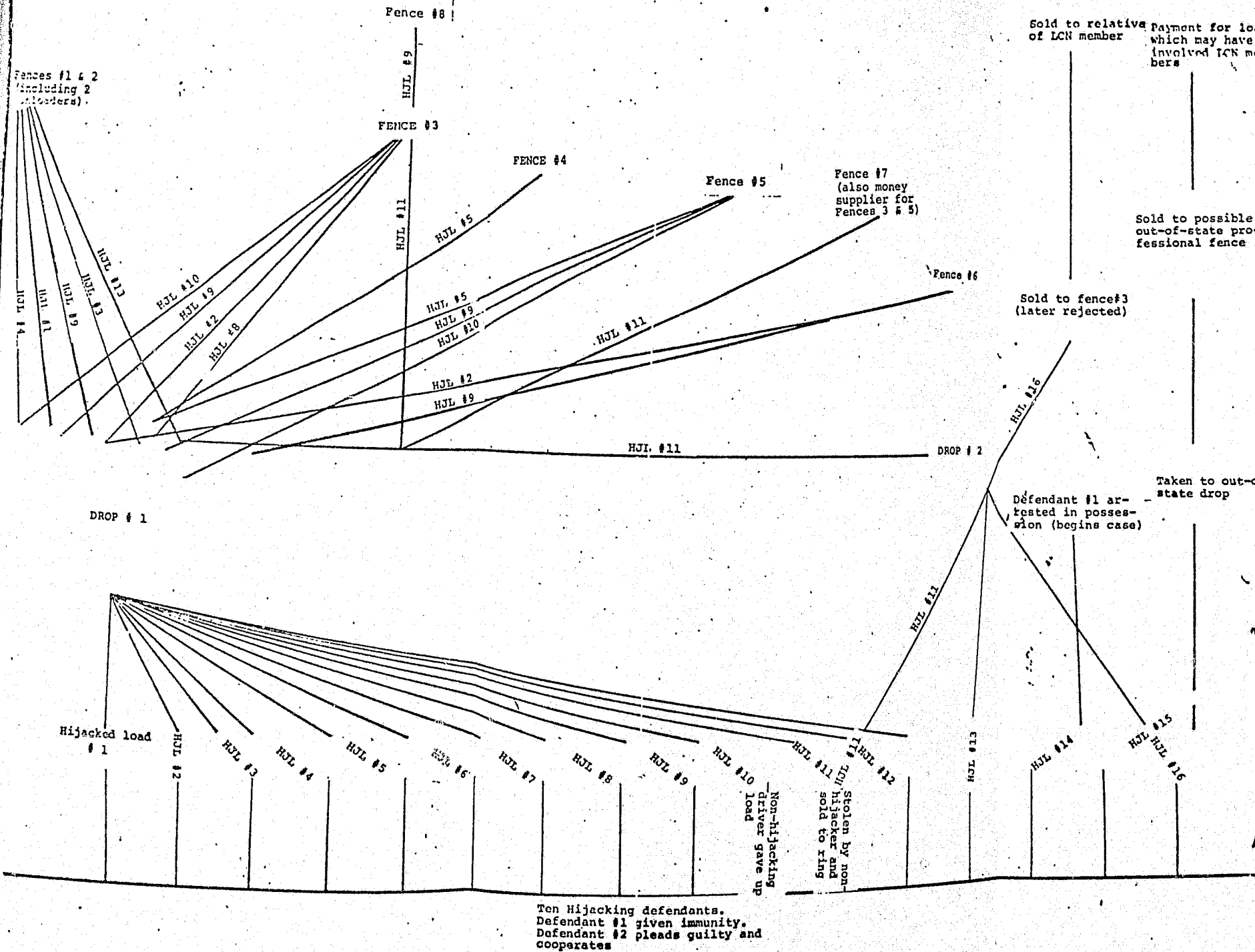
Senator BIBLE. We went into that in a hearing up in New York City some years ago.

Mr. HELLSTERN. Whether this situation will stare us in the face again in the near or immediate future, I do not know, but, at least for the moment, anyway, major hijackings in the New Jersey area are pretty quiescent.

Senator BIBLE. I want to congratulate you and all of those associated with you who had the responsibility for apparently a job very well done.

Mr. HELLSTERN. Thank you, Mr. Chairman.

[See facing page.]



Sold to relative of LCN member

Payment for load which may have involved LCN members

Sold to possible out-of-state professional fence

Sold to fence #3 (later rejected)

Taken to out-of-state drop

Defendant #1 arrested in possession (begins case)

After sitting down with LCN figure, payment for load.

Fences refused to pay. Ring leader goes to see LCN figure

Some goods had been taken to Drop #1

Sold to out-of-state fences

Recovered by local police

Agreement as to fences, payment, and kickback to LCN figure

Sit down with hijack leader, fences, and LCN connected figures.

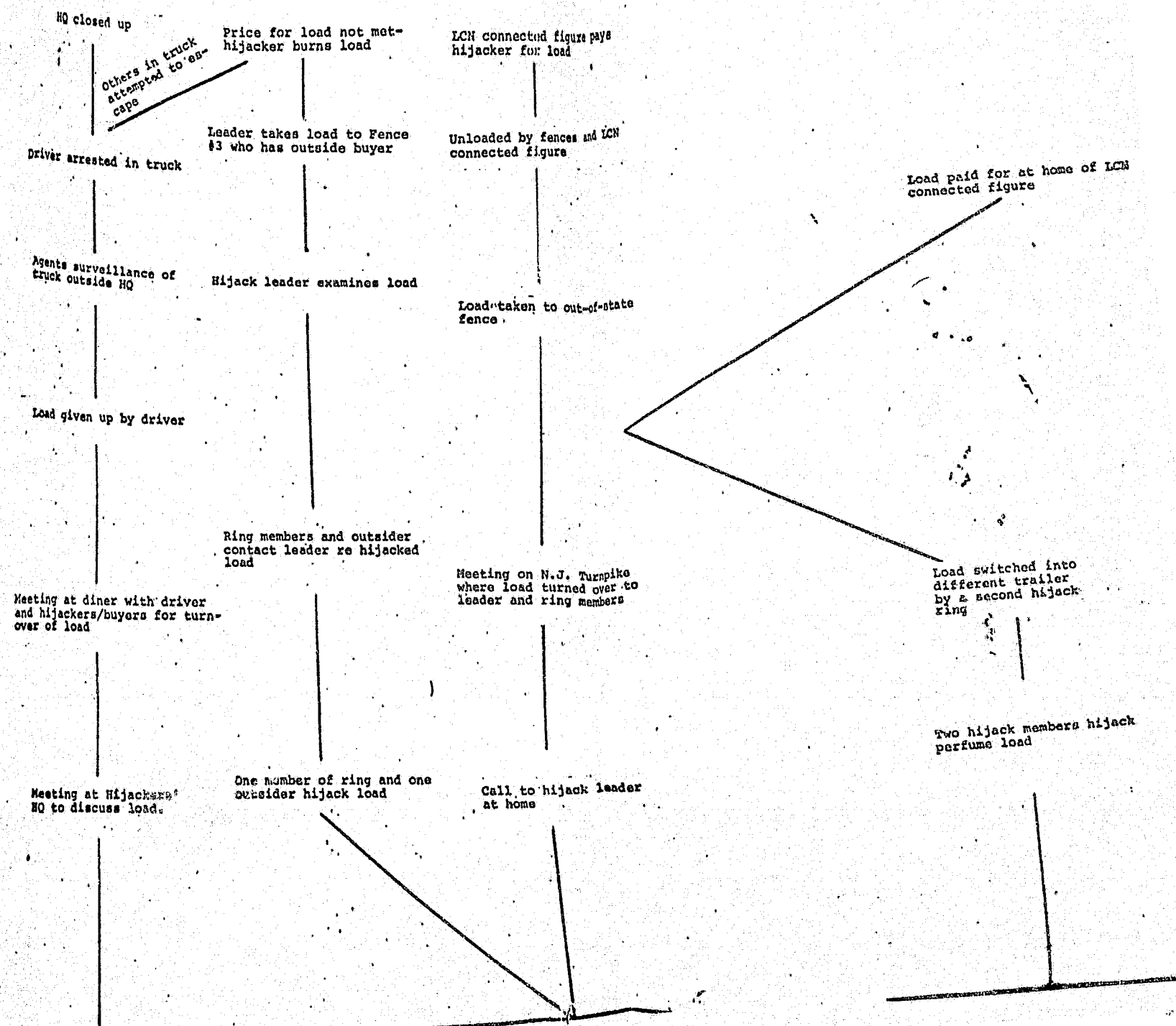
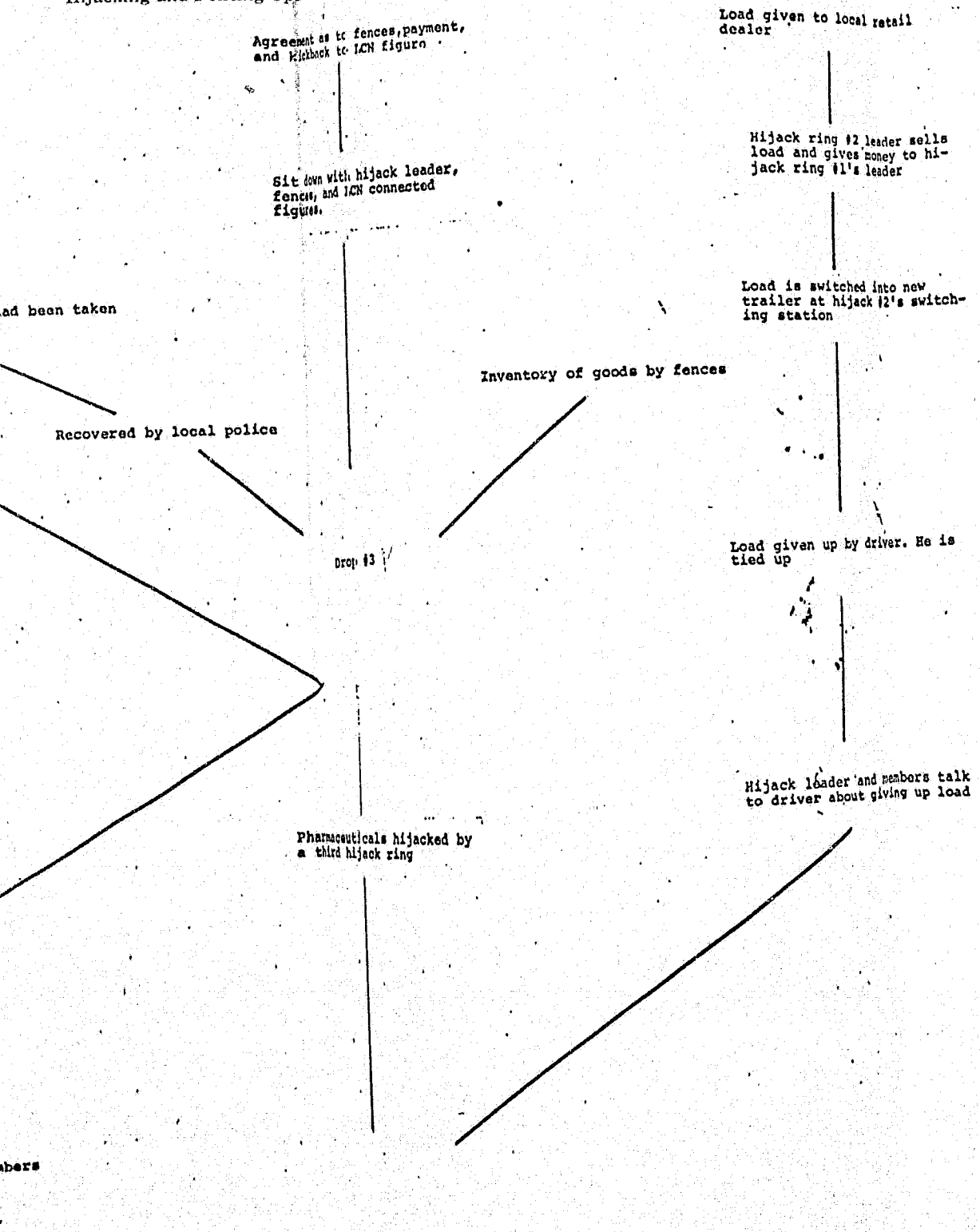
Drop #3

Pharmaceuticals hijacked by a third hijack ring

Load hijacked by three members of the ring

Inven

Hijacking and Fencing Operations, District of New Jersey, 1971-74



Senator BIBLE: You may proceed.

Mr. HELLSTERN. Just to sum up this whole Picone episode and the aftermath of it, the two witnesses that were turned broke the initial Picone case. They have been witnesses for our office in the past 2 years. They were the same witnesses that testified in the case that went to the jury yesterday that resulted in another guilty verdict. They are going to be testifying in a case set for trial next week. And they have, in effect, to date managed to give us the Picone ring, the de Benedictus ring, and four sets of fences. I think that is value received for one plea bargain and one substantial immunity.

Senator BIBLE. It looks like you have earned your salary for whatever years you have been appointed assistant U.S. attorney.

How many years have you been in that capacity with the district of New Jersey?

Mr. HELLSTERN. I have been associated with the U.S. attorney's office generally for the past 5 years. I am a native of New Jersey, but I have only been physically in that office for the past 10 months.

Senator BIBLE. Very well.

Two questions: to what extent is the random selection of truck targets that you have described the norm?

Mr. HELLSTERN. The norm is not random selection of truck targets. The norm is a very precise selection of theft targets and a very precise casing of the movement of the goods for purposes of setting up the hijack.

I think that the Gimelstob case in New Jersey that dealt with silver ingots is a classic case of a particular target being selected. I also think that our experience with the nature of the hijacking is how well-planned they are. It reflects that these targets do not come about in a haphazard way but are quite precisely selected, not randomly selected.

Senator BIBLE. Very well.

Have you discovered in the course of your cargo theft and hijacking investigations in New Jersey any evidence of local or State police or court or other criminal justice agency protection of the fences?

Are the fences protected?

Do you have any observations on that?

Mr. HELLSTERN. As you are probably aware, Mr. Chairman, we have been very active in both public and corporate corruption in the criminal area in the office as well as the area of hijacking and other areas of like manner. We would have anticipated that a substantial amount of protective coverage on the part of police agencies, either State or local, would be given to fences. But in the course of our investigation, very little if any of that has been uncovered, and we have not seen that as a major problem in New Jersey. It has been somewhat a surprise to us. I cannot respond in the affirmative to that question in our experience.

Senator BIBLE. Very well.

Are fences used by such agencies, and by your office, as a source of intelligence about the activities of burglars and others?

Mr. HELLSTERN. Yes. In fact, this is the whole basis, really, of the Federal and State cooperation. Deputy Attorney General Maroney indicated that piecing together of puzzles by communication and

pieces of information is probably the most effective thing that State and local government working with Federal Government can accomplish in this area.

Fences who are useful to us are also useful to State and local governments in investigations that they have under way, and vice versa. So I think my answer to your question would be a very positive and emphatic yes. They are a source of intelligence.

Senator BIBLE. How effective are State and local law enforcement agencies in combating fencing?

We have just heard from the U.S. attorney from Minnesota. He felt, I think, if I understood the testimony correctly, that the local law enforcement agencies were probably hampered because of, maybe, a lack of funds or a lack of personnel, a lack of expertise, maybe too much work and too few people to do it.

Mr. HELLSTERN. I think if State and local government in the State of Minnesota has a problem in that respect, it is even worse in the State of New Jersey because of the nature of the hijacking and fencing activities. New Jersey is a corridor jurisdiction between New York City and Philadelphia. We have very little intrastate fencing, hijacking activities. It is mostly from interstate or foreign commerce, a good deal of it from foreign commerce. Consequently, State and local officials with jurisdictional problems in this area, as well as with manpower problems, cannot effectively come to grips with the problem.

I underscore what U.S. Attorney Renner reflected as his experience in Minnesota. That is definitely the case.

Senator BIBLE. What, then, in your judgment, is the Federal role in dealing with fencing operations?

Mr. HELLSTERN. Speaking just for the district of New Jersey, we are taking a very positive approach towards it. When it is there to be had, we have vigorously investigated it and moved the cases into court. We do not view our role in New Jersey as a supplement to the role of state and local government. To this extent we may be an exception to a general departmental policy.

Given the unique nature of the jurisdiction in which we function, we think it is a reasonable exception and that it is virtually impossible for State and local government to come to grips with the problem. So we just occupy the void and move about our business as best we can.

Senator BIBLE. Let me ask you this, the same question that I asked U.S. Attorney Renner. That is, do you believe that the responsibility for investigating and prosecuting fences on a Federal level should be in the U.S. attorney's office, your office alone, or in strike forces, or in both?

Mr. HELLSTERN. I think I would agree entirely with U.S. Attorney Renner. I believe that it belongs in the U.S. attorney's office, and I do not believe that it should even be a shared responsibility.

Senator BIBLE. You are perfectly capable of handling it just within your own shop, so to speak, provided that you have enough people in your shop to meet the demand?

Mr. HELLSTERN. We are rather a proud office. We tend to feel that we are more than capable and probably better able.

Senator BIBLE. Do you have enough U.S. attorneys and assistant U.S. attorneys in your shop?

Mr. HELLSTERN. The Department has been exceptionally lavish with our district. We have more than tripled our size in the last 3½ or 4 years. We are now the fifth largest of the 94 U.S. attorneys' offices. We have 56 assistant U.S. attorneys. They work; we get a lot of mileage out of them. We can handle whatever comes down the pike.

Senator BIBLE. I am happy to hear you say that. I know in my role on the Appropriations Committee, among other roles that I have in the U.S. Senate, we have always tried to be responsive in that area and furnish an adequate number of U.S. attorneys and their assistants and deputies, as well as investigative personnel, with adequate funding. And we have also beefed up the salaries for assistant U.S. attorneys and U.S. attorneys to make it more and more attractive as a career.

I look on the role of the prosecuting officers and U.S. attorneys and all the way down through the complete law enforcement spectrum as professional jobs. They are not political jobs; they are professional jobs. And I think that more and more we get to the professionals, the professional officer—that is true with many, many areas of government—the better off we are, the better terms we get. I am happy to hear what you are saying.

Do you have any suggested changes to make insofar as where we can help you on the Federal level?

The only place we can actually help you, as I see it, is to keep the spotlight and attention on the fencing problem which has been neglected for many, many years. I do not think I understood what it was all about myself when I undertook this job of getting into cargo thefts and hijackings and theft from railroads, trucks, the whole spectrum. I do not think I completely understood the nefarious activities of fences. I think one place that we can help is to keep a spotlight on fencing and fencing activities.

Are there changes that can be made in the Federal statutes which would be helpful to you in the area of prosecuting, investigating and prosecuting?

Mr. HELLSTERN. I think S. 1400, which has been discussed this morning, would give prosecutors a much improved tool in bringing fences and hijackers generally to justice. In a number of areas—I will not go into any great detail—I think that S. 1400 improves on section 659 of title 18 as it is presently structured. I think that is the major section that you look to in this area.

With respect to, number one, how you prove the requirement of guilty knowledge, there is a vast improvement there in S. 1400. No. 2, the elimination of the necessity of proving a certain enumerated place where the goods were stolen—they talk about wharfs, depots, and everything like that; it becomes more generic in S. 1400. That would be a vast improvement.

In fact, we had one case in which we alleged that there had been hijacking from a wharf to put it into 659. It so happened that it had happened a couple of blocks from the wharf. Although the issue was

never raised by defense counsel, we probably had a defective indictment; we probably would have had a prosecution that might have gone down the drain because of a defective statute. S. 1400 would solve that kind of problem.

There are a wide variety of other things. The area of attempts, more flexibility in the misdemeanor area so that we can plea bargain a bit more effectively.

Senator BIBLE. I hope that can be moved forward. I think, as the Assistant Attorney General of the United States said earlier in his testimony, that is a little too much to hope for this year. We will probably get a good grasp of it this year and try to move forward next.

Mr. HELLSTERN. The key change that I think is in S. 1400, at least in my experience, is the issue of how you prove the documentation. How do you trace through stolen goods.

Senator BIBLE. Identification and serialization of goods?

Mr. HELLSTERN. That is right. What S. 1400 does is it provides that a waybill would be considered prima facie evidence of what was in the shipment. That does not go to the very real problems discussed by U.S. Attorney Renner but goes to the simplification of the element of proof that is critical in this area.

Senator BIBLE. I thank each of you. All of you have made very helpful contributions to this committee today.

We will plow forward in this area and continue to be as much help as we can. I think that we hope to be able to hear from Mr. Santerelli in the near future, because he is the Administrator of the Law Enforcement Assistance Administration, and he has been extremely helpful to the Congress of the United States.

I think we also want to ascertain if the LEAA which was designed to help Federal and State and local law enforcement officials can tell us something of their experience, knowledge and ability to be of more help in this fencing problem. We found in meeting with the Miami people that the LEAA had been extremely helpful. They had a program there which for the first time in this Miami area gave the law enforcement people, the mayor and the prosecutors some tools to work with in combating the fencing problems.

From what I have heard in my several years in grappling with this problem, it is something many criminal justice agencies would rather put on the back burner because it is so difficult to prove a case, even if you locate a fence. It is so difficult to bring a fencing case to court and to establish it and get a conviction. Instead, agencies put fences on the back burner and try to catch the thief because that is an easier thing to do. I think that is one of the problems.

I appreciate your contributions today.

We will stand in recess subject to the call of the Chair.

[Whereupon, at 11:55 a.m., the committee was adjourned, subject to the call of the Chair.]

APPENDIX

ADDRESS BY SENATOR ALAN BIBLE (D-NEV), CHAIRMAN,
U. S. SENATE SMALL BUSINESS COMMITTEE, BEFORE
UNITED STATES ATTORNEYS' CARGO SECURITY WORKING GROUP CONFERENCE,
AT GREAT HALL, DEPARTMENT OF JUSTICE, WASHINGTON, D. C.
AUGUST 7, 1974

MR. ATTORNEY GENERAL, CONFERENCE PARTICIPANTS AND YOUR GUESTS: If you will indulge me in a personal privilege, Mr. Attorney General, may I say to you that as a former Attorney General of my home state, it is a particular pleasure for me to be here today with you as a former Attorney General of your own State of Ohio and as a former distinguished and esteemed Senate colleague for several years. And Mr. Attorney General, I would risk the comparison that at times while you were a U. S. Senator and again in your present capacity, you might look longingly back at your years as Attorney General of your home state and possibly wish you were back at those less complicated and demanding duties.

But legalistically speaking, I will not ask you that question on direct examination for what could be an admission against interest. But speaking only for myself, I can say that I do look back and gain some pleasure for those interesting years when problems seemed not quite so drastically demanding or confusingly complicated.

But I do feel comfortably at home before this prestigious group of United States Attorneys whose work deals with the major population centers of this great country. Therefore, this is an honor and a responsibility I do not take lightly. And speaking about the "drastic demands and confusing complexities" of the world about us today, it is our collective job to do our level best to

help smooth out the rough roads on which all of us travel today and thereby hopefully to make those roads smoother for others tomorrow. But so much for the nostalgias of the past, present and future.

Today's problem of the cargo thief--professional or amateur--is at the root of the biggest multi-billion dollar racket nationally we have - the theft, pilferage, hijacking, unexplained loss and criminal redistribution of truck, air, rail and ship cargo.

It was our Committee's role in 1969 to focus the first national attention on this broad problem. Since that time, with help from Federal governmental agencies, including the Departments of Justice and Transportation and the transportation regulatory bodies, and from carriers, shippers, law enforcement agencies and others, an effort has been made to persuade all involved parties to pursue more aggressively improved security and other anti-crime efforts in the public transport field.

Congressional impetus has taken varied approaches, including (1) Legislation calling attention to problems and thereby providing a motivator for executive departments and transportation regulatory agencies to focus on more obvious areas, (2) Formal recommendations of our Committee and others on air, maritime, truck and rail carriers growing out of hearings and investigations, and (3) Direct "jawboning" appeals to carriers, shippers, executive and regulatory agencies and governors.

Certainly, in the public transport industry, hijackings have received the headlines, but the bulk of losses--80 to 85 percent--have been the pilferage and theft of one to several cartons each time from a dock and repeated thousands of times every year. Several years

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ago our Committee was chastised in some quarters for its estimate of \$1½ billion as the annual theft-loss estimate of stolen cargoes. But a subsequent in-depth survey by the Transportation Department corroborated that figure. Theft may, in fact, be a major share of the \$2.8 billion the Insurance Information Institute estimates were the 1972 losses from all causes for all transport modes. That 4.5 percent total of the entire industry's revenue is a high price for merchandise loss for whatever the reason.

And just remember that today's cargo thief grabs ten times more dollars by robbing a truck than by robbing a bank. A full truckload theft averages \$47,000. The ordinary bank robber gets \$4,500 per theft.

Cargo thievery has taken on major proportions that infect many legitimate business operations. We believe it serves as a major source for stolen goods fed into the criminal redistribution or fencing system which in turn must be a prime element for the billions of dollars worth of property stolen each year in this country -- \$16 billion being the per year cost of property thievery, according to a Commerce Department survey.

We believe the nature of the cargo theft problem is of such magnitude that the Congress wants and expects the transportation industry and law enforcement agencies at all levels of government --Federal, state, and local--to put forth concerted efforts to bring

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it under acceptable control.

Mr. Attorney General, your Department of Justice and your United States Attorneys across this land are to be commended for your initiative in establishing your Cargo Security Working Groups with which the Department of Transportation has assisted. These groups should provide a forum for discussion and affirmative and effective action with law enforcement and business representatives' participation. Your groups should perform important functions of monitoring the processing of cargo theft cases on an individual basis. Details of thievery and their patterns should help greatly so that known lapses of security and accountability can be improved.

Certainly, you United States Attorneys, your local counterparts and representatives of the Federal Bureau of Investigation and other Federal and local investigative agencies, plus transportation industry representatives, should encourage industry to develop cargo identification procedures to facilitate the recovery of stolen goods and the prosecution of those responsible. I understand your Chicago group has already embarked on such a project.

One fact is crystal clear. Law enforcement personnel working alone cannot get the job done alone. It takes industry help and affirmative aid from other associated governmental organizations. Thieves ordinarily cannot profitably operate without fences

and the goal is to make it impossible for the fence and the thief to persist.

We were deeply impressed by the testimony of several United States Attorneys at our Committee's continuing fencing hearings early this year and the work they are doing in New Jersey, Minnesota and Missouri. In my judgment, each United States Attorney must personally take the initiative to encourage local transportation industry top management and local law enforcement counterparts to participate fully in this endeavor.

And whether we like it or not, statistics show that approximately 85 percent of cargo thievery is attributable to employees or authorized personnel. Therefore, appropriate steps to encourage organized labor's full participation in these working groups are important. In short, U. S. Attorneys working with your industry co-chairmen must constantly oversee and support the efforts of those working groups to make this activity a success.

As I indicated previously, you may not think you have a cargo theft problem in your District because reported cargo theft statistics do not support that conclusion. May I suggest that reported shortages rather than reported thefts are probably a better barometer.

Theft-related shortages cannot be brought under control until industry establishes improved security measures and accountability procedures. Only when industry is encouraged to take these preventive measures will law enforcement people have the hard information necessary to know the how, when and where of such theft-related shortages and the identity of those responsible.

The fact that there is a serious, hidden, middle criminal level supporting this massive amount of thievery seems apparent. Those goods are moving through a criminally-directed, marketing distribution system to the detriment of carriers, legitimate businessmen all along the commerce chain, and to consumers paying crime-inflated prices.

Presently, the House Judiciary Committee has before it my Senate-passed fencing bill, to provide that transport carriers, shippers, or those lawfully in possession of goods moving in interstate or foreign commerce, could, by a civil action, recover treble damages from any person who buys, receives or has them in his possession after they have been stolen, having knowledge--actual or constructive--of their stolen character.

Very recently the Justice Department announced its support of this legislation and suggested some helpful technical amendments.

Basically, the bill would (1) Permit persons in legal possession of goods, such as truck, air, rail and maritime carriers, to sue for treble damages those persons responsible for stealing, buying or selling goods in interstate commerce, (2) Provide that if goods are sold at less than fair market value, such is prima facie evidence that an involved party is trafficking in stolen goods, (3) Permit the U. S. Attorney General to enter a private suit on a class action, (4) Permit Federal district courts to issue injunctions to force persons engaged in selling stolen goods to divest themselves of business fronts and effects used in the illicit sales.

Certainly, if a fence does not have a customer, he will not hire a thief to steal cargo.

FBI statistics show an increase of 434.5 percent from 1960 to 1971 in arrests of those buying, receiving, and/or possessing stolen property, moving upward from 9,494 arrests in 1960 to 57,747 arrests in 1971. Fencing has become more than just a follow-up to theft. It has become a main ingredient of the criminal process.

In another legislative area, earlier this year we introduced a comprehensive cargo security bill whose primary purpose is to improve the safety and security of cargo by providing authority

for Federal transportation regulatory agencies to establish minimum security performance standards for public carriers engaged in interstate and international commerce. Security would be added as a major component to transportation regulatory agency responsibilities, such as embargo, route and operational authority, commodity categorization and rate-making.

These general performance standards would be monitored by loss reporting systems established by the regulatory agencies comparable to those now in effect for most carriers. Should a carrier not achieve a performance standard, it could face sanctions such as a fine or possible suspension or loss of operating rights. Exceptions for losses beyond a carrier's control are provided.

We believe that security is an important aspect of the safe and secure movement of a commodity provided for in an ordinary operating certificate.

And in conclusion, may I urge upon you United States Attorneys to do more than just your strict traditional job as the senior Federal prosecutors within your districts. Speaking as a former prosecutor myself and one who is finishing 20 years in the U. S. Senate as a lawmaker, to succeed in your program which brings you here today, you must perform the broader leadership role that

this nation has always looked to and expected members of the law profession to provide in the conduct of community affairs. And this is particularly true for those in public office such as yourselves. This is your challenge and I know you will not be found wanting.....

And finally, let me remind you that we have put 35 million laws on the books during the last 2,000 years, trying to enforce the Ten Commandments, the Eighth one reading, "Thou Shalt Not Steal." KEEP TRYING!

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ADDRESS

BY

THE HONORABLE WILLIAM B. SAXBE
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

CARGO SECURITY CONFERENCE

10:00 A.M.

WEDNESDAY, AUGUST 7, 1974

GREAT HALL, DEPARTMENT OF JUSTICE

WASHINGTON, D.C.

737

I am very pleased to welcome you here this morning for what I am certain will be a productive conference on our joint efforts to reduce cargo thefts.

Most law enforcement work requires a high level of cooperation among different agencies. And this is particularly true of this new program to reduce cargo losses in 15 major metropolitan areas.

We are especially fortunate to be able to draw on the knowledge and experience of the transportation industry in this attack on a continually-expanding criminal element.

Only a few years ago, it might have been impossible to establish the special cargo-security teams whose creation was announced in April. But the broad representation at this meeting shows that new bonds can be forged among local, state, and Federal agencies and the private sector.

The success of the program may not be as easily achieved. But I should note that it was not long ago that government and industry joined together to reduce aircraft hijackings--and notable progress has been fashioned. If we are just half as successful as we were in reducing aircraft hijackings, we will have scored a notable achievement.

At the outset, I want to emphasize that we should thank those members of Congress who alerted the nation to the cargo theft problem. Congressional hearings in 1971 detailed both its broad dimensions and showed that in 1970 alone the losses were estimated at \$1.5 billion.

Two years ago, a cargo theft handbook published by the Department of Justice and Transportation estimated that annual losses may have risen to \$2 billion a year.

The magnitude of just this one category of crime facing the nation is staggering. It takes on even more significance when we consider that the estimated loss represents more than twice the funding available under the Federal government's grant-in-aid program to states and localities for all types of crime control.

It is apparent that new and better ways to alleviate cargo theft must be found. We owe it to the public to reduce and finally eliminate this type of criminal activity.

The cargo-security teams for the 15 metropolitan areas represent a badly-needed first step. If successful, this program will not only reduce thefts in the initial target areas, but will also provide a blueprint for similar efforts in scores of other cities.

The program has been fashioned in substantial measure from the experience of pilot programs in Chicago and Philadelphia.

One of the keys to what I think is a successful venture is the cooperative approach perhaps never before tried on this scale.

Within the Federal government, the Department of Justice and Transportation--as well as a number of other agencies--are working together closely. We also expect to have close coordination with Congressional committees.

The creation of the cargo-security teams is being supervised by the United States

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Attorneys in the 15 areas. They are in turn working to bring into the teams a wide variety of state and local officials. In organizational meetings held so far, representatives have included police executives, sheriffs, mayors, and prosecutors.

But we are going one step further--as I mentioned earlier--and it is a very important step. The transportation industry will be participating--and we also hope to enlist the support of organized labor.

The success or failure of the program will pivot on the contribution made by the private sector.

To date, the enthusiasm of the transportation industry has been gratifying. We hope it will grow even more as the concepts of the cargo-security teams are refined at today's meeting.

Many persons and organizations have asked over the years what they can do to help reduce crime.

The cargo security program is a perfect example of what one important segment of society--the business community--can do that will have a very real impact.

No matter how effective policemen and prosecutors may be, no lasting inroads on cargo thefts can be made without a substantial commitment by industry. The country has learned some painful lessons that law enforcement agencies cannot always reduce crime by themselves. It is the job of every citizen and every organization to also make their responsible contributions to the common good.

Public reaction to the cargo theft problem has been somewhat disappointing. This may be partly the fault of the government itself for not moving faster in this area and for not carrying out campaigns to educate the public.

I hope one result of our new efforts will be to help alert the public to the costs extracted from them by cargo thefts. A sense of responsible citizen outrage would be very helpful.

At a time when we are all conscious of growing costs for virtually everything, we should be aware that cargo thefts of the present magnitude help to fuel inflation.

Though it is difficult to pinpoint, the consumer is forced to pay in one way or another for virtually everything that is stolen from the transportation industry.

Only law enforcement and the industry have been greatly concerned up to this point. I hope it may be possible to also enlist public support--particularly through the work of consumer organizations.

A little prevention is always worth a lot of cure. This is particularly true of cargo thefts, and a number of steps must be taken to prevent them from occurring in the first place.

The details of the prevention efforts will have to be worked out by the cargo-security teams themselves. We hope they will provide the nucleus for broad reforms and improvements

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that will then be put into effect by the transportation industry nationally.

In some instances, more security personnel may be needed. In other cases, more effective use of existing manpower may be of great assistance. Many strides also must be made in efforts to make cargo more secure through improvement of physical security arrangements. And finally, there appears to be a great need to enhance record-keeping on cargo in transit or at terminals.

The latter need was pointed out recently by a Criminal Division prosecution of the theft of a truckload of soap. The manufacturer had promised to provide all details relating to shipment. But a few days before the trial it turned out that the prosecutor received only a statement showing which factory had made the soap and no other records were available. As a result, the case could not be brought to trial.

Thefts involve an unbelievable variety of goods. They include stocks, bonds, jewelry, ingots, furs, appliances, bags of registered mail, foodstuffs, and large consignments of drugs and medicines. In one case reported in our handbook, 530 television sets simply vanished from a dock.

Accurate record-keeping will prevent some cargo thefts. And where prevention fails, it will lead to earlier notification to law enforcement and assist in subsequent prosecutions.

Today's conference seeks to develop specific steps that can be taken to guard against cargo theft--and also to improve the basic structure of the cargo-security teams.

But it seems to me that we must look at some of the initial difficulties encountered in launching this operation if this program is to succeed.

I want to first impress upon Department of Justice personnel that I place a high priority on cargo theft reduction. The U.S. Attorneys in the 15 cities must play an active role in coordination, and I cannot emphasize too strongly how much depends on their efforts. They must also be alert to all possible Federal prosecutions while referring those cases over which they do not have jurisdiction to the proper state and local authorities.

I am well aware that the U.S. Attorneys are constantly confronted with many important matters which require their urgent attention. While the cargo security program is extremely important, I feel it is not really an added duty--but actually one that falls into the mainstream of their basic responsibilities.

It may be that some U.S. Attorneys are not convinced that cargo theft is really a serious problem in their cities. Let me assure everyone that the problem is very real. It may not always be apparent from statistical reports, for cargo thefts often are reported merely as cargo shortages. But the thefts are there, and it's time they were documented through more accurate reporting programs by industry.

Within the Department of Justice, the Criminal Division and the FBI also have important roles to play. And special responsibilities fall upon the U.S. Marshals Service, which will evaluate cargo theft reports in each city.

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At this point, I want to again place special emphasis on the gathering and reporting of statistical material. You will hear a great deal more on this subject later today but I want to stress a few key areas of concern.

The Department of Transportation has developed an excellent form on reporting cargo losses that will be utilized by the Marshals in their comprehensive analysis efforts.

However, it is up to every partner in this team effort to ensure an excellent flow of information.

The U. S. Attorneys must oversee this effort and make certain the information is both timely and thorough. In addition, the U. S. Attorneys must take every possible step to assure that the cargo security teams have up-to-the-minute information on the status and disposition of all reported thefts. For their part, transportation industry representatives have a crucial role to play in making certain that the data flows in an unending stream.

Unless each team has a vast reservoir of facts, our efforts are really doomed to failure before they begin. The importance of sound data is a very apparent from the experience of the pilot programs in Chicago and Philadelphia.

It is too early for prosecutions to have begun in those initial areas. But the action plans distributed earlier to U.S. Attorneys reflect the lessons learned there, and we obtained early proof that the security-team concept was valid.

The teams in those two cities found that sound data was absolutely essential if dynamic programs were to be developed.

The Chicago team already has done a substantial amount of work on ways to computerize a variety of data relating to cargo thefts. If successful, this information would become part of an existing criminal justice information system and would be available to the cargo-security team in a matter of seconds.

It also became apparent in the pilot projects that a broad-based effort is vital to success.

In addition, it is essential in all of the 15 areas that each component of this effort becomes a fullfledged partner.

Every new project has to undergo a shakedown cruise. So far, we have found that in at least one city not enough has been done to bring private industry into the team. In another city, the transportation industry itself seems to have shown reluctance.

Finally, difficulties have been encountered in developing organized labor participation in the program. It is essential for us to present a well-documented case to labor leaders at both the national and local levels to show them how essential their contributions would be. I am certain they would then participate with skill and energy.

It cannot be overemphasized how much reliance we are placing on the role of business and labor in this new program. We look upon them as full partners--and expect them to have major leadership responsibilities. Part of the duties for their representatives will include

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keeping the local industry and union groups fully informed of the progress and problems of the cargo-security teams.

Though every crime problem is complicated, cargo thefts pose an unusual number of complexities.

For one thing, it is estimated that 85 percent of all cargo thefts take place during normal working hours by employees or other personnel with access to docks and terminals.

Tighter security measures are a must for many freight terminal areas--with special emphasis placed on allowing access only to those who need to be there.

It may also be possible for industry to set up more effective screening procedures when hiring new employees.

Organized crime also is involved in cargo thefts--ranging from hijackings through fencing operations.

The seriousness of organized crime's role in cargo thefts cannot be underestimated. It may be possible to bring other Department of Justice resources to bear on this particular aspect of the problem.

The Federal government is also prepared to assist in other ways. Funding for cargo theft programs may be available from the state criminal justice planning agencies which subgrant funds from the Law Enforcement Assistant Administration. Close liaison should be maintained with those agencies.

Cooperation also can be developed with the Federal-State-Local law enforcement committees now being developed throughout the nation to combat a number of urgent crime problems of common concern.

Some persons have said that cargo theft is so prevalent that many now look on it as a permanent fact of life--while others see it as a source of permanent income. I do not believe that we can accept this or any other aspect of crime becoming an ingrained part of the national fabric. It would be far too costly--and the price would be exacted in many ways.

The value of the stolen goods would continue to climb--as would the impact on the corrosive spiral of inflation. Another cost cannot be measured precisely, but is perhaps the most important. By meekly submitting to one kind of crime, we would be saying in effect that we will tolerate any kind of crime--or virtually anything else, for that matter.

No free people should ever tolerate such a toll--not for a moment.

I am convinced that by cooperating and by being diligent, we can gain the upper hand against cargo thefts.

To all of you, I pledge my full support, and I will make certain that every needed resource that the Department of Justice can provide is made available.

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In closing, let me say that we are grateful for the cooperation from a number of persons.

Senator Alan Bible, the chairman of the Senate Select Committee on Small Business, has been in the forefront of efforts to develop new enforcement programs. Senator Warren Magnuson, chairman of the Senate Commerce Committee, also richly deserves our thanks. In the House, Chairman Harley Staggers and Congressman J. J. Pickle have long supported our efforts and worked to alert us to the problems through the Interstate and Foreign Commerce Committee.

At the Department of Transportation, Assistant Secretary Benjamin Davis has been the catalyst for a number of important steps. And finally, I would like to express my appreciation to Paul Tierney, President of the Transportation Association of America, and to the Department of Justice personnel who have worked so hard to get this program underway.

I believe substantial results can be obtained--results that will benefit the nation in marked ways. It is a major challenge, and one I am certain all of you will meet.

Thank you.

###

RECEIVING STOLEN PROPERTY

The Need for Systematic Inquiry into the Fencing Process

*Duncan Chappell
Marilyn Walsh*

It is clear that the criminal receiver (fence) is the heart of the theft problem. Not only large scale professional theft but also countless thefts by juveniles and occasional offenders depend on the availability of a regular market--and to provide that service is the crucial function of the criminal receiver.

-Hall, 1968: 962

The study of crime categories by legal scholars and criminologists is by no means a new enterprise (Hall, 1935; Sutherland, 1937; Schur, 1965); nor are the probes into specific crimes (Wolfgang, 1958; Cameron, 1964; Chappell, 1965; Geis, 1968; Amir, 1971). Researchers have considered not only the crime and the criminal, but also the victim, the enforcer, and the sanction. It is acknowledged that each

AUTHORS' NOTE: The authors wish to express their gratitude for the many helpful suggestions offered in the course of preparation of this paper by Gilbert Geis and Leslie Wilkins.

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CRIMINOLOGY, Vol. 11 No. 4, February 1974
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element of the criminal event must be understood if society is to deal effectively with crime.

Given all this research activity, then, it is surprising to discover a serious deficiency in the state of knowledge surrounding the crime of criminal receiving (fencing). Were fencing but an insignificant or passé behavior, engaged in by only a handful of individuals, the scant attention paid it might be understandable. The fence has, however, long been recognized as a very important part of the theft problem and as a crucial figure in the support and maintenance of the thief. As far back as 1770 Sir John Fielding was attributing London's increased burglary and robbery rates to the existence of immediate outlets for the proceeds of theft provided by receivers.¹ Patrick Colquhoun (1806: 289; italics added) was most forceful in his indictment of the receiver:

In contemplating the characters of all these different classes of delinquents (that is Thieves, Robbers, Cheats, and Swindlers), *there can be little hesitation in pronouncing the Receivers to be the most mischievous of the whole; inasmuch as without the aid they afford, in purchasing and concealing every species of property stolen or fraudulently obtained, Thieves, Robbers, and Swindlers, . . . must quit the trade, as unproductive and hazardous in the extreme.*

Nothing therefore can be more just than the old observation, "that if there were no Receivers there would be no Thieves."— Deprive a thief of a sale and ready market for his goods and he is undone.

The Association of Grand Jurors of New York County (1928: vii; italics added), in the preface to its study of the receiving laws of the 48 states and Alaska, echoed Colquhoun's words stating:

Through some strange oversight the economic, criminal and legal history of receiving stolen goods has attracted little or no attention among writers, in contrast to the thousands of volumes which have been written about thieves and robbers who have

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dealt with fences; yet it is axiomatic that "if there were no fences there would be no professional thieves."

And the President's Commission on Law Enforcement and Administration of Justice (1967a: 46), in its discussion of professional crime, characterized the fence as one of the two "essential relationships" which the professional criminal must establish in order to survive successfully.² Clearly, the fence is acknowledged to be an important individual in the world of crime, and yet the details of his activities are basically unexplored. He is at best a shadowy figure, and the nature and extent of his operations remain little more than mysteries. The contemporary situation was aptly described by the President's Commission on Law Enforcement and Administration of Justice (1967b: 99; italics added):

Little research has been done on fencing, despite its central role in professional crime. More information is needed about the nature of the market for illicit goods and the extent to which demand for various types of goods affects the incidence of theft. More should also be learned about the relationship of legitimate and illegitimate markets. Little is known about the pattern of distribution of stolen goods. . . it would be desirable to have more information about the organization and operations of large scale fencing operations to aid in the development of better methods of law enforcement."

Despite pronouncements as to the fence's importance and suggestions that a knowledge of him and his activities would be useful in unraveling the maze which is property theft, the fence has been little studied. Two sets of barriers seem to have prevented research on the criminal receiver. The first barrier relates to the fence as a subject of the criminological research process; the second, to the operational requirements of that research process.

THE FENCE AS A CRIMINOLOGICAL RESEARCH SUBJECT

Criminology's search for crime causality, bolstered by inputs from the disciplines of psychology and sociology, has greatly influenced the choice of research topics for students of the field. This interplay of the above disciplines has contributed much to research in the areas of violent and assaultive behaviors and the crimes of youths, but its progression and development have constituted, as well, an implicit bias for the study of the irrational, the nonunderstandable, the mysterious individual and his behavior patterns—i.e., the clearly *deviant* personality and society's reactions to him. This was an understandable development since criminologists felt the need to break away from some fairly simplistic economic arguments of crime causation which left much behavior unexplained, and to attempt to deal with a wider range of crime problems. The quest to develop a psychological and sociological competence in the study of crime causation meant, therefore, the rejection of the simplicity which economics had introduced. It came also to mean, however, the virtual rejection of the discipline of economics with its rational explanations, as irrelevant and inappropriate. Thus, the criminal who displays a fairly rational, economic behavior pattern has often been excluded as a research subject. The criminal receiver is an excellent example. Lacking any obvious psychological difficulties and remaining a well-integrated participant in the socioeconomic structure, the fence could hold little interest for criminologists who were searching for more deviant personalities to study. The same is true of the white-collar criminal, those individuals associated with organized crime, and many professional thieves. It seems clear that until economics is again accepted as a legitimate input into the criminological research process, the rational criminal—in particular the criminal receiver—will remain little studied and even less understood.

It can hardly be counted as an error, however, for criminologists to have been interested in subjects other than the criminal receiver, or to have preferred to develop theories which seemed potentially useful to the explanation and understanding of other forms of deviant behavior. No one can be blamed for the fact that the fence has never seemed to fit in with the mainstream of criminological thought. Consistent avoidance of a subject area, however, is one thing; "knowledgeable" exclusion is quite another. The latter would seem to have been the fate of the criminal receiver. For, while little or no research has been done on fencing, an impressive body of opinion surrounds the subject, and it is "knowledgeable opinion" which has allowed criminologists to dismiss receiving as a topic about which "everybody knows." At least six distinguishable viewpoints can be identified as instrumental in explaining away the criminal receiver and the lack of attention he receives from the criminal justice system.

THE LEGAL DEFICIENCY VIEW

This perspective, enunciated by Hall (1935) and other legal scholars, holds that the criminal receiver is little known because of his ability to evade the legal process. He does so because the laws relating to fencing are either inappropriate or inadequate to deal with it. Existing receiving laws in most states tend to punish criminal receiving like larceny. In New York, for example, criminal possession of stolen property in the first degree, and grand larceny of goods valued at more than \$1500, are both Class D felonies punishable by a maximum of seven years imprisonment (New York State Penal Law of 1967, sections 165.50; 155.35; 70.00).³ Under federal law, stealing or receiving property forming a part of or which constitutes an interstate or foreign shipment is an offense punishable by not more than a fine of \$5000, or imprisonment for ten years, or both (U.S. Code, Title 18,

1970, section 970: 659).⁴ As Hall (1935: 216-217) comments, in general "the punishment of thieves on the basis of the value of the property stolen is applied automatically to the receiver. Judged from both the standard that punishment should be proportionate to the magnitude of the harm and from that of social dangerousness, there is evident need for a radical modification of the scale of penalties now applied in almost all states."

These commentators acknowledge too that few attempts have been made to differentiate, in legislative terms, the approach of the criminal law toward professional versus lay receivers. Clearly, the former represents a far greater threat to the community. The professional receiver is a businessman buying stolen property on a continuing basis for the purpose of resale. The lay receiver, on the other hand, is likely to buy stolen goods largely for personal consumption. In this view, then, it would seem desirable to identify these (and possibly other) categories of criminal receivers in both offense and penalty structures, to maximize the deterrent and enforcement of receiving laws.

Historically the offense of criminal receiving has had a long but relatively stable existence—too stable for these critics—for, by contrast, one would be hard pressed to sustain the view that the techniques of thieves and fences have exhibited similar stasis. In this view, then, fencing should be considered and attacked as a problem of legal revision, of updating the law to the contemporary situation.

THE EVIDENTIARY DEFICIENCY VIEW

Although this perspective is linked closely with the legal deficiency view, it raises two separate and important issues of its own. The first concerns specific evidentiary requirements of the judicial system when dealing with fencing. In this view the necessity of showing "knowledge" and of proving "dominion and control" in order to convict the fence results

in a nearly impossible prosecution situation (concerning the difficulties of prosecuting criminal receivers, see in particular Hall, 1935: 172-199). The second issue relating to evidence concerns property items. Police investigating the operations of receivers are said to find it extremely difficult to establish that the goods found in a fence's possession are stolen.⁵ The relative impersonality of property items, and the lack of adequate identifying marks on most categories of goods, frequently prevents the establishment of a nexus between the fence and stolen property items, or the return of recovered property to its original owner. From this perspective, then, the problem of fencing underscores a need for changes in both the evidentiary requirements of the law and in the identification of personal property.

THE OFFICIAL INVOLVEMENT VIEW

Proponents of this view lie in two camps. One camp comes at the problem in reverse by choosing to ignore the issues raised by the views above and maintaining instead that the only way in which fencing continues to exist is with police cooperation—or, barring that, with police protection. The other camp embodies a view expressed nicely by the Association of Grand Jurors of New York County (1928: V): "One of the problems of suppressing the fence is caused by the tendency of the police in some localities to wink at the receiver because he can frequently tip (them) off to criminals whose misdeeds have aroused special resentment." This particular view would link the problems of fencing with those associated with narcotics and vice crimes; that is, that police use of principals in crimes as informants makes the police officer's efficiency and detachment from the situation less than optimal. Both views, however, tend to divert the researcher of fencing from his primary subject by linking it to other larger problems, such as those of police corruption or the pitfalls of the informer system.

THE ORGANIZED CRIME VIEW

This perspective lays the problem of fencing at the organized crime doorstep, insisting that it will never be adequately combated as long as organized crime networks persist unchallenged and undisturbed. This is, in a way, a sort of dead-end perspective, since fencing is immediately and irretrievably imbued with the impenetrability for which organized crime is noted; and, as with the official involvement view, it serves to divert the researcher from fencing *per se* to a larger, more encompassing problem which may be beyond his scope.

THE "INSURANCE-WILL-COVER-IT" VIEW

The tack taken in this view is that fencing has been and will continue to be ignored because the loss from theft does not need to be taken seriously anymore. When nearly all possessions, either personal or owned by institutions, can be insured against loss, their theft is less of a hardship. This view maintains that it is only when extremely valuable or irreplaceable items are stolen or when volume theft occurs, that theft is considered particularly disruptive and appropriate steps are taken to combat it. What insurance has done, then, is to become a buffer between thief and victim, erecting a balloon of complacency on which theft victims ride, knowing always that they will "get something back," if it is only the monetary value of their property. As long as citizens can continue to get insurance and insurance companies can continue to raise their rates, the status quo remains essentially undisturbed, the question of recovery of property becomes moot, and fencing can be ignored. So goes this view.

THE HUMAN NATURE VIEW

Hall (1936: 11) intimated the human nature view in his discussion of criminology and a modern penal code. He suggested that receiving stolen property be investigated as a social attitude to test its apparent social acceptance. This idea, carried to its logical extreme, maintains, then, that "no one will ever turn a fence in since everyone wants a bargain."

The fence, in this perspective, is providing a much needed social service for the hard-pressed consumer. His conduct, therefore, commands widespread (though covert) support and encouragement, becoming an invulnerable, if not inappropriate, target of the criminal law. Rather than like morals legislation, fencing might better be overlooked in society's enforcement efforts.

Each of these views carries with it some persuasive logic and argument. When taken together, they make it extremely difficult to support the case for substantive research on the criminal receiver. None of these views, it should be noted, even hints that the problem with the fence may be that we really know very little about him. And yet, given the second set of barriers relating to research on the fence, the view that we really do not know very much about fencing becomes highly tenable.

THE FENCE AND OPERATIONAL BARRIERS TO RESEARCH

The research process requires two basic ingredients: a fairly distinct subject area or set of circumstances to investigate, and the necessary data on which to carry out that investigation. In neither of these areas can the receiver be rated as an easy research topic, for the two most serious problems with fencing are data and definition. The first problem relates not only to the amount but also to the nature and availability of data; the second relates to the "intangibility" of fencing as a crime category.

DATA

Without a doubt, fencing research has been severely limited by the relative paucity of data in the areas as compared with that available for the study of other crimes. This may be accounted for by the nature of receiving operations. Low visibility and a system of discreet contacts are probably the hallmarks of the professional fence. The visibility-and-contact system is likely to become even more blurred as the size and scope of a fencing operation increase and acquire for it greater legitimacy. These elements of the

activity tend, then, to surround it with a veil only rarely penetrated by law enforcement authorities. Thus, in any jurisdiction, the number of individuals with official records for fencing is quite small.

Most of the information that does exist is on an anecdotal, historical, or "police intelligence" nature. For example, some preliminary interviewing of narcotic addicts by the authors produced accusations of fencing against local storekeepers which, though interesting, were not rigorous enough to support substantive research. Similarly, historical accounts of fencing—though more plentiful than contemporary literature—hold questionable relevance for the situation as it now exists (as, for instance, the analysis of fencing undertaken by the Association of Grand Jurors of New York County, 1928; Colquhoun, 1806; Howson, 1970). Fencing is, after all, not only a type of criminal activity; it is an economic venture as well. Perhaps in no part of our national life have the intensity and complexity of changes been as great as in the economic sector. The fencing operation as part and parcel of the economic system has had to accommodate these changes as has any other business. The resemblance, then, of contemporary fencing operations to their ancestors can at most be minor.

Lastly then, there is "police intelligence" as a data source for research on fencing. This can best be described as a composite of information culled from informants, apprehended theft offenders, and the results of police surveillance efforts; and it remains the most substantial source of data on which the researcher has to draw. This source, however, does not come without some difficulties of its own attached. Intelligence information is rarely made available for public scrutiny, normally surfacing only as an adjunct to evidence presented in official hearings; and prosecution of professional fences under criminal receiving or possession laws is an infrequent event. Data, then, because of their relative scarcity and inaccessibility, constitute a major limitation to fencing research.

THE INTANGIBILITY OF FENCING

The second basic operating factor contributing to the lack of research on criminal receiving relates to definition, to its status as an "intangible crime category." An intangible crime category consists of a type of activity which seems to disappear upon successful completion. It is as though the conduct erases itself after execution so that, while a functional existence can be attested to (here, stolen property is fenced), any tangible evidence as to the conduct's independent existence is gone. An intangible crime category, then, though technically criminal, though engaged in by a significant number of individuals, and though having considerable impact in its environmental matrix, commands a position of insignificance as far as official crime statistics are concerned. This is in sharp contrast to what we can term "conventional crimes" such as murder, assaultive offenses, and theft. These activities, even when successful for the perpetrator (that is, even when they are "unsolved"), still leave substantial proof of their occurrence. They possess an existence finite in both time and space which can be determined, reported, and kept track of by official sources. Thus "conventional crimes" are a significant part of official crime statistics.

Fencing is perhaps the best example of an intangible crime category, but is certainly not the only one. To illustrate: we know that the fence plays a key role in the area of property theft, but what exactly does he do? What are the elements of his activities, the boundaries, the techniques? Something does indeed happen with the fence, but it remains fairly indefinable and very ephemeral. In the same way, one might also include activities associated with organized crime (loan sharking, for example), white-collar frauds and antitrust violations, and blue-collar pilfering offenses as intangible crime types. Again, where is the definition, and where is the tangible proof of existence? Thus a researcher, looking at the *Uniform Crime Reports* (1970) and other official statistics, has his attention immediately attracted by the glaring rise in

violent crimes against persons and in theft crimes. Theft (burglary, larceny over \$50, and robbery) has sustained an alarming rate of growth (180%) over the last decade. Nowhere, however, does the researcher find fencing or other intangible crimes projected or discussed. Fencing is simply listed as a Part II offense, a status immediately deflating its importance. Its but brief appearance would seem to define this conduct as a trivial aspect of crime in the United States. Combining the apparent insignificance of fencing as a crime category with the data problems discussed above, is enough to send researchers elsewhere for more "important" and tractable studies.

LAYING THE GROUNDWORK FOR RESEARCH

Given the two sets of barriers to research on the criminal receiver imposed by the manner in which criminological thought has developed and by the special difficulties which the fence presents, it is hardly surprising that so little study has been devoted to him. But though our research efforts in the fence's direction have been insignificant, he himself has not; though we approach him with a well-defined set of viewpoints, his exact definition and description elude us; though our crime statistics fail to tally and project his actions, he leaves his clear and fresh imprint on the present crime scene. Reflected in each auto theft, in each burglary, and in many robberies and muggings is evidence of fencing. No goods, whether created through the productive process or acquired by theft, have value to the possessor unless they are distributed and sold—and that is the fence's job. Fencing, then, represents a major proportion of the nation's yearly crime figures and a key part of the fast-growing theft problem of the last decade. It becomes legitimate to ask, therefore, just how benign has been our neglect of the fence, or how serious? Although we cannot measure either effect empirically, it seems clear that if only we knew something definite about the criminal receiver, we might at least be a little closer to an understanding of property crimes and to

the adoption of effective measures to control them.

It is clear also that research on the fence should not proceed purely as a debunking venture. The "conventional wisdom" that has developed concerning the receiver is surely not worthless; neither is it necessarily a "given," however. Optimal use of the existing views on fencing might be in the role of research guides or research questions. Thus, the whole issue of legal deficiencies cannot be ignored in research on the fence. Similarly, the view that fencing commands widespread social support needs exploration, lest we claim too much for legal revision. The involvement of law enforcement officials or organized crime with fencing is also important to discover since such entanglements may affect the sort of social controls that are introduced. It is important, then, to look at our conventional wisdom critically; that is, to use it effectively, for in that way it will not proscribe our research efforts but will augment them.

Finally, research on the fence, regardless of the tack which it takes or the issue it wishes to explore, must be aware not only of the receiver's criminal definition but also of his economic one. The fence performs an important function in the facilitation of property theft and is more likely to conform and respond to the constraints of that situation than to the criminal justice system of which he has rarely been made a part. A call for research on the fence, then, is in effect a call for greater economic sophistication among students of crime. It is a call as well for research in the forgotten areas of criminology which have been sorely neglected in an impassioned quest for cause.

NOTES

1. Fielding's views were expressed before a Committee of the English Parliament investigating the crime problem in the metropolis of London (see *Journal of the House of Commons*, 1768-1770).
2. The other relationship said to be essential for the professional criminal's survival, was the "fix." "The 'fence' and the 'fix' . . . are the mutually profitable arrangements between professional criminals and members of legitimate society" (President's Commission on Law Enforcement and Administration of Justice, 1967a: 46-47).

3. The most serious form of grand larceny in New York, involving elements of extortion in addition to the stealing of property, is a Class C felony punishable by a maximum of fifteen years imprisonment (New York State Penal Law of 1967: sections 155.40; 70.00).

4. The United States Code (1970) contains other provisions relating to theft and criminal receiving in which the two offenses are linked for purposes of punishment. See, for instance, section 641 (theft and receiving of public money, property and records); section 1708 (theft or receipt of stolen mail).

5. The problem of identifying property items has received recent attention from law enforcement authorities in several places in the United States. Police have, among other things, been urging people to engrave their social security numbers on valuable pieces of property to facilitate recovery in the event of theft (New York Times, June 19, 1972: 32).

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OPERATIONAL PARAMETERS IN THE STOLEN PROPERTY SYSTEM

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Prepared for presentation at the 44th National Operations Research Society of America Meeting, November 12-14, 1973, San Diego, California

"It is high time, I think, that anthropologists, criminologists, sociologists, systems engineers, economists, management specialists, biologists, mathematicians, corporation lawyers, and other specialists in the analysis of organizations got on with the job of specifying what is sophisticated about sophisticated crime, what is professional about professional crime, what is organized about organized crime, and what is planned about planned crimes committed with impunity. A large proportion of all crime is to some degree organized in one way or another."¹

To those trained in the vagaries of the common law, the notion that the majority of all criminal behavior bears the hallmark of organization has had little past relevance or meaning. For throughout the centuries of development of the common law concept of a crime, the specific acts and state of mind of individuals have been of primary concern to lawyers.²

Actus non facit reum, nisi mens sit rea - the intent and the act must both concur to constitute the crime. This fundamental common law doctrine emphasizes the prohibition, or punishment, of only those acts deemed harmful enough to society to be labelled crimes, when committed with a guilty mind.³ The sequence of events leading to or from a prohibited act remain of peripheral importance under this doctrine.⁴ Thus in the case of burglary at common law, the breaking and entering of a dwelling house by night constitutes the actus reus of the crime, while the mens rea consists of an accompanying intent to commit a felony within the dwelling.⁵

proof of these elements may be assisted by some analysis of the activities surrounding the breaking and entering.⁶ But the primary attention of the criminal law is focused upon the establishment of each of the technical and finite elements of the crime. A labyrinthine series of cases has traced in elaborate detail what does or does not constitute an act of breaking and entering; what amounts to night; what can be described as a dwelling house;⁷ and so on. The ultimate fitting of all pieces of the evidentiary jigsaw into a whole can result in the successful prosecution of a person accused with burglarizing one dwelling house. If that same person has also burglarized a further twenty houses in the course of a criminal episode, a similar and painstaking process must be undertaken to assemble evidence relating to each separate case of breaking and entering.⁸

The definition and attachment of responsibility under our system of criminal justice continues to be guided in the main by this traditional approach of the common law.⁹ Yet appropriate though this approach may be in determining criminal responsibility, it permits only the most fragmentary understanding of the ways in which crime is an organized activity. This fact is now being acknowledged by writers like Donald Cressey, the sociologist cited at the outset of this paper, who has done much to expand our knowledge of organized crime.¹⁰ It has been a major contribution of non-lawyers in general in this field to point to the limitations imposed upon our knowledge of crime by the strictures of the criminal law. For example, the work of McClintock and others at the University of Cambridge during the past decade has pointed to the deficiencies in official criminal statistics produced by the adoption of legal labels.¹¹ These labels, which continue to be used in the Uniform Crime Reports in this country, mask vital data concerning qualitative developments in crime. We know, for instance, that since 1967 robbery has increased 55 percent in the United States.¹² We do not know, however, the proportion of this increase which is attributable to the activity of individuals, or organized groups of criminals. Nor do we know whether

this upward trend in robberies was accompanied by a greater use of personal violence by offenders. These and other questions might be answered if less importance were attached to the criminal law definition of robbery and more attention paid to the social circumstances surrounding the commission of this type of crime. In the United Kingdom a new classification of robbery, based upon these circumstances, has already been incorporated in the process of compiling and presenting criminal statistics¹³

Statisticians are not the only persons mesmerized by criminal law labels. Police enforcement procedures and practices have tended to be closely bound to conventional definitions of crime. Thus the division of investigating responsibilities within police agencies has traditionally followed the major crime categories of homicide, robbery, burglary, fraud, and allied offenses. Interrelationships between these crime categories, if perceived, have usually been viewed as jurisdictional rather than investigative problems. If an offender commits a series of burglaries and rapes, the sex squad is likely to have jurisdiction to investigate the crime because rape, according to the criminal law, is a more serious offense than burglary.

Each investigation within squads is primarily aimed at matching actors with specific acts, an approach which normally requires only limited consideration of connections between criminal events. Efficiency measurement systems in police agencies reinforce this approach. The quantity of persons arrested by individual detectives, or squads, has been the prime test of job efficiency in the past. The qualitative aspects of an arrest, which may well depend upon linking a series of events and offenders together, have usually received scant attention from superiors nurtured in the 'arrest numbers game'. The outcome of this attitude is to enhance competition within and between investigative squads. Information sharing is likely to be minimal, compounding the probability

that criminal events will be seen in isolation rather than as part of an ongoing operation. With larger police agencies the fragmentation of information about events can be extreme. Take, again, the example of the crime of burglary. The commission of a single burglary may be reported to the police and responsibility assigned to a burglary squad to investigate the crime. The same event, however, may generate crime intelligence which can be relevant to the function of a pawn broking squad, organized crime unit, narcotics unit, and centralized intelligence unit (if one exists). The degree of collaboration and coordination between these various specialized investigative units, in the majority of large police agencies around the country, is probably low.¹⁴ As a result the chances of threading together the events surrounding any one burglary or a series of burglaries are substantially reduced.

What we suggest in the balance of this paper is that there is much to be gained in the efficacy of our law enforcement, and much to be learned about the organization of crime, by turning away from traditional concepts of criminal behavior towards an operational perspective of this activity. We take as a case in point the activity which surrounds the theft of property - the stolen property system - and particularly the respective roles played by the thief and the criminal receiver (fence). References which follow to specific police reports and data on the stolen property system are drawn from an ongoing study being undertaken by the authors of patterns of criminal receiving in a large urban area of the Northeastern United States. As part of this study access has been obtained to police intelligence reports on the activities of burglars and fences, as well as records of these activities maintained in a special investigative unit in the office of the district attorney.¹⁵

The Conventional View of Theft

Perhaps no area of contemporary criminal activity holds more potential for improved understanding and successful intervention through the use of operation analysis than does that of property crime. This area of crime is by no means new, a situation which may in fact constitute the greatest barrier to fresh thinking on the subject. Centuries of experience with thefts of property have given us a fairly strong conceptualization of this crime area, a conceptualization which centers almost exclusively on the thief. There is of course nothing illogical or erroneous about a concern for this individual; it is he after all who steals the property. What is argued here, however, is that an exclusive concentration on the thief yields a myopic view of the process of theft, a view which draws the boundaries of the crime too tightly around that individual. It is a view which tends therefore to consider each incident of theft as a unique event, determined and constrained by motivations, needs and skills of the perpetrator. The "conventional view of theft" (if we can use this phrase) prescribes a response to this crime which largely consists of a fairly sophisticated sorting process, linking one individual (or one group of individuals) with each event as it occurs.

It is the detective who becomes the main agent in this sorting procedure. Through his experience, his knowledge of individual thieves, his sources of information and often his "hunches", the detective can take the elements of a theft event and in most cases move toward the description of a set of suspects.¹⁶ He will do this by systematically excluding those portions of the theft population that for one reason or another could not have committed the crime. For example, consider the case of the successful assault on the vaults of a large and well-protected fur storage firm.¹⁷

Police investigation of the incident reveals that the firm's sophisticated alarm system was tampered with and neutralized by the perpetrators; that the vaults were entered by means of an acetylene

torch; and that a large van was used to transport the stolen furs from the premises. The finesse with which original entry was made to the firm allows the detective to eliminate many persons in the theft population whose skills are not so sophisticated. That coupled with the technique used on the vaults suggests to him the combined skill levels of two very small groups of able thieves. The overall organization of the task continues to support his suspicion that the job was carried out by at least two very experienced and technically adroit thieves, perhaps acting in concert with others of lesser abilities. A quick check of those individuals competent in the neutralization of alarm systems yields, let us suppose, two good suspects since other individuals in this class can be accounted for either because they were observed elsewhere, are known to be incarcerated, or for other reasons cannot be placed at the crime site. Similarly, of that small class of so called "burn men" in the safecracking trade, all but three can be accounted for. The net begins to close in, drawing a circle around a much smaller group of suspects and their associates. Intelligence reports from the month preceding the incident further reveal that two members of the new suspect set had been observed together both in routine car checks and at various bars and nite spots. In addition, each had been seen in the company of two younger men later identified as burglars known to the police.

Within a week to two weeks of the theft; rumors from the theft microcosm itself as well as information provided by informants indicates that these same four individuals have recently displayed new found financial assets. The police pick up the two young burglars and under interrogation¹⁸ one of them confesses to the theft, implicating his 3 accomplices. As it turns out the confessing thief does not know whatever happened to the furs nor is he aware of the origin or eventual destination of the truck that was employed. On the basis of his willingness to testify, however, his accomplices are persuaded by the district attorney to plead guilty and all receive sentences.

The above case is obviously quite simply drawn. The police cannot ordinarily proceed with the ease implied. Rarely, for example, can so much of the theft population be immediately excluded on an initial sort; rarely can those individuals finally included in the suspect set be so easily and reliably accounted for; and rarely is the willing confession so available. The utility of the above case is not in its approximation of the successfulness of the typical theft investigation, but rather in its portrayal of the elements of and responses to theft which the conventional view of theft considers essential. For the conventional view of theft, the above case is "closed". The operating agencies of the criminal justice system have accomplished what this conceptualization of property theft requires of them - they have caught the thief. Our concern, however, is not so much with the capacity of the conventional view of theft to apprehend offenders (although we question whether it is generally as effective as the illustration above might suggest). Instead what becomes disconcerting is the realization that "catching thieves" is the major preoccupation of this view of property crime. Whether it is successful or not, we wonder if it really makes much difference. For behind the simple logic of the conventional view of theft, behind its seeming efficiency, and behind its apparent rationality, lie three major weaknesses for dealing with property crime:¹⁹

1) The major weakness of the conventional view of theft is its post hoc quality. Fully half of the time, the thrust of the concept is not engaged in understanding a crime, but in responding to the fact of its occurrence. The investigation of theft, therefore, becomes an historical search -- a search which wants only to link a "who" with a given set of circumstances, having little time or interest in pondering the "why" or "how". Because it spends so much time looking back on an event, it cannot adequately interpret even the eventualities of that single event much less a more general "future". Its anticipatory capability (what we might designate as crime prevention capability), therefore, is greatly reduced. Each time there is a theft, a new cycle is begun

but it does not involve any new undertaking. Instead more investigations of past events are recorded and the whole historical bias of the process is reinforced. And, since no new information is ever really generated, the process continues to repeat itself, doggedly following the same procedures, over the same cold trails, toward the same dead ends.

2) The second broad shortcoming of the conventional view of theft is its assumption that if and when the thief is caught, the game is over. In other words, one has solved the theft when one catches the thief. This tends only to reinforce and confirm the notion that each theft is a unique event and militates against its being interpreted in terms of a broad range of similar events. Merely attaching responsibility for a theft to an individual or group of individuals does not, after all, explain two important elements of the crime: opportunity and incentive. And if one has not understood those two elements, he will still not have "solved" that crime. Nor will he have made any headway toward impacting on future, similar acts.

3) The final weakness of the conventional view of theft is its failure to consider the system of crime of which a theft is only a part. It sees theft essentially as a static situation, ignoring completely the dynamics of the stolen property marketplace. It considers only the fact that property was taken; it ponders not where that property was taken to. And, failing this, it misses the whole point.

An addict does not steal your stereo to listen to his records; he steals it for its negotiability, that is, because it can give him the means (money) to acquire what he has better use for. The professional thief does not steal Renoirs to decorate his apartment but to satisfy the art pleasures of someone else. The theft is only the beginning, then, of a very intricate system in which stolen property is acquired, converted, redistributed and reintegrated into the legitimate property

stream. This system involves not only cops and robbers, but also several levels of marketers and customers. It requires a set of tasks (and their necessary functionaries) which the theft concept doesn't even begin to contemplate, much less appreciate. Because of this, it isn't hard to understand why, even when the conventional view of theft does its best, it doesn't do very much. It ignores most of the iceberg in favor of focusing on its most visible part; and, rather than slaying dragons, it only feints at their images.

The kinds of loose ends that were left in the case described above are typical of the operation of the conventional view of theft. Questions relating to the source and destination of the truck used in the theft; the location of the furs; and even the choice of the theft target itself remain unanswered. For an explanation of these and similar other points, this view of theft relies on the idiosyncracies of the individual thief. It does this because it fails to follow the flow of the crime it is investigating. It concentrates on theft as an extraction event, ignoring completely its transfer function. By this omission it never deals with the environment within which the original event derives its value. The conventional view of theft, then, does not investigate a crime but an historical event; the crime it seeks exists in an arena it rarely deals with - an arena we shall call the Stolen Property System.

The Scope and Dimensions of the Stolen Property System²⁰

The Stolen Property System (hereafter SPS) is that set of individuals and their interactions which locates, plans, facilitates and executes the extraction of property from an owner (in most cases the rightful possessor) and its transfer to a new owner. Ideally this system will have six functioning modes:

1. the research and planning mode: the determination of a demand for an item(s), its location, and how best it can be acquired.

2. the extraction mode: the actual separation of property from its owner (the theft).
3. exchange mode: the transfer of the item from the extractor to the marketer (that person who will offer it for sale).
4. the marketing mode: includes transportation and storage, demand analysis (marketing information subsystem); packaging and advertising (any necessary modifications in property prior to resale).
5. the redistribution mode: determination of where, when and at what price the item will be resold.
6. the evaluation mode: analysis of the feedback to the system as to its performance.

In its simplest form, the SPS can consist of but a single individual as in the case of the thief peddling his own merchandise. In this situation, mode 3 would be combined with mode 2 in a single operation. At the uppermost level of complexity, the SPS can contain many individuals (the maximum number being indeterminate) as in the case of a truck hijacking. In this situation, the planning mode (mode 1) alone will require either the accurate forecasting of the behaviors of shipper, dispatcher and driver, or the enlistment of the aid of one or all of these individuals.²¹ It is important to note that whether the SPS consists of one or a dozen individuals, all of its functions must be performed. If this is not done by those within the system, then it will be undertaken by its clients or by others in the environment.²² An abridged version of the SPS, then, does not imply a functional curtailment, but rather a combining of functions into fewer operational steps.

There is some evidence that the SPS in its simplest form does in fact occur. Eric Pace in a New York Times article (1971)²³ notes that the low prices which fences were offering addicts for stolen property were forcing addicts to sell the merchandise themselves. It is clear,

however, that the nature of the SPS is such that its most frequent manifestation consists of a division of labor between at least two individuals - the thief and the fence. Robert Earl Barnes, a convicted professional thief, in a written statement to the Senate Small Business Committee, explained it this way:²⁴

A thief who steals merchandise is like bread without yeast, no good, (as) just as yeast is an essential element in the making of good bread, the 'Fence' is the essential element in any accomplished act of thievery whenever merchandise is involved.

This basic division of labor between the thief and fence occurs roughly at mode 3, with modes 1 and 2 generally allocated to the thief and modes 4 through 6 to the fence. The relationship between the thief and the fence in mode 3, though little studied, is essential.²⁵ It is also precisely that interaction which the conventional view of theft fails to recognize and account for.

The theoretic character of the relationship between thief and fence is best described by the mixed motive bargaining situation. The thief is motivated to cooperate with the fence in order to divest himself of the stolen property, yet at the same time, he is motivated to compete with the fence in achieving the best price for the merchandise. The fence is in a similar situation. By the very nature of his role, he is in the market for stolen property (hence he will want to cooperate with the thief) and yet his profit margin depends upon how well he can compete with the thief for a favorable price on the goods. The pressures to cooperate are perhaps greater for the thief, since the consequences following failure to reach an agreement are likely to be more significant for him; i.e. the possibility of being caught with the goods in hand. The fence runs no risks, particularly in the short run, if a deal is not consummated. The consequences of protracted bargaining situations may, in the long run, however, result in decreasing sharply his sources of

supply as he gains the reputation of being an unfair bargainer. Dealings between thief and fence, as with all commercial dealings, are strengthened by consistency and reliability. Although fence and thief, therefore, are motivated to compete with each other regarding the exchange value of stolen property, the clear bias for both is toward the establishment of cooperation. The thief-fence relationship is not unique in this respect for as Deutsch (1949)²⁶ has explained, cooperative interests must be strong enough to overcome competitive interests if mixed motive bargainers are to reach agreement.

The three general factors considered important in mediating the thief-fence bargaining relationship are as follows:

1. the ability to communicate
2. the existence of power and/or status equalities or differentials
3. threat and coercive power capabilities.

We will discuss each briefly.²⁷

1. The Communication Dimension in the Thief-Fence Interaction

Theorists investigating mixed motive bargaining situations generally conclude that communicability contributes to the establishment of trust in such interactions.²⁸ The relationship between the thief and the fence is obviously a communicative one, but we are less inclined to conclude that it is therefore a generally trusting interaction.

ITEM 1: (interview with Greg, professional burglar)

"I took a course in gemology because I was convinced the fences were cheating me. I wanted to make sure that they knew that I knew what stuff was worth... When the word got around, other guys used to ask me to appraise their stuff so they wouldn't get cheated either."

ITEM 2: (from police activity reports)

"X (fence in our files) stabbed to death last night in a tavern...word is that he cheated one guy too many."

ITEM 3: (from Robert E. Barnes)

"Fences are notorious for promising to pay a certain price prior to the theft of goods and then either dropping the price after it is stolen or claim(ing) they can't 'unload' the merchandise themselves."

If not toward a relationship of trust, to what ends can the communication between thief and fence contribute to their generally cooperative interaction? It seems likely that Harsanyi's insight into the existence of a bargaining game precedent to a game (g) is particularly apt here.²⁹ The importance of communication for the fence and thief is in establishing the limits within which they are willing to make agreements. It is the faithful communication of these bargaining limits that allows for selectivity to occur between thieves and fences in the SPS. Hence once an individual fence and an individual thief meet to exchange property the question of whether or not they will in fact reach an agreement is nearly a moot one; instead the question settles on the terms of that agreement. Police activity reports testify to our contention of a SPS selection process:

ITEM 4: (activity report)

"Info that Mr. A. fencing and selling at this address from the 'East Side Burglars'."

ITEM 5: (activity report)

"Received information from informant that several young men on West Side are committing house jobs. They take the jewelry and other loot to Mr. Y. who is an attendant at the _____ bowling alley everyday at 1 p.m."

ITEM 6: (activity report)

"Information from tipster that X is responsible for the burglaries on the North Side and is peddling all the loot to Mr. C. Information also that C's antique store is presently closed and he's operating at home."

The "standing agreement" is a special case of selectivity in the SPS:

ITEM 7: (activity report)

"Information that G & H are buying lots of boosted clothes from junkies. The junkies are told to save the price tags on the garments and are paid around 1/3 the price."

The arrangements -however loose- between these individuals reflect the establishment of compatible bargaining parameters which will insure their cooperation in exchanges, but leaves open the determination of the exact agreement to be made and its relative advantage to each participant.

Communication has, of course, a contribution to make to the actual exchange process in its ability to enhance the participant's bargaining positions. Both fence and thief stand to gain by less than candid information exchange.³⁰ Thus the fence can claim a limited market for the SP suggesting that the thief must be willing to let it go cheaply (Robert Earl Barnes' contention above). At the same time the thief can allege other offers made to him at better prices than the fence seems willing to pay. The bit of information that can be most significant in this process is the allegation that "this is my final offer." The credibility of such "final offers" will depend of course on what each has determined to be the other's exigencies in the situation. How immediate, for example, does the fence know the thief's need for cash to be? How important is it for the fence to acquire this piece of property? Communication at this point, then, is closely tied to the relative power positions (the pressures on them to negotiate) of the

participants, the topic to which we next turn.

2. Power and Status Dimensions in the Thief-Fence Interaction

Studies conducted on the relevance of power differentials to the establishment of cooperation in mixed motive bargaining situations help us develop a fairly clear picture of the power dimensions operating in the thief-fence relationship.³¹

On one hand we have the fence who has the general power of deciding what reward the thief will get for his efforts. On the other side, we have the thief who has the power to reject the fence's reward and withdraw from the relationship to another one. Both have a desire to consummate an agreement since it would serve both their needs (the thief to divest himself of the stolen property; the fence to acquire stolen property for resale). At the same time both desire a degree of consistency and reliability in their relationship avoiding disruptions that would be profitable to neither. Further, we contend that this relationship, if not a loving one, is at minimum one of mutual cooperation and accommodation. From what we have learned about the effects of power on mixed motive bargaining situations, we can conclude the following about the thief-fence relationship:

1. In spite of the structurally weaker position of the thief as seller, power is symmetrically distributed between them.³²
2. Though each is committed to a general strategy of cooperation and accommodation, neither is likely to be unconditionally agreeable to the offers of the other.³³
3. The structurally stronger position of the fence allows him to accrue the greater proportion of the rewards available in the relationship.³⁴
4. What we know about the efficacy and value of norms in contributing to cooperative and consistent bargaining behavior suggests that norms are functioning in the fence-thief relationship. Though conflict

of interests exists between them, there is little question that the commonality of interests which they share dominates, rendering these norms informal and prescriptive rather than formal and proscriptive.³⁵

3. Threat and Coercive Power Dimensions in the Thief-Fence Interaction

Research in the area of mixed-motive bargaining situations suggests that an important distinction must be made between the possession of power and the possession of a threatening or coercive power capability.³⁶ This distinction can often contribute to different outcomes in such situations. We said above that the relationship between the fence and the thief had a certain amount of power symmetry, but at the same time that the fence occupies a structurally stronger position. Our interest here can be summarized as follows: can the fence's power capabilities assume coercive proportions and still contribute to a generally cooperative relationship with the thief? The answer must be affirmative. We can characterize the fence as possessive of coercive threat and punishment capabilities and there is some evidence that we should.

ITEM 8: (interview with professional burglar)

"I had this whole load of furs and after talking to one or two fences I realized that the word had gone out that I was 'over a barrel' and not to offer me anymore than X did. I knew I couldn't possibly do any better here so I decided to take them to New York City.... When I got back, A and B (two enforcers) were waiting for me."

ITEM 9: (Robert E. Barnes)

"It should be noted that thieves who are apprehended who steal merchandise are usually apprehended, not in the act of committing the offense,...because they have difficulty in agreeing upon a price with the 'Fence' or hold onto the merchandise because the fence refused to pay the promised price before the merchandise was stolen.... Thus the thief has to sell at

their price or throw the merchandise into the river as it isn't any good to them (him)." (emphasis ours)

In order for the fence to apply coercive power and gain compliance to his wishes, of course, his threats must have "believability" to the thief. Tedeschi, Bonoma and Brown in their "Paradigm for the Study of Coercive Power"³⁴ suggested those factors which contributed to a threatener's believability. Included were: the prestige of the threatener; the status of the threatener; his role position; the approval given him by others; and his fluid resources. In addition, the fluid resources of the target and the target's self esteem were considered important. If we apply these factors to the fence-thief relationship, it is interesting to note the manner in which the environment within which their relationship operates affects these factors. For example, the fence is in the vast majority of cases a "legitimate" businessman, while the thief is in the vast majority of cases, only a thief. The status and prestige accorded these two occupations by society in general is quite different - the fence's being significantly more approved. Similarly the law confers status differentially upon the thief and fence; first, with its disparate penalties for the two crimes (C.RSP usually carries the same or even a shorter sentence);³⁵ and then in its treatment unwillingness to accept the uncorroborated testimony of a thief against the fence.³⁶ The enforcement of the law which devotes many more resources to the thief rather than the fence has some pronounced effects on both the self esteem of the thief (who is often arrested and imprisoned) and on his evaluation of "approval" given the fence (who is rarely arrested and generally ignored by the criminal justice system).

ITEM 10: (Robert Earl Barnes)

"For years laws have been enacted to raise the penalties for crimes such as postal thievery, hijackings, plane and train shipment thieveries, and burglaries, still such laws have not penetrated the real cause behind such acts, because such increases in punishment by new laws

have been aimed at the wrong participants (participants) in the crimes... This is like cutting off the end of a worm. The small part lays there, while the large portion crawls off, and within a few days heals itself and once again is complete.

When the thief is apprehended; is prosecuted; is convicted; is incarcerated for stealing the merchandise..., the 'Fence' just sits back for a few days until he gets himself another thief to do his dirty work for him."

ITEM 11: (Robert E. Barnes)

"Not long ago a retiring judge made the statement that I was a notorious burglar who had stolen hundreds of thousands of dollars....

Although this judge may have been correct in expressing such harsh words against me for my past criminal activities, I have yet heard any judge express any harsh words about who actually made those gigantic thefts possible, and the reason for this is, the receiver of stolen merchandise remains seemingly unimportant, when in reality he is most important of all." (emphasis ours)

Even when the criminal justice system, however, attends to the fence (as Barnes suggests they should do more often), the fluid resources accruing from his occupation are greater than those of the thief. Thus the fence is more apt to be capable of manipulating and/or withstanding the effects of the criminal justice system upon him.

Jerome Hall:

"[Criminal receivers have] been shrewd enough to devise methods of operation which escape public notice. They dress their illegal traffic in all the paraphernalia of lawful enterprise; they conduct their businesses secretly; they are equipped both mentally and financially to take full advantage of the weaknesses in the administrative machine, should prosecution be initiated."⁴⁰ (emphasis added)

The police generally echo Hall's sentiments, but if the police feel a measure of frustration in what they see as undue "considerations" given the fence; the thief, for whom such consideration is generally unavailable, is likely to take the situation even more to heart. It would seem, then, that those factors which Tedeschi et al found to be contributory to the believability of a threatening source are likely to make the fence very believable to the thief. Society in general and the "even hand of the law" both have a part in conferring upon the receiver the necessary prerequisites for the effective use of coercive power against the thief.

The thief-fence relationship, then, as a mixed motive bargaining situation, consists of three important elements which insure a generally cooperative interaction between them:

selectivity: Because the fence-thief relationship is a communicative one, each has the ability to alert the other to the range of agreements he will accept. This allows for selection among actors in the SPS and minimizes the number of face-offs between partners who would be unlikely to reach agreements.

reliability: Power symmetries (though by no means power identities) form the basis for informal norms in the thief-fence relationship which specify the accommodative behaviors prescribed by varying sets of circumstances. These norms protect each from the arbitrary use of power by the other and eliminate the expectations of such arbitrariness which could prove disruptive to the relationship.

stability: The structurally stronger member of the relationship (the fence), has additional status and prestige characteristics conferred upon him by the environment in which thief and fence meet. These additional characteristics make his power coercive in nature and insure the eventual compliance of the thief in even the

most protracted bargaining situations. This interjects an element of certainty into the relationship which is indispensable to its long term success.

Further Dimensions of the Stolen Property System

Up to this point, we have confined our attention to the thief-fence interaction at mode 3 (exchange) in the SPS, stipulating that the system's division of labor has allocated modes 1 and 2 to the thief and modes 4-6 to the fence. It should be emphasized that this is the most elementary form of that relationship. While it has been extremely useful in elucidating some dimensions of the thief-fence interaction, we must turn now to some more complex relationships between these two individuals in order to gain further insights.

In order to understand more complex thief-fence relationships and to achieve a greater appreciation for the role of the criminal receiver, two important axioms regarding the SPS must be introduced:

- A. The effectiveness of the SPS does not require a single and specific division of labor to obtain. That is, no particular allocation of the activities in the system is essential to its successful functioning.
- B. The functional integrity of the SPS is not disturbed by a non-sequential performance of its modes. What this means is that although we have set down the logical progression of activities in the SPS in modes one through six, this does not imply that they must be performed in that order.

These axioms have not been introduced to repudiate the authenticity of the thief-fence relationship we have described above, but only to better explain why the former is not the only interaction occurring between them. Instead these axioms emphasize at least two origins of variety in the SPS, and it is this variety which makes the system both

ITEM 17: (police activity report)

"Mrs. _____ recent victim of a house burglary says she has made purchases in antique store owned by T. "T" has been suspected of setting up wealthy clients for years."

ITEM 18: (police activity report)

"Info that Greg's gang (prof. burglars) is fencing stuff through X who works for a detective agency and gives the burglars floor plans and info on security devices."

ITEM 19: (police activity report)

"4 is allegedly giving the reservation lists from the _____ Restaurant (an expensive and exclusive restaurant in the city) to A, B and C (burglars)."

In these items, we see the fence who, by virtue of his business or occupation, is in a position to know individuals who possess valuable property, the nature of that property, and/or something about their movements. By sharing this information with thieves he becomes the engineer, the prime mover, of the theft. Implied in most of these arrangements, of course, is the agreement that he will receive the property once it has been stolen. The increased role of the fence as "set-up man" in mode 1 also increases his power vis à vis the thief since his control over valuable theft information has an impact upon the thief's livelihood and future. The thief who needs this information must be willing to accept completely the fence's terms. If he does not come to terms, the fence with complete knowledge of who committed the theft, is in an excellent position to "set-up" the thief as well. This is why some professional thieves prefer to rely on their own research and planning rather than risking an indenture (however brief) to the receiver.

2. The division of labor between fence and thief in the extraction mode.

Labor sharing between fence and thief in the actual theft can take

two forms. The fence can actually participate in the theft or he can offer technical advice on its commission. The former arrangement is an extremely unlikely situation in the SPS.

ITEM 20: (Robert Earl Barnes)

"Seldom does the 'fence' ever participate in the actual thievery of the merchandise.... (He) is the individual who takes no chance of apprehension by the police while the actual offense is being committed...."

ITEM 21: (Greg)

"I know the fence's job is a lot more lucrative and a lot safer (than that of the thief) because he never actually steals anything himself, but it just isn't as exciting."

Even though, then, the fence's participation in the theft's commission is highly unlikely, there is some evidence that he can assist in the offense in ways other than setting it up. He can, for example, instruct the thief as to techniques to use in avoiding suspicion and apprehension.

ITEM 22: (police activity report)

"went to the jail and talked with _____. He said recent daytime burglaries are being set up by Mr. L. He tells the junkies to go from door to door and if some answers to attempt to sell them a Reader's Digest."

ITEM 23: (police activity report)

"word is that X tells burglars to sit on stuff til they call in and only to come to the store during regular hours."

Little evidence could be found of a more active role taken by the fence in the extraction mode. Instead his involvement here appears limited to the giving of advice or admonition to the thief. It is probably fair to say, therefore, that a division of labor in the SPS which allocates mode 2 to the fence is a highly unlikely arrangement and for all intents and purposes can be eliminated from consideration.

3. The division of labor between fence and thief in the marketing mode.

It is probably necessary to restate the activities which occur in the marketing mode of the SPS since it covers three general areas: an analysis of demand in the stolen property economy (a marketing information subsystem); activities related to the transportation and storage of property; and finally activities related to packaging and promotion (the modifications necessary in the preparation of stolen property for resale). As can be imagined, mode 4 is an extremely complex and comprehensive component of the SPS. This is in general the fence's milieu; and it is because of his skills in organizing and coordinating the various activities in this mode that he can command a lion's share of the rewards which the SPS has to offer. (Robert E. Barnes, for example, suggests that he pays a "'bucket of coal' for a bucket of diamonds."

The quality of the demand analysis conducted by the fence will depend upon his individual business acumen. If he distributes stolen property through his own retail outlet, he must anticipate the future demands of his customers and determine what he needs to buy from his "suppliers." Similarly he must decide what mix of stolen versus legitimate property he wants to maintain; this again will affect his buying habits. In addition he will need to analyze the market he serves to discover the different segments it contains and the varying tastes that he should satisfy in his product line. If the fence does not sell directly to the public but instead to other middlemen or to retail establishments, his demand analysis will follow the same general pattern as above but will depend as well upon the quality of the contacts he makes in the legitimate market place and the guidance they can provide. The fence, then, faces many of the same dilemmas as any legitimate marketer. There is no one formula for success, only the expertise which past success and failure teaches. (An accommodation to the difficulties in demand forecasting and analysis used in both legitimate and illegitimate market places will be discussed

below when the non-sequential function of the SPS is considered.)⁴ There is little question, however, that the demand analysis function is an all-fence activity.

The other two activity areas in mode 4, though directed by the fence, can be shared with the thief. This is particularly true of the transportation and storage function where the evidence suggests that often an equal responsibility obtains. Consider the case in which the fence employs a "drop" where property is to be abandoned by the thief. The former pays for the storage facility while the latter must be responsible for transportation.

ITEM 24: (police activity report)

"what happens is that burglars are told to take stolen property to a drop at _____ St. and stash it in the garage until X (fence) can be called. He comes to the drop and if property is worth buying he opens his store for burglars to deliver it that night. Most of the stolen property is kept in a back room of the store and guarded by a police dog (kept mostly for protection against the police)."

Below, a similar arrangement has the fence financing both transportation and storage functions.

ITEM 25: (police activity report)

"went to cell block of county jail re: arrest of A and B (burglars) last night inside the _____ TV store. Both gave sworn statements and also stated that they were to drop the TVs at a gas station on _____ and _____ streets. They were to meet a blue van truck at the gas station between midnight and 1 a.m. B admitted to a previous burglary the night before in which they took 6 TVs and 4 stereos and sold them to Mr. Y (fence) after making a deal with him at the _____ bar and grill. They took this loot to the same gas station and put it in a blue truck and were paid \$225 by unknown w/M. They were to do the same thing last night."

The "drop" is only one technique which the fence uses to facilitate the safe transport and storage of stolen property while at the same time insuring against his being found in "possession" of it. The rental of warehouse facilities serves a similar purpose.

ITEM 26: (police activity report)

"Info that Mr. A (fence) not only owns the appliance store on _____ St., he also has the store across the street and rents a storage area further down the block."

ITEM 27: (police activity report)

"Detectives _____ and _____ rec'd info that Mr. X is into stolen property again. Heard he has a warehouse on _____ St. where he stores these items."

It is clear that the storage function is the sole responsibility of the fence since the thief has at this point relinquished control over the property to him. Similarly, any further transportation that may be required is also the fence's concern. Some fences pursue occupations in the trucking and storage industries which are tremendous assets to their illegal business endeavors. Two individuals in the data base, for example, jointly own three moving and storage firms, with a dozen vans and numerous warehouses. Two of their legitimate businesses did a gross in 1969 of \$96,000 and police won't attempt to estimate their profits from criminal receiving. These individuals also appear to provide transportation facilities for other fences in the city. Witness the following notes from police files:

ITEM 28: (police activity report)

"Mr. B (fence) who owns the _____ auto parts co., is a good friend X, owner of _____ Moving and Storage. Trucks of latter often make deliveries at B's place."

ITEM 29: (police activity report)

"suspicious activity at _____ Avenue re: building being used as warehouse for storage of TVs and hi fi's (foreign mfg.)- Detectives observed male get out of car and use

key to gain entrance - car registered to Mr. C. who is suspected of being a fence. To add to suspicions, when TVs were moved across state to the present location at above-mentioned warehouse, the mover was X owner of _____ Moving and Storage (fencing outlet)."

We have seen that activities related to ⁴ transportation and storage in the SPS can be shared by fence and thief. The sharing of responsibility for these functions is not, however, haphazard or random in nature. Instead it is determined by the degree of control which each is considered to exercise over the stolen property at a given point in time. Thus, any storage or transportation activities that are required pursuant to an agreement reached in the exchange process (mode 3) are likely to be performed by the thief. Once this exchange agreement has been satisfied, any further need for transport or storage becomes the fence's responsibility. To require the thief to perform such functions beyond those pursuant to the exchange process would be to defeat his prime motivation for making an agreement with the fence, which is to divest himself of the stolen property. Similarly, to require the fence to perform these functions prior to an exchange agreement would force him to exercise control over property which he has not as yet decided to purchase. Both thief and fence recognize that their possession of (i.e. effective control over) stolen property requires the performance of certain activities; neither, however, will be willing or likely to assume responsibility for such activities once possession has been relinquished or before it has been undertaken.

The final activity area in mode 4 of the SPS is the preparation of property for resale. This is almost exclusively the province of the criminal receiver who, following the exchange with the thief, becomes the new seller of the merchandise prior to sale; in what quantities he will sell the goods; and in what manner he will present the items to potential customers. With some items, such as automobiles, the fence will find it important to remove or disguise identifying numbers while keeping the make and model apparent. In other cases, with fair traded appliances for

example, it may be more important to disguise make and model than identifying numbers. The type of customer which the fence serves, whether retail or wholesale, corporate or individual, knowledgeable or naive; will determine the quantities in which the merchandise is sold and the manner in which it is promoted. The planning and coordination of activities in the packaging and promotion area emphasize again the organizational knowhow and financial base which a fence needs to operate efficiently. It also serves to explain why he may not be able to "afford" to reward the thief too generously for his efforts.

There are certain limited cases in which the thief shares responsibility for preparing stolen property for resale. One such case is that of the professional jewel thief.

ITEM 30: (interview with Greg, professional burglar)

"As soon as we finished a job we always went back to my apartment. There I'd remove all the stones from their settings weigh them, appraise them and put them in jeweler's paper to protect them."

Greg explained that this was done for two reasons: first, as a form of protection. Often the only identity possessed by a gem is its setting. By removing a gem from its setting, then, its identification becomes much more difficult so that even upon apprehension by the police he and his associates had a good chance of not being charged with anything. Second, Greg found that he could make better deals with fences with loose stones since he had saved them the trouble of removing the settings. In addition, the origins of the items could remain somewhat obscure protecting both of them.

The professional thief is probably one of the few classes of thief who has sufficient skill, or motivation, to perform such preparatory activities. It is obvious, that he does it not as a favor to the fence but out of his own self-interest. This activity area in mode 4, then,

is similar to the area of transportation and storage where activities are performed by the individual in control of the property. Because of the nature of the packaging and promotion activities and the point in time in which they occur, it is the fence who in nearly all situations is in possession of the merchandise. Responsibility for these activities, therefore, falls primarily on him. From our review of mode 4 activity areas it also becomes quite clear that the fence is the prime mover in the marketing process of the SPS.

B. Non-sequential Performance

The second axiom introduced above relates to the non-sequential nature of the functioning modes in the SPS. In order to demonstrate the sort of variety which this axiom suggests, we will discuss three modal configurations in the SPS: (1) The system beginning at mode 2 (extraction) and proceeding spontaneously; (2) The system beginning at mode 1 (planning), moving to mode 3 (exchange agreement) then to mode 2 (extraction) and finally proceeding to modes 4 and 5; (3) The system beginning at mode 5 (redistribution) then moving to modes 1, 3, 2 and 4 in that order. Each of these configurations represents not only different degrees of "determinateness" in the SPS, but also different degrees of integrative control exhibited by the fence.

1. The SPS beginning at the extraction mode 2, having eliminated a research and planning phase.

This configuration can be termed the "cheapest opportunity model." It is likely to be initiated by the least skilled thief or the addict thief. Because of the lack of planning involved, it will also be the least determinate, least integrated and least efficient model in the SPS for one of two reasons. First, it is unlikely to yield property of great resale value since its targets must be those which can be attacked spontaneously and with a minimum effort.

ITEM 31: (property missing item)

"B & E at pawnbroker's shop on _____ St. Window broken and two trays of jewelry removed. Assailant believed to be on foot.

In some cases this model of the SPS will yield nothing at all and instead will serve only to create a disturbance within the environment surrounding the system.

ITEM 32: (police activity report)

Alarm sounded at warehouse on _____ Avenue. Two w/m seen running from building. Would-be thieves didn't have time to get anything. Pct 2 will put a patrol car in the area in case they try again.

The second reason why the "cheapest opportunity model" is inefficient is that it fails to predetermine a demand for merchandise. For example, consider the luckless thieves below who managed to steal merchandise of some value but whose lack of planning rendered it not only valueless to them but also incriminating.

ITEM 33: (police activity report)

"X and Y (thieves) were arrested this AM in the act of trying to peddle meat from the _____ warehouse. They did not have a refrigerated truck so most of it had already started to spoil when recovered."

This model, if it is to be effective at all, requires the existence of the generalist fence who is willing to handle a wide range of items of varying quality and in indeterminate quantities. The SPS does of course provide this sort of individual in the form of secondhand and general merchandise outlets and used furniture and appliance stores. Fences who engage in this sort of trade do so because they can acquire property very cheaply from hard-pressed thieves whose lack of planning has put them in precarious possession of stolen property. If then the thefts initiated under this model are of the cheapest opportunity variety, they are also of the least rewarding variety to the thief. For the fence they also represent the "cheapest opportunity" since they comprise the best bargains he can get

from any set of thieves.

If this model is to have any determinateness, it is the fence who must introduce it by manipulating the rewards offered in the exchange mode. By giving some direction to the thief's activities, the fence is not generating a planning process but only narrowing the range of products which he is likely to encounter. This can help make the thief a bit more predictable and the system a bit more determinate and efficient. This model of the SPS remains, however, the least integrated configuration.

2. The SPS in the modal sequence of planning (mode 1), exchange (mode 3), extraction (mode 2) marketing (mode 4), and redistribution (mode 5).

This is the "exchange oriented model" of the system in which thefts are planned but not carried out until the terms of the exchange agreement and the responsibilities for activities pursuant to that agreement are determined. This model is significantly more determinate and efficient than is the "cheapest opportunity" model above, although this is only true through the exchange-extraction processes. The marketing and redistribution modes retain an indeterminate quality in this model. The degree of integration in the "exchange oriented" model depends upon who generates and plans the theft and who initiates the terms of the exchange agreement. Two basic situations are possible: The thief-generated pact and the fence-generated pact.

The thief-generated pact is the situation in which the thief insures a market for the theft he envisions by making preliminary arrangements with a fence to buy the product of his activities. In some sense, then, it is the thief's insurance policy which he hopes will prevent him from being caught holding stolen property unnecessarily.

ITEM 33: (Robert E. Barnes)

"one...must always remain conscious of the fact, it is

impracticable for the thief to steal what he cannot sell. What should be of vital importance to law enforcement officials is the fact that semi and professional thieves seldom steal before they sell, thus proving the fact that all major crimes whereas merchandise is involved would never occur if there were no outlets for this merchandise."

In many cases the professional thief wants more than the assurance of a market, he may also want to make sure that his efforts will be sufficiently rewarded before attempting a "big score."

ITEM 34: (interview with Greg, professional burglar)

"We had been casing this place in _____ (a nearby city) where this lady was supposed to have \$100,000 worth of jewelry in the house. I called Mr. A (jewel fence) at home and asked him if he could come up with \$30,000 cash if it were necessary. 'Yes,' he said, 'if the stuff was worth it.'"

Perhaps the most important element of the above statement is the fence's "if." It is clear that the professional thief can succeed in getting some assurances from the fence but it is unlikely that he can force any binding agreement upon the fence before he has seen the merchandise. We remember Robert E. Barnes' statement that "fences are notorious for promising to pay a certain price prior to theft of the goods" and then renegeing on the agreement later. The thief-generated pact under the exchange centered model of the SPS does not display very much integration. All it really does is to assure the thief of a buyer and to notify the fence as to the type of property he is likely to receive and when.

The fence-generated pact is somewhat different. Here a high degree of integration can be introduced into the system as the fence has the opportunity to specifically direct the activities of the thief and to positively determine the products he will acquire. The fence who plans the theft and who provides information important to its commission is also in a position to extract from the thief a specific exchange agreement. This makes for a highly rationalized extraction process which has been preplanned

and with an exchange phase that is predetermined. The integrative control of the fence over the exchange-extraction processes produces a more efficient and determinate model of SPS behavior.

3. The final modal configuration of the SPS is by far its most complex and sophisticated sequence. This is the situation in which the system begins at the redistribution phase (mode 5) and proceeds through modes 1, 3, 2 and 4. The most apt term for this configuration is the "production to order model." What happens in this case is that no activities relating to a theft are initiated until an order for the merchandise has been received. Once this order is received, the theft is planned; an exchange agreement decided upon; the extraction carried out; and the marketing activities completed. And all of the above processes are coordinated and directed by the fence.

The "production to order" model is an accommodation made in the legitimate marketplace to avoid the stacking up of inventory surpluses and gluts in the marketing process. The fence uses the model for similar reasons but has the advantage over the legitimate marketer that his "suppliers" (thieves) are likely to produce goods quicker than is the legitimate manufacturer who supplies the legitimate businessman. The model, then, is likely to be much more effective within the SPS than it has been found to be in the legitimate marketplace.⁴²

The most frequently cited example of the "production to order" model in the SPS is the auto theft ring. Instances have been reported of automobiles being stolen to meet the exact specifications of buyers, with color and bogus engine numbers added before resale. Robert Earl Barnes suggests that the "production to order" model is not limited to the stolen auto area, being particular prevalent in the hijacking and cargo theft arena:

"Prior to any hijacking, the merchandise has already been

set-up, and carried out by the thieves, the merchandise is extremely difficult to recover, as it may go but for resale on the legitimate market to as many as 50 to 100 middle men."

Both the "cheapest opportunity" and "exchange centered" models of the SPS require the fence to have increasing amounts of control over the forces of supply in the system. The "production to order" model requires of him the ability to generate the forces of demand as well. Demand control by the fence is somewhat more amorphous than is supply control. It will depend on such things as his individual abilities to forecast the desires of disparate customers; the kinds of contacts he has been able to cultivate at the wholesale and retail levels of the legitimate marketplace; and often upon his particular occupation. For example, the two individuals described below pursue legitimate occupations of which generating orders for merchandise is an integral part. Their additional abilities to initiate an illegitimate supply process, allows them to operate a tight and effective stolen property distribution system.

ITEM 35: (police activity report)

Mr. T who is a salesman for the _____ Company, a manufacturer and distributor of clothing, is also a fence. Was seen last night with a load of clothes in car. Day crew check any recent clothing store burglaries in area.

ITEM 36: (police activity report)

Mr. S. who owns a jewelry manufacturing company is alleged to be fencing for some of our better burglars. He supposedly has nationwide customers and contacts. Should be kept in mind whenever jewelry is taken in residence jobs.

The control which the fence has over the sequencing of events in the SPS under the "production to order" model makes it possible for him to bring the forces of demand and supply into a fairly stable equilibrium. This makes the model highly efficient and determinate. It also serves to protect all of the persons involved since by insuring that all aspects

of the system are coordinated beforehand, the stolen property can move swiftly to its final destination, minimizing the risk of either thief or fence being found in possession of it.

The limits upon the production to order model are of two orders. The model is limited first by the individual ability of the fence to generate demand (i.e. contacts and outlets to do business with him). Second, the model hinges upon the amount of organizational and financial resources at the fence's disposal which can facilitate the completion of all activities based in mode 4, the marketing mode. This is perhaps the more important limitation since it defines the size and scope of his operation. No matter how organizationally skilled the fence, if he cannot command the use of storage and transport facilities - or cannot finance the performance of such activities by others - his business volume will remain small.

Take the following example of "Jerry," a small time fence under the production to order model. Jerry's is a low budget operation. Working out of his home, he has "contact men" (salesmen really) who phone in orders. These orders may only be for 20 men's suits or five watches but his operation remains clean and efficient and safe. His salesmen each have different times to call and use code names in doing so. Jerry's transactions with burglars or boosters (later found to be working for him) are never over the phone. It is not known whether Jerry personally contracts orders to boosters or whether he uses a runner for that purpose. The stuff does, however, end up being transported to his home where his salesmen pick it up by appointment. Jerry's last arrest (and only arrest for criminal receiving) was in 1966 but no case could be made since the witness could not identify him as the man from whom he bought a television set. This unidentified man (known only as "Red") could not be produced and Jerry's case was dropped. By staying in the background just far enough, Jerry protects himself from being linked directly to the stolen property he handles.

The production to order model need not, then, be characterized by large scale operations. Instead this model describes a highly integrated, tightly controlled and finely precisioned model of the SPS in which the fence is both the orchestrator and the central character.

Identifying the Role of the Fence

What is immediately apparent from the above discussions of division of labor and sequence configuration in the SPS, is the wider role played by the fence in the stolen property game. This actor, completely ignored by the conventional view of theft, has been shown to be much more than an innocuous mechanism by which the thief converts property to cash. On the contrary the criminal receiver is often the planner, the initiator and the contractor for theft. These additional roles assumed by the fence help to explain, first, the origins of the incentive for theft which, despite the volume of space in criminological literature devoted to thieves, has remained an area little developed. By focusing on the fence, we have sought to better explain just why it is that thefts occur in our society.

The next area which the multifarious activities of the fence help to elucidate is the process by which opportunities for theft are generated. The fence by virtue of his occupation or station is often in a position to develop information vital to the successful commission of a theft which in most cases could not be generated by the thief himself. Robert E. Barnes tells of his relationship with a jeweler:

In _____ (large city) one jeweler supplied me with over one hundred fifty names, addresses, amount of jewelry within the premises, time the family worked, telephone numbers of the home, and then purchased the stolen jewelry for about ten percent of its actual value after I burglarized the residents. The fact remains if I had not been given these addresses by this so-called legitimate businessman those families would still possess their jewelry today."

Without such a service provided by the fence, many thieves might be considerably less productive - if not less successful.

Once we have seen the fence as author of both the incentive and the opportunity for theft, we can appreciate more fully the compelling nature of his relationship with the thief. The dimensions of communication, power and retaliatory capability in their interaction take on a new and greater meaning. The thief becomes little more than an instrument of the fence - a highly visible but relatively minor cog in a giant distribution circuit. This should also tell us why our efforts to combat theft by concentrating on the minor character who is the thief have been less than successful. In doing so we have concentrated upon eliminating the most easily replaceable functionary in the SPS without in any way dampening that system's incentives; altering its opportunity structure; or hampering its ability to dispose of stolen property rapidly and efficiently.

Evaluating the Stolen Property System

One final model in the SPS is left for our consideration, mode 6 (evaluation). Any system desiring to grow and maintain itself must seek feedback. In addition it must be capable of evaluating the feedback it receives for validity and usefulness and be willing to incorporate modifications which such feedback suggests. Often a system's feedback will be internally-generated, that is the individual components of a system will monitor each other's activities. Alternatively a system can employ outside evaluators to review its operations and procedures and suggest revisions. Finally, a system can interpret its operational effectiveness through the feedback given by the several environments in which it finds itself. This latter evaluative source, Nature - though often fickle - is presumed to favor no one and hence can comprise a system's least biased feedback mechanism.

The SPS must be characterized as a highly successful distribution mechanism in the American economy. Over the decade of the 1960's, the theft

rate grew 180%;⁴³ and the SPS showed itself to be both flexible enough and efficient enough to absorb this expansion comfortably. It is estimated now that in the area of cargo theft alone, the SPS annually handles a volume of goods valued at \$1½ billion.⁴⁴ Such a system must continually seek and carefully analyze feedback. The fence who occupies the central position in the SPS has the best opportunity to make such an analysis. He will be influenced of course by the demands, the suggestions and the dilemmas of both his suppliers and his customers. But he is also likely to be influenced by the feedback received from the environment.

What is the nature of this feedback? Clearly, the environment offers little challenge to the techniques and procedures of the SPS. The SPS faces an economy of mass produced and mass owned goods whose anonymity is insured because of poor identification and bookkeeping systems; it operates in a world of commerce dominated more often by "terms of sale" than by origin of goods; it sees a society in which "the paraphernalia of lawful enterprise" carries a seal of legitimacy; it finds a criminal justice system that is avidly pursuing thieves, and a social science establishment that continues to view crime as a curiosity rather than as a major American industry.

This resounding support given the SPS by its several environments can only be characterized as encouraging for it. It also makes it difficult to evaluate the SPS's true effectiveness for in many ways that remains to be tested. If it is to be tested, a major reorientation must occur in the area of property crime. To accomplish this reorientation three important steps must be taken. First, the outmoded "conventional view of theft" must be discarded in favor of a more operationally descriptive definition of the theft process. Second, the enforcement emphasis placed upon the thief must be shifted and additional resources allocated to the investigation of the criminal receiver. Finally, the police detective and the scientist must be willing to form a partnership in which the sharing of experience and skills can devise a new technology to respond to a 20th century theft industry. Unless these minimum steps are taken the SPS will continue to operate unchallenged. Quite clearly - and literally - that is something we just cannot afford.

Footnotes

1. Donald R. Cressey, Criminal Organization: Its Elementary Forms, (New York: Harper and Row, 1972), p.5.
2. For a broad description of this development, see Jerome Hall, General Principles of Criminal Law, (2nd Edition) (Indianapolis: Bobbs-Merrill, 1960).
3. Although the massive growth in recent years of so called 'offenses of strict liability' has resulted in some diminution of the strength of this doctrine.
4. There are exceptions, as is the case of the inchoate crime of conspiracy where a broad sweep of events may be reviewed in order to establish the commission of an offense. But in general the range of focus of the criminal law is narrowly confined to the immediate acts, and intent, of the accused.
5. For a discussion of the law of burglary, see generally Wayne R. LaFave and Austin W. Scott, Handbook on Criminal Law (St. Paul, Minnesota, 1972). See pp. 708-715; also, Duncan Chappell, The Development and Administration of the English Criminal Law Relating to Offenses of Breaking and Entering (University of Cambridge, 1965; unpublished doctoral dissertation).
6. Such as undertaking surveillance of a building before committing a breaking and entering offense.
7. Chappell, op. cit., supra; note 5.
8. In practice this 'painful' process is likely to be circumvented by securing a plea of guilty to these additional offenses. Such a plea is usually of benefit to both criminal justice agencies and the defendant, the former 'clearing the books' of a number of crimes with little effort and the latter obviating subsequent prosecution for an ongoing string of offenses.
9. Competing models, however, continue to be pressed from time to time. See, generally, Herbert L. Packer, The Limits of the Criminal Sanction (Stanford, California: Stanford University Press, 1969).
10. Donald R. Cressey, Theft of the Nation: The Structure and Operations of Organized Crime in America (New York: Harper and Row, 1969).
11. See, for example, F. H. McClintock and Evelyn Gibson, Robbery in London (London: MacMillan, 1963); Chappell, op. cit., supra, note 5.
12. Clarence M. Kelley, Crime in the United States (Washington, D.C.: U.S. Department of Justice, 1972), pp. 14-15.

13. An excellent discussion of the legal classification problems in the context of criminal statistics can be found in the United Kingdom Home Office Report of the Departmental Committee on Criminal Statistics (London: H.M.S.O., 1967), Cmnd. 3448.
14. Even when attempts have been made to overcome the dilemmas produced by the profusion of squads, and agencies, having overlapping jurisdiction in various areas of crime, the results have not been very rewarding. Federally organized crime strike forces provide one illustration of an apparently unsuccessful collaborative venture.
15. Portions of this research were supported by funds made available from the National Science Foundation, Grant No. 20-477.
16. The concept of the "support set" is taken from the work of M. A. P. Willmer in Crime and Information Theory (Edinburgh: Edinburgh University Press, 1970).
17. The case described is not an actual one although many of its elements as well as the description of the police response are drawn from the authors' field observations.
18. It will be assumed that the interrogation was conducted within the Supreme Court guidelines as presented in Miranda and Escobedo and hence would be admissible in court. One might also consider the possibility that the police were able to skillfully maneuver the two young suspects into a prisoner dilemma situation thereby insuring the confession.
19. This discussion of the shortcomings of the "conventional view of theft" as well as the development of that concept is taken from the doctoral dissertation of Marilyn Walsh, "Criminal Receiving: A Study of the Fence and How He Operates," School of Criminal Justice, State University of New York at Albany.
20. The Stolen Property System Concept and its discussion is taken from the dissertation of M. Walsh, ibid.
21. A fascinating account of the complex planning and execution of truck hijacking can be found in the Report of the Select Committee on Small Business, Criminal Redistribution Systems and Their Economic Impact on Small Business Business, Hearings, U.S. Senate, 93rd Congress, 1st Session, (1973).
22. For example, it is inconceivable that the SPS makes use of the extensive advertising efforts of the legitimate marketplace. Such pre-selling of merchandise removes from some fences the necessity of carrying on their own promotional campaigns.
23. "Shift in Crime Patterns Adds to 'Fences' Here," Eric Pace, New York Times, October 12, 1971, pp. 1 and 31.

24. Robert Earl Barnes, a convicted professional thief who is now serving time at the Federal Correctional Institution in Sandstone, Minnesota, wrote a rather lengthy letter about fences to the Senate Select Committee on Small Business, United States Senate. This letter is reproduced in a recent report of the Committee, op. cit., supra, note 21, pp. 158-163.
25. A point elaborated in Duncan Chappell and Marilyn Walsh, "Receiving Stolen Property: The Need for Systematic Inquiry into the Fencing Process." In press, Criminology.
26. Morton Deutsch, "A Theory of Cooperation and Competition," Human Relations, Vol. 2 (1949), pp. 129-152.
27. This discussion is again taken from Walsh, op. cit. It is a much abridged version of a chapter which relies heavily upon the contributions of sociologists and social psychologists to the theory of games. Since much of the theoretical development is eliminated here, the sources particularly used to reach the conclusions noted will be supplied in the footnotes.
28. The specific studies relied on in the area of communications in mixed motive bargaining situations include: James L. Loomis, "Communication, The Development of Trust, and Cooperative Behavior," Human Relations, Vol. 4 (1959), pp. 305-315; Robert Radlow and Marianna Fry Weidner, "Unenforced Commitments in 'Cooperative' and 'Non-cooperative' Non-constant Sum Games," Journal of Conflict Resolution, Vol. X(4), (December 1966), pp. 497-505; Harold H. Kelley, Linda Linden Beckman, and Claude S. Fischer, Journal of Experimental Social Psychology, Vol. 3(4) (October 1967), pp. 361-398.
29. John C. Harsanyi, "A General Theory of Rational Behavior in Game Situations," Econometrica, Vol. 34(3) (July 1966), pp. 613-634.
30. Much as did the subjects of the study by Kelley, et al., op. cit.
31. The three studies relied upon particularly for this discussion were: Peter Murdoch, "Development of Contractual Norms in a Dyad," Journal of Personality and Social Psychology, Vol. 6(2) (June 1967), pp. 206-211; John Thibaut, "The Development of Contractual Norms in Bargaining: Replication and Variation," Journal of Conflict Resolution, XII(1) (March 1968), pp. 102-112; and S. S. Komonita and Marc Barnes, "Effects of Pressures to Reach Agreement in Bargaining," Journal of Personality and Social Psychology, Vol. 13(3) (November 1969), pp. 245-252.
32. Follows directly from Thibaut and Komonita and Barnes, op. cit.
33. Developed from Paul G. Swingle, "Exploitative Behavior in Non-Zero Sum Games," Journal of Personality and Social Psychology, Vol. 16(1) (September 1970), pp. 121-132.

34. See Komonita and Barnes, op. cit.
35. See Murdock, op. cit.
36. Some of the theoretical work used in this development included: Morton Deutsch and Robert M. Krauss, "The Effect of Threat Upon Interpersonal Bargaining," Journal of Abnormal and Social Psychology, Vol. 61(2) (September 1960), pp. 181-189; Harold H. Kelley, "Experimental Studies of Threats in Interpersonal Negotiations," Journal of Conflict Resolution, Vol. IX(1) (March 1965), pp. 79-105; Thomas C. Schelling, "Game Theory and the Study of Ethical Systems," Journal of Conflict Resolution, Vol. XII(1) (March 1968), pp. 34-44; Claude S. Fischer, "The Effect of Threats in an Incomplete Information Game," Sociometry, Vol. 32(3) (1969), pp. 301-314; James T. Tedeschi et al., "The Effects of Opportunity Costs and Target Compliance on the Behavior of a Threatening Source," Journal of Experimental Social Psychology, 6(2) (April 1970), pp. 205-213.
37. James T. Tedeschi, Thomas V. Ponomo and Robert C. Brown, "A Paradigm for the Study of Coercive Power," Journal of Conflict Resolution, XV(2). (June 1971), pp. 197-224.
38. A review of the penalty structure for theft and criminal receiving in each of the states will be found in Duncan Chappell and David Hirschel, "A Summary of the Provisions Relating to Criminal Receiving Contained in United States Statutes," Select Committee on Small Business, Criminal Redistribution (Fencing) Systems, Hearings, U.S. Senate, 93rd Congress, 1st Session (1973) Part I, Appendix I.
39. See Scott and LaFava, op. cit., supra, note 5, p. 691.
40. Jerome Hall, Theft, Law and Society, (2nd Edition) (Indianapolis: Bobbs-Merrill, 1952), p. 195. See also Duncan Chappell and Marilyn Walsh, "No Questions Asked: A Consideration of the Crime of Criminal Receiving," In press, Crime and Delinquency.
41. Concerns in the legitimate marketplace over inventory investment costs have stimulated the use of operations research techniques to determine such things as the optimum inventory stock and the economic (re)order quantity (EOQ). There has also been some development of customized production in industrial markets in which customers are given price considerations for placing orders in anticipation of future needs allowing the supplier to initiate production when the order is received. Such order-generating production is limited, however, to high unit value goods and to specialty and craft items in the legitimate marketing system.
42. Again it should be emphasized that this model is limited in the legitimate market to large unit value items designed primarily for industrial users and to to craft and specialty items in the consumer market. Although production to order is analogous to a catalogue buying

- system, the latter situation requires that someone hold an inventory of already finished goods, usually at a central warehouse or distribution center. A description by a burglar of a production to order fencing operation will be found in the Select Committee on Small Business Report, op. cit., supra, note 21, pp. 30-36.
43. "Crime in the United States," Uniform Crime Reports 1970, issued by Federal Bureau of Investigation, J. Edgar Hoover, Director, (Washington, D.C.: U.S. Government Printing Office), p. 4.
44. Op. cit., supra, note 21, p. 2.

Submitted to the International Association of
Chiefs of Police, Inc.

TO ASSIST WITH PREPARATION OF TRAINING KEYS ON FENCING

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September 25, 1974

FENCING OF PROPERTY OF HIGH VALUE

The fencing of stolen property is essentially a marketing activity, that is, the performance of functions associated with the movement of goods from a productive source (in this case the thief) to a consumptive end (a final consumer or a final setting in which it will be sold or resold). Even the most primitive of fencing operation requires some knowledge or appreciation of marketing considerations. Thus, even the addict-thief, peddling his own merchandise to strangers on the street, must consider (1) the saleability, i.e., the attractiveness, of his wares to passers-by and (2) the best price to ask for them. Where high-value merchandise is involved, however, the complexity of marketing considerations is substantially increased and the requisite knowledge to perform the activity successfully is much greater. This is true for several reasons.

First, property of high value generally requires a specialized expertise in order to evaluate minute differences in quality and desirability. Such expertise is usually acquired through specific training bolstered by experience, both of which are limited to a small range of persons. Jewelry and gem stones, for example, often possess minute but critically important differences in quality, in relative scarcity and in size which influence their value. The expertise required in making those distinctions and in establishing the uniqueness of a jewelry item is generally limited to experienced jewelry and gem dealers who have both a financial and a professional interest in maintaining and improving that capability.

Second, property of high value is generally destined for a limited (as defined by financial capability) and, in most cases, knowledgeable market. The greater sophistication of this market (in terms of its ultimate consumers or their agents) at both the wholesale and retail levels requires a high degree of professional competence on the part of sellers of such merchandise. This is

because any incongruities relating to its sale, its price or its representation will be noted by the knowledgeable market. Antiques, for example, are generally purchased by a knowledgeable consumer or his agent who is thoroughly versed in their worth and availability. Any misrepresentation by a seller, then, will reflect upon his competence and/or integrity as a merchant of such goods.

Third, because of the knowledgeable market for high value goods and the expertise needed to make value distinctions regarding them, the market is extremely price sensitive in two respects: (1) there is a strong relationship made between price and quality and (2) the market is well aware of the "right price" for a given piece of merchandise. Because of this dual-edged price sensitivity, neither goods priced too low nor those priced too high will be accepted. In other words, there is no room for "bargain basement" pricing without reflecting on quality, and little room for inflationary pricing except on unique and highly desired items.

Finally, many high value items are not designated or destined directly for a consumer market, with the bulk of transactions involving dealers and wholesalers of the merchandise. In this setting, all must display a competence and an understanding of both the complexities and subtleties of the market. Amateurs cannot function covertly in this marketplace without notice.

All these characteristics of the market for and the nature of high-value merchandise are as true for the illegitimate seller as they are for the legitimate one, and apply to goods legally or illegally obtained. Therefore, the fencing of stolen merchandise of high value, i.e., jewelry and gemstones, art objects, furs, guns and antiques, is most likely to be performed by merchants knowledgeable in those product areas and possessing some legitimate status in those markets. For example, in a study of the fencing industry in one eastern metropolitan area (Walsh, M. E., Criminal Receiving of Stolen Property: A Study of the Fence and How He Operates, 1974),

it was found that stolen antiques were uniformly received by persons having legitimate commerce in antiques; stolen jewelry and gemstones were handled by "legitimate" jewelers or antique dealers. (Supporting documents 1 and 2 contain more detailed information about these findings and other characteristics of the fencing industry studied.)

The lesson to be learned here, then, is that where a theft of high-value merchandise is involved, police should give primary attention in surveillance and questioning activities to established markets for and sellers of these goods at both the wholesale and retail levels. This need not be in an adversary role for truly legitimate merchants can be valuable sources of information and good monitors of the business dealings of their peers. In addition, they can provide investigators with specialized information regarding the usual marketing patterns for such merchandise. The key thing to remember is that jewelry is not likely to be fenced through marginal second-hand dealers, and much time can be wasted surveying these shady merchants. Instead, time is more efficiently spent surveying local legitimate jewelry markets for information regarding new or unusual transactions, and giving attention to interactions observed between members of the jewelry trade and known theft offenders. The same general rule applies to other high-value, stolen goods destined for such specialized markets as described above.

Industrial goods, i.e., raw materials, supplies and accessories and parts, have a similar marketing pattern when stolen. Thus, in the study referred to earlier, such items as metal alloys and ores were uniformly handled by "legitimate" tradesmen for those goods. Again the knowledge and sophistication of the market requires the fence as well as the legitimate seller in the industrial market to be well versed in its intricacies. Most often this means that the fence of industrial goods and raw materials will be a part of the legitimate marketing structure of that merchandise or else be very close to it through some quasi-legitimate relationships or arrangements.

From the perspective of the potential for law enforcement intervention, it is not very encouraging to note these characteristic qualities of the high-value stolen goods market. This may be one of the reasons why criminal receivers have for so long been ineffectively dealt with by the criminal justice system. Police are justifiably timorous about invading the business premises of the "legitimate" jeweler, etc., and may find it extremely difficult to obtain warrants to do so given the fact that fences rarely have arrest records that might support a contention of wrongdoing. Once again the study reported above found that 53% of the identified criminal receivers had either no record or arrests for vehicle and traffic violations only. Even if arrested, the fence--unlike his counterpart the thief--is quite unlikely to be re-arrested, while convictions in any case remain staggeringly few.

Where, despite these gloomy prospects, can the police intervene effectively? Interestingly enough there are several points at which the fence of high-value property is considered vulnerable, once understood and appreciated. For example, actual possession of stolen merchandise is somewhat unavoidable for this type of fence. Receivers of more mundane items can often act as brokers, but where high-value property needing evaluation is involved, the fence must undertake possession--if only briefly--to do so.

In addition, because of the high mark ups traditionally associated with such goods, it is likely that possession once undertaken by the fence will be more than brief. High-value items on which a single sale represents a significant profit can be comfortably (from a financial viewpoint) held in inventory and sold at a later date. The fact that many high-value items such as gemstones, art works and antiques, are used as standards of value in an inflationary period also means that it is advantageous and often prudent to hold such merchandise in inventory.

It is on the possession and storage (i.e., inventory maintenance) dimensions of the fencing activity, then, that the receiver of high-value goods is most vulnerable. The transit function is not nearly

as susceptible to intervention, although some rules of thumb regarding stolen property movements have emerged in the study noted earlier. First, high-value goods that fall into the industrial market category will generally conform to a transportation pattern dependent on their weight and bulk. Thus, metals, alloys and other heavy or bulky industrial goods were not generally transported for resale far from their point of origin, that is, the theft. Operating supplies and equipment, however, such as electronic parts and restaurant equipment were observed to move from the market region of origin to external markets of varying distances. Generally these external market areas were found to be normal and natural trading partners of the metropolitan area studied. Stolen goods, then, appear to follow trade routes in their distribution patterns similar to those utilized for licit merchandise.

Second, for high-value goods generally, movement tends to vary directly with uniqueness of the item. Thus, the more unusual and hence valuable a high-value piece of merchandise, the further it is likely to travel. This is thought to be true for two reasons: (1) because of the extreme "heat" placed on the item by its identifiability and (2) because it is likely to have been "stolen to order" with the buyer agreeing to absorb special or extraordinary transportation charges in acquiring it. (This situation, along with other arrangements in the stolen property market place, are described in more detail in supporting document 3.) A theft of paintings stolen from the city studied, for example, were quickly transported internationally and are rumored to be in Germany at this point.

"Heat" and a willing subsidizer of transportation costs, then, are likely to make high-value goods move--often great distances--from their points of origin. This latter dimension, the willing subsidizer, is probably not very susceptible to police intervention. The previously contracted-for theft is generally too well orchestrated to allow for effective reactive police strategies. This is not so true of the former dimension of "heat" deriving from identifiability. Clearly

much more high value property could have its thermal temperature increased for the fence were it better identified. It is precisely because many owners of high-value goods do not take advantage of new techniques for marking their property that the fence can with immunity take possession of them and hold them in inventories at his leisure.

What this suggests is that an important law enforcement strategy regarding the fencing of high-value property must be one of public education of the high-value property owner with a view toward enlisting his or her cooperation in better identifying that property. There are many new techniques involving fluoroscopic and infrared devices that allow for better identification without detracting from the beauty or value of such items. Once the cooperation of property owners can be achieved, the police are put in a much better position in applying for search warrants and in recovering property clearly identifiable by the owner.

A second strategy of cooperative action is also suggested. This involves a good working relationship with reputable merchants in high-value merchandise trades and with insurers of such property. This latter group is generally assumed to know more about the fencing of high-value property than is often confessed, and while it must be recognized that the activities of some insurers may sometimes be at cross purposes with those of law enforcement, they remain an important source of information and cooperation. The same is true of the reputable merchant in high-value trades. Careful and exhaustive intelligence work is likely to reveal the disreputable or suspicious tradesman, but because many, if not most, merchants are not willing dealers in stolen merchandise, this latter group can be very helpful sources of information about market patterns generally and the recent acquisitions of peers. Such a strategy must be handled delicately in both cases, of course, and is probably best undertaken on a continuing and very general basis rather than in relation to a specific theft investigation involving a specific tradesman.

In summary, the following points should be remembered when high-value goods are stolen:

1. They are likely to be received and redistributed by individuals having some form of legitimate commerce in those trades.
2. Because of the need for scrutiny and evaluation, they are likely to involve the actual possession at some point by the fence.
3. Where the merchandise is not readily identifiable and involves a high mark up, it is likely to be held in inventory locally for some period of time.
4. Where bulky or possessing significant weight, the merchandise is likely to stay in the local market area for resale.
5. Where transport costs are not significant, such items will often move to external market areas analogous to those which are normal and natural trading partners of the region or origin.
6. Where particular "heat" is associated with a high-value item or it is unusual enough to suggest a customized theft, the property is likely to move very quickly and often great distances.
7. In order to effectively combat such fencing activity, the cooperation of property owners, merchants and insurers must in some way be enlisted.
8. There is little or no substitute for painstaking background intelligence efforts where fencing is concerned, combined with the systematic interviewing of theft offenders to generate and enhance separate information-gathering activities.

Fencing Stolen Property



Most efforts to curb the rising rate of property crimes have concentrated on stopping the theft itself. Equally important is the prevention of criminal redistribution of stolen property. The fence who buys and sells stolen property plays a vital role in the present high level of property crimes.

Training Key®

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In the United States the estimated value of stolen property each year amounts to approximately \$16 billion. The flow of this property from the thief to an eventual consumer involves many of the same kinds of distribution problems encountered by legitimate businesses. The stolen property must usually be transported, stored, and marketed to a customer before it is converted into cash. The mechanics of converting stolen property into cash are usually handled by a criminal specialist known as the fence.

Unfortunately, the fence is often not recognized by society as a criminal. Instead, he is often described as a "shady businessman" or someone with "connections" who can supply merchandise at bargain prices. In fact, the fence plays a vital part in nearly all property thefts. Without the fence, property thefts would undoubtedly decline because the property thief could gain nothing more than a garage full of stolen merchandise.

Fencing Operations

DIRECT SALES: Perhaps the lowest level of criminal fencing is direct, small-scale buying and selling of stolen property, which is usually undertaken by one individual as a part-time activity. The fence in this instance personally buys stolen property from a thief and sells it to cash-paying customers. This type of fence usually has a steady job, which he may or may not use to create a distribution route for stolen property.

For example, a typical fencing transaction at this level might involve driving an automobile onto a factory parking lot during the lunch hour and selling merchandise directly from the trunk of the car to workers. The fence usually needs some contact point within the factory to spread the word that "some real bargains" will be available. The factory worker may take orders for merchandise himself, thus becoming involved in the fencing operation, or he may simply pass the word to potential customers. The legitimacy of the sales may be supported by a claim that the seller has connections with certain large-volume distributors who are experiencing difficulty.

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STOREFRONTS: A somewhat higher level of fencing operation is that which involves an individual who sells stolen property as part of an otherwise legitimate business. Typical types of businesses that are frequently involved in this type of fencing operation are pawnshops, flea markets, and used-furniture stores. In some cases, the proprietor may not consider himself to be a criminal. He does, however, practice willful self-deception about the probable ownership of the property that he buys and sells. By failing to ask reasonable questions about the ownership of used property, this type of businessman encourages property thefts and derives profit from low-volume sales of stolen items.

The storefront fence may, on the other hand, establish some kind of working agreement with burglars or other thieves who supply him with stolen property. These arrangements are usually neither binding nor exclusive, in that the thief may sell elsewhere if the price is better. Also, the fence can refuse to purchase anything that he does not want to handle. Generally speaking, however, this type of arrangement encourages a degree of dependency between the thief and the fence. Both derive a steady income from the arrangement, and each needs the other.

Occasionally, the fence may place an "order" for certain kinds of stolen property that he knows can be resold. The fence in this case does not actually set up the burglary by picking a location as a target, but his order serves to initiate the events that lead up to the burglary. If the thief is captured, the storefront fence may furnish needed bail money.

LARGE-VOLUME SALES: The distribution of large volumes of stolen property, such as might be taken during a truck hijacking or warehouse burglary, usually involves connections that will eventually funnel the stolen property back onto the legitimate market. The fence who operates at this level occupies a position comparable to the wholesale distributor in legitimate business.

The distributor fence often specializes in certain areas such as construction materials, liquor, or furniture. Some of his customers are honest businessmen who do not know

they are purchasing stolen property. Other customers, of course, simply do not want to know how the distributor is able to undersell the competition and do not question why he wants to be paid in cash. Like the storefront fence, the specialized distributor may occasionally place an "order" for shipment of electrical wire or other equipment when a customer asks for it.

The most complex level of criminal fencing is that conducted by the "master fence" who deals only in large-volume purchases and who does not sell at all to legitimate customers. The master fence disposes of his property to specialized distributors and other criminal middlemen who knowingly accept the stolen property in order to resell it on the legitimate market. Sales of stolen property at this level may be extremely difficult to link directly with the fence. Employees in his organization are used to examine, store, and transport the stolen merchandise. The buying and selling transactions are generally conducted on the telephone, and the fence himself may never actually see or touch the stolen property.

Terminology

Persons who are engaged in criminal distribution of stolen merchandise often use a specialized vocabulary to describe various elements of the system. These terms include activities, places, and people involved in fencing. This slang vocabulary varies from one region to another and is constantly being modified, but the alert patrol officer should be able to recognize the basic fencing vocabulary used in his own area.

The term *fence*, for instance, is both a verb and a noun. As a verb it indicates the act of buying or selling stolen property with criminal intent. As a noun it denotes the organization or individuals who purchase and dispose of stolen goods. The term *swag* has often been used to describe the stolen property. *Swagman* is a term occasionally used to indicate the person who fences stolen property.

A *drop* is a place where the stolen property can be stored. It may be a warehouse, an apartment, or a garage. At the drop, a group of persons called *loaders* remove the merchandise from the truck and store it. They also *strip the carous*, which means to remove any identifying marks from the shipping boxes. This same term includes removing identification marks from the merchandise itself when the loaders are sufficiently skilled to do so. Such marks might include salvage markings, stamped numbers or letters, trademarks, and sewed labels.

The individual who locates desirable property to be stolen is known as the *setup man* or the *finder*. The set-up man may contact the fence regarding the sale of the property before he arranges to have it stolen. After the theft has taken place, the fence may send an associate called the *OK guy* to inspect the merchandise. The OK guy checks the quality and quantity of the merchandise before payment is made. When stolen property is sold, it is said to be *downed*. A thief who supplies a fence with stolen property may be called a *booster*.

Elements Of Proof

Gathering sufficient proof to gain a conviction for fencing stolen property can be a long, painstaking task that involves more time and concentration than is available to the patrol officer. It is desirable that every arrest for fencing stolen property be a *planned arrest*. Although it is necessary to recognize that there will be times when a patrol officer must make an *immediate arrest* for possession or transportation of stolen property rather than risk losing the property, generally speaking, each officer should strive for a planned arrest based on a solid case. In most instances, it is wiser to limit the immediate role of the patrol officer to collecting information that can be used to build a thorough case.

In larger departments, information obtained by the patrol officer about suspected fencing operations should be reported to the bureau or squad within the department whose responsibility it is to keep track of burglary and fencing activities. Even if the officer observes possible evidence that can lead to an immediate arrest, he should not act hastily. The better course of action is to withdraw temporarily, think over the case, be sure everything is in order, and then return to make the arrest. This procedure is suggested because of the complexity of laws governing receipt and possession of stolen property. Although each fencing case must be evaluated in terms of local statutes and court opinions, certain common elements are present in most controlling legislation.

IDENTIFICATION: The property must be positively identified as being stolen. This may prove to be far more difficult than expected. In many cases, police officers find persons in possession of property that they believe is stolen but which cannot be traced with any certainty to a legitimate owner. The lack of serial numbers on a property or the failure of the owner to maintain adequate records are often at fault here.

Many manufacturers of small appliances and similar items claim that serialization would be extremely costly in terms of labor and record keeping. In most cases, therefore, identification of specific items depends on certain markings (name of consignee and shipping number) that are stenciled on the cartons or shipping crates in which the products are packed. Of course, one of the first things done by the fence who receives the stolen property is to "strip the cartons."

Similarly, inadequate inventory control by large companies may make it impossible for them to prove that they were actually the victims of a theft. Without good inventory control, a company may not be able to document its own legal ownership of property that has been stolen. Again the police officer may find himself in the frustrating position of "knowing" that a theft has occurred but lacking sufficient elements of proof to make a formal charge.

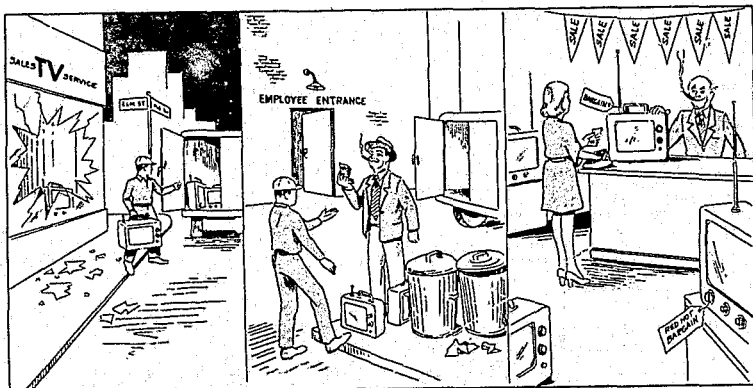
Identification of stolen property is also extremely difficult with respect to so-called fungible goods. These are goods that are normally undistinguishable from one another. Fungible goods include such items as tools, electrical wire, liquor, and wearing apparel. Lacking any specific identifying marks, it is extremely difficult to establish ownership of a particular spool of wire. It is equally difficult for the owner of fungible goods to state positively that a particular item is his own property.

RECEIPT: The stolen property must have been received by the suspect. Most statutes prohibiting receipt of stolen property also cover concealment, possession, storing, and selling of stolen property. Direct evidence in any of these activities may be very difficult to obtain. Instead, the officer will have to depend on building a strong case of circumstantial evidence.

A person may be shown to be in possession of stolen property when the stolen merchandise is discovered on his own property. This fact in itself, however, is not sufficient to obtain a conviction. The evidence may be considerably more incriminating if the stolen goods are located in immediate association with other property belonging to the accused, if access to the storage point is limited to the one suspect, or if the accused is observed in physical possession of the stolen property.

When an officer attempts to develop circumstantial evidence against a suspected fence, he should consider the following points:

- Did the suspect obtain the property by paying a price that is far below its reasonable market value?
- Did he pay by check or with cash?
- Does he have a receipt of purchase?
- Do his business records differ from the normal method of record-keeping in his type of business?



SMALL-SCALE FENCING

- Are the stolen items segregated from other items in storage?
- Is property from several different thefts in his possession?
- Is there a reasonable and satisfactory explanation for the presence of the stolen property?

KNOWLEDGE: The receiver of the stolen property must have knowledge that the property was stolen. This is a basic requirement for successful prosecution of a fence.

In the absence of direct information about an individual's thoughts, the officer must rely on circumstantial evidence to prove foreknowledge. Some of the things to be considered include an extremely low price paid for the merchandise, the fact that no established business concern was involved in the transaction, and knowledge that the seller of the property could not possibly have been the legitimate owner (for instance, when purchasing 12 television sets from someone having no legitimate connection with the industry).

Because a large-volume fence may operate exclusively by telephone, his knowledge of stolen property may have to be demonstrated by such methods as legal electronic surveillance, or wiretap. The interception and monitoring of telephone conversations is expensive and time-consuming police work, but it is practical in this instance because the large-volume fence usually operates from a permanent location and makes frequent telephone conversations related to the transaction. It should be noted that the conversation will probably be guarded and may include much slang terminology or code words that could conceivably relate to a legitimate business front maintained by the fence. The terms used in the telephone conversation must be shown to be consistent with the suspected fencing operation before they can be considered as evidence.

Other methods for obtaining evidence of knowledge about stolen property include continuous surveillance and the use of undercover officers. Close surveillance may be very difficult because the fence is wary of strangers who are present at crucial moments. An undercover officer who wears recording equipment while attending meetings with the fence may be able to secure evidence during a planned purchase of stolen merchandise. A decision to arrest on the basis of this information, however, should be weighed against the potential usefulness of the officer remaining in an undercover role.

Collecting Evidence

Arrests for fencing should be planned arrests. Evidence against the fence should be collected over a period of time and accumulated at some central point where a decision can be made concerning the best possible time and circumstance to make an arrest. In most cases, therefore, direct immediate action by the patrol officer is not recommended.

An exception to this general rule should be mentioned: street-level enforcement against small-scale fencing operations. For example, in the case of a fence who makes sales from the trunk of his car, the patrol officer should take direct action. The officer should make an inquiry about this selling. In jurisdictions where a license is required to make sales of merchandise, the officer should consider making an arrest and seizing the property if the vendor is violating a licensing law. The investigation regarding the origins of the merchandise should not stop with a simple seizure for a licensing violation. The officer should determine if the property is stolen. If the property is identified as stolen, he should then determine the vendor's role in selling the stolen merchandise. Thus, if the officer will pursue the matter, a licensing violation can possibly develop into a fencing case.

Beyond this noted exception, the patrol officer would do better to limit his own role in the investigation to collecting evidence, reporting it to a designated central point, and sharing in the decision whether or not to arrest. Keep in mind that the fencing operation includes buying, transporting, storing, and selling stolen property. Most of the evidence that can be collected by the patrol officer involves either transportation or storage. This is so because the buying rarely takes place where it can be easily observed, and the selling rarely occurs under circumstances that are clearly incriminating. Both activities, furthermore, involve only very brief periods of time. The transportation and storage of stolen property, on the other hand, are phases of the fencing operation that are most vulnerable to detection by the patrol officer.

TRANSPORTATION: Much of the transportation of stolen property is done by truck. If a patrol officer suspects a carrier is transporting stolen property, the police officer can make a routine check for driver's

license and registration and follow up with a request to see the bill for loading or other paperwork related to the shipment. Truck deliveries customarily are accompanied by some kind of paperwork. If the driver cannot produce shipping papers or refuses to do so, the officer may not demand to inspect the cargo unless he has probable cause to believe the truck contains stolen property. Mere suspicion by the officer is not sufficient to justify a search. Lacking probable cause for a search, the officer should make a full report of the suspicious incident to the appropriate unit within the department.

If an officer has probable cause to believe that a truck contains stolen property, he may then thoroughly search both the locked and unlocked portions of the vehicle. A warrantless search of a vehicle is based on the existence of probable cause, the mobility of the vehicle, and the reasonableness of the search. A vehicle by its very nature must be treated differently from fixed locations (houses and offices) because of the possibility that either it will be moved or incriminating contents will be carried away while a search warrant is being obtained. The standard of probable cause for a warrantless search of a vehicle is the same standard required for a search by warrant.

Vehicle searches based on probable cause should be made immediately and without warrant, as this course is more practical, convenient, and lawful. If an officer has probable cause to believe incriminating items will be found in the vehicle, he may stop the driver, search the vehicle, and then place him under "formal arrest" if the items are found.

If the police officer has probable cause to search a vehicle, which is not mobile, then he must obtain a search warrant. For example, if the officer desires to search a trailer parked without a cab and there is no danger of the trailer being moved or the contents disturbed, he should have the trailer kept under surveillance and obtain a search warrant. Lacking the mobility factor associated with vehicles, the officer is best advised to observe the trailer and obtain a search warrant.

When officers are making a planned arrest of a fence in his vehicle, they will need to obtain a valid search warrant to search beyond the area authorized by the rules governing a search incidental to the arrest.*

STORAGE: Although stolen property is often held temporarily in garages, warehouses, or other protected sites while awaiting distribution, much stolen property is also stored at the same location where it is offered for sale to the public. The fence who operates a storefront may have quantities of stolen property either in his stockroom or openly on display for sale. The patrol officer is in an excellent position to collect evidence at this phase of the fencing operation.

Generally speaking, the police officer can inspect any item that is displayed by a merchant for sale. A careful observation of items displayed at suspicious used-furniture outlets should occasionally be made by the patrol officer. Serial numbers and other identifying marks should be checked against lists of items reported stolen. Ordinarily this kind of inspection cannot legally be extended into stockrooms or other areas where the public is not permitted to go unless specific enabling legislation exists in the local jurisdiction.

If the inspecting officer should discover a dozen stolen television sets, it would probably be wise not to inform the proprietor of the discovery. In this case, the officer should immediately report the discovery to persons within

the department who can make a decision about appropriate police strategy.

If an officer during the course of such an inspection should discover a single stolen item, such as a television set, he should place a "police hold" on the item. In other words, he should instruct the proprietor not to sell the item because there is some reason to suspect that it may be stolen property. The officer does not make a formal charge against the merchant for possessing stolen property merely on the strength of finding a single television set. After informing the merchant to hold the property, the officer should promptly report the discovery to persons within the department who can evaluate the merchant's previous or present involvement in fencing operations and make the decision about appropriate police strategy.

Tracing The Fence

Because the basic role of the fence is one of supporting and motivating thefts rather than actually participating in them, he is often overlooked during the prosecution of those who are caught while stealing merchandise for him. Police officers should keep in mind that the burglar is not really attempting to collect a garage full of stolen merchandise. His ultimate purpose is to receive cash for the stolen property, and this would only be forthcoming from a fence.

Investigations of burglaries and other property thefts should always be extended to include the probable destination of the stolen property. One prosecutorial technique to secure evidence against the large-volume fence is to offer a grant of immunity from prosecution against a co-defendant so that he will testify freely about fencing activities in which he has been involved. The testimony obtained in this way can provide direct evidence that the suspected fence did receive stolen property and that he had knowledge that it was stolen.

When a thief and a fence work together frequently, a degree of mutual dependence exists between them. The thief, therefore, may withhold any information about the fence because he expects to be helped by him during a future trial or jail term. It is not unusual for a fence to provide bail money for a thief who is caught during a burglary.

The police officer may be able to establish a lead to the fence by tracing how bail was provided for the defendant. The fence may have channeled money through members of the thief's family, such as a wife or brother. When these family members are interviewed by police, they may reveal information that will identify the source of the money. When bail is provided by a legitimate bail bondsman, it may be true that the bondsman's fee was paid by a third party on behalf of the defendant. Lacking that, it is possible that the bondsman received some verbal assurance from a third party that he accepted as a "guarantee" for his investment. Police officers should attempt to build a rapport with legitimate bail bondsmen. If the bail assistance can be traced to a suspected fence, the officer may have identified an important indication of dependency that could lead eventually to the arrest of the fence.

In summary, it should be underscored that the fence is an overlooked criminal. He performs a vital supporting role in nearly all property thefts. Without the fence, most thieves could never convert their stolen property into cash. Without the expectation of quick cash, most property crimes would never be committed. Investigation of all property crimes should be extended to include the probable destination of the stolen property. Evidence against the suspected fence should be carefully collected and evaluated. When sufficient evidence has been collected, the fence should be apprehended with a planned arrest.

*For an in-depth discussion of vehicle search, see IACP Legal Points, "Search of Vehicles—Connected with Arrests," "Search of Vehicles—II, Consent and Inventory Searches," (Police Legal Center, IACP, 11 Firstfield Road, Gaithersburg, Md.) 1971. Also, see Chambers v. Moroney, 90 S. Ct. 1975 (1976).

Discussion Guide

1. Some retail businessmen are actually fences who use their stores as fronts for selling stolen goods. This fencing operation is conducted out of an apparent legitimate business front such as a pawnshop, swap shop, flea market, or secondhand store. Discuss the methods used in this type of fencing and how it can be controlled.

A. Fencing Method

... The shop owner may practice a policy of never inquiring as to where or from whom the seller obtained the merchandise, or whether the seller had a legal right to possess it.

... This attitude on the part of shop operators encourages the selling of stolen goods.

... Another method is for the storefront fence to have several burglars working for him.

... This is a mutually convenient arrangement in that the burglar knows to whom he can sell the stolen property and the fence can depend on certain burglars to bring him merchandise.

... The storefront fence may even place an order for certain kinds of items to be stolen. Normally the fence simply tells a burglar how many items of a certain kind he needs.

B. Control

... Most state statutes require a shop operator to make reasonable inquiry to determine if the person has the legal right to possess and sell the merchandise.

... Failure on the part of the merchant to make this reasonable inquiry when ownership is doubtful can be a presumption that he knew that the property was stolen.

... Additionally, there are business license statutes that require pawnshops to keep records and supply the police department with information relative to property that is put into pawn.

... Officers should regularly inspect these records in search of stolen property and ensure that shop owners comply with other statutory requirements.

... Officers should regularly inspect the merchandise in the store to determine if any stock consists of items reported as stolen and to check whether the operator is reporting all pawned items.

2. Drug-related thefts play a role in certain types of fencing operations. Discuss this relationship.

A. The Thefts

... Shoplifting, thefts from vehicles, small-time burglaries are often the work of addicts.

... Most of the items stolen by addicts are of a personal nature—watches, luggage, clothing, jewelry, electrical appliances.

... Large-scale thefts, such as truck hijacking and cargo thefts, often require skills normally beyond those of an addict.

... The cumulative effect of many small thefts make drug-related fencing operations a major problem.

B. Fencing

... The personal use items stolen by the addict are sold to small-time fences and individuals looking for a "good buy."

... Also, many narcotic pushers accept property as payment for drugs.

... Only a few addicts are involved with large fencing operations requiring sophisticated and systematic thefts and disposition of valuable property.

3. Each year there is \$3 billion in employee thefts. This systematic larceny of merchandise by dishonest employees results in another source of salable property for the fence. Discuss the various means dishonest employees use in fencing operations.

... Carrying items out of the business hidden in trash boxes and selling directly to a fence.

... Ordering excessive amounts of merchandise, then selling the overage to the fence.

... Identifying items as damaged and nonsalable, then instead of disposing of the merchandise selling the items to a fence.

... Changing delivery addresses on cartons so the merchandise will be delivered to conspirator.

... Leaving merchandise unattended on loading docks and trucks so as to provide an opportunity for a conspirator to steal the items.

4. Another source of stolen property for the fence comes from career criminals. Discuss the career criminal and his relationship with a fence.

A. The Career Criminal

... He regularly works at stealing and crime is his way of life.

... He is harder to apprehend than the nonprofessional.

... His criminal activity provides him with most, if not all, of his income.

... He maintains contacts with others engaged in similar illegal pursuits.

... He is deliberate, rather than impulsive, in his activities.

... The career criminal is considered by a fence to be a reliable source of salable property.

... Generally the career criminal will not steal until he has a buyer for the merchandise.

... Normally he carefully plans the theft.

5. The lucrative business of selling stolen property has not gone unnoticed by organized crime. Its figures are involved in certain kinds of fencing, usually large-scale operations that can only be conducted with the business structure of organized crime.

... Although organized crime is involved in fencing, few fences are members of organized crime.

... One way in which organized crime figures become involved in fencing operations is to "stake a fence."

... This is to provide financial support to an individual fence, who in return will use his connections to move the stolen property obtained by organized crime.

... Some large-scale operations such as a hijacking of a truck-load of untaxed cigarettes, affixing counterfeit tax stamps, and then distributing to retailers indicate organized crime fencing.

... Stolen meat may be used to supply restaurants owned by organized crime.

... Hijacked loads of appliances may provide the stock for discount outlets of organized crime.

... The major proportion of stolen property is moved by fences not affiliated with organized crime.

6. An assumption has been made—that, if the criminal redistribution of stolen property can be prevented, then property thefts would be reduced. The logical action to support this assumption is to destroy the thief's market for stolen goods. If a thief does not have a buyer to purchase his stolen merchandise, then it becomes valueless to him. There are two major efforts directed toward destroying the thief's marketplace.

A. Operation Identification

... This program is designed to prevent the theft in the first place, failing prevention then operation identification will enable positive identification of stolen merchandise.

... Fences and burglars are wary of handling items that positively can be identified and traced because identification of the item can connect them to the crime.

... Officers should encourage homeowners and businessmen to keep exact inventories of their valuables by serial or other identification numbers.

... For items that are not serialized, engraving identification on the item has proved to be effective.

... This requires the property owner to engrave his property with a unique number that can be traced back to him.

... As an added deterrent against a burglary, a window sticker is displayed to indicate that the property has been marked for identification.

B. Civil Liability

... The Select Committee on Small Business in the United States Senate has prepared proposed federal legislation that would impose civil liability for receiving stolen property.

... The logic behind this law relates to the belief that, if a fence or purchaser of stolen property is vulnerable to lawsuit in a civil proceeding that is governed by a less stringent evidence rule than criminal procedure, his marketing ability will be adversely affected.

... By imposing civil liability the standard of proof is the preponderance of evidence, rather than proof beyond a reasonable doubt.

... In brief, the law will permit those persons lawfully owning goods to sue in civil proceeding for treble damages, those who steal, purchase, or resell the property stolen from them.

... Because this is federal legislation it is limited to interstate commerce. The proposed legislation was published in the Congressional Record, Feb. 1, 1973, Vol. 119, No. 18.

... In order to make civil remedies applicable on the state level, similar state legislation would need to become law. One state, California, in 1972 passed a law similar to the proposed federal legislation.

questions

The following questions are based on material in this Training Key. Select the best answers.

1. Which one of the following statements is true about a "distributor" fence?

- He generally participates in the theft of the property.
- He often specializes in certain areas such as construction materials.
- He will not place an "order" for a burglar to steal a certain item, even if a customer has asked for that specific item.
- He seldom is able to sell the stolen merchandise to the legitimate market.

2. When possible it is desirable for an officer to make a "planned arrest" in apprehending a fence. In general, which one of the following actions should he not take in planning an arrest of a fence?

- Avoid the arrest until the suspect has the stolen merchandise on his property. This eliminates the need to prove that the suspect knowingly purchased stolen goods.
- Be very careful in planning the arrest strategy because of the complexity of the laws governing receipt and possession of stolen property.
- Make sure that the stolen property can be identified as such.
- Prepare reports on all suspected fencing operations.

3. When an officer suspects that a truck is transporting stolen property, he should

- search the vehicle if he has probable cause.
- request a "special warrant" that is issued immediately by the F.B.I.
- search the vehicle based on his suspicions.
- verify driver's statements by calling employer.

answers

- (b) A distributor fence is likely to specialize in certain items.
- (a) Although it is necessary to prove that a suspected fence knowingly purchased stolen merchandise, the items do not need to be in his physical possession to establish this point.
- (a) A search should be made if there is probable cause.



Have you read...

Criminal Redistributions Systems and Their Economic Impact on Small Business. Hearings before the Select Committee on Small Business, United States Senate, 93 Congress, (U.S. Government Printing Office, Washington, D.C.) 1973.

These hearings were held to establish a factual record of how stolen property is disposed of and its damaging effects on legitimate business and on crime-inflated prices the consumer pays for his daily needs.



AN ANALYSIS OF CRIMINAL REDISTRIBUTION SYSTEMS
AND THEIR ECONOMIC IMPACT ON SMALL BUSINESS

HEARING, REPORT SUMMARY

1. U.S. Small Business Administration, Crime Against Small Business, A Report of the Small Business Administration. Transmitted to the Select Committee on Small Business, U.S. Senate, 91st Congress, first session, Senate Document No. 91-14, April 3, 1969.
2. Hearings before the Select Committee on Small Business, 91st Congress, first session, on Impact of Crime on Small Business—1969 (General Business Crime and Air Cargo Loss-Theft), part 1, May 21, 22, 23 and July 22, 1969.
3. Report—Part I, An Overview of the effects of Crime on Small Business based on hearings May 21 and 22, 1969 (General Business Crime), Senate Document No. 91-612, part I, December 19, 1969.
4. Report—Part II, effect of Cargo Loss and Theft in Air Commerce based on hearings May 23 and July 22, 1969, Senate Document No. 91-612, part II, December 16, 1969.
5. Hearings before the Select Committee on Small Business, 91st Congress, first and second session, on Impact of Crime on Small Business—1969-70 (Cargo Theft-Maritime Industry), part 2, July 23, 1969, and June 24, 1970.
6. Report—Part III, Effect of Cargo Loss and Theft in Maritime Commerce based on hearings July 23, 1969, and June 24, 1970, Senate Document No. 91-1547, December 30, 1970.
7. Hearings before the Select Committee on Small Business—1970-71, 92d Congress, first session, on Impact of Crime of Small Business (Cargo Theft-Trucking Industry), part 3, June 25, 1970, and June 8, 1971.
8. Report—Part IV, Effect of Cargo Loss, Theft, and Hijacking in the Trucking Industry based on hearings June 25, 1970, and June 8, 1971, Senate Document No. 92-839, June 8, 1972.
9. Hearings before the Select Committee on Small Business—1970-71, 92d Congress, first session, on Impact of Crime on Small Business (Cargo Theft-Joint Conference), part 4, June 17-18 and July 6-7, 1971 (appendix to pt. 3).
10. Report—Part V, Effect of Cargo Loss and Theft in Rail Commerce based on a hearing June 9, 1971, Senate Document No. 93-276, June 28, 1973.
11. Hearings before the Select Committee on Small Business—1971, 92d Congress, first session, on Impact of Crime on Small Business (Cargo Theft-Railroad Industry), part 5, June 9, 1971.

12. Hearings before the Select Committee on Small Business, 93d Congress, first session, on Criminal Redistribution Systems and Their Economic Impact on Small Business, part 1, May 1 and 2, 1973.
13. Hearings before the Select Committee on Small Business, 93d Congress, first session, on Criminal Redistribution Systems and Their Economic Impact on Small Business, part 2, May 1 and 2, 1973 (appendix to pt. 1).
14. Staff Report—An Analysis of Criminal Redistribution Systems and Their Economic Impact on Small Business, 92d Congress, second session, October 26, 1972.

END