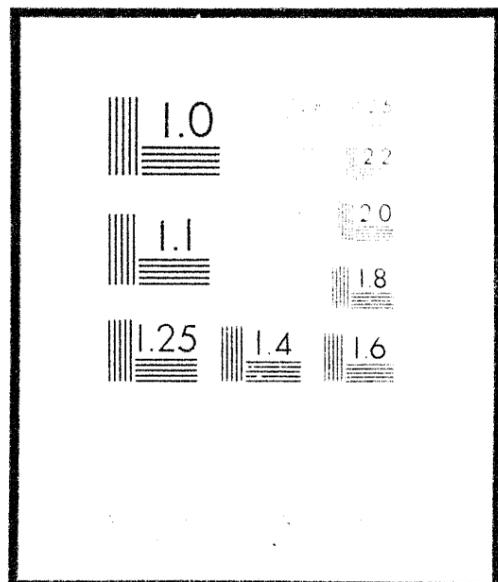


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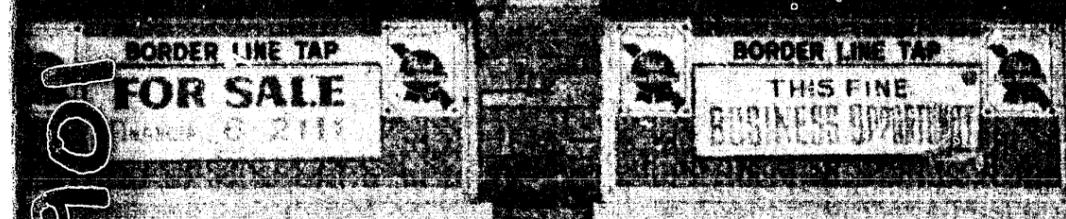
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ILLINOIS BUREAU OF INVESTIGATION'S PROJECT BORDERLINE TAVERN



38901

Illinois Legislative Investigating Commission

ILLINOIS - BUREAU OF INVESTIGATION'S - PROJECT BORDERLINE TAVERN

A REPORT TO THE
ILLINOIS GENERAL ASSEMBLY



NCJRS

FEB 3 1977

ACQUISITIONS

BY THE
ILLINOIS LEGISLATIVE INVESTIGATING COMMISSION

300 West Washington Street, Chicago, Illinois 60606

Telephone (312) 793-2606

JANUARY 1977

Printed by the Authority of the State of Illinois

(Two Thousand Copies)

THIS REPORT IS RESPECTFULLY
 SUBMITTED PURSUANT TO HOUSE
 RESOLUTION 548 ADOPTED BY THE
 ILLINOIS HOUSE OF REPRESENTA-
 TIVES ON NOVEMBER 19, 1975.

TABLE OF CONTENTS

| | |
|---|-----|
| HOUSE RESOLUTION 548..... | iii |
| LETTER TO HONORABLE MEMBERS OF THE GENERAL ASSEMBLY... | v |
| Chapter 1 INTRODUCTION..... | 1 |
| Chapter 2 THE STORY OF THE BORDERLINE TAVERN | |
| A. Preliminaries..... | 3 |
| B. Law Enforcement Assistance Administration (LEAA)..... | 6 |
| C. Ironing Out Legal Problems..... | 8 |
| D. Delays and Problems..... | 11 |
| 1. Calumet City Selected, Rejected..... | 11 |
| 2. Selection of the IBI Agents..... | 12 |
| 3. Problems With Chaney and Imber..... | 14 |
| E. Setting Up the Borderline Tavern..... | 18 |
| 1. Yo-Yo Club Rejected..... | 18 |
| 2. Borderline Tavern Fund..... | 18 |
| 3. Application for Liquor License..... | 19 |
| 4. Loose Ends..... | 19 |
| 5. Immunity Problem..... | 19 |
| 6. Opening the Tavern..... | 20 |
| 7. Closing Down the Tavern..... | 21 |
| F. Efforts to Salvage the Project..... | 22 |
| G. The Firing of Chaney and Imber..... | 27 |
| H. Summary..... | 28 |
| Chapter 3 THE ISSUES | |
| A. Introduction..... | 31 |
| B. Forrest Chaney..... | 31 |
| C. David Imber..... | 34 |
| D. Immunity Issue..... | 35 |
| E. The IBI Administration..... | 40 |
| F. Bureau of Alcohol, Tobacco and Firearms (ATF)..... | 43 |
| G. Summary..... | 44 |
| Chapter 4 FINDINGS | |
| 1. Legality of Project/Participating Government Agencies..... | 45 |
| 2. Purpose of the Project..... | 45 |
| 3. The Funding of the Project..... | 47 |
| 4. The Firing of Chaney and Imber..... | 47 |

| | | |
|------------|--|----|
| Appendix A | DOCUMENT RECEIVED FROM THE ILLINOIS BUREAU OF INVESTIGATION RE: OPERATION NORTHSIDE. | 51 |
| Appendix B | IBI INSPECTOR CHANEY'S HANDWRITTEN STATEMENT VERBATIM..... | 57 |
| Appendix C | IBI S/A IMBER'S HANDWRITTEN STATEMENT VERBATIM..... | 59 |
| Appendix D | LETTER FROM ILLINOIS ASSISTANT ATTORNEY GENERAL JAMES B. ZAGEL..... | 61 |
| Appendix E | LETTER FROM FORMER UNITED STATES ATTORNEY JAMES R. THOMPSON..... | 62 |
| Appendix F | OPERATION NORTHSIDE -- SOURCE AND APPLICATION OF FUNDS..... | 64 |
| Appendix G | INTERVIEWS AND SOURCES..... | 68 |

HOUSE RESOLUTION 548

This resolution was sponsored by the following Representatives:

| | |
|-------------------|---------------------|
| Frank Giglio | E. J. "Zeke" Giorgi |
| Philip W. Collins | Samuel C. Maragos |

This resolution was adopted by the Illinois House of Representatives on November 19, 1975, and is quoted below:

"WHEREAS, Allegations have been made that the Illinois Bureau of Investigation, hereinafter referred to as the IBI, secretly purchased a tavern in Calumet City (the Borderline Tavern) for \$15,000 and a 3 year lease requiring a \$250 monthly payment and falsified a liquor license application; and

"WHEREAS, It is alleged that in the spring of 1975, the IBI ordered two of its agents Forrest Chaney and David Imber to operate this tavern as an investigative front and for the purpose of providing Calumet City officials, particularly Mayor Robert Stefaniak, with an opportunity to solicit bribes; and

"WHEREAS, It is alleged that this IBI secret investigative front operation was conducted with the knowledge and cooperation of Federal, State and County law enforcement agencies; and

"WHEREAS, Neither Mayor Robert Stefaniak, nor any other Calumet City official solicited any bribes nor acted improperly in any way; and

"WHEREAS, It is alleged that when the above agents refused to continue operating the tavern, they were fired by IBI Superintendent Wayne Kerstetter; and

"WHEREAS, The above allegations, (which appeared in the November 2, 1975 *St. Louis Post Dispatch*), if true, raise very serious questions regarding the propriety and legality of the IBI's activities in this matter; and

"WHEREAS, It is in the best interest of the people of the State of Illinois that a full investigation of the above allegations be made; therefore, be it

"RESOLVED, BY THE HOUSE OF REPRESENTATIVES OF THE SEVENTY-NINTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, that we direct the Illinois Legislative Investigating Commission to investigate the above allegations regarding the IBI's ownership of a tavern in Calumet City; the falsification of a liquor license application; the attempt to solicit bribes from Calumet City officials; and the extent of the cooperation and involvement of Federal, other State or County law enforcement agencies, including the source of all funds used in this operation; and to report its findings to the General Assembly as soon as is practicable."

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Acting
EXECUTIVE DIRECTOR:
Ronald Ewert

TO: HONORABLE MEMBERS OF THE GENERAL ASSEMBLY

This is a report of our findings pursuant to House Resolution 548, which was adopted by the Illinois House of Representatives on November 19, 1975.

House Resolution 548 directed this Commission to investigate the following allegations: that the Illinois Bureau of Investigation (IBI) purchased the Borderline Tavern and falsified a city liquor license; that the tavern was set up "as an investigative front and for the purpose of providing Calumet City officials, particularly Mayor Robert Stefaniak, with an opportunity to solicit bribes"; that the tavern operation "was conducted with the knowledge and cooperation of Federal, State and County law enforcement agencies"; and that IBI Superintendent Wayne Kerstetter fired Agents Forrest Chaney and David Imber "when the agents refused to continue operating the tavern." The resolution also directed the Commission to investigate "the source of all funds used in this operation."

This Commission's investigation began with our attendance at the Illinois Civil Service Commission hearings, where the issue of Chaney and Imber's firing from the IBI still remains in doubt to this day. At the same time, we set out to interview anyone who had any involvement in the Borderline Tavern project: IBI supervisors and agents, including Kerstetter, Chaney, and Imber; officials of the Illinois Attorney General's office, the Cook County State's Attorney's office, and the Illinois Law Enforcement Commission; officials of the Law Enforcement Assistance Administration and the Bureau of Alcohol, Tobacco and Firearms. We interviewed Mayor Stefaniak, Taylor Pensoneau of the *St. Louis Post-Dispatch*, and a number of others. In addition, we examined all the documents pertaining to the conception, the planning and the administration of this project.

With regard to the allegations reported by House Resolution 548, we can state unequivocally that the Illinois Bureau of Investigation took great pains to ensure that the operation was legally sound. The tavern itself was carefully insured. The falsified application for a liquor license is lawful when it is performed by State or federal undercover agents in

criminal investigations. The purpose of the project was to attack various organized crime activities, as well as to expose possible official corruption; however, there is no evidence whatever to support the allegation that Calumet City Mayor Robert Stefaniak was a "prime target" of the investigation.

Even the firing of Forrest Chaney and David Imber was justified, but this issue involves a larger one--the IBI's administration of the whole project--in which the Bureau's conduct can hardly be commended.

The Borderline Tavern project was carefully planned and coordinated with a number of federal agencies: the Bureau of Alcohol, Tobacco and Firearms, the Federal Bureau of Investigation, and the United States Justice Department's Chicago Strike Force. But the IBI had primary control over the whole operation, with Superintendent Wayne Kerstetter as Project Director. We believe that had this project been well administered it could have benefitted the people of Illinois in ways that are not perhaps readily apparent. In any case, the State had little to lose, since the project was federally funded. It is disappointing--and it surely must have been a disappointment to the participating federal agencies--that the IBI did not take advantage of this opportunity.

The numerous administrative problems and delays the IBI created and encountered during the course of this operation are detailed in the text of this report.

The Bureau spent more than one year planning and preparing the Borderline Tavern project--all in the hope that when the tavern opened undercover agents and underworld types could commingle.

Chaney and Imber ran the bar for two days; on the third day they went home and refused to have anything more to do with it. The tavern was never reopened.

Clearly, Chaney and Imber were guilty of insubordination, and Kerstetter was justified in having them fired. But the main issue here is whether Kerstetter, as director of a quarter-million dollar joint federal/State project, acted imprudently by assigning two unwilling agents to a job upon which the success or failure of the whole project depended.

Chaney and Imber had made it plain to Kerstetter from the outset that they were not interested in this assignment. Despite their numerous complaints and objections, Kerstetter refused to relent. In essence, he allowed his conflict with Chaney and Imber to become more important than the project

itself--and although he won his battle with the agents, it was certainly a Pyrrhic victory. As one IBI official said, "The battleground was poorly chosen."

This Commission does not condone Chaney and Imber's attitudes and actions, but it is possible to see how the Bureau administration encouraged their distrust. For instance, when the two men requested letters of immunity from prosecution for any violations they might commit during the course of their undercover work, they should have been told plainly that it was impossible to grant such a request. Instead, they were offered vague promises. This Commission was itself, during the course of our investigation, the recipient of Bureau doubletalk and evasiveness.

Concluding, the Commission conducted a careful audit of the funding of the Borderline Tavern operation and we found no irregularities. But almost \$56,000 in federal funds, not to mention the salaries of numerous IBI personnel, were wasted on this project which failed mainly because of administrative imprudence.

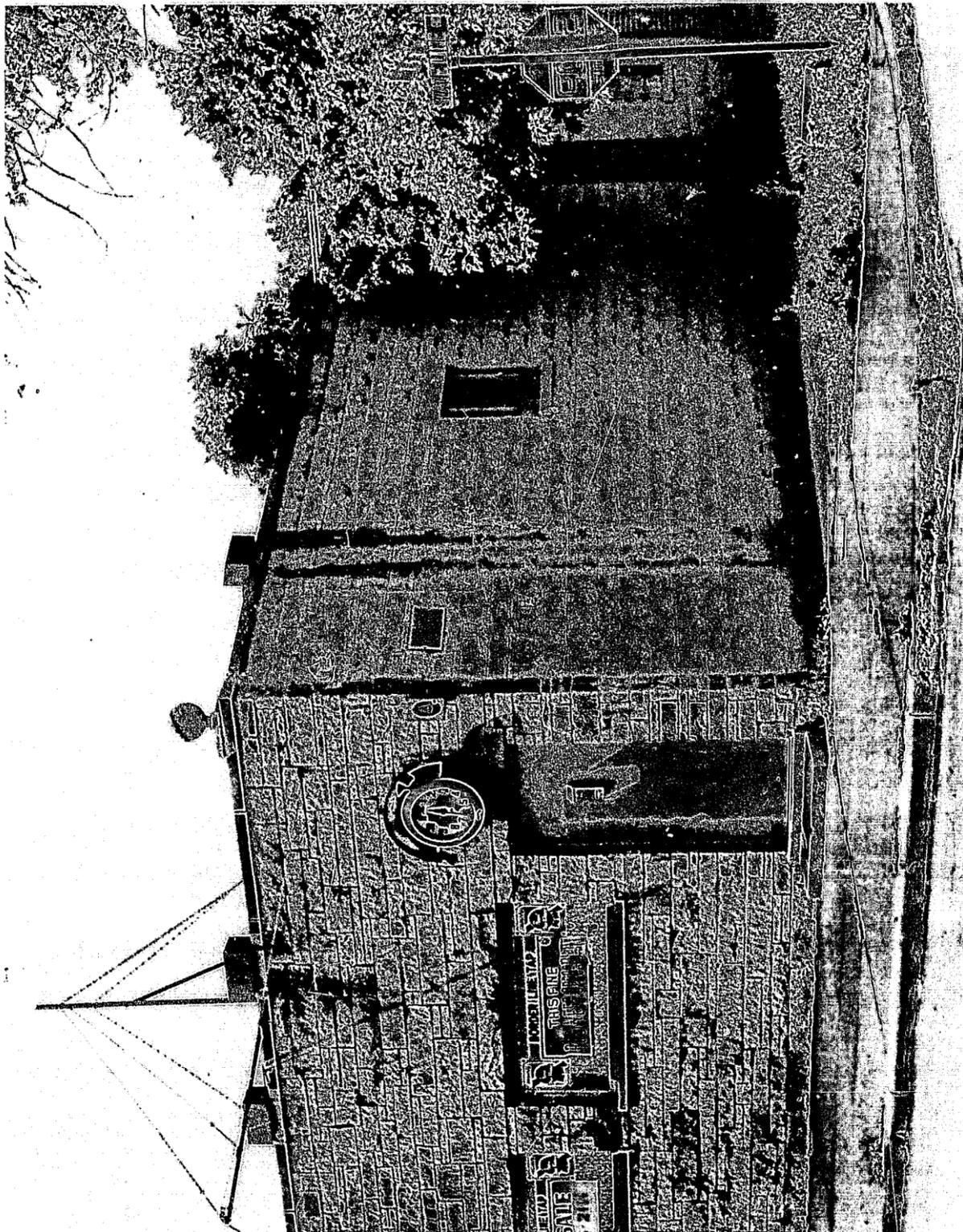
Respectfully submitted,

Co-Chairmen:
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Rep. Joseph G. Sevcik

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James "Pate" Philip
John B. Roe
Frank D. Savickas

House Members:
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Leland H. Rayson
George H. Ryan, Sr.
W. Timothy Simms
James C. Taylor

Acting Executive Director:
Ronald Ewert



Chapter 1

INTRODUCTION

In April, 1975 the Illinois Bureau of Investigation (IBI) opened up a tavern in Calumet City, Illinois, staffed by two of its own undercover agents. The tavern was part of a long-range project involving a number of federal law enforcement agencies, and it was funded almost entirely by a federal grant. The stated purpose of the project was to combat various activities of organized crime.

The tavern, a squat, one-story building with the name Border Line Tap stenciled on both windows, looks no different from most of the taverns along the strip of road separating Illinois from Indiana. The steel workers and ex-convicts who frequent these saloons are tough, two-fisted drinkers. Although it is generally thought that organized crime is down substantially from the days when the rackets flourished here, some law enforcement people still suspect Calumet City is a key area of underworld activity.

It took almost a year for the IBI and participating agencies to get their project off the ground. First they had to apply for and obtain the federal grant. Then they had to decide upon a location and find a suitable tavern for sale. Undercover agents had to be assigned to run the bar. A city liquor license had to be secured--under a fictitious application. After numerous problems and delays, the bar finally opened on April 15, 1975.

Two days later the agents assigned to the Borderline Tavern packed up and went home. Ordered to reopen it, the agents refused and were fired a short time later.

The story of the IBI's aborted tavern project became public on November 2, 1975, when the *St. Louis Post-Dispatch* ran a detailed story which obviously required the cooperation of sources within the Bureau. "2 Illinois Agents Dismissed For Refusing To Run Tavern," the headline announced, and the article then proceeded to describe the claims of its sources: that the purpose of the undercover tavern was "to obtain evidence of political corruption and other criminal activity"; that operating the tavern would have exposed IBI agents Forrest Chaney and David Imber to "excessive personal danger as well as possible liability for legal violations"; and that the Bureau failed to guarantee the agents immunity against any prosecutions resulting from their activities.

"The reluctant participation of Imber and Chaney, the unusual nature of the project and the possible implications of the discharge case have contributed to what those familiar with the subject regard as one of the more bizarre situations in recent state law enforcement history," wrote the *Post-Dispatch*.

In the days following that article Chicago area newspapers picked up on the story and added a political dimension. The *Chicago Tribune* reported Forrest Chaney as admitting that Calumet City Mayor Robert Stefaniak was the "prime target" of the undercover project.

"He (Stefaniak) was one of my prime people to try and bribe," the *Tribune* quoted Chaney. "Our other targets included any public official in Calumet City...." The *Tribune* said that Stefaniak labelled the investigation a "police state tactic."

In an interview with *Suburban Week*, IBI Superintendent Wayne Kerstetter denied the allegations that the project was aimed at Stefaniak.

"The agents' statements that this was an investigation of the mayor or anyone else in the Calumet City government are categorically untrue," Kerstetter said. "The only reason the tavern was set up there was its proximity to the Indiana state line. That's where you find the active fencing markets."

Regarding the firing of Chaney and Imber and their appeal before the Illinois Civil Service Commission, Kerstetter told *Suburban Week* that after the agents closed down the tavern and expressed some concern as to the legality of the operation, the whole thing was discussed with the Illinois Attorney General's office, which gave the IBI a green light. "We decided to run it for another week," Kerstetter said. "But the agents refused, and we fired them."

Suburban Week also interviewed State Representative Frank Giglio, whose home town is Calumet City. "I think this whole tavern operation is a clear case of entrapment," Giglio said. "It raises some important questions on how our tax money is being spent. Is it right for us, as taxpayers, to subsidize the State's purchase of a bar?"

Representative Giglio was the chief sponsor of House Resolution 548, adopted by the Illinois House of Representatives on November 19, 1975.

Chapter 2

THE STORY OF THE BORDERLINE TAVERN

A. Preliminaries

The idea of a long-range Chicago area undercover project which would coordinate the activities of State and federal agencies was initiated in November of 1973 by Peter Vaira, Chief of the United States Justice Department's Chicago Strike Force.*

Vaira explained to officials of the Illinois Bureau of Investigation (IBI) and the Bureau of Alcohol, Tobacco and Firearms (ATF) that the Law Enforcement Assistance Administration (LEAA) provides grants which allow State law enforcement agencies to join forces with federal agencies for the purpose of combating organized crime. A series of meetings was held, attended by supervisors of the IBI who agreed to apply for the grant, and by officials of the ATF, the FBI, and the Strike Force--all of whom agreed to commit manpower to the project. Specifically, they proposed to work together on a three-pronged undercover operation involving a tavern, a discount store, and a stolen securities investigation. The purpose of the project was to seek criminal prosecutions for various organized crime activities as well as for official corruption.

The plans evolved over the next few months. Joel Friedman, an attorney for the U. S. Strike Force, was brought in as a consultant; he related his experience in obtaining LEAA grants and in setting up various undercover businesses. J. Michael Fitzsimmons, formerly a U. S. Attorney, helped with administration of the project. Fitzsimmons and Vaira traveled to New York City, where a similar undercover operation was under way involving the New York Police Department and the FBI there. They learned how to handle such problems as obtaining a liquor license, forming a corporation, and acquiring insurance.

Finally, in April, 1974, officials of the participating agencies met and agreed upon the following "Memo of Understanding," which was drafted by Arthur Sinai of the IBI, and signed by Kerstetter, Vaira, and Judson Doyle of ATF.

*There are many people referred to in this chapter and it would be too cumbersome to continually cite an individual's title and agency. When in doubt the reader should consult Appendix G.

Confidential Memorandum of Understanding Regarding Illinois Bureau of Investigation Organized Crime Project.

The Illinois Bureau of Investigation, grantee, will initiate a major attack against organized crime in Illinois. The grant will be administered by the IBI, and the following federal agencies have agreed to commit manpower to this project on a full time basis: 1) Joint Federal Strike Force, 2) Federal Bureau of Investigation, and 3) Bureau of Alcohol, Tobacco and Firearms.

The funds requested are to finance the purchase and joint operation by the IBI, the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco and Firearms, and the Joint Federal Strike Force, of three undercover businesses in the Greater Chicago area. The objective, by operating the businesses through undercover law enforcement officers, is to expose ourselves to facts permitting criminal prosecutions in the industries involved for violations of the following criminal laws: extortion, commercial bribery, payoffs to union representatives, loan sharking, tax evasion, merchandise thefts, receipt of stolen merchandise, police or other official corruption, firearms violations, gambling, prostitution, and violations of anti-trust laws. Based upon our experience it has been extremely difficult for law enforcement agencies to obtain evidence of these crimes by interviews and other routine investigative methods because the persons involved have been generally unwilling to talk out of fear of reprisals. We believe that the operation of undercover businesses will afford an excellent opportunity to gather evidence which is otherwise unobtainable for the above mentioned reasons.

We envision that the long range results of making major criminal cases in these industries should be a change in attitudes towards law enforcement of the persons involved, and a much greater willingness on their part to cooperate by giving evidence regarding the organized criminal activity to which they have fallen prey.

We will set up and operate a bar and grill, a discount merchandise store, and an individual who will purchase stolen securities. The Joint Federal Strike Force has agreed to assign two attorneys to each of these endeavors and these attorneys will be assigned the responsibility to monitor these operations; to handle all legal problems; and to build prosecutable cases.

The bar and grill will be operated by three undercover ATF agents and one or two undercover IBI agents. Both the IBI and ATF will provide additional agents for surveillance and to conduct necessary investigations. The discount store will be operated by an undercover IBI agent and an FBI confidential source. The IBI and FBI would set up a joint squad for the purposes of surveillances, and other investigations. The stolen security business would be run by an FBI confidential source, and both the IBI and FBI would investigate the cases.

A joint state/federal team would perform periodic audits of these businesses and the confidential funds expended.

These businesses would probably be operated undercover for 12-15 months before making public any criminal cases which are developed.

Attached are rough estimates of the costs involved in operating these businesses. However, it should be noted that after a while the income generated by these businesses will be sufficient to cover all personnel and operating expenses after that time.

It should further be noted that approximately \$30,000 has been set aside for the purchase of necessary technical surveillance equipment, and \$108,500 for confidential expenses. All these expenditures will be made in accordance with federal and state statutes and regulations.

Income generated by this project will be distributed in accordance with the Federal Office of Management and Budget Circular A-102, Attachment E, at the conclusion of the project.

The disposition of all property and equipment acquired with LEAA funds will be made in accordance with the Office of Management and Budget Circular A-102, Attachment N (Property Management Standards).

The corporations, businesses, and/or other assets will be liquidated at the end of the grant or extension thereof and 90% of funds received will be refunded to LEAA (90% federal LEAA grant funding - 10% state match).

No funds may be expended for the salary, travel, other compensation or expenses of federal employees.

In addition to this memo, officials of each agency also contributed to a document called "North Side Project."

North Side Project was originally the code name for the undercover tavern project, but the name was later changed to Operation Northside. The document, which is reproduced in Appendix A, reveals the following pertinent facts:

- (1) that at least some of the participants in the project considered official corruption to be a key objective;
- (2) that IBI Superintendent Wayne Kerstetter is the Project Director, assisted by Peter Vaira;
- (3) that it was initially planned for five ATF agents to run the tavern, and that they would be supported by IBI agents;
- (4) that the "unusual nature of this project will undoubtedly lead to the defense of entrapment," requiring a briefing on the pertinent rulings regarding entrapment;

It is also clear, from information provided to the Commission by ATF, that initially ATF was responsible for finding a suitable location for the bar in the Chicago Heights area, which the IBI, ATF, and FBI agreed was "one of the most lucrative areas for this type of project." It was anticipated that a tavern in Chicago Heights could establish a regular clientele of fences and burglars, and that the location could become known to the underworld as a good place to fence such goods as firearms and liquor. It was also anticipated that in the initial stages of the project shakedowns would occur by public officials.

Ultimately, of course, the above plans were altered somewhat. It was decided, for intelligence reasons, not to set up the bar in Chicago Heights. And it was also decided that IBI agents would be responsible for daily operations of the bar, with ATF agents in a support capacity.

After these preliminary plans had been laid, the next step was for the IBI to apply for and to secure the LEAA grant. An explanation here of how LEAA functions will provide a framework for the rest of our discussion of this project.

B. Law Enforcement Assistance Administration (LEAA)

In 1968 the federal Omnibus Crime Control and Safe Streets Act was passed establishing the LEAA within the U. S. Justice Department. Since the theory behind the creation of LEAA was to help local law enforcement agencies fight crime with federal dollars, the Safe Streets Act also established 55 criminal justice planning agencies.

Each year LEAA awards block grants to these planning agencies to be used for evaluating local crime problems and for funding crime reduction programs. In Illinois the agency designated to administer the Safe Streets Act is the Illinois Law Enforcement Commission (ILEC).

Each year ILEC submits to LEAA a Comprehensive Plan detailing its projects, programs, and priorities. These various programs are submitted to ILEC by city and county agencies throughout the State to improve criminal justice and to combat such problems as drug and alcohol abuse. These local agencies submit their proposals to various Regional Planning Agencies, which screen the applications and submit them to ILEC. ILEC reviews the applications, prepares a comprehensive plan and submits it to LEAA. If it is approved, LEAA awards the funds necessary for implementation of the plan. In FY 75, ILEC received \$25.5 million from LEAA for disbursement to State agencies.

LEAA may, in addition to the above funding program, award what are called discretionary grants. A discretionary grant may be awarded solely at the discretion of the Administrator of LEAA for any unique program; furthermore, this type of grant may be awarded without the approval of the State Planning Agency--ILEC. The IBI organized crime project under investigation in this report was funded by just such a discretionary grant.

Daniel Behnke, Deputy Director of the ILEC, told our investigators that a discretionary grant is awarded in the following way. Initially, the agency requesting the grant (in this case, the IBI and the Illinois Department of Law Enforcement) prepares a proposal and submits it to ILEC. (Like any proposal, it must pass through the A-95 Clearinghouse in Springfield.) ILEC reviews and either certifies it or does not. The proposal, along with ILEC's recommendation to certify or not, is then forwarded to LEAA, where a decision is made regarding whether to award a discretionary grant. Behnke said that in 99 percent of the cases, LEAA will not award a discretionary grant for a proposal not certified by ILEC.

One important thing to note is that although LEAA funds cannot be provided directly to any federal agency (the whole purpose of LEAA is to support State and local agencies) there is no prohibition against federal agencies using these funds if they are working jointly on a project with State and local governments. In such cases, however, the State maintains complete control over disbursement of the funds

and if the State agency chooses to terminate a joint State/federal project, the federal agency has no recourse to appeal to LEAA.

The Illinois Department of Law Enforcement formally submitted the IBI grant application to LEAA on April 15, 1974, in the amount of \$247,500. The application spelled out the purpose and objectives of the organized crime project--as explained in the Memo of Understanding discussed above. The application included a "Budget Narrative," which itemized expenses for personnel, travel, equipment and supplies. Regarding the request for \$108,500 for confidential expenditures, the application noted that "the considerable amount of project funds allocated for this category reflects the relative weight of information and evidence gathering in building organized crime prosecutions."

The application suggested that the criteria to be used for evaluating the success of the project would be the number of criminal prosecutions initiated:

COMMENT

It should be clear at this point that the IBI's undercover tavern project was conceived to attack organized crime activities and to expose official corruption generally. But it was not conceived (as implied by House Resolution 548) specifically to get at any particular public official. This whole question of the purpose of the project will be discussed in detail in Chapter 3.

It is also clear that the very conception of the IBI organized crime project required considerable cooperation between various agencies. House Resolution 548 specifically directed the Commission to investigate "the extent of the cooperation and involvement of Federal, other State or County agencies," and in the following sections of this chapter we will document the participation of the various agencies in dealing with the legal aspects of the project; we will also discuss the crucial problem of the selection of agents to the project, and the decision to focus the operation on Calumet City.

C. Ironing Out Legal Problems

Even before the LEAA grant was formally approved, State and federal officials devoted considerable attention to ensuring that the undercover tavern would not violate any local or federal laws and that the property would not become a liability to the State.

On May 29, 1974, another project meeting was held, attended by officials from the IBI, LEAA, ATF and the Strike Force. LEAA notified the participating agencies that there should be no trouble securing the necessary funds to finance the project; furthermore, the LEAA official gave the IBI authority to make advance expenditures. It was also decided that a private attorney would be secured in order to draw up papers of incorporation. The corporate name Balmar was selected, which would be owned by the undercover agents assigned to the tavern by the IBI. But at this point the IBI had yet to assign agents, and a tavern had yet to be purchased.

On June 3, 1974, IBI Superintendent Kerstetter wrote a memo to Michael Fitzsimmons raising a number of "unresolved points": the question of "the subterfuge necessary to protect our identities" in establishing these businesses and in obtaining a liquor license; whether nondisclosure of identity might jeopardize insurance coverage; and the problem of subterfuge ownership regarding State and federal taxes.

In his response to Kerstetter, Fitzsimmons said that he and Peter Vaira had retained Chicago Attorney Richard C. Moenning to deal with the legal aspects of incorporating. He also said that Lloyds of London would be contacted regarding additional insurance coverage; that the question of taxes would be handled by Jule V. Conard, formerly a CPA for the Internal Revenue Service; and that the question of obtaining State and city licenses would be handled by Illinois Assistant Attorney General James Zagel.

LEAA approved the grant (Discretionary Grant Number 71 DF 1137) on June 15, 1974, effective immediately, for one year. The conditions of the grant required the IBI to make a "soft match" of \$82,500 (a soft match involves commitment of manpower, equipment, etc., as opposed to a "hard match" which is money). Another clause in the grant noted that the IBI's request for an additional \$450,000 for the following two years should not be regarded as a commitment by LEAA. Finally, the grant provided for reimbursement of any expenses incurred on the project prior to approval of the award.

The Illinois Law Enforcement Commission had certified the IBI proposal before passing it on to LEAA for final approval, but whereas usually such a proposal is reviewed by staff committee, the secrecy of this project precluded this procedure. The only ILEC official privy to details of the entire project was Executive Director David Fogel.

As such, ILEC waived the monitoring and auditing responsibilities which that agency would normally assume. In granting the award, therefore, LEAA stipulated that "all books and records, including fund expenditure, will be maintained by the IBI and shall be available for audit by LEAA and the Comptroller General." We will have more to say about this matter in Chapter 3.

On June 21st, Peter Vaira, Michael Fitzsimmons, and IBI Supervisor Lawrence Casey met with James Zagel, Chief of the Illinois Attorney General's Criminal Justice Division. Vaira and Fitzsimmons outlined the project to Zagel, describing the LEAA funding, the type of violations sought, and the techniques to be used. They also explained their concern for the problems of obtaining false licenses and involvement in illegal activities while working undercover. Zagel's response was presented in a June 21st letter to IBI Superintendent Kerstetter:

On June 21, 1974, I had a conference with Thomas [Lawrence] Casey of the Illinois Bureau of Investigation, Michael Fitzsimmons and Mr. Peter Vaira of the Department of Justice Strike Force. Pursuant to this conference, I understand that your agency, in cooperation with federal agencies intends to conduct certain undercover operations. I understand further that it will be necessary for your agents to conceal their true identities and true purpose in order for the operations to bear any chance of success. It is my opinion that such concealment of identity and purpose including concealment in oral conversation, in writing and on applications for license or employment, is lawful when the concealment is performed by state or federal law enforcement officers during the pendency of an undercover operation with the express intent of securing evidence of violations of the criminal laws of Illinois under the circumstances described to me in the conference of June 21, 1974.

Further, this office stands ready to aid and assist the Illinois Bureau of Investigation and the cooperating federal agencies in this matter.

Several weeks later, on July 8th, Kerstetter, Vaira and Fitzsimmons met with James Haddad, of the Cook County State's Attorney's office, for the purpose of seeking authority to operate consensual overhear devices in the undercover projects funded by the LEAA grant. According to Kerstetter's memo of the same date, the following points were agreed upon:

--the IBI would obtain weekly authorization from the Cook County State's Attorney;

--specifically designated areas would be used for consensual overhear devices, with safeguards against inadvertent overhears;

--the tapes would remain in the custody of the federal agencies who would review them for inadvertent material. Any inadvertent material would be deleted by the federal agents but kept in their custody;

--the IBI agents would be deputized U. S. Marshalls;

--the State's Attorney would not require that all individuals whose conversations were recorded must be identified before authorization is granted.

At this point in the project, the IBI had secured the cooperation of the Illinois Attorney General's office and the Cook County State's Attorney's office. Additional cooperation would be sought from the U. S. Attorney's office, but we will delay any discussion of that matter until later.

D. Delays and Problems

1. Calumet City Selected, Rejected

In June, even before LEAA had formally approved the IBI grant request, the ATF assigned agent Ernest Alexander of its St. Louis office to work Operation Northside. Alexander came to Chicago at once, adopted an undercover identity, and set out in search of a suitable location for a bar.

Within two weeks he found one in Calumet City which was acceptable to both ATF and the IBI. The cost was \$6,000; a lease was to be signed before the end of the month.

But on June 23, 1974, an article appeared on the front pages of Chicago and Hammond, Indiana newspapers which forced a change of plans. According to these articles, IRS Intelligence was investigating Calumet City liquor licensing procedures and the city government as a whole, and the investigation was expected to require Grand Jury appearances for several organized crime subjects as well as city officials. At a June 25th meeting attended by Peter Vaira, Larry Casey, and ATF agents, it was agreed to change the target area to the north and west suburban areas of Chicago.

In July, ATF Agent Alexander began searching for a bar in the above areas. He found three suitable taverns in Lyons, but these opportunities had to be passed by for reasons cited in an ATF memo dated July 26th: "The IBI has not provided an agent suitable for the undercover contact . . ."

2. Selection of the IBI Agents

The delays and problems surrounding the IBI's assignment of agents to Operation Northside are a curious story. Initially, the official responsible for making these assignments was Arthur Sinai, the Assistant Superintendent. In June, Sinai chose his friend and associate Paul Kirby. (Sinai and Kirby, who were hired by the IBI in 1973, currently work for the Governor's Office of Special Investigations.) Apparently, Kirby attended one meeting with participants in Operation Northside, after which he was rejected for the undercover assignment because he "looked too much like a cop."

Sinai then asked Agent Richard Mulder if he would be interested in this assignment. Mulder recalled that he was enthusiastic about working in an undercover capacity, but he said he heard nothing after Sinai's initial contact, and he was never told why he was not selected. Apparently, Mulder was rejected because his 14 years as a Chicago policeman made him too risky for long-range undercover work in the area.

In mid-July of 1974 Deputy Superintendent Robert Bullock was given the responsibility, by Kerstetter, for selecting agents for the project. Bullock, who had 25 years experience with the Detroit Police Department, had been with the IBI only two months.

The first agent Bullock considered was Agent James McCoy. According to McCoy (who lives in Springfield), when Bullock asked him if he would be interested in transferring to Chicago for an undercover project, he told Bullock that his wife was pregnant and that he would rather remain in Springfield. McCoy said that he did tell Bullock that if he were assigned to the project, he would carry out his orders. Bullock maintains that he rejected McCoy after learning that McCoy had exposed a St. Louis area operation; Bullock feared that members of that group might appear in Chicago and possibly expose McCoy's cover.

According to Agent David Imber, he received a telephone call from Bullock on July 22, 1974, telling him to report to Springfield for a conference. Imber, who had been with the

IBI since it was established in 1970, was at the time Supervisor of the Bureau's Belleville office. Imber reported to Springfield and Bullock advised him that he was being considered for the undercover assignment in Chicago. Imber replied that he was not interested.

On July 30th, Imber was summoned to the IBI Chicago office where he met with Kerstetter, Bullock, and Larry Casey. Again, he was told that he was seriously being considered for a long-range undercover assignment in Chicago, but he was told no details. Again Imber expressed his disinterest. In fact, in a July 30th memo, Kerstetter himself states that "Dave Imber indicated that he would refuse the assignment to this position on the grounds that he was thinking of starting a family at some undetermined time in the future in the Belleville area. I told him I would take the matter into consideration."

On the same day, July 30th, Inspector Forrest Chaney received a call from Bullock and was told to take the next flight from Springfield to Chicago. Chaney, a Special Agent III who had been working for the IBI since 1970, lives with his wife and four children in Decatur.

He flew to Chicago as ordered, where he too met with Kerstetter, Bullock and Casey. They explained the project to him in general terms; they told him that he was well-qualified to handle the job and that he was being seriously considered for it. Chaney told them that he was not interested. He also told them that he was under treatment for high blood pressure.

In a memo Kerstetter stated: "I asked Inspector Chaney to have his doctor submit a letter to me about his physical condition. I told Inspector Chaney that I would take his condition under consideration in making a decision about the position."

Chaney's physician, Dr. Dean F. Stanley, sent the following letter to the IBI on July 31st.

To Whom It May Concern:

Mr. Forrest Chaney is a patient under my care and has recently been seen by me in the office 7/22/74, 7/25/74, and 7/26/74. He is on medication for slight elevation of his blood pressure. Mr. Chaney is a rather tense individual, however it is my feeling that he is in excellent general physical condition.

On August 1st, the following day, Arthur Sinai wrote this memo to IBI Administrator John Bucher:

Please have Russ Ford immediately review the applications of out-of-state applicants to immediately identify two applicants whom we could hire to undertake a long-term undercover assignment in the Chicago area. It is imperative that these applicants be at least 30 years of age, if not older and have prior law enforcement experience.

On August 14th, Chaney and Imber were instructed to report to Chicago for a meeting with Kerstetter, Bullock and other IBI supervisors. At this time they were briefed on their project assignments and handed their transfer orders.

3. Problems With Chaney and Imber

The transfer orders initially directed the agents to report to Chicago on September 1, 1974, but they were granted extensions to September 16th. On September 10th, Chaney formally appealed his geographic transfer to the Illinois Civil Service Commission; Imber filed an identical appeal on September 12th. They requested and were granted a hearing which would require their own testimony as well as the testimony of IBI supervisors. Delays and continuances caused those hearings to extend into December.

In the meantime, both agents continued to express their disinterest and bitterness. Initially, Imber was briefed by Larry Casey for the wrong assignment: Imber was assigned to the tavern project, but Casey mistakenly briefed him for the discount store.

On September 12th, Imber phoned Casey to voice a number of complaints. According to Casey's memo of September 13th:

Agent Imber wanted to know how he could continue to afford personal expenses incurred by the project. Imber advised that he already was \$100 in the hole working up here during the last two weeks.

Imber further wanted to know about a vehicle to use, and how he was supposed to get around.

Imber also advised that he wouldn't go out on the street if he didn't have a gun. A safe gun to carry regarding the project. Imber thought he was being "fucked over" but still wanted to do it right.

Imber said his only grievance was not about the project but what would happen to him after the project--would he be able to return to the Belleville area.

On September 23rd Imber again phoned Casey. According to Casey's memo of that date, Imber advised that he was taking off September 26th because of a Jewish holiday and was requesting a compensatory day for September 27th for a dentist appointment. He would be reporting to Chicago on September 30th. Casey's memo continues:

Imber stated that he didn't intend to get fired because of some Bureau infraction, and that is why he would be advising me of his every move. Imber said he didn't want to get fired as of yet.

Agent Imber also stated that he had 8 weeks of vacation accrued and that he would lose 2 weeks vacation, if it wasn't used by December 74. Imber said he would be putting in leave papers, and would attempt to take one week of vacation every month, starting in October.

On October 1st, the day after he reported to Chicago, Imber notified Casey that his right arm was bothering him and that he would need medical attention. The following week Imber advised that he had scheduled three days of medical examinations and treatment for his ailing arm.

Back to Agent Chaney. Chaney was first briefed in detail about his assignment on August 29th by Cooper, Casey, Kerstetter and Bullock. His duties, he was told, were to operate an undercover discount store the purpose of which was to expose fences (receivers of stolen property) and thieves.

According to a Cooper memo of September 12th, Chaney then advised Casey and him that "he had made application for outside employment and that if he were offered a job that he would accept it. He felt that he should advise us of this development in all fairness, so that we would know this."

Casey stated that he then asked Chaney if he had any reservations about his ability to do the job. Chaney replied that "if he was requested to come here to do the job he was certain that he could handle it" (the discount store).

The job for which Chaney had applied was with the Decatur Public School system as Director of Material Service. When Casey contacted Chaney on September 9th to inquire if he had

received a job offer yet, Chaney replied "that he would wait to see how these hearings [Civil Service hearings] went before looking further for outside employment."

Chaney reported to Chicago on September 16th and was given an assignment of reviewing and revamping informant files. In an interview, Kerstetter said that one possible reason why Chaney was not told to report at once to the discount store assignment was that LEAA funds were delayed (the first funds were received on October 16, 1974).

As it turned out, of course, Chaney never worked the discount store project. On October 17th he received a memo from Bueford Cooper advising him that he was being reassigned to join Agent Imber in Operation Northside--the tavern. The reason, Cooper stated, was that Imber's ailing arm "raises the possibility of intermittent absences.... Imber has also advised that he has a number of annual leave days which he must utilize before the end of the calendar year."

Cooper also wrote that should Chaney's Civil Service appeal result in withdrawal from the assignment, the tavern project "would suffer less disruption than your earlier assignment."

The following day, October 18th, Chaney wrote a letter to Kerstetter in regard to Cooper's memo: "This memorandum has substantially changed the position for which I was originally transferred to Chicago," Chaney wrote. "I was told by you that the reason for my transfer [from Springfield] was made thru a very careful selection process and that out of the whole bureau, I was the only agent for the job.... In view of this change I would respectfully request that I be reassigned to the Springfield, Illinois office, as the reason for my transfer no longer exists."

On October 25th, Kerstetter responded:

S/A/C Cooper's memorandum dated October 17, 1974, clearly indicates that there is a continuing role for you in the federal-state undercover project currently underway in the Chicago area. Your letter dated October 18, 1974, is incorrect wherein you state that the October 17, 1974, memorandum has "substantially changed the position for which I was originally transferred to Chicago". Your new role in the project carries the same requirements of age, appearance and need for concealment of identification as a police officer as your previous role. This modification in role was necessary for the following reasons: (1) The unexpected need for medical treat-

ment of S/A Imber's arm; (2) S/A Imber's desire to utilize substantial number of leave days by the end of the calendar year; and (3) The entire undercover assignment would not be fatally prejudiced should your appeal to the Civil Service Commission result in your withdrawal from the operation. It is in the best interest of the IBI and this project to have you available to fill-in for S/A Imber during his various absences. In addition, the assignment of two agents to the project will enhance coverage and flexibility in the operation, particularly in view of the extensive business hours kept by this enterprise each week.

In order to set the record straight, you were selected and, in our opinion, remain an appropriate agent for the assignment given the requirements mentioned above, and the one best suited for the position in light of the various responsibilities of the IBI.

I am somewhat at a loss to understand your continued unwillingness to accept an important assignment in the IBI in light of the fact that you accepted your position as an IBI agent with the express commitment that you were willing and prepared to accept assignment or transfer to any part of Illinois for either temporary or permanent duration.

Kerstetter's conflict with the agents continued. On October 24th Chaney and Imber directed a memo to Kerstetter the subject of which was: "Financial hardship due to Geographic Transfers." They complained that lodging, although promised, had not been provided, and that each of them was spending \$90 per week for lodging expenses. "...we will each suffer a monetary loss of approximately \$360 per month," they wrote. Chaney and Imber also charged that the federal agent assigned to the project was being furnished funds by the IBI, "while we are being told that we are on our own regarding maintenance."

Kerstetter replied on October 28th. He told the agents that their expenses had been paid consistent with State of Illinois travel regulations. He told them that the federal agent had been provided only with a vehicle, as had Chaney and Imber. He also explained that an undercover apartment could not be rented for their use until a project tavern was located. Kerstetter concluded: "I am disappointed in your persistence in viewing the acceptance of your responsibility which you specifically and explicitly undertook as a condition of employment as an unjust hardship."

The "progress" of this LEAA funded joint State/federal investigation, which at this point was about nine months into the planning and preparation stages, is indicated in the Progress Reports of ATF and IBI. In an August 28th Progress Report ATF's Charles Callaghan noted that "coordination between agencies has been severely handicapped by internal changes in the IBI hierarchy and personnel problems in their agency."

Kerstetter, in an LEAA Progress Report dated October 29, 1974, noted that the project was set back temporarily due to an unforeseen federal probe in Calumet City. He also mentioned the numerous meetings and personnel selection problems.

E. Setting Up the Borderline Tavern

1. Yo-Yo Club Rejected

There are very few memos or reports to indicate what the project agents did for the next several months. A November 21st memo by Imber reveals that on that date he telephoned William Dennison, owner of the Yo-Yo Club, 213 State Street in Calumet City, regarding possible purchase or lease of the bar. This is the first indication that Calumet City was being reconsidered as a project site.

Dennison informed Imber that he would accept \$7,000 for the business, which would include fixtures, stock and the liquor license. Rent would be \$150 per month. On December 3rd and again on December 12th, Imber and Chaney along with ATF Agent Roggenbauer (who replaced Agent Alexander), visited the Yo-Yo Club, inspected the premises, and spoke with the owner.

2. Borderline Tavern Found

The Yo-Yo Club would probably have been purchased had not Roggenbauer discovered that the Borderline Tavern was for sale. Frank Fasano, owner of the bar at 638 State Line Road in Calumet City, told Roggenbauer he did not own the property but that he would sell the license, fixtures and stock for \$15,000. The lease was \$250 per month.

During the following month Chaney, Imber and Roggenbauer visited the tavern four or five times to inspect the premises and to negotiate with Fasano. They decided that the bar was more suitable for their purposes than the Yo-Yo Club: the clientele appeared more prone to criminal activity, and the bar itself was strategically located on the Illinois/Indiana border. Kerstetter agreed.

3. Application for Liquor License

The next step was to apply for a city liquor license. In early January, 1975, Imber and Chaney met with Calumet City Mayor Robert Stefaniak. Stefaniak gave them an application and explained to them that if the license was granted he expected them to run a clean establishment. He told them that the Borderline Tavern had a bad reputation, that police were often called in to break up fights. The agents asked if they could be of any "help." Stefaniak said they could not. Stefaniak had no idea he was talking with IBI agents.

Two weeks later Chaney returned with the completed application; a short time after that, in early February, Imber and Chaney met with Stefaniak again and were told that their license had been approved. (See Chapter 3 for a fuller discussion of this issue.)

4. Loose Ends

On February 7, 1975, Chaney and Imber lost their transfer appeal before the Illinois Civil Service Commission (the Commission's reasons for denial will be discussed in Chapter 3). There are no IBI memos to commemorate that event, but Chaney and Imber's supervisors later reported an improvement in the agents' attitudes toward the whole project.

On February 20th, Balmar, Inc. was officially formed, with Forrest Randall (Chaney) as President and David Scott (Imber) as Treasurer. The two agents leased an apartment in Calumet City on February 17th (effective March 15, 1975 to March 31, 1976) for \$225 a month. On March 28th the Borderline Tavern was purchased by Balmar, Inc. for \$15,000; at the same time, a lease was negotiated on the property, owned by one Mary Orkis, for three years at \$250 a month. In a Progress Report to LEAA on March 6th, Kerstetter wrote: "Operation Northside is not yet operational. City license was received on 3/5/75 after police investigation. No problems were encountered. Business deal will be closed and project operational by 3/14/75." Although that projection was premature, it seemed, finally, that the project was getting off the ground.

5. Immunity Problem

Hovering ominously over the whole project, however, was the issue of immunity. Chaney and Imber claim that through the planning stages they kept requesting--and were

promised--letters of immunity from prosecution from appropriate authorities. On January 30, 1975, prior to purchase of the tavern, they sent a memo to Kerstetter informing him that they had secured several pieces of undercover identification: driver's license, firearm's ID, fishing license, social security card, and two credit cards.

"These documents were acquired with the understanding ...that there were letters of immunity from prosecution from the United State's Attorney for the Northern District of Illinois, the Attorney General of the State of Illinois, and the State's Attorney for Cook County," they wrote. These letters of immunity, they added, "were to cover all violations committed by Agents in the performance of their duties...."

On March 18th, U. S. Attorney James R. Thompson directed a letter to Chaney and Imber acknowledging the agents' acquisition of various pieces of undercover identification. Thompson stated:

As these acts are to be performed within the scope of your official duty, they will not be interpreted by Federal authorities as acts undertaken with intent to deceive or defraud any of the various agencies of the State of Illinois. As you know, this is a joint project, coordinated between Federal and State authorities, with the State authorities fully aware of the acts which you are to perform.

This, however, does not relieve you of the normal and usual responsibilities and duties due to protect and uphold the United States Constitution, the laws of the United States and of the several states, and your oath of office.

6. Opening the Tavern

Chaney and Imber spent the next several weeks stocking and readying the bar. Then on April 11th, a meeting was held at the U. S. Attorney's office in Chicago, attended by personnel from all participating agencies.

First there was a discussion of entrapment. Douglas Roller, Special Agent with the Chicago Strike Force, explained the various elements of entrapment, and the fact that entrapment is a common defense against criminal cases.

Since all of the necessary licenses had been secured, it was generally believed that any unusual delay in opening

the tavern might create suspicion. It was decided, therefore, to open the business the following week--April 15th--even though ATF agents Roggenbauer and Callaghan were scheduled to attend a Special Agents Refresher Seminar in St. Louis. Chaney and Imber were apparently skeptical about opening the bar in their absence, but Roggenbauer told the group that he would be back in Chicago on April 18th and would be available Friday night and on the weekend for work in the tavern.

It was also decided that after the first or second week of the operation another meeting would be held at which time arrangements could be made for additional ATF agents to provide relief for the first group. So the decision was made: the bar would open on April 15th.

April 14, 1975. On this date, Forrest Chaney applied for a job at Caterpillar Tractor Company in Decatur.

The Borderline Tavern opened for business at noon on April 15th, attended by Chaney, Imber and a hired barmaid. Several hundred people came in, curious about the new owners who alternately tended bar and circulated among the patrons. The day was largely uneventful and they closed the place around 3 a.m.

The bar reopened at noon on the 16th. Business was steady. There was one fight, which the agents succeeded in breaking up. One woman came in, laid her pistol on the bar, and asked Chaney if he knew where she could get a new gun. One man, upon learning that Randall (Chaney) was from Decatur, said he had a friend from Decatur named Mullins who he would introduce to Chaney some day (Chaney later said he might have known a man named Mullins in Decatur). That night the agents closed the bar at about 2:30 a.m.

7. Closing Down the Tavern

The following morning, Thursday, April 17th at 12:45 p.m., Assistant Superintendent Robert Bullock observed Chaney and Imber walking south on Michigan Avenue, just a short distance from the Bureau's offices. Bullock stopped both agents and asked them how their assignments were proceeding. According to Bullock's memo, the men "shrugged their shoulders in the affirmative and said, 'everything's okay.'" Bullock told them that their letter of immunity was in the process of being prepared by Superintendent Kerstetter. Then he watched them proceed toward the IBI office.

Twenty minutes later Bueford Cooper was returning from lunch when he noticed Chaney and Imber sitting in Larry Casey's office (Casey was their immediate supervisor). Cooper knew, of course, that the bar was in operation so he was surprised to see them in the building. They exchanged greetings and Cooper asked how things were going. Chaney and Imber only shrugged and said they were waiting to see Casey.

"I heard there were a lot of interesting people in the bar," Cooper commented.

"Yeah, if you consider such people as murderers, rapists, thieves, and home invaders...it's like a zoo," Imber said. Cooper then departed for his own office.

A short time later Casey returned from lunch. Chaney and Imber then announced that they had closed down the bar and were not going back. They said they had told the hired employee that a tax lien was forcing them to close. They also said that they had moved out of their undercover apartment. Why? Casey asked. In effect, Chaney said that it was too dangerous and that they were worried about immunity. Chaney said they would prepare written statements (see *Appendices B and C*).

Cooper was sitting in his office when Casey walked in.

"You won't believe this, but Chaney and Imber have closed down the bar," Casey said.

F. Efforts to Salvage the Project

Chaney and Imber prepared handwritten statements regarding their objections to the Borderline Tavern project. The substance of the questions and issues they raised were discussed during three meetings held the following week.

On Sunday, April 20th, Cooper telephoned Chaney at his home in Decatur. He pointed out to Chaney that neither the ATF nor the Strike Force had been briefed concerning why the bar had been closed down. According to Cooper's memo Chaney agreed that "we owed it to the other agencies to let them know why the project would not work."

A meeting was therefore arranged for the following day, April 21st, at the William Tell Inn in Countryside, Illinois. In attendance were Kerstetter, Bullock, Cooper, Casey, Chaney, Imber, Vaira, Callaghan, and Roggenbauer. According to Cooper's memo, Chaney and Imber raised seven issues

regarding their decision to close down the bar (generally, the same issues set down in their handwritten statements).

1) Civil liability of third parties resulting from violence: Chaney and Imber were advised that the tavern was doubly insured in order to provide the best possible protection.

2) Maintaining control of the tavern from the criminal element: Chaney and Imber were advised that the proprietor must set the tone of the place; that customers who ran fencing operations must be told that the Borderline Tavern is a respectable place and that fights and brawls will not be tolerated.

3) Problem of condoning criminal activity: Chaney and Imber were advised that every situation would require a judgment on their part; serious crimes such as shootings would have to be reported to the local police; all crimes would have to be reported in daily debriefings.

4) Difficulty of bringing additional agents in to run the bar without creating suspicion: Chaney and Imber were advised that since the bar had always employed a number of employees there would be no risk involved in bringing in added help, possibly part-time help if necessary.

5) Problem of daily debriefings: The agents were advised that they would not have to travel downtown to IBI headquarters for debriefings; rather, they could dictate reports via a telephone system. Specific crime activity would require detailed written reports.

6) Safety of the agents: Chaney and Imber were advised that they were chosen for physical attributes, training, experience, and ability to take care of themselves; that at least two agents, both armed, would always be present; that when circumstances warranted additional agents could be brought in for support.

7) Problem of long-range jeopardy to the image of the IBI and the agents resulting from adverse publicity: they were advised that infiltration of criminal elements is a standard operating procedure of police and investigative agencies.

At the conclusion of the meeting Chaney and Imber were asked to meet with the State's Attorney and the Attorney General so that any other questions could be discussed and answered. Chaney replied that the project was unworkable and that nothing could change his mind.

The following day Superintendent Kerstetter forwarded a memo to Chaney and Imber directing them to meet with representatives of the Illinois Attorney General and the Cook County State's Attorney. This meeting was held on April 24, again at the William Tell Inn. Attending were Kerstetter and Cooper; Assistant Attorney General Michael Murphy; Cook County Deputy State's Attorney Kenneth Gillis and Assistant State's Attorney Joseph Claps; Peter Vaira; and Charles Callaghan and Donald Roggenbauer.

The following exchange is detailed in Casey's memo of April 25, 1975.

At Room 211 in the William Tell Motel in Countryside a meeting was held commencing at 1510 hours. Those present were IBI S/A II David Imber, IBI S/A III Forrest Chaney, IBI S/A/C Bueford Cooper, R/A, IBI Superintendent Wayne Kerstetter. State's Attorney General Assistant Mike Murphy. Cook County Deputy State's Attorney Kenneth Gillis, Cook County Assistant State's Attorney Joseph Claps. Chief Federal Strike Force U.S. Attorney Peter Vaira, ATF S/A Charles Callaghan, and ATF S/A Donald Roggenbauer.

S/A Chaney asked the first question addressed to the group, Chaney inquired about condoning criminal activity as a sworn police officer - what about the liability of such?

Gillis responded that the operatives have the duty to report to their superiors what they see and hear in their undercover capacity.

Chaney advised that something should have been considered much earlier before this time. Chaney asked what about a homicide that might occur within the premise? What about the opportunity to prevent? What about my legality, my moral sense to do something?

Attorney Gillis responded that in these situations there is usually an element of time, of being able to weigh the crime and considering notification, and effective action.

Chaney stated that this is the first time an operation like this is being tried. This evaluation, this time element isn't workable. This place is like a prison loaded with criminals.

Gillis answered, anything we do is better than nothing; that it is appropriate for law enforcement to engage the criminal element in this type of operation. Attorney Gillis further advised that civil problems would be handled

by the Attorney General's Office. There will be no problem as long as the agents act within the scope of their employment.

Chaney asked about a situation wherein the employee on the premise is allowed to carry a gun, if she were to kill somebody with it - what about the liability?

Gillis advised that in his 12 years as a prosecutor there are many situations that arise which you will not be able to stop or prevent, we cannot prevent all possible crimes. Non-action is not a legal action.

The issue of fights on the premise was brought up; should they be condoned or prevented.

Mike Murphy answered by stating, the operatives have to set the standard and tone of the place to prevent fights.

Charlie Callaghan further advised that certain customers could be barred; we should have a sign reserving the right to serve.

Murphy inquired if that answered Chaney's question. Chaney responded by saying he thinks some of the ones we should be barring, are the kinds we should be making cases on.

Vaira advised that it is always a judgment call, that there is no hard or fast rule. The level of violator will be elevated once word spreads about outside business.

Imber advised that they didn't want to get the reputation of being a dime dropper. Imber was advised there are many ways to make cases, and preventive action could still be accomplished in situations where cases couldn't be made.

Chaney then advised that the tavern business vs. other types of operations has many new problems, particularly when it hasn't been tried before. You get a real education in a short time. Chaney believed the disadvantages outweigh the advantages.

Gillis answered by stating there is a distinct advantage in this kind of business. We can observe many State, Federal and Local violations with this kind of business.

Joe Claps advised that we gain firsthand knowledge, by being close to the source of where and how goods are stolen. Further, we would be able to get closer to the big jobs.

Vaira advised about the possible official corruption in this kind of business where cases could be made.

The question of drinking was brought up by Chaney, and he cited an example of a Decatur Deputy who lost a case because it was determined he had been drinking on duty.

Chaney was advised by R/A and others, of the many ways to handle drinking on the assignment.

Murphy advised that usually the biggest problem encountered in undercover work is women. Examples were then given of how to avoid suspicion and problems with women in the line of duty.

Superintendent Kerstetter advised that a meeting for Friday would be set up with IRS Agent Gonzalez to assist Chaney and Imber further in adapting to their undercover roles.

The meeting ended at 1630 hours.

The following day, on April 25th, a third meeting was held, the purpose of which was for an experienced IRS undercover agent to answer any questions regarding undercover work. In attendance were Cooper, Casey, Chaney and Imber, Roggenbauer and Callaghan.

Chaney asked the agent one question: "What would you do if a customer laid a .357 magnum on the bar?" The agent said that he would not be bothered by it; he would simply report the matter to his supervisor. He would not feel personally responsible for actions that others may or may not take. No other questions were asked.

On April 28th, Kerstetter prepared the following directive for Chaney and Imber:

As you are aware, a series of conferences were held during the week of April 21, 1975 in which you were given an opportunity to present the concerns you had regarding the undercover project to which you are assigned. One of those conferences involved senior persons from both the Illinois Attorney General's Office and the Cook County States Attorney's Office. It was the conclusion of these persons that the arrangements for the project were operationally and legally sound and that the project should continue. The senior federal and IBI management staff that sat in these conferences have reached the same conclusion.

Mr. Ken Gillis, Deputy State's Attorney for Cook County, suggested that the project be operated for another week or so and then another conference be held with his staff to discuss further whatever operating issues arise. I have concluded that this is a wise suggestion.

I am therefore directing you to reopen the project business April 29, 1975 and operate it for another week. I will attempt to schedule a conference with Mr. Gillis or his staff on next Tuesday or Wednesday (May 6th or 7th) to review the results of the week's operation.

Agents from the Strike Force, and perhaps the IBI, will join you in this operation.

This memo was given to Chaney and Imber by Agent Cooper and Agent William Collins on April 29th. At this meeting Chaney and Imber reaffirmed their belief that the project was unworkable, dangerous, and illegal. They said they would refuse to reopen the tavern.

G. The Firing of Chaney and Imber

On June 5, 1975, Harvey N. Johnson, Jr., Director of the Illinois Department of Law Enforcement, issued the following statement which resulted in the termination of Forrest Chaney's employment with the Illinois Bureau of Investigation.

Pursuant to Personnel Rule 2-720 and in accord with guidelines of Personnel Memorandum #62M-74 dated July 26, 1974 promulgating the Agency Disciplinary Guideline wherein it is stated that "violation of any of the following rules shall be grounds for immediate discharge:

8. Insubordination by refusing to carry out supervisory instruction or to follow the lawful directive or policy of an agency supervisor
15. Engaging in, instigating or causing any interruption or impeding of work";

and further pursuant to the authority of Bureau of Investigation Policies, Rules and Regulations effective November 17, 1972, and again declared in full force and effect on February 5, 1973, wherein, at Section V-C it is stated: "Personnel will obey all orders from superior officers whether written or oral", it is hereby stated:

- (1) That on April 29, 1975 Forrest R. Chaney was employed as a Special Agent of the Illinois Bureau of Investigation;

- (2) That on April 29, 1975 the aforementioned Rules, Regulations and Guidelines were in full force and effect and all employees of the Illinois Bureau of Investigation were subject to those Rules, Regulations and Guidelines;
- (3) That on April 29, 1975 Forrest R. Chaney was handed a written order by Special Agent William R. Collins of the Illinois Bureau of Investigation;
- (4) That on April 29, 1975 by direction of that order, signed by the Superintendent of the Illinois Bureau of Investigation, Forrest R. Chaney was ordered to reopen and engage in the activities of a special project of the Illinois Bureau of Investigation for a period of time not to exceed seven (7) days;
- (5) That on April 29, 1975 and thereafter Forrest R. Chaney did knowingly and intentionally refuse to obey that direct, written order signed by the Superintendent of the Illinois Bureau of Investigation.

In view of the above cited refusal to obey a lawful order it is hereby requested that Forrest R. Chaney be discharged from his position with the Illinois Bureau of Investigation.

An identical statement was drafted for David Imber.

On May 14, 1975, both Imber and Chaney were placed on suspension pending their discharge from the IBI. They were both subsequently discharged for cause on June 13, 1975.

On June 17, 1975, Chaney and Imber requested a hearing before the Illinois Civil Service Commission to defend themselves against the charges presented in Johnson's dismissal statement. The hearings, which were initially scheduled to begin within 30 days, did not begin until December 11, 1975 and at this writing they are still incomplete. Although an investigator from our Commission attended all of the hearings held thus far, it would be improper for us to comment upon and possibly influence the outcome of those proceedings.

H. Summary

The Borderline Tavern, which required more than a year of planning and preparation and which was in operation for two days, was never reopened.

After Chaney and Imber refused to reopen the bar some additional consideration was given to salvaging the project. On April 29th a meeting was held attended by Kerstetter, Cooper, Peter Vaira, and James Welch, ATF Chicago area Special Agent in Charge. The major question discussed was whether or not publicity over the Chaney/Imber matter had jeopardized the whole project. It was decided that a confidential informant known by Welch would be brought up from St. Louis to frequent the Calumet City bars. If the informant determined that street rumors had not compromised the project, the bar would be reopened in about a month.

On May 13th the informant, after a briefing by ATF and IBI officials, departed for Calumet City. In June he reported that no rumors were circulating regarding the Borderline tavern. Another meeting was held on July 14th, attended by Kerstetter, Bullock, Casey, Cooper, and ATF Agent Callaghan. Callaghan told the IBI officials it was his opinion that the project should go forward and the tavern reopen. Callaghan told them that he based his opinion on the fact that the informant operating in Calumet City reported there was no suspicions regarding the Borderline Tavern; in addition, Callaghan noted that Chaney and Imber's Civil Service hearing had been continued until early fall, and that additional continuances were possible.

The IBI officials at first agreed with Callaghan and they immediately entered into a discussion concerning what agents could be assigned to the project. However, for the next several months they delayed making a decision, and in November, 1975, when the whole story of Chaney and Imber's dismissal erupted in the news media, the Borderline Tavern project was finished.

The State of Illinois still owns the tavern at 638 State Line Road in Calumet City, and continues to make a monthly payment of \$250 on the three-year lease.

Chapter 3

THE ISSUES

A. Introduction

House Resolution 548's directive that the Commission investigate the firing of Forrest Chaney and David Imber brings us to the crux of the whole problem. At issue here is not simply the fact that two agents were fired for refusing an assignment--although we will of course examine the reasons for their refusal. The main issue is whether Illinois Bureau of Investigation (IBI) Superintendent Wayne Kerstetter, as Director of a quarter-million dollar joint federal/State project, acted imprudently by assigning two unwilling agents to a job upon which the success or failure of the whole project depended.

We will begin with a discussion of Chaney and Imber.

B. Forrest Chaney

Forrest Chaney told our investigator that his main objection to Operation Northside from beginning to end, stemmed from his belief that the project was illegal. He said it was because he feared the project was illegal that he filed his transfer appeal to the Illinois Civil Service Commission, and it was for the same reason that he ultimately closed down the Borderline Tavern.

This is puzzling. He filed a grievance procedure regarding his transfer not because he was against being transferred but because he felt the project was illegal. He said that filing a transfer grievance was the only tool available to stop the IBI from operating this illegal tavern.

We asked Chaney when he first became convinced that the tavern project was illegal. Chaney said that the minute he first learned of his transfer from Springfield to Chicago he knew that the tavern was illegal, and that if he operated the tavern he feared for criminal prosecution. Therefore, he said he made up his mind that neither he nor anyone else in the IBI should have to run this tavern. Hence, his transfer appeal.

We noted in the previous chapter that Chaney was not initially assigned to the tavern project when he received his transfer orders. Rather, he was assigned to the discount store. It was not until mid-October that he was reassigned to the tavern.

Our investigator pointed out this discrepancy to Chaney. Chaney was asked: What bearing could your Civil Service grievance, filed on September 10, 1974, have upon the tavern project, to which you were not assigned until a month later?

Chaney's response was that he feared he might be assigned at some future time, to the tavern project.

Chaney also said he filed his grievance because, "I didn't want two other poor slob to have to work the tavern." We pointed out that if he and Imber won their appeal, two other agents would have been assigned to the tavern.

Chaney's response was that he knew he would not win his grievance. He said that if by some chance he had won, he would have "looked for redress outside the Bureau rather than from within."

At one point Chaney said: "I will not break the law to enforce the law." We asked Chaney why he opened the tavern at all if he really believed it was illegal. Chaney said he had asked for, and was promised, letters of immunity from prosecution. These letters, he said, were never given to him. Chaney said he closed down the bar because he felt all of his fears and anxieties regarding the illegality of the tavern were justified.

In his handwritten statement of April 17, 1975 (see Appendix B), the day he and Imber closed the bar, Chaney again stated, "the current position we are taking with regard to this project is in no way an attempt to get our way in regards to the geographical transfer controversy."

What seems clear, however, is that almost all of Chaney's actions are related to his unwillingness to transfer. His transfer appeal of September, 1974, is largely an attack upon the administration of Superintendent Kerstetter, and it concludes with a list of "personal and family hardships" which would be caused by the transfer: he had just bought a new house; he was going to start work on a Master's Degree; he was being considered for a part-time teaching position; he has four children in school; he is a leader of his church; he might not be able to attend his daughter's January wedding; he has high blood pressure, "brought on in my opinion by current Bureau management."

Regardless of the possible justness of Chaney's charges against the Bureau administration or of the actual hardships caused by his transfer, the point is that nowhere is there any suggestion that Chaney believed the tavern project to be illegal.

In his transfer appeal Chaney also argued that at the time of his transfer order he was involved in a very important investigation. But in an interview with our investigator, Chaney lamented the fact that when Kerstetter took over as Superintendent of the IBI in 1974, he was stripped of his supervisory duties and had almost nothing to do for two years. In fact, Chaney said he frequently played gin rummy while on duty.

We pointed out in Chapter 2 that in August, 1974, Chaney notified his supervisor, Lawrence Casey, that he had applied for a job; when Casey asked Chaney several weeks later if he had received a job offer yet, Chaney replied that he would wait for the outcome of the Civil Service hearings before looking further. Our investigator later discovered that Chaney also applied for a job at Caterpillar Tractor Company in Decatur, Illinois, on April 14, 1975--the day before the opening of the Borderline Tavern.

That Chaney's main concern throughout was his transfer to Chicago is borne out by a document this Commission received from the IBI. This document, a signed statement by an IBI agent who we choose not to identify, records an August 30, 1974 incident in which the agent overheard Chaney telling his friends: "In no way am I going to Chicago... the only reason I'm filing a grievance with Civil Service, is because I want to buy some time. The longer I delay in my transfer the more time I have to find another job."

The agent's statement then proceeds to describe a September 10, 1974 conversation he had with Chaney. "I asked Chaney if his grievance had been ruled on by Civil Service. Chaney replied, 'I don't think they have yet and time is running out for me, I have only five days left.' Chaney further stated that he had not been given the position he interviewed for one week earlier.... Chaney appeared somewhat dejected over the fact that he didn't get the position applied for. I then asked Chaney if he was going to have to go to Chicago and he replied, 'I may have to go there for awhile, but that doesn't mean I'm going to stay there.'"

The Commission interviewed the agent who signed this statement and we have no reason to believe that this person would simply fabricate such a story. On the contrary, the credibility of his statement is reinforced by the rest of the facts surrounding Chaney's resistance to his transfer.

In his handwritten statement of April 17, 1975, Chaney worries about prostitutes coming into the bar; he worries

about his liability should he "take violent action against someone while drinking." He worries about violence: "I'm paid to take chances but not paid to be put into unreasonable jeopardy." He worries that "new faces could not be introduced as part-time bartenders." These fears and worries were largely answered at the April 24, 1975 meeting held at the William Tell Inn, as discussed in Chapter 2. But Chaney told us that the answers provided at that meeting were unsatisfactory.

C. David Imber

In his interview with the Commission David Imber stated that his main concern from the time he was assigned to the project to the time he opened the bar was possible prosecution. But he also admitted that he was concerned with his geographic transfer, that he lacked undercover experience and was unqualified to work the project.

It is Imber's belief that his transfer and assignment to Chicago was punitive. He said that in April of 1973 the IBI, along with the federal government, conducted a controversial drug raid in Collinsville. Later, several of the federal agents who participated in the raid were indicted for their actions (they were subsequently acquitted). Imber said that Kerstetter did not support the IBI agents who had participated in the raid and that Kerstetter was upset because he was unable to punish Imber's squad.

In addition, Imber said that Kerstetter disliked him because of his close association with several agents who were very vocal in expressing their dissatisfaction with the Bureau administration.

We questioned Imber regarding Casey's memos, discussed in Chapter 2, which relate Imber's various criticisms of his transfer and of the project per se. Imber contended that most of the information in these memos was taken out of context and that he never had any intention of sabotaging the project. Imber denied Casey's statement that he had requested time off for extended medical treatment of his arm.

Imber repeatedly expressed his concern over his personal liability. He said that the hired barmaid, Van Schutt, told him that she would carry a gun while she worked in the bar. Imber said that although Casey told him that this was acceptable, because of the project's priorities, Imber feared that if she shot somebody, he himself would be held criminally or civilly liable. The Commission would point out that Imber himself had the responsibility for hiring the barmaid.

Imber also told us that he could be liable for lying to the mayor and the police chief of Calumet City. He said he feared that because the insurance on the Borderline Tavern was listed in a fictitious name there was no guarantee of coverage in the event of an accident. He said he also feared that Frank Fasano, the former owner of the tavern, might be mistaken for an IBI agent and that he (Imber) would feel guilty if Fasano were killed or injured. He said that his general lack of undercover experience led to his inability to make decisions concerning when to take appropriate police action.

In his written statement of April 17, 1975 (see Appendix C) Imber cited other objections to the project. He said that his undercover identity was highly vulnerable. He said that the necessity of frequent meetings at IBI headquarters risked his exposure. Like Chaney, Imber also stated that it would be almost impossible to bring additional agents in to help run the bar without creating suspicion.

Again, these fears were largely answered at the William Tell meetings in April, 1975, but Imber told us that those meetings did not resolve the issues. "We tried earnestly to ask questions of significance," Imber said, "and we got answers of retardation."

Since Imber repeatedly stated his belief that the project was illegal and that he feared prosecution, we asked him why he even agreed to open the bar. "That's a good question," he said, adding that he wanted to act in "good faith." But he emphasized that the main reason he and Chaney decided to close down the bar was because the long-promised letters of immunity had not arrived. Imber said that if he had received those letters he would have gone through with the operation of the tavern.

D. Immunity Issue

Chaney and Imber's persistent request for letters of immunity from prosecution, as well as the IBI administration's promise to deliver such letters is a strange and curious issue in the whole Borderline Tavern story.

In Chapter 2 we quoted part of a memo directed by Chaney and Imber to Kerstetter on January 30, 1975, subject: "Immunity Documentation." Here is that complete memo.

Since our assignment to the Northwest Project, beginning approximately October, 1974, the following documents have been acquired by Agents Chaney and Imber to further establish

undercover identities in the furtherance of this project, in the names of Forrest P. Randall and David A. Scott:

1. Illinois Driver's License
2. Illinois Firearm's Owner Identification Card
3. Illinois Resident Hook and Line Fishing License
4. Social Security Card
5. Texaco Credit Card, number 62500 90120 00064
6. American Express Credit Card, number 046 877 239 7 800 AX

These documents were acquired with the understanding that they would be used in the furtherance of the Northwest Project and further, with the understanding that there were letters of immunity from prosecution from the United States Attorney for the Northern District of Illinois, the Attorney General of the State of Illinois, and the State's Attorney for Cook County. The above mentioned letters of immunity were to cover all violations committed by Agents in the performance of their duties while in the furtherance of the Northwest Project.

In light of the recent "Watergate controversy" and subsequent conviction of its participants and the current Federal investigation of Illinois Bureau of Investigation Agents for alleged illegal wiretapping, we find it imperative to request original copies of the letters of immunity from prosecution from the aforementioned federal, state and county prosecutors.

We also request that the legal authority of each of the aforementioned prosecutors to grant such immunity be cited and copies of such authority be forwarded with the letters of immunity on or before February 15, 1975.

Forrest R. Chaney
David Imber
Inspector Forrest R. Chaney
S/A David A. Imber

There is nothing in IBI files to indicate that Kerstetter responded in writing to this memo.

Imber told the Commission that about one week prior to opening the tavern he and Chaney told Casey that they would not open the business until they were presented with letters of immunity. As stated above, they then went ahead with the scheduled April 15th opening because, Imber said, they wanted to show good faith.

Chaney told us that he spoke with Casey once on the telephone the first day the tavern was in operation. He said he again told Casey that he feared criminal prosecution and again requested the letters of immunity.

On April 17th, the day Chaney and Imber refused to re-open the bar, they met Assistant Superintendent Arthur Bullock on the sidewalk near IBI headquarters. As we noted in Chapter 2, Bullock told the agents that Superintendent Kerstetter was in the process of preparing the letter of immunity. Here is the memo Bullock wrote on April 18th.

On Thursday, April 17, 1975, at approximately 12:45 p.m., the writer observed S/A II David Imber and S/A III Forrest Chaney walking south on Michigan Avenue, Chicago, 100 ft. north of IBI offices at 209 N. Michigan. The writer stopped both agents and asked of them how things were proceeding with their present assignment. They both shrugged their shoulders in the affirmative and said, "everything's okay", and the writer at that time advised both agents that the requested letter of immunity was in the process of being prepared by Superintendent Kerstetter. At the conclusion of these remarks, both agents proceeded toward the IBI office, 209 N. Michigan.

Robert Bullock
Asst. Superintendent Robert Bullock

In his handwritten statement of April 17th, Imber concluded:

Letters of immunity from prosecution in the furtherance of project matters were promised to us from the offices of the IBI, State's Attorney, and U. S. Attorney prior to our opening the project business. However, more than six months have transpired since the original offer and we were forced to either open the business on April 15, 1975, or have more suspicion brought down on us by the people of Calumet City that associate in this type of establishment. Still without having any type of immunity letters, we opened the business and operated anyway. At the time of this writing, April 17, 1975 at 2145 hours, Agent Chaney and myself still remain empty handed of the letters of immunity promised more than one half year ago, and have operated the business without them on April 15 and 16, 1975.

Chaney, on the other hand, in his handwritten statement of April 17th observed:

There has been much talk of letters of immunity from prosecution for reasonable violations of the law to further the project. In that light, immunity cannot be granted by a prosecutor, it must be granted by a judge upon the recommendation of a prosecutor.

The key questions in this whole issue are: (1) was Chaney and Imber's request for immunity reasonable; and (2) was the IBI's handling of the immunity issue satisfactory?

At the outset it is important to note that Chaney and Imber's request on January 30th--whether or not they knew it at the time--was an impossible request: immunity cannot be granted before a crime is committed; furthermore, only judges, not prosecutors, have the authority to grant it. Deputy State's Attorney Kenneth Gillis told us that the idea of granting blanket immunity before an act is committed is absurd, because a person could then proceed to commit any crime and not be subject to prosecution.

The question arises, then, as to why the IBI did not explain this fact to Chaney and Imber at once rather than offering vague promises and allowing the issue to remain unresolved for several months. Kerstetter's explanation is that he was under the impression that the agents were concerned about the legality of the project, and that in response to this concern the Bureau provided Chaney and Imber with the letters from Assistant Attorney Zagel and U. S. Attorney James Thompson (see Appendices D and E). There is considerable confusion as to whether Chaney and Imber ever saw these letters prior to closing the tavern or whether they saw the letters and simply found them unacceptable.

Imber, in his statement of April 17th, complained that letters of immunity were never received, but in answer to that charge the IBI cites the Zagel/Thompson letters. An IBI document prepared after the closing of the tavern states the following:

Chaney and Imber had each received letters, dated March 18, 1975, from the United States Attorney advising them that the acquisition of fictitious Illinois driver's license, et. al., would not be interpreted by federal authorities as acts undertaken with the intent to deceive or defraud any of the various agencies of the State of Illinois. Prior to this date, S/A/S Casey had given Chaney and Imber copies of a letter, dated June 25, 1974, addressed to Superintendent Kerstetter, from Mr. James B. Zagel, Assistant Attorney General, Chief, Criminal Justice Division, stating that concealment of identity and purpose, by our agents, including concealment in oral conversation, in writing and on

applications for license or employment, is lawful when the concealment is performed by state or federal law enforcement officers during the pendency of an undercover operation with the express intent of securing evidence of violations of the criminal laws of Illinois (under the circumstances as described to him in a conference relating to this project).

Chaney and Imber told us that they did not see the Zagel and Thompson letters until the April 24, 1975 meeting at the William Tell Inn. Lawrence Casey told us that he personally presented them with these letters prior to the opening of the tavern. Casey even said he recalled that the agents complained about the wording of the Thompson letter.

Whether or not Chaney and Imber saw letters before they closed down the tavern, it is clear that neither the Zagel nor the Thompson letter offers the kind of impossible immunity the agents sought. Zagel's letter admits to the legality of government undercover agents concealing their identity on applications for licenses and employment. Similarly, Thompson's letter states that the agents' acquisition of various pieces of undercover identification "will not be interpreted by Federal authorities as acts undertaken with intent to deceive or defraud...the State of Illinois."

Far from offering blanket immunity, Thompson's letter concludes with a warning that the agents are not relieved of their "normal and usual responsibilities and duties due to protect and uphold the United States Constitution, the laws of the United States and of the various states, and your oath of office."

In an interview, Zagel told us that he is convinced that the project was legally sound, that the agents had received the assurances of all of the project's legal advisors, and that their request for immunity indicated an unusual paranoia.

Deputy State's Attorney Kenneth Gillis told us that in all of his years of law enforcement he had never before heard of an agent requesting immunity. Gillis added that if somehow the agents were charged for some criminal violation related to their project undercover work there would have been no problem in securing immunity for them. Gillis concluded that the agents should have been willing to accept the advice of their supervisors, the Attorney General's office, the State's Attorney's office, as well as the U. S. Attorney's office.

That Chaney and Imber did not accept such advice reveals a deep distrust of the IBI administration--a distrust they

themselves admit to. And although this Commission does not condone their unreasonable immunity request, it is possible to see how the Bureau encouraged their distrust. The Bureau's handling of the immunity issue is just one instance.

Why, for example, as noted in Deputy Superintendent Bullock's memo above, did he tell Chaney and Imber that Kerstetter was in the process of preparing their requested letter of immunity? We asked Kerstetter but he was unable to explain: he prepared no such letter. We reinterviewed Bullock, who then conceded that his choice of words was poor, and that Kerstetter was not in fact preparing such a letter. It is not difficult to see that this kind of double talk does not help to establish trust.

E. The IBI Administration

Given the importance of the selection of agents for any undercover project--not to mention one as important as Operation Northside--it is curious that Superintendent Kerstetter should have given Deputy Superintendent Robert Bullock the responsibility for selecting agents to this undercover project.

Bullock, who spent 25 years with the Detroit Police Department, had only come to the IBI on May 6, 1974. Two months later, in mid-July, he began searching for agents. The obvious question: did Bullock have a sufficient familiarity with the IBI's approximately 150 agents to make this important selection?

In an interview, Bullock said that he chose Chaney and Imber because they fit the qualifications he was seeking: they did not look like policemen; they react well under pressure; they had law enforcement experience; they were over 30 years old; they were sufficiently intelligent; they were not known in the Chicago area. Although Chaney and Imber had done very limited undercover work, Bullock said he did not consider such experience a necessary prerequisite for the assignment.

Bullock admitted that at the time he made his selection of Chaney and Imber, he had never seen or spoken with at least one-quarter of the agents in the Bureau. However, despite all of the problems Chaney and Imber later caused, Bullock refused to concede that Kerstetter had made a mistake by giving him this responsibility, and he still believed that Chaney and Imber were the right men for the job.

When we asked Kerstetter about the wisdom of selecting a man with only a limited acquaintance of IBI personnel for this important responsibility, Kerstetter simply said that

Bullock was free to draw on whatever resources were necessary to aid him in his decision. Kerstetter said he agreed with the qualifications which Bullock used to determine his choice, and he further agreed that Chaney and Imber were the best men for the job.

Since Chaney and Imber immediately expressed disinterest when told about the assignment (Imber stated flatly to Kerstetter that he would refuse the assignment), we asked Kerstetter why motivation was not considered an important factor in selecting agents for the project. Kerstetter said: the issue here is whether the IBI is going to be run to meet the needs of the people of the State of Illinois or for the convenience of the employees of the IBI. IBI agents accept in writing, he said, an obligation to take an assignment anywhere in the State.

We asked Kerstetter if anyone involved in the project ever recommended to him that Chaney and Imber be replaced. He said no one ever made this recommendation, but our interviews with Casey and Cooper show otherwise.

Casey told us that because of Chaney and Imber's obvious unwillingness to work the project, evidenced by their numerous statements as well as by their repeated absences, he informed Kerstetter at least twice that they should be removed from the project. He also said he informed Bullock about his frustrations with Chaney and Imber and about their poor attitudes toward the project.

Likewise, Bueford Cooper stated that it was clear to him from the outset that Chaney and Imber were uninterested in their assignment. He said he expressed his apprehensiveness about them to Kerstetter and that Kerstetter responded: "Coop, there is an overriding principle here." In effect, he told Cooper that if he gave in on occasions such as this one, he would later have difficulty assigning any agents in the Bureau.

When we asked Cooper his opinion of Kerstetter's position, Cooper replied: "The battleground was poorly chosen." He explained that a lot was at stake, in that the IBI was not only spending federal money but was working in cooperation with federal agencies.

One problem this Commission encountered was the virtual absence of memos or progress reports which could indicate the activities of the undercover agents and their supervisors from the time the LEAA grant was approved to the time when the tavern opened--a period of more than ten months. The IBI file on the Borderline Tavern project, which we secured with some

difficulty, revealed only documents relating to the LEAA grant and the numerous memos regarding Chaney and Imber's resistance to their transfer.

Kerstetter simply told us that he was surprised at the absence of memos, and he referred us to Casey and Cooper. Casey told us: "I was so on top of this project we didn't need written reports." He said he was in daily contact with the agents and was kept abreast of their activities--although Chaney and Imber told us that Casey was generally unavailable. Cooper said that it was initially planned for Chaney and Imber to submit daily or weekly reports of their activities, but that when the agents complained to Casey about having to report to IBI headquarters, Casey allowed them to submit oral reports to him. Cooper admitted that he had almost no contact with the agents from August, 1974 to April, 1975.

Because of this lack of written reports the Commission has no way of knowing how Chaney and Imber spent most of their time from the fall of 1974 to the time the tavern opened. As reported in Chapter 2, the only written reports available are those regarding the possible purchase of the Yo-Yo Club in December, and Chaney and Imber's January 30th memo to Kerstetter in which they describe the various undercover IDs secured and request immunity letters.

Both Casey and Cooper told us that after Chaney and Imber lost their transfer appeal in February, the agents seemed, for a time, to take an active interest in the project. Chaney and Imber appealed their Civil Service ruling in the Circuit Court of Cook County. Had they won that appeal they would have been ordered off the project. Casey said that in retrospect he believes the agents "snowed" him. He also believes that Chaney and Imber never had any intention of following through with their assignment--and that they conspired to sabotage the project.

We asked Kerstetter why undercover experience and knowledge of the tavern business were not considered prerequisites for the assignment; he said only that Robert Bullock was responsible for selection of the agents, that he trusted Bullock's judgment, and that he believes Bullock made a good choice. It is worth noting that in a June 3, 1974 memo to Michael Fitzsimmons, Kerstetter himself raised the question as to "whether we should have somebody who understands the tavern business. If not, we may be compromised by our own ignorance."

Both Casey and Cooper believe that the IBI should have sought volunteers for the project (in fact, Casey himself

volunteered for the undercover assignment). But Kerstetter told us that because they were looking for very specific characteristics and that few agents met these qualifications, volunteers were not sought. Kerstetter also said that seeking volunteers could have compromised the confidentiality of the project.

F. Bureau of Alcohol, Tobacco and Firearms (ATF)

When we interviewed ATF Special Agent in Charge James Welch, we asked him to explain his agency's primary criteria for selecting men for undercover work. Welch stated: "My experience has shown that the most successful undercover operations are conducted by volunteers. Motivation and desire are extremely important." Because of this, Welch added, ATF makes it a general practice to obtain concurrence from their agents before making undercover assignments.

We asked Welch if the IBI's problems with Chaney and Imber caused problems for ATF. Welch said that in general ATF's predicament was that they had no primary control over the project. He said that Agent Ernie Alexander often reported his frustration resulting from the fact that no one seemed to be making any decisions during the first several months of the project.

Welch said that by early January, 1975, he too became frustrated over the IBI's delays in getting the project off the ground. He relayed his disappointment to Strike Force Attorney Peter Vaira and he then recommended to William Richardson, ATF's Assistant Regional Director for Criminal Enforcement, that ATF pull out of the project. Welch said that Richardson basically agreed but decided to wait another month or so. A short time later the IBI purchased the Borderline Tavern, after which the question of withdrawing from the project was dropped.

Welch added, however, that when the immunity issue then erupted he suggested to the IBI that a confidential informant be hired to run the bar, with help from federal and State agents. He said that the IBI rejected this idea at that time.

Welch was also of the opinion that the project could have been salvaged even after Chaney and Imber closed down the tavern because, as we reported earlier, ATF's informant convinced them that there were no rumors in Calumet City bars regarding the Borderline Tavern.

"I believe that the project would have worked," Welch said. "There were three violations the first day the bar was open."

G. Summary

We conclude this chapter with the Illinois Civil Service Commission's "ANALYSIS" of Chaney and Imber's appeal of their geographic transfer.

121. When the bulk of the testimony concerning the prime characteristics of a good undercover agent is considered, especially the testimony concerning the importance of attitude toward the work, it may be concluded that these agents were not the wisest choice for so important an undercover assignment.

122. There was also extensive testimony concerning the hardship that these transfers would cause upon Petitioners. While there is no question that the transfers indeed have caused grave difficulties for Petitioners [Chaney and Imber], the evidence indicates that all of them were indeed aware of this possibility when they became employed by the IBI. This foreknowledge certainly negates to a great extent the hardship pleas for Petitioners.

123. While the evidence certainly proved that Respondent [the IBI] did not make the best decision in transferring Petitioners, and indeed may not even have made a wise decision, the burden of proof upon Petitioners is to show that their transfer was 'unreasonable, unjust, or capricious and was not a bona fide attempt to serve the best interest of the operating agency.' (Civil Service Commission Rule § 11.01.) The Commission does not and will not question the wisdom of management decisions in making Geographical Transfers. Management is permitted to commit what the Commission or its Hearings Officer might consider errors in judgment, since management is in the best position to operate an agency. The Commission will question decisions when they appear to have been made in 'bad faith.' Such is not the case here. The Petitioners in this matter have failed to meet their burden of proof and their appeal must therefore be denied.

The Commission substantially agrees with this "ANALYSIS."

Chapter 4

FINDINGS

It is interesting that although the Illinois Bureau of Investigation (IBI) cannot be condemned for any of the allegations set forth by House Resolution 548, neither can the Bureau's conduct be commended. For although the IBI is innocent of any illegal acts, it is guilty of immense imprudence.

1. Legality of Project/Participating Government Agencies

It is clear that the IBI made every effort to ensure that the procedures used in the establishment of this undercover business and in the procurement of a liquor license were well within the bounds of legality. The fact that the IBI received and sought the cooperation of various federal, county and other State agencies can only be considered wise.

Commission investigators interviewed representatives of all of the government agencies which provided legal counsel for the Borderline Tavern project: the Illinois Attorney General's Office; the Cook County State's Attorney's Office; the U. S. Attorney's office; and Peter Vaira, Chief of the Justice Department's Chicago Strike Force. It is the opinion of each of these officials that the project was legally sound, and we concur with that opinion.

In addition to the above, the following agencies actively participated in Operation Northside: LEAA provided the project funds. The Illinois Law Enforcement Commission certified the IBI proposal before passing it on to LEAA for fund approval. The U. S. Justice Department's Chicago Strike Force initiated the idea of operating an undercover tavern. The Treasury Department's Bureau of Alcohol, Tobacco and Firearms provided manpower for the preparation and the operation of the tavern. The IBI was the coordinating agency; it provided operational personnel and was charged with maintaining all books and records of the project, including expenditures.

2. Purpose of the Project

There is no question but that one purpose of the Borderline Tavern project was to provide public officials with an opportunity to solicit bribes. Developing cases of official misconduct was of particular interest to the federal Strike Force, which believed that any bribes or shakedowns would

occur during the initial stages of the project, when agents were setting up the business and applying for a city liquor license.

There is no evidence whatever to support the allegation that Calumet City Mayor Robert Stefaniak was the "prime target" of the investigation--as reported by news media articles. As we noted in Chapter 2, initial plans called for the undercover project to be set up in Chicago Heights--and the location was then changed for intelligence reasons.

Commission investigators interviewed everyone involved in the conception, the planning, and the administration of the project. All of them deny the allegation that Stefaniak was targeted or that he was suspected in any way. They do admit that Chaney and Imber were told to be "receptive" to bribe offers from any public official, but as Chaney and Imber themselves admit, they were explicitly instructed not to offer any bribes.

Chaney and Imber told us that when they met with Stefaniak regarding the liquor license application they asked him if they could be of any help. Stefaniak told us that they asked him if they could help out his campaign fund. Although the exact wording is not clear, all three men agree that Stefaniak's response was negative. In addition, he gave them a lecture regarding how he expected them to run a clean establishment.

When our investigator asked Stefaniak if he interpreted the agents' comments as a bribe he said that there was an "implication" that they were trying to bribe him but that they made no overt attempts, that they did nothing that could be considered illegal and nothing for which he could have had them arrested.

In interviews with the Commission, everyone involved in the Borderline Tavern project agreed that far and away the main purpose of the whole operation was to build prosecutable criminal cases against such organized crime activities as fencing, gun running, and gambling, as well as against official corruption.

We conclude that the purpose of the project was not to "get" Mayor Stefaniak. We also suggest that there is nothing either illegal or improper about an investigation which has as one of its objectives the exposure of official corruption. That there was apparently no official corruption to expose is a credit to Mayor Stefaniak and to the officials of Calumet City.

3. The Funding of the Project

The Borderline Tavern, along with the discount store and defunct brokerage business, was funded by a Law Enforcement Assistance Administration discretionary grant for \$247,500. During the course of the Commission's investigation, all the funds committed to and expended on the Borderline Tavern were thoroughly examined by Commission agents. This was accomplished by obtaining the Tavern's accounting records from the IBI, IRS Strike Force Representative Jule V. Conard, and the attorney who represented Balmar, Inc., Richard Moenning. In addition to these records, the records maintained by ATF for their undercover agents and informant were obtained and examined.

The accuracy of the information contained in these records was verified by Commission agents during meetings and interviews with Inspector George W. Kruger, the IBI's Fiscal Officer for the Tavern project, Conard, Moenning, and various ATF officials. These interviews coupled with the information contained within the records themselves have resulted in the Commission concluding that there were no irregularities in the funding of the Borderline Tavern project. But the project did result in the unproductive expenditure of approximately \$56,000 in federal money, not to mention the salaries of the numerous IBI personnel who participated in Operation Northside.

The details of the Tavern's funding are contained in Appendix F of this report.

4. The Firing of Chaney and Imber

The Commission concludes that although the firing of Chaney and Imber for insubordination was justified, it is easy to understand from this instance why the IBI administration was unable to command the respect which any administration needs if it is to function properly.

The Borderline Tavern project was one which should have worked. As conceived, the project was one which could have benefitted the people of Illinois. The organized crime activities it was meant to combat may seem intangible and a bit remote from people's daily concerns, but such crimes always raise prices and lower our standard of living. Also, the funding for this local undercover investigation was provided by the federal government.

The IBI had everything going for it on this project--federal dollars and federal manpower--and yet, through administrative imprudence, the project failed.

The ultimate responsibility for the failure of the Borderline Tavern project belongs to Wayne Kerstetter. Kerstetter, a well-known scholar in his field, found his authority challenged by two troublesome agents: they told him that they did not want the assignment. It would have been a simple enough matter to replace them, but Kerstetter decided he was going to show Chaney and Imber who was boss. He showed them, but in the process of winning the battle, he lost the war. The agents lost their jobs and Kerstetter lost the project.

The assignemnt of agents to any long-range undercover project is, as Kerstetter should have known, a critical and sensitive decision. Not only must the agent's experience and physical qualities be considered in relation to the assignment, but equally important is attitude. No intelligent movie director would cast an unwilling actor for a key role: the director realizes that confidence, interest, and desire, are as important as ability itself. Similarly, an undercover agent, in order to perform convincingly, must like the part he is playing and he must want to play it. It is always possible, of course, that an unwilling agent or actor may rise to the occasion--but why take the chance?

This principle is so fundamental, so agreed upon by law enforcement experts, that Kerstetter's obstinacy is inexplicable. Kerstetter tried to tell us that the key issue in this whole matter was whether the IBI should be run to meet the needs of the people or for the convenience of its employees. What seems clear to us, however, is that Kerstetter himself disregarded "the needs of the people" by insisting that he get his way with Chaney and Imber.

Kerstetter may not have realized it, but he allowed his conflict with Chaney and Imber to become more important than the project itself. This fact became clear to the Commission as we examined the IBI's file on the Borderline Tavern project. There are very few memos or reports regarding the project itself, but there is memo upon memo (as seen in Chapter 2) documenting Kerstetter's orders and responses to Chaney and Imber's numerous complaints. Kerstetter even ordered Chaney and Imber's supervisors to put in writing any problems they had with the agents. One almost senses that Kerstetter was preparing for a court battle.

The Commission believes there is little substance to most of Chaney and Imber's stated objections to working the Borderline Tavern--clearly, their main objection was transferring to Chicago. But their reasons for not wanting the assignment are less important than Kerstetter's "I will be

obeyed" attitude. For while Kerstetter technically had the authority to assign his agents anywhere he wanted, this case underscores the fundamental truth that authority must be used with discretion.

Appendix A

DOCUMENT RECEIVED FROM THE ILLINOIS BUREAU OF
INVESTIGATION RE: OPERATION NORTHSIDE

NORTH SIDE PROJECT

I. PROJECT

To set up and operate a retail liquor business in Metropolitan area of Chicago. The purpose shall be to ascertain any and all extortionate demands for money and/or other property by city, county and state officials and employees, elected or appointed, and by organized criminal groups upon those individuals owning and operating retail liquor dealerships in the Chicago area.

II. EXPECTED RESULTS

It is expected that in the initial stage that shake-downs will occur by public officials elected or appointed, in the procurement of the necessary licenses to commence and carry on the operation. In addition, we expect additional extortionate demands to be made by the said or other public officials in order to continue the operations of the business. Additional pressures are envisioned to cause the business to use certain services and products such as cigarettes, juke box, food, linen service, insurance and particular brands of liquor and beer. These efforts may be instituted by organized crime individuals, aided and abetted by local governmental harassment if any resistance is offered by the retailer to the demands of the organized crime individuals.

III. POSSIBLE VIOLATIONS

- A. Alcohol, Tobacco and Firearms
 - a. Failure to file Form 11
 - b. Aiding and abetting in filing false tax return (Form 11)
 - c. Uses or carries a firearm during the commission of a felony which can be prosecuted in a court of the United States. Sec. 924 (c), GCA. This section of law could provide a possible entree for ATF to adopt jurisdiction to any other federal violations -- Narcotics, Hobbs Act, thefts, etc.
 - d. Liquor violations

- B. Other Federal Violations
 - a. Tax violations - Fraud and failure to file
 - b. Narcotics
 - c. Theft TFIS
 - d. Hobbs Act
- C. Local and State Violations
 - a. Extortion
 - b. Malfeasance and official misconduct
 - c. Theft
 - d. Violations of Liquor Control Act

IV. DIRECTION AND CONTROL

A. The project Director will be Wayne Kerstetter, Director of the IBI assisted by Peter Vaira, Chief, Chicago Strike Force.

B. The ATF Special Agents in the undercover project as well as those ATF Special Agents occasionally assigned in support will be under the supervision of John Ruggero, ATF Area Supervisor. The IBI Agents in the project will be supervised by Lawrence Casey or his delegate.

C. Wayne Kerstetter, Director, IBI, Peter Vaira, Chief, Chicago Strike Force, Charles T. Callaghan, ATF Representative, Chicago Strike Force will be jointly responsible for the coordination of policies and procedures to be used in building criminal cases as a result of the project, when and what information will be submitted to other law enforcement agencies.

Any conflicts or areas of misunderstanding will be promptly reported by the respective ATF or IBI Agents or supervisors to the above persons for clarification and resolution.

D. Strike Force Project Attorney Terry Norton shall assist in any legal questions concerning the project and the gathering of any evidence for criminal prosecution.

Weekly meetings will be held concerning the project, the individuals whose presence is deemed necessary will be informed in advance. Although the project is geared for one year operation a meeting every 45 days shall be held for the purpose of assessing the progress being made. Three months from the opening of the business a special meeting will be held to evaluate the project and determine the continuation or abandonment of the project. ATF Regional Office reserves the right to make its own evaluation and to exercise

their discretion as to withdrawal from the project after reasonable notice to participating agencies.

V. TACTICAL OPERATIONS

A. Three ATF Agents will be assigned full time in an undercover capacity to operate the business. An additional two agents will be part-time on a standby basis to provide relief for time off or emergency situations. One IBI Agent will participate in the undercover operation of the business and will be the licensee of the business.

The day to day operations of the business will be the responsibility of the ATF Agents with one of the three being in the position of a manager who will be responsible for using checks and making decisions or purchases acting ostensibly for the licensee (IBI Agent).

Appropriate support will be furnished by the Chicago Branch Office and IBI for surveillance or other functions required by the operation. While ATF will participate in securing initial evidence or identifying violations outside of ATF jurisdiction they will not be utilized in additional investigative efforts to perfect such cases outside of their jurisdiction.

The agent designated as manager of the business will have the authority to purchase evidence in the amount of _____ . Any purchases requiring larger amounts of money or unusual items or circumstances will be discussed with the Chicago Strike Force who shall coordinate with IBI prior to rendering decisions.

B. The unusual nature of this project and if it is successful will undoubtedly lead to the defense of entrapment. Each undercover agent or any agent who is likely to be in contact with alleged violators as a result of this endeavor will attend a briefing on entrapment and the pertinent rulings concerning entrapment prior to assignment. This briefing will be conducted by ATF Regional Counsel or a Chicago Strike Force Attorney.

An area of equal concern is that of project agents knowing in advance that a felony is to be committed (i.e. thefts of certain merchandise that we have indicated interest in, etc). It is expected that the good judgment of the participating agents can avoid this situation at all times.

C. In addition to the Standard Codes of Conduct of the respective agencies the following rules shall be adhered to in this project.

1. No facilities rented for the furtherance of this project shall be used for entertainment of females.

2. No credit card issued for this project will be used for personal expenses.

3. These credit cards will not be lent to any other person other than to those to whom they are issued.

4. The monies taken from the business shall not be spent except for the usual business expense incurred in the business.

5. Each participating undercover agent shall be judicious in the money spent for entertainment, food and drink. The securing of intelligence or developing of unwitting informants shall control your action in these expenditures.

6. All expenditures will be covered by receipts or invoices if possible. In the exceptional cases when this cannot be done the agent making the expenditure shall make a written memo stating date, amount and purpose. These memos and/or written reports can be mailed to a fictitious drop, provided for the project.

7. No agents other than those assigned to the project are authorized to come to the business premise. It shall be the responsibility of any agent on duty to document the name, date and time of any agent visiting the business.

8. To preclude any claim for overtime or night differential ATF Agents will be scheduled to work no more than eight hours per day, work will be scheduled to assure two consecutive days off. The approval of ATF Special Agent in Charge will be secured and cutting of orders on each employee changing their normal work week will be accomplished.

9. Any request for leave other than emergency or sick should allow for sufficient time to secure replacement.

D. All expenditures and receipts for the liquor business as well as all expenditures of ATF Project Agents will be entered in Account Books maintained by Jule Conard, Chicago Strike Force IRS Intelligence Representative. These books will be maintained for audit by any outside agency.

E. All electronic surveillance in the project shall have approval of ATF Special Agent in Charge and Chief Strike Force Attorney.

The electronic surveillance shall meet all Federal requirements and safeguards against misuse.

VI. SECURITY

A. All credit cards, fictitious identification, shall be recorded when issued to each agent and will be turned in upon completion of this project.

B. The true identity or purpose of the project will not be discussed by undercover agents over any phone installed in the premises rented for the project. The use of public phones is expected if it becomes necessary to reveal any information that would surface the operation.

C. An outside attorney has been retained, he has limited knowledge of the project but will assume a client attorney role if any legal problems arise in connection with the project. His name and address and phone are listed below.

1. Richard C. Moenning
135 South LaSalle
Chicago, Illinois
Business Phone: 263-0062
Home Phone:

D. In the event of emergency it is suggested that the undercover agent who is not on duty be contacted to relay information to the Chicago Strike Force.

E. A covert mail drop has been secured for any official reports or memos of expenses. The address is listed below:

1. Midwest Brokers Association
U.S. Post Office
Loop Station Box 2848
Chicago, Illinois 60601

F. Access to any information concerning the project will be on a "need to know" basis. It shall be the responsibility of all agents involved to document any inquiries by any person who indicates a knowledge of the project when they should not have said knowledge.

G. All agents assigned in a undercover capacity to this project will prior to becoming operational read this plan and acknowledge that they understand its contents by affixing their signatures.

Appendix B

IBI INSPECTOR CHANEY'S HANDWRITTEN STATEMENT VERBATIM

To: SAS Lawrence Casey Jr.
From: Inspector Forrest R. Chaney
Date: 4-17-75
Subject: Project

One thing should be made completely clear at the outset, the current position we are taking with regard to this project is in no way an attempt to get our way, in regards to the geographical transfer controversy.

This in no way is an attempt to sabotage the project, but instead is an attempt on our part to enlighten the bureau with regard to the hazards and pitfalls that heretofore were not thought of. A project of this type has never been tried before, we have tried it and want to bring back the experiences we have had in an attempt to show that the disadvantage far outweigh the advantages of continuing on.

In an operation of this type the undercover agent becomes a member and friend of the street element he is dealing with, and that situation creates some of the pitfalls I'm talking about. As an example, there is an individual by the name of Ray Hamm in Calumet City who is well known to the bureau.

I have had a least (5) conversations with Ray in the past two days, last night he was talking to me about bringing prostitutes into the bar, I didn't acknowledge agreement with him, however, if I were to buy a stolen T.V. from Ray tomorrow I would have a hard time explaining to him why I don't mind being a thief but I don't want prostitutes in my joint. Next if Ray and 2 or 3 of his friends as they have a reputation for stomping someones head into the floor and I call the police or try to interfere, I'm on the shit list with all of those people. This is their way of life and when you become a part of it you accept it or get stomped yourself. A police officer sworn to uphold the law could not begin to condone the situations that we would be facing in an operation of this type.

Last night a fight broke out about 1:00 AM between an individual know as "Indian Bob," and another know as "Foster." After David and I broke up the fight and individual by the name of John Boodah called me over and said "we liked the way you handled that by not dropping a dime to the police, theres a lot of problems like that in here and if your a dime dropper they will tear this fucking place down around your head everynight."

An individual known to me as Wesley spoke with me for about 2 hours yesterday, recounting the history and fortelling the future of

the Borderline Tavern. H's stories verified by other customers, and the mayor and Calumet City police dept describe the Borderline as a "bucket of blood".

Last night a woman known to me as "Kay" appx. 60 years old was talking to me at the bar, and she said "honey do you know where I can get a new pistol like this one I have here, (which she then laid on the bar) is old I need a new one".

This job requires a certain amount of drinking particullary in this type of an operation, eveyone wants to buy you a drink and if you refuse they get mad an raise hell, my point is this I'm able to hold my beer, but in the event I would take violent action against someone while drinking with witnesses I've got problems. Case in point, in Decatur, Ill in 1959, deputy sheriff's had been hired to work in uniform as keepers of the peace at an all black dance at a local skating rink. Alcohol was served and a deputy by the name of Fred Hertrich imbibed 2 or 3 bottles of beer. Later an altercation broke out and Hertrich attempted to settle it, he took out his blackjack, an individual observed this and proceeded to shoot Hertrich fatally wounding him. The individual fled and was later captured by the FBI in Chicago. At the trial witnesses came forward and testified they had observed Hertrich drinking, even though these same witnesses said the individual shot Hertrich the defendant was acquitted.

I hope anyone reading this report does not get the idea that I'm afraid of a little violence, a check of my previous experiences in police work will show I've had my share. I'm paid to take chances but not paid to be put into unreasonable jeopardy.

This project would require that new faces could not be introduced as part time bartenders, thus necessitating Don, Dave, and myself being in the bar most of the time.

This project being a new concept many things were not or could not have been thought of in advance, you actually have to do it to see that for what would be gained the risk is to great.

There has been much talk of rters of immunity from prosecution for reasonable violations of the law to further the project. In that light immunity cannot be granted by a prosecutor, it must be granted by a judge upon the recommendation of a prosecutor.

There are many feelings you have as a police officer which are hard to put down on paper, it is not with tongue in cheek or I told you so attitude that Dave and I bring you our recommendations, we fully realize the sensitive position our position places the Bureau and the Supt. in. We want to spare the bureau any further problems that are going to be created by this project.

In conclusion, there are many more things that have passed thru my mind, however in the last 50 hours I've had about 8 hrs sleep.

Appendix C

IBI S/A IMBER'S HANDWRITTEN STATEMENT VERBATIM

To: SAS Lawrence Casey
From: S/A David Imber
Date: April 17, 1975
Subject: Project

It is imperative that it be understood that this report in no way is to be interpreted as reasons relative to my objection to the geographical transfer to Chicago, Illinois, but as direct observations and understanding regarding the existing project, and why it is opposed to.

Regarding why it is felt that the project will not work in the way the supervising planners thought it would, can be illustrated as follows - the tavern business is speculative in nature no matter where it is located. The tavern business in Calumet City, Ill. and more specifically the Borderline Tap in Calumet City, Ill. is not only speculative, but highly explosive and vulnerable to "problem" activity. The Borderline Tap is known for its' bad reputation, which can be verified by the local police department, patrons of the establishment and citizens within the city. It was thought that this type of business establishment would be an ideal location for the project in mind and generation of the activity desired in the early planning stages of this assignment. What was not known and further, what most likely could not be known without direct participation, was the end result of this matter. In order to gain the confidence and respect of the very individuals that we were going to attempt to target and write criminal prosecutable fact situations on, we as the tavern proprietors would have to tolerate all and any actions these individuals would perpetuate both within and outside the boundaries of the Borderline Tap, not to mention the law. By accomplishing this, we would be granting these potential subjects the very same immunity that we as police officers have requested, and even more a "carte blanche" attitude to conduct themselves as they will while at the Borderline Tap. This type of activity would not last throughout the day before the battles would ensue, and the police could not be requested if we were to retain the confidence of these individuals. Further the remaining 90% of the clientele which are made up of hard working steel workers and laborrs would soon present another problem merely observing our action or lack of action toward the potential caseload clientele. It is our opinion that the project we are attempting to get next to would most certainly take over control of the establishment during the entire tenure of this operation, making it next to impossible for us as policemen not to compromise ourselves at one time or another.

It is our opinion that the jeopardy angle is a highly potential probability, and that at any time of the day or night, the person coming through the door is likely to "burn" us and the entire project. This

operation differs totally from any undercover assignment ever undertaken by the Bureau (excluding the other project and even that project is totally uncomparable to this one), in that we are living with and in complete association with these people, with absolutely no control over who these individuals can be. The "cover" that has been obtained by us by no means is thorough, and with a little back-tracking by a suspicious person, total breakthrough might occur. There is virtually no way to cover an individual's identity completely, and we are aware of this fact - however in this situation, that is exactly what is going to be required for the safety and success of the people involved.

Additional possibilities of compromise to the project, thus projecting jeopardy, was the continued exposure we were required to put ourselves in - that is numerous meetings in both the IBI Offices and the Federal U.S. Attorneys Offices, while we were developing the existence of the present project site. This action was totally unnecessary and perhaps will be found to be a major downfall in this project. There are other examples of poor procedure, but the point is well taken as stated.

Still another problem area that exists, is that of adequate number of personnel assigned. This tavern, in our opinion will require two men to operate same at all times. With the federal people assisting, we are speaking of a minimum of four people involved in operation of the tavern. To bring in four new faces into an unknown location in a new town not only spells suspicion, but a very great possibility of disaster. The people of Calumet City that associate in bars similar to the Borderline Tavern all know or are known by most every one else that frequent these places. The type people that we are interested in making cases on will either stay totally clear or directly confront us, and in either case, we will be unsuccessful in our efforts.

In conclusion to this brief memorandum, and so as not to be redundant with the reports made by S/A/C Cooper and S/A/S Casey, it is very apparent that Agent Chaney and myself acted in good faith and attempted to do every thing in our power and good judgement to make this project a success. Letters of immunity from prosecution in the furtherance of project matters were promised to us from the offices of the IBI, States Attorney, and U.S. Attorney prior to our opening the project business. However more than six months have transpired since the original offer and we were forced to either open the business on April 15, 1975, or have more suspicion brought down on us by the people of Calumet City that associate in this type establishment. Still without having any type of immunity letters, we opened the business and operated anyway. At the time of this writing, April 17, 1975 at 2145 hours, Agent Chaney and myself still remain empty handed of the letters of immunity promised more than one half year ago, and have operated the business without them on April 15 and 16, 1975.

Appendix D

LETTER FROM ILLINOIS
ASSISTANT ATTORNEY GENERAL JAMES B. ZAGEL

Superintendent Wayne Kerstetter
Illinois Bureau of Investigation
209 North Michigan Avenue
Chicago, Illinois

Dear Superintendent:

On June 21, 1974, I had a conference with Lawrence Casey of the Illinois Bureau of Investigation, Michael Fitzsimmons and Mr. Peter Vaira of the Department of Justice Strike Force. Pursuant to this conference, I understand that your agency, in cooperation with federal agencies intends to conduct certain undercover operations. I understand further that it will be necessary for your agents to conceal their true identities and true purpose in order for the operations to bear any chance of success. It is my opinion that such concealment of identity and purpose including concealment in oral conversation, in writing and on applications for license or employment, is lawful when the concealment is performed by state or federal law enforcement officers during the pendency of an undercover operation with the express intent of securing evidence of violations of the criminal laws of Illinois under the circumstances described to me in the conference of June 21, 1974.

Further, this office stands ready to aid and assist the Illinois Bureau of Investigation and the cooperating federal agencies in this matter.

Very truly yours,

s/James B. Zagel

James B. Zagel
Assistant Attorney General
Chief, Criminal Justice
Division

JBZ:mw

Appendix E

LETTER FROM FORMER UNITED STATES
ATTORNEY JAMES R. THOMPSON

Mr. David Scott
Special Agent
Illinois Bureau of Investigation

Dear Mr. Scott:

You are presently assigned by your agency to a special project which necessarily entails you to perform certain acts, among which are the following:

1. Acquisition of an Illinois driver's license under an assumed name.
2. Acquisition of an Illinois firearm owner's identification card under an assumed name.
3. Acquisition of an Illinois resident hook and line fishing license under an assumed name.
4. Acquisition of checking and savings accounts at various banks under an assumed name.
5. Acquisition of a baptismal certificate under an assumed name.
6. Acquisition of credit cards under an assumed name.

As these acts are to be performed within the scope of your official duty, they will not be interpreted by Federal authorities as acts undertaken with intent to deceive or defraud any of the various agencies of the State of Illinois. As you know, this is a joint project, coordinated between Federal and State authorities, with the State authorities fully aware of the acts which you are to perform.

This, however, does not relieve you of the normal and usual responsibilities and duties due to protect and uphold the United States Constitution, the laws of the United States and of the several states, and your oath of office.

Sincerely,

JAMES R. THOMPSON
United States Attorney

Appendix F

OPERATION NORTHSIDE
SOURCE AND APPLICATION OF FUNDS
LEAA GRANT NUMBER 71-DF-1137
November 30, 1976

SOURCE OF FUNDS

| | | |
|---------------------------|------------------|--------------------|
| LEAA Grant No. 71-DF-1137 | \$55,789.66 | |
| Bar Receipts | 294.70 | |
| IBI "Soft Match" | <u>23,521.90</u> | |
| TOTAL | | <u>\$79,606.26</u> |

APPLICATION OF FUNDS

| | | |
|-----------------------------------|-----------------|-----------------|
| Tavern | | |
| Incorporation Expense | \$ 199.66 | |
| Tavern Acquisition - Cost | 15,000.00 | |
| Rent | 3,900.00 | |
| Insurance | 1,415.00 | |
| Licenses | 802.50 | |
| Advertising | 362.50 | |
| Merchandise | 185.70 | |
| Miscellaneous Equipment | 74.86 | |
| Janitor | 150.00 | |
| Garbage Disposal | 66.00 | |
| Utilities | 92.39 | |
| Miscellaneous | 26.40 | |
| Legal Expenses | | |
| Fees | \$3,612.50 | |
| Advances | <u>6,933.54</u> | 10,546.04 |
| Security Deposits | | |
| Rent | 250.00 | |
| Electricity | 175.00 | |
| Water | 100.00 | |
| Retail Occupational Tax | <u>500.00</u> | <u>1,025.00</u> |
| | | \$33,846.05 |
| Undercover Expenses - ATF | | |
| Special Agent Ernest J. Alexander | | |
| Motel Expenses | 98.88 | |
| Automobile Lease | 1,344.95 | |
| Gasoline | 546.67 | |
| Parking and Tolls | 170.20 | |
| Confidential Expenses | 877.05 | |
| Miscellaneous | <u>82.63</u> | 3,138.38 |

| | | |
|-------------------------------------|--------------|--------|
| Special Agent Donald R. Roggenbauer | | |
| Gasoline | 108.80 | |
| Parking and Tolls | 199.08 | |
| Confidential Expenses | 202.15 | |
| Undercover Weapon | 154.10 | |
| Ammunition and Cleaning Kit | 12.34 | |
| Miscellaneous | <u>56.01</u> | 732.48 |

| | | |
|----------------------------------|--------------|----------|
| Informant | | |
| Salary | 5,200.00 | |
| Travel | 162.65 | |
| Motel | 56.90 | |
| Taxi | 184.60 | |
| Confidential Expenses | 1,879.00 | |
| Advance for Purchase of Evidence | 180.00 | |
| Miscellaneous | <u>22.79</u> | 7,685.94 |

| | | |
|------------------------------------|--|-------|
| Special Agent Charles T. Callaghan | | |
| Advances for Confidential Expenses | | |
| and/or the Purchase of Evidence | | 28.20 |

| | | |
|------------------------------|--------------|----------|
| Undercover Expenses (IBI) | | |
| Automobile Leases | 4,463.50 | |
| Gasoline | 331.58 | |
| Truck Rentals | 164.51 | |
| Motel | 1,454.17 | |
| Apartment Rent | 1,127.50 | |
| Apartment Electricity | 30.00 | |
| Furniture Rental and Storage | 1,413.32 | |
| Undercover Weapons | 351.70 | |
| Ammunition and Cleaning Kit | <u>28.83</u> | 9,365.11 |

| | | |
|----------------|--|----------|
| Audit Expenses | | 1,288.20 |
|----------------|--|----------|

| | | |
|------------------|--|--------------------|
| IBI "Soft Match" | | <u>23,521.90</u> |
| | | <u>\$79,606.26</u> |

It is the opinion of the IBI that the recovery value of the tavern's acquisition costs (goodwill), fixtures, inventory, and miscellaneous equipment is negligible.

The tavern's rent has been paid through June, 1976. However, the tavern's lease will remain in force until December 31, 1977, at a rate of \$275 per month unless an earlier settlement is negotiated. The unexpired portion of the lease represents an additional liability of \$4,950.

Owners, landlord and tenants' liability insurance is required by the lease agreement. The current policy expiration date is April 13, 1977. Failure to renegotiate this obligation will result in an additional insurance premium of \$276.25 at current rates. Dram shop liability insurance on the tavern has been discontinued.

All liquor licenses on the tavern have expired.

Miscellaneous expenses include bank charges, post office box, a cash register shortage of \$3.12 and an unreconciled \$.90 credit on legal statements.

Richard C. Moenning, attorney at law, was originally retained to incorporate Balmar, Inc., doing business as the Borderline Tavern at a rate of \$50 per hour. Subsequent to the closure of the tavern Moenning was given power of attorney to administer the corporation's expenses and negotiate a settlement or assignment of the tavern's lease. The fees shown are as of Moenning's November 9, 1976 statement. The advances shown above are LEAA grant funds entrusted to Moenning to satisfy the remaining obligations required under the tavern's lease (rent, insurance, utilities, etc.) as they come due. It is noted that Moenning's November 9th statement reflects funds on deposit in the amount of \$7,483.54. The Commission has amended this figure to recognize two months' rent expense paid but not yet deducted.

It is the opinion of the IBI that the tavern's rent security deposit will be absorbed by general maintenance charges required to restore the tavern to its original condition. The electrical deposit will be offset against the final billing and the unused portion returned to the IBI. The \$100 water deposit will be returned to the IBI through Richard C. Moenning. The \$500 retail occupational tax deposit is secured by a \$500 five percent certificate of deposit held by the Bank of River Oaks, Calumet City, Illinois. The deposit plus interest less any sales tax liability due will be returned to the IBI.

Roggènbauer's undercover weapon, a .38 caliber Smith and Wesson model 36 with a two inch barrel serial number J226876, is now in the possession of the IBI.

The \$180 advance to the confidential informant was for the purchase of three cases of cigarettes. However, the cigarettes were never purchased nor was the \$180 returned to the IBI. No attempt has been made to recover the \$180 as of this writing.

Excess advances of \$28.20 credited to Charles T. Callaghan for the purchase of evidence and/or confidential expenditures has not been returned to the IBI as of this writing.

Chaney and Imber's undercover weapons, a .38 caliber Smith and Wesson model 36 with a three inch barrel serial number J260609 and a Walther PK/S .380 automatic serial number 184020, are now in the possession of the IBI.

Audit expenses represent charges for an independent audit of the project conducted by Jule V. Conard, CPA, as of December 15, 1975.

The soft match figure provided by the IBI comprises the Bureau's direct manpower contribution to the project [salary and fringe benefits of Chaney and Imber].

Thus far the IBI has incurred \$6,146.98 in legal fees and expenses for outside legal counsel to represent the Bureau in the Civil Service hearings resulting from Chaney and Imber's dismissal. Legal fees will continue to be incurred by the IBI until the question of the dismissals is resolved.

Appendix G

INTERVIEWS AND SOURCES

The Commission interviewed numerous individuals during the course of this investigation, most of them in State, federal and county law enforcement agencies. Here is a list, in alphabetical order, of those who provided key information as well as other persons mentioned in the text of this report.

Ernest Alexander
Special Agent, Bureau of Alcohol, Tobacco and Firearms,
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63101

Daniel Behnke
Deputy Director, Illinois Law Enforcement Commission,
120 South Riverside Plaza, Chicago, Illinois 60606

Robert Bullock
Acting Superintendent, Illinois Bureau of Investigation,
53 West Jackson, Chicago, Illinois 60604

Charles Callaghan
Special Agent, Bureau of Alcohol, Tobacco and Firearms,
Butterfield Office Plaza, 2625 Butterfield Road, Oak
Brook, Illinois 60521

Lawrence Casey
Supervisor, Chicago Office, Organized Crime Division,
Illinois Bureau of Investigation, 53 West Jackson,
Chicago, Illinois 60604

Forrest R. Chaney
(Former Illinois Bureau of Investigation Special Agent)

Joseph Claps
Assistant State's Attorney, Cook County State's Attor-
ney's Office, 2600 South California Avenue, Chicago,
Illinois 60608

Jule V. Conard
(Former Internal Revenue Service Strike Force Repre-
sentative)

Bueford Cooper
Special Agent in Charge, Organized Crime Division,
Illinois Bureau of Investigation, 53 West Jackson,
Chicago, Illinois 60604

Judson F. Doyle
(Former Special Agent in Charge of the Chicago Office
of the Bureau of Alcohol, Tobacco and Firearms)

Frank Fasano
c/o Jim's Firehouse Tap, 519 Conkey Street, Hammond,
Indiana 46325

J. Michael Fitzsimmons
(Former United States Attorney, on loan from federal
government to Illinois Bureau of Investigation), Du-
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David Imber
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Harvey N. Johnson, Jr.
Director - Department of Law Enforcement, Room 103,
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(Former Illinois Bureau of Investigation Superintendent)
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Taylor Pensoneau
Illinois Political Correspondent, *St. Louis Post Dispatch*,
c/o - Taylor Pensoneau, Press Room, Illinois State House,
Springfield, Illinois 62706

William H. Richardson
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Donald Roggenbauer
Special Agent, Bureau of Alcohol, Tobacco and Firearms,
160 United States Federal Building, 316 North Robert
Street, St. Paul, Minnesota 55101

Arthur Sinai
(Former Illinois Bureau of Investigation Assistant
Superintendent), Assistant Director, Illinois Depart-
ment of Law Enforcement, 160 North LaSalle Street,
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Robert Stefaniak
Mayor - Calumet City, 204 Pulaski Road, Calumet City,
Illinois 60409

James Thompson
(Former United States Attorney - Northern District
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Force on Organized Crime, Federal Building, 219 South
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James Welch
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field Road, Oak Brook, Illinois 60521

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END

J. Thompson