

ORGANIZED CRIMINAL ACTIVITIES

South Florida and U.S. Penitentiary, Atlanta, Ga.

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

OCTOBER 24 AND 25, 1978

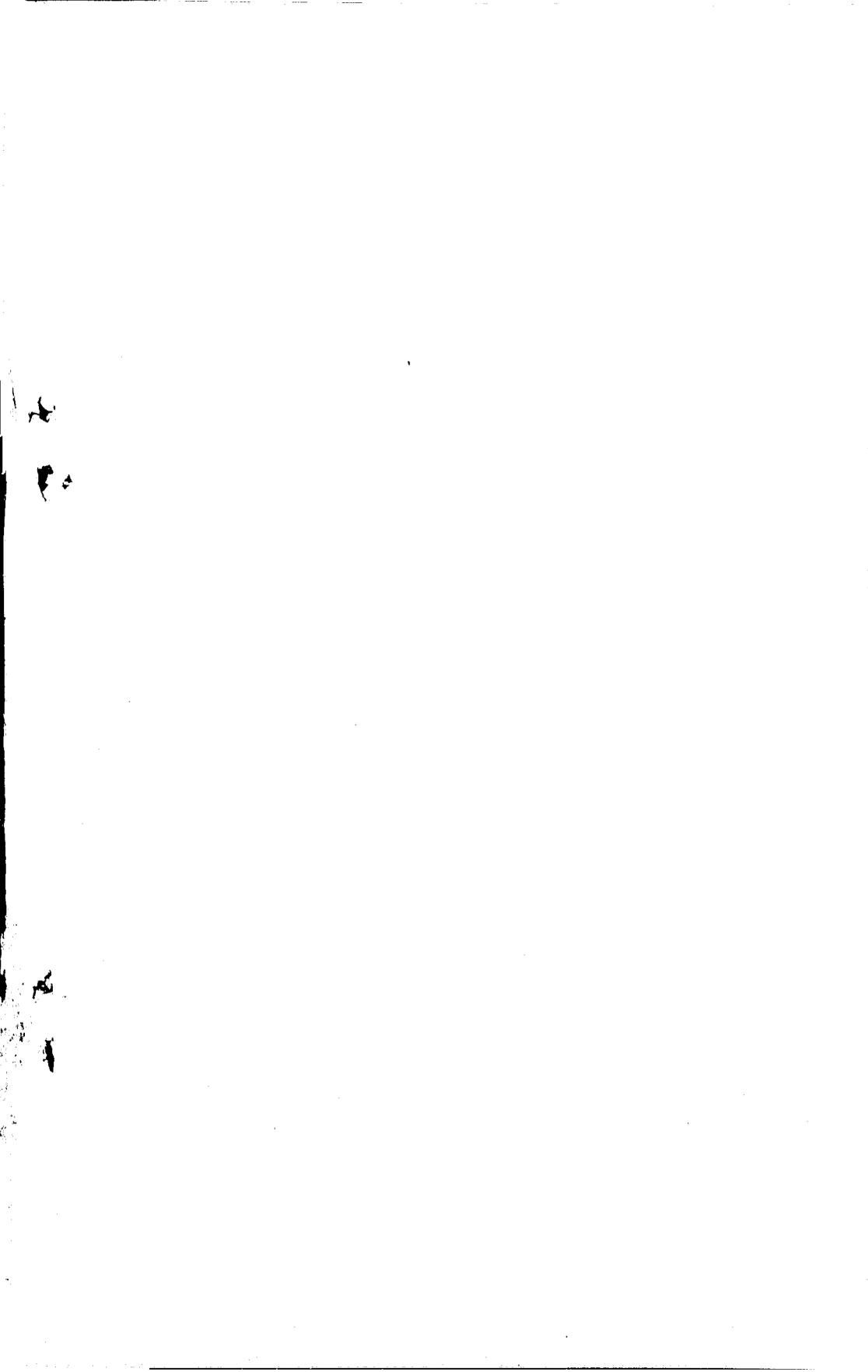
PART 3

and for the use of the Committee on Governmental Affairs



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BEFORE THE ACQUISITIONS
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OF THE
COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
NINETY-FIFTH CONGRESS
SECOND SESSION

OCTOBER 24 AND 25, 1978

PART 3

Printed for the use of the Committee on Governmental Affairs



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CONTENTS

	Page
Appendix-----	807
Testimony of—	
Austin, Ed, State attorney, Jacksonville, Fla.-----	702
Bertucelli, Maj. Steve, commanding officer, Organized Crime Bureau, Dade County, Fla., Department of Public Safety-----	734
Callahan, Leo F., chief of police, Fort Lauderdale, Fla.-----	702
Cunningham, Ralph, chief investigator, 20th Judicial Circuit, Florida-----	
D'Alessandro, Joseph P., State attorney, 20th Judicial Circuit, Florida-----	647
Ellrich, Robert H.-----	621
Fay, Hon. Peter T., circuit court judge for the 5th Judicial Circuit--	767
Finks, Larry L., captain, U.S. Park Police-----	730
Fluet, Joseph E.-----	621
Gallinaro, William B., investigator, Permanent Subcommittee on Investigations-----	723
Green, Sgt. David, Organized Crime Bureau, Dade County, Fla., Department of Public Safety-----	734
King, Hon. James Lawrence, district judge for the Southern District of Florida-----	767
Keck, Charles-----	661
Pearson, Sgt. William, Organized Crime Bureau, Dade County, Fla., Department of Public Safety-----	734
Sommerhoff, Lt. Roy, Organized Crime Bureau, Dade County, Fla., Department of Public Safety-----	734

EXHIBITS

	Introduced on page	Appears on page
48. U.S. Custom's report re Robert Ellrich and John Piazza--	623	(1)
49. DEA report of investigation of Robert Ellrich, et al., together with arrest record-----	623	(1)
50. Records and reports regarding Joseph E. Fluet-----	623	(1)
51. Article from Esquire magazine, September 12, 1978, en- titled "The Colombian Gold Rush of 1978" by Robert Coram"-----	635	636
52. Sworn statement of Robert H. Ellrich-----	643	(1)
53. Sworn statement of Joseph E. Fluet, Jr.-----	644	(1)
54. Dade County, Fla., Department of Public Safety, Organized Crime Bureau report re William J. Mullinnix-----	687	(1)
55. Copy of a tape made by Fort Lauderdale, Fla., police in- vestigators of a telephone conversation between an ex- tortion victim and the culprit-----	709	(2)
56. Tape of interview of John Piazza, October 5, 1978, by sub- committee investigators-----	727	(1)
57. Memoranda by William B. Gallinaro, investigator, Per- manent Subcommittee on Investigations re interviews and attempted interviews with the following individuals:		
A. John Charles Piazza III-----	731	(1)
B. Sam DeCavalcante-----	731	(1)
C. Joseph Indelicato-----	731	(1)
D. Joseph Dominick Paterno-----	731	(1)
E. Joseph Covello-----	731	(1)
F. Alvin Malnik-----	731	(1)
G. Meyer Lansky-----	731	(1)

See footnote at end of table.

IV

	Introduced on page	Appears on page
58. Memorandum from Capt. J. E. Rafferty to Maj. Steve Bertucelli, Dade County, Fla., Department of Public Safety re seizures of narcotics at airport.....	737	737
59. Judgment and commitment order issued by the U.S. District Court, Southern District of Florida in <i>United States of America v. Irving Karl Katzen</i>	747	747
60A. Photograph.....	750	(1)
60B. Photographs of Isadore Blumenfeld, Yiddy Blume, M. Ashe, I. Katzen, Jack B. Cooper, Meyer Lansky, Hymie Lazer, David Marder, L. Pizer, J. Queen and Abe Roth.....	750	(2)
61. Excerpts from hearings and report of the Committee on Rules and Administration, U.S. Senate in 1964 entitled "Financial or Business Interests of Officers or Employees of the Senate".....	751	(2)
62. Deposition of Jack B. Cooper re jai alai.....	752	(1)
63. The public report of the second statewide grand jury on illegal gambling in the State of Florida.....	766	807
64. Order denying bond pending appeal in the matter of <i>United States of America, Plaintiff v. Fernando Miranda, et al., Defendant</i> in the U.S. District Court, Southern District of Florida.....	786	786
Proceedings of—		
October 24, 1978.....		615
October 25, 1978.....		701

¹ Sealed exhibit.

² May be found in the files of the subcommittee.

ORGANIZED CRIMINAL ACTIVITIES

South Florida and U.S. Penitentiary, Atlanta, Ga.

TUESDAY, OCTOBER 24, 1978

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Miami, Fla.

The subcommittee met at 10 a.m., pursuant to call, in Central Courtroom, U.S. Courthouse, 200 Northeast First Avenue, Miami, Fla., under the authority of Senate Resolution 370, agreed to March 6, 1978, Hon. Sam Nunn (vice chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; and Senator Lawton Chiles, Democrat, Florida.

Members of the professional staff present: Owen J. Malone, chief counsel; F. Keith Adkinson, assistant counsel; Stuart M. Statler, chief counsel to the minority; Jerry Block, general counsel to the minority; David P. Vienna, investigator; William B. Gallinaro, investigator; Peter Roman, investigator. Federal Spending Subcommittee; Larry L. Finks, captain, U.S. Park Police; Mary B. Donohue, assistant clerk; and Kathy C. Bidden, assistant clerk.

Senator NUNN. The subcommittee will come to order.

[Members of the subcommittee present at time of reconvening: Senators Nunn and Chiles.]

OPENING STATEMENT OF SENATOR SAM NUNN

Senator NUNN. Today we begin 2 days of hearings, continuing the review by the Permanent Subcommittee on Investigations, of organized crime activities in south Florida.

These hearings originated in Washington, D.C., in August. A year before, which would have been in 1977, Senator Lawton Chiles, as a member of this subcommittee, told the subcommittee of the grave concerns he and many citizens of south Florida had with the presence of organized crime figures and numerous criminal activities in this region.

Senator Chiles asked that the subcommittee begin an inquiry into organized crime in south Florida.

From the summer of 1977 until now, the subcommittee staff has developed information on its own and with the assistance of Federal, State, and local law enforcement officials in this State.

These hearings represent the second series of sessions at which testimony and evidence will be received about organized crime in south Florida. There will be further hearings next year.

The August hearings spanned 5 days. We received testimony from law enforcement officials and a self-confessed Miami loan shark named Gary Bowdach. He testified to contract murders, arsons, witness intimidations, and bombings. He testified about his activities with the notorious Cravero narcotics gang.

He testified as a former criminal who had turned, giving his views about law enforcement and problems that law enforcement faces in Florida, and really throughout the Nation.

Gary Bowdach said in south Florida, the criminals are organized and law enforcement is not. He said that Federal, State, and local law enforcement efforts are not coordinated.

He said that the criminals are better armed and equipped. Bowdach testified to highly sophisticated communications equipment on boats used to transport narcotics from ships to shore points in and around Miami.

He said that he and other criminals used the Freedom of Information Act in an effort to identify the informants against them. Bowdach testified that while he was in jail he obtained information under the Freedom of Information Act that he should not have received.

More importantly, he said that had he been free when he obtained these privileged documents, he would have taken action against the prosecutor.

The Permanent Subcommittee on Investigations is charged by the Senate with the responsibility to review the appropriateness of our laws and Federal, State, and local law enforcements efforts aimed at combating organized crime.

The purpose of the hearings in August and the hearings we begin today is an exercise of those responsibilities imposed by the U.S. Senate on this subcommittee.

As a result of the August hearings, we obtained a number of answers to questions we had. We learned of the terror of organized crime, of the hopelessness of those involved, and of the large amounts of money that is the ultimate goal of organized crime.

Mr. Bowdach and the law enforcement officials told us that south Florida is an open territory, meaning that no one organized crime group is recognized by others as controlling criminal activities in this region. But that does not mean it is free from criminal activities.

To the contrary, it means that south Florida is an area, according to the testimony we have received thus far, where any organized crime family can operate freely and without fear of reprimand from other families.

This places a very special burden on the law enforcement efforts of Federal, State, and local authorities. It means that because of its beautiful setting, its wonderful climate, and an understanding by criminals to keep it open, Miami and south Florida have become really a haven for some of the worst elements of our society.

Therefore, it is a reasonable area to be the subject of this focus by the Permanent Subcommittee on Investigations. Though we come here after receiving many hours of testimony in August in Washington in which we obtained some answers, we come here with questions—serious questions:

One: What is the nature and scope of organized crime activities in south Florida?

Two: Are the people engaged in these activities exporting crime to the rest of the Nation from a Florida base?

Three: Are Federal, State, and local law enforcement agencies cooperating with each other and coordinating their efforts?

Four: Even if law enforcement is organized, are the various governmental efforts equipped properly, manned properly, and funded to the levels necessary to successfully meet the challenge of the criminal activities taking place here?

Five: Finally, what about the laws that have been passed by Congress? Have we passed laws, in all good faith and for all good purposes, that are being used to the advantage of criminals?

Six: Ultimately, we want to know whether our laws and our court decisions in some cases are handcuffing our police in this country, and I know of no better place to examine that than here.

We will take testimony today about a new type of organized crime group. The new mobsters are not the publicity shy, backroom, behind-the-scene criminal operators. They are young, hard-charging businessmen who see crime as a career opportunity. In crime they see high profits and low risks.

They do not compete with the traditional hoodlums who are still with us. Rather, they work, with them, beside them but not for them. In the underworld, at least, organized crime has bridged the generation gap.

This morning, we will hear from two pilots who flew narcotics for this group. In addition, one of the group's lieutenants will testify.

Finally, we will receive testimony from Joseph P. D'Alessandro, the Florida State attorney from Fort Meyers.

Tomorrow, we will receive the testimony of Ed Austin, the Florida State attorney from Jacksonville and chairman of the Governor's Council on Organized Crime; Maj. Steve Bertucelli, the head of the Organized Crime Bureau of the Dade County Public Safety Department; Federal Circuit Court Judge Peter T. Fay; Federal District Court Judge James Lawrence King; and Leo Callahan, chief of the Fort Lauderdale Police Department.

Senator Chiles, I am honored to be here with you and we appreciate very much your fine work on this subcommittee. You have taken a lead not only in this but in many others, and I am delighted to have a chance to join you here in Florida and I hope our hearings will be productive.

OPENING STATEMENT OF SENATOR LAWTON CHILES

Senator CHILES. Thank you, Mr. Chairman.

During the spring and summer of 1977, I started getting a lot of letters and visits from people in south Florida. Some were individuals and some were officials, but all were complaining that the presence of organized crime in south Florida had reached such a point that they felt they were in the middle of a movie set.

They said that offshore smugglers sometimes threw their cargo overboard when the patrol boats would come close and that bales of marihuana were floating up on the morning tide and littering the beach.

There were people shooting people in the streets, and the papers were full of stories of legitimate businesses being infiltrated and looted by the mob, and the scum that always comes with a large criminal presence: Prostitution, loan sharking, gambling, shakedowns, and threats, and they were all seeking help.

Last fall, approximately 1 year ago, I came down here during a congressional recess and spent a number of days talking with all of the major law enforcement groups in south Florida: The city and county police, as well as the Federal narcotics agencies, the FBI, and the Strike Forces.

What they told me was most disturbing. In essence, they said that the organized criminals were running wild in Florida, that law enforcement authorities were outmanned and outgunned. Laws which were meant to protect civil liberties have been construed to protect the guilty.

Jail sentences were very short, or suspended. The people were totally frustrated and intimidated.

This isn't some general problem that we are talking about that might happen to somebody else somewhere else at some other time. The problem we are talking about is happening here, happening to Floridians in our State right now.

As a boy being raised in Florida, it was a different atmosphere. It was more of a frontier State at the time. We were less sophisticated at that time, but we have learned to enjoy our climate and our way of life, and there is no reason we should allow anybody to take that away from us.

Mr. Chairman, I want to express my particular thanks to you for arranging first hearings into this entire subject and the work that you have done with the subcommittee in going into the entire area of organized crime, and also for the particular attention that you are paying with the subcommittee to the problems that we are having in south Florida.

Bowdach was a south Florida figure. He operated here and his testimony began to give us some insight of what was going on and how the organized crime operates.

I wish today we could say that things are getting better but they aren't and I think you and I both know that. We are at least starting to find out exactly what is wrong and we are starting to get the first substantive ideas of how we can go about recapturing our State from its invaders.

Today's hearings and tomorrow and the ones that we have held this spring and summer are designed to do a number of things: Identify the criminals; see how they go about their business; and get an idea of the risks and profits that are involved.

We are beginning to get a clearer picture of how they operate, who their customers and victims are, and how we, the public and the institutions that we have developed, how we have become so vulnerable.

Obviously, our present methods of going about combating organized crime haven't been working. In large measure, we have not been able to know who the people at the top are. Of those who we have identified, only a very few get caught. Most of them are out on the street in a short time.

They are free to rob and steal even while awaiting trial and, often, there is no prosecution or very little punishment.

The rewards are enormous and the risks have been very few. We have to reverse that equation if we are to have any sort of heritage to pass on to our children.

In the next 2 days, we will continue our efforts to identify organized crime figures and how they operate. We will also hear of some recent, and thankfully, successful efforts at the State and local law enforcement level.

We need to bring these people out in the sunlight and expose them for what they are: they are thieves; they are murderers; they are criminals. We need to examine our law enforcement structure. It isn't working and we have got to find out why.

We need to examine how our laws and our judicial proceedings, which are not equal to their current task, and how we can strengthen them.

Then armed with the public knowledge and public indignation, I think we will have the power to mandate and a mandate from the people to make the changes that we need to make, and to make them quickly when we have established that record.

Thank you, Mr. Chairman.

Senator NUNN. Thank you, Senator Chiles.

Our ranking minority member is Senator Charles Percy from Illinois. Senator Percy has taken a vital interest in these hearings. He played a key role in all of the testimony we had in August. His staff works hand-in-hand with the majority staff in a bipartisan way.

Senator Percy cannot be here because he has other previous commitments that were longstanding, but he is represented here by Mr. Stuart Statler, who is the chief counsel to the minority, and also by Jerry Block, general counsel to the minority.

Mr. Statler, we would certainly invite you, as we always do, to participate in these hearings representing Senator Percy. We wish he could have been here. Senator Percy has not only participated in these organized crime hearings, he has led the way in opening up a tremendous emphasis at the Federal level to the problem of arson and the problems relating to arson which also overlap, of course, into the organized crime area.

So, Mr. Statler, if you have any remarks you would like to make on behalf of Senator Percy before we call our witnesses we would be delighted to have them.

Mr. STATLER. I would like to say briefly, Mr. Chairman and Senator Chiles, that Senator Percy regrets very much that he can't be here today. He has a prior engagement in Illinois. He did ask me to convey to both of you that he is fully supportive of these hearings, which he regards as vital and important. He recalled when I spoke to him that just over a year ago Senator Chiles brought the severe problem in south Florida to the attention of the subcommittee. This has led to a realm of investigations in Atlanta, in Washington, in Chicago, and here in south Florida. We expect that in the future there will be others conducted elsewhere.

What the two of you are doing this morning and have done throughout the year is critical to bringing this kind of problem to public

attention. Hopefully, by uncovering some of the gross criminal acts which have occurred, we can upgrade the law enforcement efforts across the country.

I also want to express our sincere appreciation for the cooperation that we have had from south Florida law enforcement agencies. They have been most cooperative with the subcommittee, majority and minority, throughout this investigation. We are thankful for that.

Thank you, Senator Chiles. Senator Percy is most grateful because of your dedication to this effort and he wishes you every success in these hearings and in uncovering what we now know to be a very, very severe problem in this part of the country.

Thank you.

Senator NUNN. Thank you very much, Mr. Statler.

Before we get started with our first witnesses I want to thank Marshal Donald Forrest and his entire staff for not just days, but weeks of cooperation. We appreciate so much all that the Marshals Service has done for us here. Without their help we would not have been able to put on these hearings.

Before we call out first two witnesses, I think we ought to make it clear for the record that the witnesses who are about to testify, Mr. Robert Ellrich and Mr. Joseph Fluet, have both made a request that no photographic or motion picture cameras be directed at their faces.

Furthermore, they have requested that no pictures of any kind be taken of their profile. The rules of procedure of our subcommittee, the Permanent Subcommittee on Investigations, provide that, and I quote:

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

In my view, as acting chairman, this request is a reasonable one. The witnesses are concerned about the widespread dissemination of their pictures which increase their overall probability and possibility of harassment.

I think that is a reasonable request and I would ask that the subcommittee go on record as approving the request.

Is there objection? Without objection, the request is approved. Members having approved under the rules of our subcommittee, I would ask and direct that the cameras not operate while the witnesses are entering the room, and not take any pictures of the witness in terms of their profile or frontal pictures.

After the witness is seated, we can turn the cameras back on and you will be able to take pictures of the testimony as it proceeds from the back without showing the face.

Do any members of the media have any particular questions about this procedure? I want to make sure you understand it. We have had to do this in Washington several times. It causes some inconvenience, but I think it is a right of a witness to make this request, and we have just learned that these first two witnesses have made this request. If there are no questions, I certainly want to thank, in advance, the media for your cooperation and understanding.

Who is going to be the chief marshal here? Could you give me your name? I will ask you to make sure before witnesses are brought in that the cameras are pointed away from the front and then I will ask you to give me the signal when the cameras are in the right position from your perspective, and then we will bring the witnesses in.

After you have seated your witnesses, I would ask you to give me a signal and I will in turn let the cameras know and the media know that they can turn them back on. Would you make sure the cameras are now turned? This applies to any kind of camera, not just television. They do not want their pictures taken.

Are you ready? The marshals may bring the witnesses in. Will the two witnesses please stand before we turn the cameras? Do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ELLRICH. I do.

Mr. FLUET. I do.

**TESTIMONY OF ROBERT HANSON ELLRICH AND JOSEPH E. FLUET,
JR., ACCOMPANIED BY COUNSEL WILLIAM ROWE, ESQ.**

Senator NUNN. Let the record reflect both witnesses have answered in the affirmative.

The marshal will make sure the witnesses are properly seated and then give me the signal and we will put the cameras back in motion.

OK. Gentlemen, I might say that one of the cameras is more at an angle. If you want to tilt a little bit this way, I think it would be appropriate to keep your face a little bit turned this way. We couldn't arrange them perfectly.

Before we begin the questions, I first want to thank both of you for appearing today. I know it is not easy to relate some of the things we will be talking about today in public, but we think your appearance here will be a very valuable part of the testimony this subcommittee has in our Florida phase of the hearings.

We believe it will help. We think it will help to improve law enforcement, and it will certainly help to improve the understanding of the U.S. Senate in terms of the narcotics activities in south Florida.

Before we begin the testimony, I want to advise each of you of your rights and obligations as a witness before this subcommittee. First, you have the right to consult with an attorney prior to answering any questions or question.

Do either of you or both of you have an attorney this morning?

Mr. ELLRICH. Yes, I do.

Mr. FLUET. I do not.

Senator NUNN. You understand you have the right to an attorney?

Mr. FLUET. Yes.

Senator NUNN. Would the attorney identify himself for the record?

Mr. ROWE. Yes, sir. It is William Rowe, R-o-w-e, Senator.

Senator NUNN. Where do you practice?

Mr. ROWE. State of Maine.

Senator NUNN. We are delighted to have you here this morning. You would have the right to consult with your attorney before answer-

ing any question. If at any time we ask you a question, you want to consult with your attorney, you have every right to do so. I want you and the attorney to understand that.

Mr. FLUET, do you understand that you have the right to an attorney?

Mr. FLUET. Yes, I do.

Senator NUNN. Do you waive that right?

Mr. FLUET. Indeed.

Senator NUNN. I will ask both of you to pull those mikes up as close as you can comfortably.

In addition to your rights as a witness both of you have an obligation as a witness. You have both sworn to testify truthfully before this subcommittee. If you do testify, you are obligated to provide truthful responses so as not to subject yourselves to the laws and penalties regarding perjury. Do you both understand your obligations as a witness?

Mr. FLUET. Yes.

Mr. ELLRICH. Yes, I do.

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

Mr. FLUET. Yes, I do.

Mr. ELLRICH. Yes, I do.

Senator NUNN. At this stage I will let Senator Chiles start questioning and then we will go from there.

Senator CHILES. Mr. Ellrich, would you state your full name and the date of your birth?

Mr. ELLRICH. Robert H. Ellrich, and I was born in 1933.

Senator CHILES. You are appearing before this subcommittee on direct subpoena?

Mr. ELLRICH. Yes, sir.

Senator CHILES. You were born in——

Mr. ELLRICH. Rumford, Me.

Senator CHILES. If you will pull that mike up, you won't have to lean up quite as much.

What is your educational background?

Mr. ELLRICH. Two years of college.

Senator CHILES. You are currently employed?

Mr. ELLRICH. Yes, sir, I am.

Senator CHILES. Where is that?

Mr. ELLRICH. National Airlines.

Senator CHILES. How long have you been employed there?

Mr. ELLRICH. Approximately 12 years.

Senator CHILES. Have you ever been arrested?

Mr. ELLRICH. Yes, regarding the incident arising out of the hearing.

Senator CHILES. Would you relate the circumstances surrounding the arrest? I think that was in September 1976? I understand there were two arrests, were there not? Just relate, if you will, the incident in September 1977.

Mr. ELLRICH. Senator, I was arrested in Orlando after making a flight out of the country, if that is what you are referring to.

Senator CHILES. Explain the September 1976 arrest in connection with the Bahamas, when you were flying out of the Bahamas?

Mr. ELLRICH. I flew an airplane over there and we landed in Greater Inagua, and relanded here coming back in Homestead without clearing customs.

Senator CHILES. You were fined for that?

Mr. ELLRICH. Yes, I was.

Senator CHILES. What was the amount of that fine?

Mr. ELLRICH. \$1,500.

Senator CHILES. I would like to have the sealed copy of the U.S. Customs report concerning that arrest placed in the record.

Senator NUNN. Without objection.

[The document referred to was marked "Exhibit No. 48" for reference and is retained in the confidential files of the subcommittee.]

Senator CHILES. The other arrest on October 23 is a result of a flight to Colombia which Mr. Fluet accompanied you. Is that correct?

Mr. ELLRICH. Yes, sir.

Senator CHILES. And a sealed copy of the arrest record and reports on that arrest for the record.

Senator NUNN. Without objection.

[The document referred to was marked "Exhibit No. 49" for reference and is retained in the confidential files of the subcommittee.]

Senator CHILES. You are a licensed pilot?

Mr. ELLRICH. Yes; I am.

Senator CHILES. What type of rating do you have?

Mr. ELLRICH. Commercial pilot's license.

Senator CHILES. Mr. Fluet, would you state your full name and date of birth?

Mr. FLUET. Joseph E. Fluet, Jr., born in 1944.

Senator CHILES. You are appearing before the subcommittee under direct subpoena?

Mr. FLUET. Yes.

Senator CHILES. Where were you born?

Mr. FLUET. Also in Maine, Biddeford.

Senator CHILES. What is your educational background?

Mr. FLUET. Master's degree.

Senator CHILES. In?

Mr. FLUET. Engineering.

Senator CHILES. Your current employment?

Mr. FLUET. I am self-employed.

Senator CHILES. How long have you been self-employed?

Mr. FLUET. Other than occasional jobs, about 2 years.

Senator CHILES. Mr. Fluet, have you ever been arrested?

Mr. FLUET. Yes; I have.

Senator CHILES. When was this?

Mr. FLUET. October 23, same incident just referred to, in Orlando.

Senator CHILES. In the arrest with Mr. Ellrich?

Mr. FLUET. Yes.

Senator CHILES. Mr. Chairman, I would like to have placed in the record a copy of the arrest record and reports on Mr. Fluet.

Senator NUNN. Without objection.

[The documents referred to were marked "Exhibit No. 50" for reference and are retained in the confidential files of the subcommittee.]

Senator CHILES. Are you a licensed pilot?

Mr. FLUET. Yes; I am.

Senator CHILES. What kind of rating do you have?

Mr. FLUET. Commercial.

Senator CHILES. Commercial?

Mr. FLUET. Yes, sir.

Senator CHILES. Single or multiengine?

Mr. FLUET. Multiengine.

Senator CHILES. What type of flight experience have you had?

Mr. FLUET. I flew in the service, I flew for a small flight school for a while, and just personal flying.

Senator CHILES. Mr. Ellrich, do you know a Mr. Charles "Charlie" Keck?

Mr. ELLRICH. Yes, sir, I do.

Senator CHILES. What was your relationship with Mr. Keck?

Mr. ELLRICH. I was in a body shop business with Mr. Keck.

Senator CHILES. How did you first become involved with Mr. Keck.

Mr. ELLRICH. I first met him as a neighbor and he lived in the same trailer court that I lived in.

Senator CHILES. After that, did Mr. Keck approach you about making some extra money?

Mr. ELLRICH. Leading to my becoming a partner with him in a body shop, yes. I would say so.

Senator CHILES. After that, becoming a partner in the body shop, when did he first—did he bring up this flight to Colombia or the possibility of making extra money in that regard?

Mr. ELLRICH. Yes, sir, I believe so.

Senator CHILES. When did that come up?

Mr. ELLRICH. Specifically, the dates—are you asking for dates?

Senator CHILES. Roughly, if you can tell us.

Mr. ELLRICH. Oh, 2½, 3 years ago.

Senator CHILES. What was the offer that was made to you in that connection?

Mr. ELLRICH. In regard to the flight that I took?

Senator CHILES. Yes, sir.

Mr. ELLRICH. I was supposed to get \$35,000.

Senator CHILES. What were you supposed to do for that \$35,000?

Mr. ELLRICH. Fly the airplane down there, fly it back.

Senator CHILES. It was for one trip?

Mr. ELLRICH. Yes, sir.

Senator CHILES. Where were you to fly the plane to?

Mr. ELLRICH. Down to Santa Marta, Colombia.

Senator CHILES. Mr. Fluet, do you know Charlie Keck?

Mr. FLUET. No, sir, I don't.

Senator CHILES. When were you first approached about the flight to Colombia and by whom?

Mr. FLUET. A couple of weeks prior to the arrest and on the airplane with us, who was also arrested with us.

Senator CHILES. What was the name of the fellow?

Mr. FLUET. Mr. Redman.

Senator CHILES. Gains Redman III?

Mr. FLUET. Yes.

Senator CHILES. What was your relationship with Mr. Redman?

Mr. FLUET. We didn't have any prior—he knew an acquaintance of mine.

Senator CHILES. You met him through another acquaintance?

Mr. FLUET. Yes, sir.

Senator CHILES. Was it Mr. Redman who introduced you to Mr. Ellrich?

Mr. FLUET. Yes.

Senator CHILES. What was your first association with Mr. Ellrich?

Mr. FLUET. We met at, I believe, at Opa Locka Airport to practice flying DC-3's.

Senator CHILES. Mr. Fluet, did you have an occasion to fly to Bimini with Mr. Redman prior to your flight to South America?

Mr. FLUET. Yes. Again I went up there to take a flight lesson, but the airplane I was to take a lesson in was booked as a charter flight, so I went along in the jumpseat just to observe how the systems work, and that sort of thing.

Senator CHILES. What kind of plane was that?

Mr. FLUET. DC-3.

Senator CHILES. That was the same kind of plane you were going to fly to Colombia?

Mr. FLUET. Yes; I didn't know at that time I was going.

Senator CHILES. But you never had any experience in flying a DC-3?

Mr. FLUET. I had been in one before, I had never flown one.

Senator CHILES. How about you, Mr. Ellrich?

Mr. ELLRICH. No, sir, no prior.

Senator CHILES. Will you summarize for us, Mr. Fluet, your pretrip negotiations with Mr. Redman?

Mr. FLUET. There were two or three instances, I am not sure which, where I went to Opa Locka to take a flight lesson. I never actually did get to fly the airplane. I did get to sit in the jumpseat while Mr. Ellrich took the lessons. He was to be the pilot, I was to be the copilot.

Just prior to the flight Mr. Redman told me where we were going and he didn't tell me where, he just said we were going to Colombia; that we would be hauling marihuana. We then negotiated the amount that I was to be paid for the trip.

Having settled on the amount, we then, I, although I had no ethical problems about hauling marihuana, I did about other drugs, and we agreed there would be nothing else on the airplane except marihuana.

Then the day before we flew, he called me, told me it was going to be the following day. We met in a restaurant, made the final arrangements of where to meet and got ready to go. That brings us up to the trip.

Senator CHILES. You were to be paid \$50,000. How was that payment to be made?

Mr. FLUET. \$10,000, and then I thought it was to be 10 and 50, but whatever, the balance of it when we returned successfully.

Senator CHILES. There were to be no drugs except marihuana. Mr. Ellrich, you knew that the purpose of the flight was to haul marihuana?

Mr. ELLRICH. Yes, sir, I did.

Senator NUNN. Let me back up just 1 minute for one question, Mr. Ellrich. I believe you said you had been arrested twice?

Mr. ELLRICH. No; I wasn't arrested by that customs incident you were talking about. That was the so-called secondary inspection by them and released. There was no arrest involved.

Subsequent to that they sent me a notice of fine.

Senator NUNN. You were fined?

Mr. ELLRICH. For not going through customs inspection station.

Senator NUNN. That wasn't a criminal offense?

Mr. ELLRICH. No, sir.

Senator NUNN. Who was on that flight with you?

Mr. ELLRICH. Mr. John Piazza.

Senator NUNN. John Piazza?

Mr. ELLRICH. Yes, sir.

Senator NUNN. Thank you.

Senator CHILES. Did you ever have any occasion to fly Mr. John Piazza on any other occasion besides that?

Mr. ELLRICH. No, sir.

Senator NUNN. What was the purpose of that trip?

Mr. ELLRICH. I never did really find that out. It was under the guise of going over to the Bahama Islands to stay at a friend's house that had a small airport over there.

Senator NUNN. Under the guise, you didn't think that was——

Mr. ELLRICH. I don't think that was the purpose. We never did find that place and ended up landing in Greater Inagua after dark, against Bahama rules, staying there overnight, proceeding back to Homestead the next morning.

Senator NUNN. Had you known Piazza for a long time or was this the first time you had met him?

Mr. ELLRICH. I had known him not for a long time and not on a personal basis.

Senator NUNN. How did you meet him?

Mr. ELLRICH. Through the body shop and Mr. Keck.

Senator NUNN. Mr. Keck introduced you to Mr. Piazza?

Mr. ELLRICH. Yes, in the body shop we were in need of a new paint booth and Mr. Keck came up with the money for that booth, which was about \$10,000, and it turned out that Mr. Piazza had loaned him the money. From that point I knew him from that incident.

Senator NUNN. When did you first meet him, approximately?

Mr. ELLRICH. Specific dates, you mean prior to this flight that was taken?

Senator NUNN. When did that first flight take place, approximately?

Mr. ELLRICH. September 1976, I believe.

Senator NUNN. September 1976?

Mr. ELLRICH. Yes, it probably was 6 or 8 months prior to that I knew him or knew of him.

Senator NUNN. Where did you intend to fly to when you took off? What was the destination?

Mr. ELLRICH. Which time?

Senator NUNN. The first flight when Mr. Piazza was with you?

Mr. ELLRICH. To, as I said, a house over in the Bahamas, with a privately owned landing strip which to this date I don't know where it is.

Senator NUNN. You intended to go to the Bahamas, but you didn't land at the same strip where you intended to land?

Mr. ELLRICH. No.

Senator NUNN. Were you getting paid to be the pilot?

Mr. ELLRICH. No.

Senator NUNN. You were the pilot?

Mr. ELLRICH. Yes.

Senator CHILES. Mr. Ellrich, were you given any money up front in the Colombia run?

Mr. ELLRICH. I was supposed to have been, but I never got it and I haven't gotten it to this day.

Senator CHILES. You did not get any money?

Mr. ELLRICH. No.

Senator CHILES. Did you get the remainder of your money, Mr. Fluet?

Mr. FLUET. No, sir, you did.

Senator CHILES. I didn't, but maybe the Government did.

Who planned the flight as far as the height goes, the speed, the fuel, et cetera?

Mr. ELLRICH. Are you directing the question to me?

Senator CHILES. To both of you.

Mr. ELLRICH. Both of us did, Mr. Fluet and I.

Senator CHILES. Where did you work that flight plan out?

Mr. FLUET. We were at Mr. Redman's house the morning of the flight.

Senator CHILES. Since neither one of you were familiar with flying the DC-3, I think, Mr. Ellrich, you hadn't flown a DC-3?

Mr. ELLRICH. I had, but very limited amount.

Senator CHILES. How were you able to develop the flight plan?

Mr. FLUET. We got hold of an old military flight manual on a C-47/DC-3 and went through the charts and got some what we thought were approximations of cruising speed, altitudes, fuel flows, that sort of thing. Based on those, we were flying pretty badly overweighted so we extrapolated the charts hoping the curves were still linear.

Senator CHILES. Why were you going to be flying overweight?

Mr. FLUET. DC-3's don't fly to Colombia nonstop. They won't make it. You had to have extra fuel tanks aboard, so we were about 700 pounds over the maximum weight without any marihuana aboard, just in fuel.

Senator CHILES. Then you were going to go to Colombia, pick up a load of marihuana, fly back and try to make that oneway, too; is that right?

Mr. FLUET. It doesn't make much sense to me now.

Senator CHILES. Had either of you ever flown to South America before the October 22 trip?

Mr. ELLRICH. No, sir.

Senator CHILES. Mr. Fluet, will you describe to the subcommittee the discussion with Redman about how much marihuana the plane would carry?

Mr. FLUET. When we were doing the flight planning it became apparent we were 700 pounds, as I mentioned before, over gross weight without anything aboard. We didn't even know it would takeoff with that. We stopped in the middle, asked "How much do we have to bring back to break even?" We were told at least 2,000 pounds. We said, "How much will it carry?" Obviously, at least 2,700 pounds max gross. We agreed we would takeoff out of Fort

Lauderdale, see how it handled. If it flew all right, we would load it with fuel, I guess.

Senator CHILES. So you were really guessing?

Mr. FLUET. Yes.

Senator CHILES. Would you say if you were getting ready to be a passenger on that flight, especially maybe the return flight from South America, after you had to pick up at least 2,000 pounds, would you have taken that trip as a passenger?

Mr. FLUET. Not on a bet.

Senator CHILES. Mr. Ellrich, just prior to departure you and Mr. Fluet witnessed a group of people around the plane. What were they doing?

Mr. ELLRICH. Prior to departure from Fort Lauderdale?

Senator CHILES. Yes.

Mr. ELLRICH. In prior testimony I have testified that they were on the airplane putting plastic bags, et cetera, on the airplane.

Senator CHILES. Did you know who they were?

Mr. ELLRICH. Are you referring to Mr. Redman and Mr. Steerwalt, I believe?

Senator CHILES. People that you saw around the plane.

Mr. ELLRICH. We are talking about 2 years ago. I am trying to have instant recall. I am not doing too good at it, obviously, but I am not trying to evade the question. I am trying to give you a truthful answer. I don't want to answer without collecting my thoughts.

Senator CHILES. We want to give you time to do that.

Mr. ELLRICH. OK. There were several people around the airplane.

Senator CHILES. You later found a bugging device on the plane?

Mr. ELLRICH. Yes, we did.

Senator CHILES. When did you find that bugging device?

Mr. ELLRICH. Prior to our taxiing the airplane.

Senator CHILES. Did you connect any of the people around the plane with the fact that you found that bugging device, or did you know all of the people that were supposedly around the plane?

Mr. ELLRICH. The people that were around the plane, as far as I can recall, were the people that were going with us.

Senator CHILES. Where did you find the bugging device?

Mr. ELLRICH. It was in the tail end of the airplane, an obvious antenna, sticking out of the airplane that wasn't supposed to be there. Attached to that antenna was a black wire, follow the black wire, there was a device on the end of it.

Senator CHILES. What did you do with that?

Mr. ELLRICH. We disconnected it.

Senator NUNN. There was an antenna sticking out the back?

Mr. ELLRICH. Yes. Like a set of rabbit ears off the TV set.

Senator NUNN. That wasn't part of the plane?

Mr. ELLRICH. No.

Senator NUNN. It wasn't very hard to detect the bugging device?

Mr. ELLRICH. No, it was very obvious.

Senator NUNN. You saw that when you first got in the plane before you took off?

Mr. ELLRICH. Yes.

Senator NUNN. What did you do then? Go back and inspect it?

Mr. ELLRICH. Several of us looked at it, you know, talked about it and we were at a dilemma as to what to do with it. We finally disconnected it, and I believe it was thrown overboard after we took off, out in the ocean.

Senator NUNN. Didn't that give you some apprehension about the mission?

Mr. ELLRICH. Oh, yes; very much. But at that point, damned if you do, damned if you don't, and backing out was probably more of a danger than going forward.

Senator NUNN. Why would backing out have been a danger?

Mr. ELLRICH. Dealing with the people that we were dealing with, not knowing their intentions, it just intimidated me to think that if I backed out, I had been in more trouble than I would have if I had gone forward.

Senator NUNN. You were more afraid of the people you were dealing with than you were with law enforcement at that stage?

Mr. ELLRICH. Yes, at that point I was.

Senator CHILES. We understand that the plane was parked beside the Federal highway, U.S. 1, at the southeast end of the airport; is that correct?

Mr. ELLRICH. Southeast end of the Fort Lauderdale Airport next to the U.S. 1; yes, sir.

Senator CHILES. It could be seen from the highway?

Mr. ELLRICH. It could be seen from many, many points, including Howard Johnson's across the way, anyone that wanted to stop along U.S. 1 or any other point on the airport.

Senator CHILES. Would you describe the problems that you all experienced prior to takeoff and while you were enroute to South America?

Mr. FLUET. The first problem encountered was that Bob and I stopped to get some charts and all at the flight service not far away; and when we turned the corner, the first thing both of us thought, it looked like a dope deal going down, people running all over the airplane, found the antenna. There was an instrument in the airplane that I recognized as an IFF, which is an old military instrument no longer used. Commented on what it was. I said, "Can't possibly be working. At least 20 years old. Can't possibly be working."

Senator CHILES. It was working?

Mr. FLUET. Sure enough; and turned on.

Senator CHILES. What does that instrument do?

Mr. FLUET. It works much like the transponders in today's airplanes, but instead of being electronic, selected frequency on which it transmits, it has got a crystal in it that is fixed. World War II, for example, on each flight you put a different crystal in it so you would know it stands for identification, friend or foe, and you would know which airplane, if it was your airplanes coming back to the carrier, to the base, whatever.

Senator CHILES. So you saw that on the airplane, but you just felt there was no way that could be working because it was a World War II vintage?

Mr. FLUET. Sure.

Senator CHILES. It was working?

Mr. FLUET. Apparently. When we cranked up, we heard a peep in the headset, didn't know what it was. It seemed bad. It seemed like another omen. What is it? Couldn't figure it out. Chased down inside the airplane; couldn't find anything, still pressed on.

Senator CHILES. Was that beep the IFF signaling friend or foe?

Mr. FLUET. Yes, the whole world. We rolled down the runway. It was very difficult to takeoff. The takeoff was very difficult. We didn't have anything aboard. That was another indication. We got airborne. Shortly after we got airborne, somebody from the tower transmitted something to us, I can't remember what the words were, but asked if there was somebody aboard, if we were going to bring someone along. We wondered how on earth anybody in the tower would know.

I don't know to this day who it was or what it was about, another indication. We got airborne, the fuel tanks, the extra tanks that had been installed were not installed properly. It turned out that we found that out when we tried it out, tried the extra fuel tanks out. The right engine just quit. We switched back; the engine started again.

We surmised that there was a way to do it. The way was to run one engine off three of the tanks and the other engine off the other three. The problem is, if there is any bad fuel, the problem with the tanks, you will lose an engine for sure if the tanks were bad.

The navigation equipment didn't work properly. There was BOR, which is a type of instrument used in the States, that was working, but there isn't any of that in South America, in the Bahamas. So that didn't help us. We still decided to go.

Senator NUNN. Had you filed any kind of flight plan?

Mr. FLUET. No, sir.

Senator NUNN. You didn't file one?

Mr. FLUET. No.

Senator CHILES. What were you doing? Were you trying to escape radar detection?

Mr. FLUET. Yes. We flew up and down the coast, checking out the fuel tanks, like we were on training mission. Then we flew down low, went underneath the radar.

Senator CHILES. Your excuse was going to be you were checking out the plane. When you say you flew down low, how low were you flying.

Mr. FLUET. On the way out?

Senator CHILES. Yes.

Mr. FLUET. 400, 500 feet. It wasn't particularly dangerous going out.

Senator CHILES. It wasn't that dangerous because you weren't loaded?

Mr. FLUET. Yes.

Senator NUNN. What time of day or night was this, approximately?

Mr. FLUET. Late afternoon. We tookoff about 3:30, 4 o'clock. I am not sure of that.

Senator CHILES. What other modifications had been made to the airplane besides the extra fuel tanks?

Mr. FLUET. It was empty. The seats were out.

Senator CHILES. Describe quickly, if you can for me, your flight to South America. How did you try to go?

Mr. FLUET. We flew southeast to that slot on the eastern edge of Cuba, and then east to the Windward Passage and straight south to Colombia. We had a problem because we knew that the airplane was so slow, the distance was so great that we should have flown a great circle route and also should have taken a coriolis, but we didn't know how to do it.

We pressed on, figured we would get to South America, turn right.

Senator CHILES. How long did the flight take?

Mr. FLUET. Ten hours.

Mr. ELLRICH. Approximately 9½ going down.

Senator CHILES. How close to where you were heading? Did you have to turn right or left?

Mr. ELLRICH. When we hit South America, we turned right.

Senator CHILES. How far off were you?

Mr. ELLRICH. Forty, fifty miles.

Mr. FLUET. Seventy-five. It wasn't too bad.

Senator CHILES. What prior arrangements had been made with reference to your landing in South America?

Mr. ELLRICH. There was supposed to be a radio beacon which we could home on, which never occurred. It was misinformation that we had gotten. Also, the airport that we were to land at was supposed to turn on the lights, which they did. We were supposed to arrive there an hour after the last commercial flight left that airport, which we did.

Senator CHILES. Did they turn on the lights for you?

Mr. ELLRICH. Yes; they turned on the lights. We had circled the bay about once or twice before the lights came up. Then someone noticed that they were on.

Mr. FLUET. We couldn't find the airport because we had some frequency we were supposed to call in on and nobody answered. Nobody was monitoring.

Senator CHILES. So without the lights being turned on, you wouldn't have found it?

Mr. FLUET. We did find it even without the lights on. We found it because it was, looking at the chart, the only place where there is a little protrudance sticking out of the bay.

Senator CHILES. This was on the bay, and the name of the town is?

Mr. FLUET. The airport isn't at the town, but the nearby town is Santa Marta.

Senator CHILES. We understand that there was some disagreement as to whether or not you were to land until radio contact had been made to determine if the coast was clear. If you didn't establish radio contact, what were your feelings about landing?

Mr. FLUET. Out of gas, in a foreign country, you are going to land whether you like it or not, so you might as well land at the airport.

Senator CHILES. It wasn't a question of deciding whether you were going to land; it was just you had to land?

Mr. FLUET. Yes.

Senator CHILES. Would you describe what happened when you did land?

Mr. FLUET. We touched down, instructed to taxi back to the takeoff end of the runway, point the airplane like it is ready to roll, ready to

take off, climbed out, absolute silence. We were all worried. Didn't know who was going to come, what was going to happen; speculation about swimming the bay or climbing the mountain and going into the jungle, whatever. We sat there. Literally a caravan showed up.

Senator CHILES. Did you get off the plane?

Mr. FLUET. We were standing around the airplane.

Senator CHILES. Just standing around the airplane waiting to see what did happen? What did happen?

Senator NUNN. Let me ask one question, if I could.

What was supposed to happen? What was the prearranged plan?

Mr. FLUET. Darned if I know.

Senator NUNN. Who did?

Mr. ELLRICH. We were supposed to show up down there an hour after the last flight left and the lights were supposed to come on. We were supposed to have radio communication with someone. The lights did come on, we landed, we were supposed to park the airplane down at the beginning of the takeoff end of the field, which we did, and shut everything off, and the lights went out. The airport went dark again and then from that point we didn't know what was going to happen.

Senator NUNN. Who had given you these instructions?

Mr. ELLRICH. I believe the details of the lights, et cetera, were from Mr. Murray, Mr. Murray was on the airplane with us.

Senator CHILES. Then you are standing by the edge of the airplane and what happened next?

Mr. FLUET. The caravan showed up, a taxicab with a couple fellows in it. Looked like an Army convoy behind them military vehicles, police vehicles, surrounded the airplane and we weren't sure at first that we weren't being arrested: surrounded the airplane, the police jumped out, the Army set up a defensive perimeter, fields of fire, pretty good one, machine gun nests, and all the things were right. Then a man got out.

Senator CHILES. You had seen perimeters like that set up before in your experience in the service?

Mr. FLUET. Yes.

Senator CHILES. You say they set up fields of fire, had machine guns, automatic weapons at the right points?

Mr. FLUET. Pretty good.

Senator CHILES. This was the military?

Mr. FLUET. Yes.

Senator CHILES. Were there any officers there?

Mr. FLUET. Three looked like field generals; lots of brass and stuff.

Senator CHILES. First a taxi arrived, then the military convoy arrived?

Mr. FLUET. They were all together.

Senator CHILES. Led by a taxi; the military convoy led by a taxi?

Mr. FLUET. Yes.

Senator CHILES. How many troops were involved, police and troops?

Mr. FLUET. Seventy-five, a hundred.

Mr. ELLRICH. We don't really have any way of knowing.

Senator CHILES. A bunch?

Mr. ELLRICH. A bunch.

Senator CHILES. Seventy-five or a hundred? First you thought that was an arrest; that they were coming out to——

Mr. ELLRICH. We hadn't been briefed as to what was going to take place, how many people were going to show up, all that sort of thing. It was startling to us.

Mr. FLUET. You have to understand, I don't know about Mr. Ellrich, I was working under the terrible misconception that the less I knew about this whole thing the better off I was. I was just going to fly an airplane. I felt like if I flew an airplane, came back, that was all I was going to do. Obviously I was wrong. We didn't know what was going on.

Senator CHILES. What happened after the military perimeter was set up, the defensive perimeter was set up around the plane?

Mr. FLUET. We backed up, one of the trucks had fuel, 50-gallon drums, and a hand pump device, and I set out to postwipe the airplane. The airplane was not a great airplane. It was in pretty bad shape. We had to tape up some of the control surfaces. They are made out of canvas, fabric. Some of them had holes in them. We had to tape them up with duct tape.

They started fueling the airplane, putting oil in it, stuff like that. They were loading the marihuana inside.

Senator CHILES. Where did the marihuana come from? What kind of vehicles or trucks was it on? Was it part of the convoy?

Mr. ELLRICH. Yes. Pickup trucks; you know, 1-ton trucks, not military, but civilian type.

Senator CHILES. Civilian type?

Mr. ELLRICH. Yes.

Senator CHILES. Who was the sort of the leader of this caravan that came out there? Did you know? Did you hear anybody say? What was he called?

Mr. FLUET. I heard the name Pedro mentioned. He is the person there who spoke English. I don't know that. He is the only one that I heard speak English.

Senator CHILES. Do you know who he was?

Mr. FLUET. Someone said he was the mayor. It seemed improbable; seemed very young.

Senator CHILES. You didn't know that? Someone said that? Did you hear any conversation? What kind of conversation?

Mr. FLUET. The only time I spoke, I was really quite concerned with the airplane.

Senator CHILES. You were trying to get the plane ready for the return trip?

Mr. FLUET. To see if the fuel had water in it, which it did; to see if the oil was the right type, which it wasn't.

Senator CHILES. Pedro was not an American?

Mr. FLUET. I don't know that he wasn't, but he was Spanish speaking, Portuguese, whatever.

Senator CHILES. There didn't seem to be any Americans there on the ground?

Mr. FLUET. No.

Senator CHILES. Who directed the loading operation? Was that Pedro?

Mr. ELLRICH. As Mr. Fluet said, we were both real busy with the airplane, but it didn't seem that he was doing all the directing. He was here and there. I noticed him in several points.

Senator CHILES. How much marihuana was loaded on the plane?

Mr. FLUET. I was told afterwards they picked up 3,800 pounds.

Mr. ELLRICH. Approximately 4,000 pounds.

Mr. FLUET. It was marked in kilograms.

Mr. ELLRICH. We didn't realize the bags were marked in kilograms and we thought they were in pounds. Of course, they felt quite light, since 1 kilogram is twice the weight of 1 pound. They were marked like 20. We thought that was 20 pounds. Actually it was 40 pounds.

Senator CHILES. So you ended up putting about twice—

Mr. ELLRICH. No. We ended up with approximately 4,000 pounds of weight on the airplane, but when we first started checking the weights, we didn't realize we hadn't taken that into account.

Mr. FLUET. We just finally got to the point where both of us felt like this airplane will not fly. It will not fly; no more is going on.

Senator CHILES. You told them that?

Mr. FLUET. They wanted to keep loading, loading, and loading to the point where it was going to collapse over the runway.

Senator CHILES. Did they load all the marihuana they brought out there on the plane?

Mr. FLUET. No, I don't think so.

Senator CHILES. You reached the point where you said—

Mr. FLUET. We refused any more because we knew the airplane wouldn't fly at that point, or suspected it wouldn't.

Senator CHILES. Did either of you see any money exchanged for the marihuana?

Mr. FLUET. No, I didn't.

Senator CHILES. Do you know whether there was any money carried down there for exchange?

Mr. FLUET. No, sir. I do not know. I think there was, but I am not certain.

Senator CHILES. You think some was on board the plane, and do you know how it was carried?

Mr. FLUET. It was a bag. I assume there was money in it. I didn't see it. I was going to carry money down. I don't know.

Senator CHILES. You didn't see that bag change hands?

Mr. FLUET. No.

Senator CHILES. Did you see the bag on the plane on the return trip?

Mr. FLUET. No, sir. I didn't look for it, either.

Senator CHILES. You said something about Pedro being the mayor, or someone said. What caused you to think that or to hear that name of the mayor? Do you know?

Mr. FLUET. It seemed like an astounding statement. That just stuck with me. I don't really know. Didn't it seem a little strange, the mayor?

Senator CHILES. Somebody on your flight said something about that he was the mayor. Where did you get that from?

Mr. FLUET. I am not really certain.

Senator CHILES. That just stuck with you.

Mr. Ellrich, did you hear any statement about that; about Mr. Pedro being the mayor?

Mr. ELLRICH. I heard it from somewhere, but I couldn't tell you where I heard it from, from what source. There is an article I read recently that has that in it, that is published.

Senator CHILES. You think you heard it before that article?

Mr. ELLRICH. Yes. I think I heard it before that but I don't know from what source.

Senator CHILES. You heard it in connection with the flight, the trip?

Mr. ELLRICH. Yes. I believe it was on the ground while we were there, but I don't know who said it. It probably had to come from one of our people around the airplane because there weren't that many English-speaking people around.

Senator CHILES. How much time did the crew spend on the ground in Colombia?

Mr. ELLRICH. We were there about 3½, 4 hours.

Senator CHILES. Would you relate the circumstances surrounding your departure from Santa Marta?

Mr. FLUET. The airplane wouldn't fly. We rolled down the runway, took 2,000, 2,500 feet just to get the tail off the ground. We were committed, we couldn't stop. Bob was flying, he bounced the airplane, literally in a bounce. I sucked the gear up, pulled the gear up from under it. It settled a little bit. We just barely got off the ground. We flew through some bushes.

Senator CHILES. How much runway did you have?

Mr. FLUET. About 1,000 feet, maybe, couldn't tell. Do you know?

Mr. ELLRICH. I think that runway is about 5,500 feet long.

Senator CHILES. You just barely got it off?

Mr. ELLRICH. Excuse me. There is an article here I would like to give you a copy of, if you would care to take it. It has a lot of details about the area that we are talking about.

Senator NUNN. What is that article?

Mr. ELLRICH. It is an article written in Esquire magazine dated September 12 of this year.

Senator NUNN. Does it make reference to that particular airport?

Mr. ELLRICH. Yes.

Senator NUNN. Does it make reference to your particular transaction?

Mr. ELLRICH. I don't believe so, but if Joe and I were writing the article, we would probably have written the same thing; the beginning of that article.

Senator NUNN. You think this is the same airport you are talking about as described in this article in Esquire magazine?

Mr. ELLRICH. Yes, I believe it is.

Senator NUNN. You read the article and the description of that airport is pretty much what you remember?

Mr. ELLRICH. Yes.

Senator NUNN. Is that also your recollection?

Mr. FLUET. I haven't read the article yet.

Mr. ELLRICH. It also described Pedro as the so-called mayor of Santa Marta.

Senator NUNN. You think you gained that information independently and prior to reading this article?

Mr. ELLRICH. Yes.

Senator NUNN. We will make the article part of the record without objection.

[The document referred to was marked "Exhibit No. 51" for reference and follows.]

EXHIBIT No. 51

[From Esquire Magazine, Sept. 12, 1978]

THE COLOMBIAN GOLD RUSH OF 1978

(By Robert Coram)

It is always late at night when marijuana smugglers land at Simon Bolivar Airport, near Santa Marta, Colombia. The airport closes each evening at ten p.m., after the last commercial flight arrives, and almost every night, smugglers begin landing an hour later. When a pilot flies in for the first time, he is usually in that condition of fright and apprehension referred to as "maximum pucker point." Airport lights are off and he is flying up and down the coast between Santa Marta and Ciénaga looking for the runway. His fuel tanks are almost empty after the 1,200-mile flight from Florida. Lightning from nocturnal thunderstorms in the 18,000-foot mountains a few miles away affords an occasional glimpse of the coastline below.

The pilot calls repeatedly on a secret radio frequency and counts himself among the blessed if anyone answers. Suddenly runway lights flicker on and he lands, taxis to the south end of the field, turns around to be in position for an immediate takeoff, and shuts down the engines. Airport lights go off and again all is black. The pilot begins to sweat. He has illegally entered a foreign country, is carrying perhaps \$100,000 in cash, and is out of gas, with the ocean at his back and only one road leading away from the airport. He has visions of spending the rest of his life rotting in a Colombian jail if anything goes wrong.

He and the crew climb out of the aircraft and stand in the hot, sultry darkness. For perhaps ten minutes nothing happens. Then they hear the muted growl of a high-powered speedboat moving in from offshore. At the same time, down the single road to the airport comes a convoy of speeding vehicles led by a taxi.

Police cars stop on the access road and in the glare of headlights the pilot sees uniformed figures setting up a roadblock. The taxi, followed by heavy trucks, pulls up and soldiers carrying automatic weapons quickly encircle the aircraft and crew. The door of the taxi opens and a tall, slender, handsome—and suprisingly young—man steps out and approaches the pilot.

"Are you the mayor?" the pilot asks diffidently.

Pedro Dávila throws back his head and laughs. His father is mayor of Santa Marta and an uncle is governor of the Guajira Department, the arid peninsula jutting into the Caribbean from the north coast of Colombia. Smugglers, in deference to Pedro's ability to use Simon Bolivar Airport and have police and military protection, refer to him as "the mayor."

"I am Pedro," he says, extending his hand. His English is without accent, perfected at the military school he attended in Florida. His dark eyes quickly recognize the aircraft, from its type and number, as the one he was expecting and the pilot fits the description telephoned that evening from his man in the States.

After a moment of chitchat about the flight, Pedro asks for his money. The pilot hands him a canvas sflight bag as a police officer and two army generals in full uniform emerge from the shadows. Pedro counts the money as quickly as a bank teller and passes part of it to the uniformed men. They turn and begin shouting orders in crackling Spanish. Two large trucks back up to the cargo doors of the aircraft as a general turns to Pedro, salutes, and says the men are ready to load. Pedro motions him to go ahead. The pilot remembers the speedboat offshore but Pedro reassures him by flashing a pirate's grin and saying, "That's my escape boat." He's not worried about law enforcement but he is worried that another smuggling gang might attack and steal both the marijuana shipment and the money.

A crew of soldiers begins loading the sixty-kilo bags of marijuana as another crew refuels with a hand pump and drums of gasoline. Illegally installed auxiliary fuel tanks are difficult to reach and it is past dawn before the aircraft is ready for takeoff. Passengers aboard nearby trains watch the smuggling operation they have seen so many other mornings, and airport workers give a sigh of resignation when stopped by police on the access road and told the airport is closed. As the workers wait, they watch the aircraft and the bustle of activity surrounding it.

Pedro and the pilot have an angry confrontation when the pilot says the aircraft is 5,000 pounds over maximum allowable takeoff weight and refuses to take more marijuana aboard. Pedro tells him to bring a bigger airplane next trip. At thirty, Pedro manages one of the largest smuggling rings in Colombia and like all businessmen wants to push his product, especially since he knows the market is waiting to buy everything he ships north.

Doors of the aircraft shut and the pilot carefully runs up the engines as Pedro watches from the fender of his cab. The police and army troops will stand by until the pilot is airborne.

The pilot advances the throttles and the aircraft begins a slow, ponderous roll, using all of the 5,600-foot runway before wallowing reluctantly into the air and beginning a long, slow climb-out a few feet over the waves of Santa Marta Bay. It takes more than half an hour for the aircraft to reach an altitude of 1,000 feet.

Pedro Davila's smuggling operation is unusual only in that a paved commercial airport is used. A few miles east of Santa Marta an average of three aircraft and one ship leave the remote Guajira peninsula each day bound for the southern United States with a load of Colombia's best-known product. The aircraft range in size from light twins carrying a ton of grass up to DC-7's carrying more than ten tons. Ships range from small sailboats to giant freighters—mother ships—carrying an average of thirty-five tons. This activity is from sixteen highly active clandestine airstrips slashed out of the scrubby undergrowth and from one ramshackle dock in Portete Bay. Another 280-plus airstrips and dozen docks are used on a less regular basis.

More than 500,000 pounds of marijuana are smuggled into the United States each week from Colombia; more than 2 million pounds each month; upward of 25 million pounds each year—a business generating more than \$14 billion untaxed dollars each year.

Smuggling marijuana is so lucrative, so well organized, with risks so few and chances of detection so slim, that heroin smugglers are switching to marijuana. People have retired for life after three or four smuggling trips to Colombia. A pilot makes \$50,000 for a round trip lasting twelve to eighteen hours. The owner of a remote dock on the Georgia or South Carolina coast can make \$100,000 to turn his back for a few hours. It is not uncommon for a smuggling ring to bring in \$2 million to \$3 million weekly.

Without benefit of public relations the business has taken on an aura of romance: just a bunch of good ol' boys out running in a load now and then, good ol' boys motivated only by a desire to bring you high times and mellow evenings. Everyone works together, no one is hurt, and no major laws are violated.

But that's not the way it is. The pipeline begins in Colombia, where soil and climate are conducive to growing top-grade marijuana year round. One growing season follows another. From all over Colombia the weed that dope smokers consider among the best in the world is trucked to the Guajira peninsula, the primary staging area for boat and air shipments to the United States. Officers of Colombian Customs, the military, and the Departamento Administrativo de Seguridad (DAS), the equivalent of the FBI, take a direct and active role by providing vehicles, uniformed personnel, and security. The Guajira is ruled by smuggling, dominated by the gun, and is one of the most lawless spots on earth, virtually an independent state. Two or three people are killed each week in smuggling-connected fights, and occasional wars between rival dope factions kill dozens.

Allegations of marijuana smuggling reach to the highest levels of the government, including cabinet officers and Julio César Turbay Ayala, who became president in August. The only high elected official in whom the United States has complete confidence is Attorney General Jaime Serrano Rueda, according to Dave Burnett, the Drug Enforcement Administration's special agent in charge of the Bogotá office.

A Harvard MBA would be taxed to improve any facet of the smuggling operation. Smugglers have it all—sophisticated logistics and delivery systems, high government contacts, police protection, and unlimited financial resources. Smuggling rings have their own fleets of boats and aircraft; crews, security forces, electronics technicians to debug aircraft, logistics experts, intelligence operatives, lawyers, wholesalers, and enforcers to ensure silence. Smuggling boats have been interdicted with documents aboard giving data on every port along the southeastern seaboard—everything from water depth and Customs and Coast Guard patrol schedules to radio frequencies used by law enforcement, proximity to the nearest paved roads, whether or not the local sheriff is on the payroll, and even psychological profiles of the surrounding area's inhabitants, with conclusions indicating whether local people might call police about suspicious activity.

Smugglers fly aircraft that are usually faster and always far better equipped than those flown by U.S. law enforcement. The smugglers know the best locations and methods for punching through the offshore radar net; their scanners monitor VHF radio waves and their radios monitor secret frequencies used by federal agencies. They know what remote subdivision roads to land on, the best sites for airdrops, and where a friendly line boy will come to an unattended field to refuel aircraft late at night.

Smuggling is filled with violence, death, deception, and disregard for a dozen laws. Pilots crash at sea or go down over Cuba with never a word. Law enforcement files bulge with documented instances of teenagers killed for a briefcase full of money or an aircraft full of dope. Smugglers routinely violate the Neutrality Act, the Bank Secrecy Act, the Controlled Substance Statutes, and laws and regulations enforced by the Drug Enforcement Administration (DEA), the U.S. Customs Service, the Immigration and Naturalization Service, the Internal Revenue Service, and the Federal Aviation Administration.

United States smuggling chieftains routinely put out contracts on witnesses who might testify against them. A Florida smuggling ring paid \$200,000 for hit men to kill the state's entire list of material witnesses in one case. Last year a narcotics agent was killed in Tampa by a contract assassin. Two attempts have been made to kill an investigator for the state attorney in Fort Myers, and a \$50,000 contract is out on him now. United States Customs officers in Miami narrowly escaped death on two occasions when their aircraft were sabotaged.

Smuggling generates such an inordinate amount of cash that money comes to be a commodity meaning almost nothing. A \$70,000 customized speedboat used to meet mother ships is burned after two trips. A DC-7 carrying \$12 million worth of marijuana is abandoned at a remote Georgia airstrip. A giant freighter being pressed by the Coast Guard is scuttled as the crew dives overboard and seeks refuge aboard the Coast Guard vessel. Tomorrow is another day.

Big smuggling rings—those generating several million dollars each week—are too well connected to have any fear of state or federal agents. Small-time smugglers flying occasional loads in light twin-engine aircraft swarm across the southeastern coast in numbers too great to stop. They nickel and dime the feds to death. But the mid-level smuggler with several boats and aircraft stands the greatest risk of arrest. He is envied by the little man and is a potential threat to the big man, so both act as informants. Even so, except for the bunglers and incompetents, the smugglers are rarely caught. They have little to fear from federal agencies, as those agencies are more involved in intramural bickering, backbiting, and turf protection than in cooperating to stop the flow of marijuana.

The agencies are crippled by internecine squabbling reaching such depths of petulance that the DEA recently ordered Customs to stop showing a reel of film taken in Colombia during a drug-busting operation. The DEA said it was "inappropriate for U.S. Customs to make any presentation to any law enforcement conference, statewide grand jury, or congressional committee on the topic of drugs," since that was the primary responsibility of the DEA. In short, the DEA ordered Customs not to brief fellow lawmen, grand juries investigating marijuana smuggling, or even congressional oversight committees.

The DEA is the lead agency in what a number of U.S. Presidents have grandly referred to as the "war on narcotics." But the agency has had credibility problems since its inception in 1973 as part of Nixon's Reorganization Plan Number Two. It was born as Watergate bubbled over and no one had time for the care and feeding of the DEA during numerous personnel changes, frequent identity crises, and numerous allegations of both domestic and international improprieties. Even today, many law-enforcement agencies think that mid-level DEA bureaucrats are arrogant, secretive, and incompetent and that their words and actions demonstrate only a nodding familiarity with human rights and Supreme Court decisions.

Reorganization Plan Number Two gave the DEA all intelligence-gathering duties related to narcotics—a mandate the agency guards with unwavering zeal, particularly against Customs, which until recently had such a sophisticated intelligence operation that it routinely infiltrated smuggling rings and flew to Colombia as crew members, served as gas pump attendants for smugglers, and advised smugglers on routes and tactics. The DEA no longer allows Customs to gather intelligence.

Customs has problems even in its narrow interdiction function, especially in Florida, Georgia, and South Carolina—the funnel through which marijuana is poured from Colombia to the United States. Until a year or so ago most marijuana came into the United States from Mexico. But the quality of Mexican dope, like the quality of Mexico's other national products—prostitution and tequila—suffered a drop in quality. Millions of U.S. dollars went into a Mexican enforcement effort that hurt marijuana production. The paraquat scare cut back the buying of Mexican dope even more and efforts to pass it off as Colombian did not work. Even though most people still perceive Mexico as the primary source of dope, all is relatively quiet along the Mexican border. About ninety percent of the marijuana coming into the United States comes from Colombia.

However, the most sophisticated equipment and special enforcement efforts historically have gone to patrol the 2,000-mile Mexican border. Customs officers there fly 270-knot Mohawks and a Citation jet to chase single-engine Cessnas, while in Miami a couple of surplus S-2 Trackers, helicopters shot up in Vietnam, and a forty-year-old B-26 seized from smugglers chase DC-4s, DC-6s, and DC-7s that haul upward of ten tons per trip.

It's the same story with the Coast Guard. This agency is up against fast and sophisticated boats with vessels that are few in number, ancient, slow, and equipped with electronics manifestly inferior to that of smugglers. The Coast Guard must patrol for oil spills, enforce the 200-mile fishing limits, conduct search-and-rescue missions, remind people to wear life jackets, maintain buoys and navigation devices, conduct safety inspections, and interdict mother ships. With summer here and coastal boating increased, the Coast Guard is too busy to be considered a factor by smugglers.

Almost every boat and aircraft smuggling marijuana reaches its destination. The DEA and Customs once said they caught maybe ten percent of them, but that was before they had any idea of the magnitude of the smuggling operation. The true figure is closer to two percent.

"The government has never really made a commitment to stopping dope," says one front-line narcotics officer in Florida. "It's just like Vietnam—we're not in it to win."

The one exception was Operation Stoppap, a secret forty-five-day enforcement effort inside Colombia that ran from late December of 1977 to mid-February of 1978 and resulted in the seizure of two-dozen boats and numerous aircraft, dozens of arrests, and marijuana worth a street value of \$220 million. But the DEA committed such monumental blunders that it had to keep quiet about its greatest success, to veil it with secrecy, and forbid other federal agencies to discuss it.

During Operation Stoppap, the DEA and Customs conducted flights over the Guajira peninsula and offshore waters to identify clandestine airstrips and to monitor mother ship traffic in Portete Bay and other locations. The overflights were conducted on an average of twice daily. After each flight, pilots contacted Miami on high-frequency radios and passed along information on the types of aircraft seen loading, tail numbers, and probable arrival time in the United States. The same was done with ships. The Coast Guard blockaded the Yucatán Channel, the Windward Passage, and the Mona Passage. Both the Coast Guard and Customs piled up an impressive interdiction record. Boats and aircraft that penetrated the blockade could be tracked down at leisure because the DEA quite literally had their number.

The DEA, because of alleged excesses committed in foreign countries, has a congressional order not to participate in overseas police actions. But when Customs, on an overflight near the coastal town of Dibulla, sighted a large stash and an aircraft being loaded with marijuana, the DEA called in an armed Colombian helicopter strike force.

The Bell Jet Rangers—a gift from the U.S. State Department—landed, frightened away most of the traffickers, dropped off part of the assault team, then went airborne again to track down fleeing smugglers. DEA pilot John Stevenson landed his yellow Cessna 310 and was not impressed with the enthusiasm of Colombian law enforcement. So this armed American agent ran through the bush exhorting Colombian Customs, the DAS, and Army troops to move their asses and catch those smugglers.

As traffickers were arrested, the helicopters returned to land. Aboard one was an observer from the Colombian attorney general's office who, in his excitement, was waving an automatic pistol. He shot the pilot in the back while the chopper was still airborne. A second pilot took control and landed. Stevenson air-evacuated the wounded pilot to Barranquilla. The pilot was later transferred to Miami, where he is still undergoing therapy. He is paralyzed for life.

The Dibulla raid resulted in the seizure of 165 tons of marijuana—until then more than twice the amount of the previous world's record seizure.

The DAS officer placed in charge of the stash until it could be burned moved 4,000 pounds to the beach and tried to sell it to a mother ship. He removed the vital parts of the three custom-made baling presses. The DEA took the remaining parts of the presses, which could be easily replaced, and dropped them from a helicopter into the ocean. In secret briefings with congressional leaders and government officials, the DEA takes considerable pride in pointing to photographs of a hovering chopper with a big splash underneath.

The next day a local dope lord showed up and offered a DAS officer the equivalent of \$1.4 million for the stash. The DEA says the freshly baled marijuana was burned but reluctantly admits that "several tons" might have been pulled from the ashes and put back into the pipeline.

During most of the overflights in Operation Stopgap, no Colombians were aboard U.S. aircraft. The DEA conceived, directed, and executed what turned out to be an enforcement effort in a foreign country.

Stopgap provided the first hard evidence of how much marijuana was being smuggled from the Guajira. Until then, the DEA, which specializes in international intelligence and has four agents in Bogotá, said 50,000 pounds per week were coming out of Colombia. This turned out to be one tenth of what the DEA documented was being smuggled out and what is still only part of the total.

In April, flushed with the success of Stopgap but frustrated because it could not publicize the coup, the DEA returned to Colombia for another enforcement effort, facetiously referred to as "Son of Stopgap." The DEA, which could then operate in Colombia pretty much as it chose, took extraordinary security precautions back home. The agency used a Piper Navajo and a crew from another region rather than from Miami and told neither Coast Guard nor Customs that it was returning to Colombia.

Timing for the trip was based on intelligence that a DC-7 would be making a major haul from an area used as a stash by Colombian dope lords. The first day that overflights were conducted, the DC-7 was located on a dirt strip near Riohacha. A waiting strike force was called in, the bust went down, the aircraft and more than \$60,000 were seized, and the crew was jailed. (Local police released the crew at two a.m. several days later.)

After the bust, the DEA ordered the strike force to search for the stash. Helicopter pilots began a circular search pattern and located four nearby warehouses containing more than 570 tons of freshly baled Colombian gold—upward of 1,140,000 pounds of grass only ten weeks after Stopgap seized 700,000 pounds in the same area.

The U.S. ambassador in Bogota asked DEA administrator Peter Bensinger to notify news media about what great things Colombia was doing in stopping the flow of marijuana. Bensinger announced the seizures and gave Colombia all the credit. No one seemed to think it strange that a U.S. bureaucrat was announcing the results of an enforcement effort in a foreign country. A parallel would be the FBI's announcing that Polish security forces had broken up a counterfeit ring in Warsaw.

Bensinger kept the aircraft and crew in Colombia until early summer, flying surveillance flights not only over the Guajira but over the Llanos, the fertile plains southeast of Bogota where marijuana grows in even greater amounts than on the Guajira. Neither Customs nor the Coast Guard were ever notified of any aircraft or boats sighted in Colombia.

"You can't be down in the Guajira and not get information every day. It's criminal not to send it back. It's neglect. It's rotten politics," said a Customs officer.

"I've given up trying to figure out why DEA doesn't trust the Coast Guard, when part of our job is to interdict smuggling vessels," said a Coast Guard officer.

The DEA, which earlier had ordered Customs not to show movies taken during Operation Stopgap, took its own movies during the follow-up operation. Dave Burnett says the footage provides documentary evidence that 570 tons went up in smoke and that none was put back in the smuggling pipeline. "I say it all burn down to a pile of ashes," he says. But Bensinger, who had promised photographs taken at the four burn sites, later backed off, saying the movies didn't turn out very well.

In this, the umpteenth year of America's war on drugs, Bensinger sounds a confident note and predicts happy days ahead.

He says Colombia shows signs of increasing cooperation with the United States in cracking down on smuggling. While this is true, it also is true that Colombia provides sanctuary for more than 300 refugees from U.S. narcotics charges and will not extradite them. It is true that the smuggling of marijuana and the coffee business are in a race for the title of Colombia's best-known industries and that both operate in the open.

Bensinger talks most of all about the increased cooperation and weekly meetings between the DEA, Customs, the Coast Guard, and other agencies. They have signed articles of cooperation and agreed to a long-term public love-in. But out on the street, the agencies are locked in mortal combat and the DEA's major concern continues to be turf protection.

Inevitably, any discussion about marijuana smuggling brings up comparisons with prohibition. And there are many similarities. Techniques used by smugglers are the same used in prohibition—mother ships loitering off Florida as speedboats dash out under cover of darkness for loads of contraband. Arguments favoring marijuana parallel arguments used during prohibition: The government cannot legislate morality; it's impossible to stop marijuana if people want to smoke; it is only a matter of time until marijuana is legalized. Millions of Americans use marijuana regularly and subscribe to these arguments.

But lawmen contend smuggling can be stopped cold. They say the first step is to offer crop replacement programs, financial inducements, or—if need be—economic and political sanctions to stop marijuana at its source. They believe that if the Colombian government made even a token enforcement effort, Pedro Dávila could not use police and military troops to take over a commercial airport almost every night and that multi-ton stash warehouses and wide-open smuggling activity on the Guajira could be slowed. The second step would be to lessen the U.S. interdiction effort along thousands of miles of coastline and airspace from Maine to Texas and to focus enforcement in Colombia.

"If we could stay down there as we did during Stopgap, we could close down the Guajira in a month," one federal officer said. Air and sea debarkation points there are concentrated in a small geographic area. Overflights and offshore patrols could identify every aircraft and vessel leaving Colombia, the officers contend.

"Coast Guard and Customs could grab boats and aircraft. We wouldn't get them all but we could make it too risky and too expensive for them to continue," one agent said.

The agents say that even though U.S. pressure curtailed opium production in Turkey and the DEA virtually stopped marihuana coming out of Mexico, no similar efforts appear to be forthcoming in Colombia. State and federal officers will likely continue to fester with a raging impotence about how little impact they have on smuggling from Colombia and about the apathy of millions of Americans toward marihuana and its concomitant violence.

"It's too bad," one officer said. "All it takes is for somebody to learn just a little about what's really going on out there and he's on our side."

Senator CHILES. Were either of you concerned whether you were going to make it back alive?

Mr. ELLRICH. Very concerned.

Mr. FLUET. It took us 1 hour to get to 1,000 feet.

Senator NUNN. You were trying to get there? You weren't trying to stay down?

Mr. FLUET. No. There was no point in staying down at that point, because we were over Colombian waters and had no fear of radar detection.

Senator CHILES. What were your prearranged plans once you flew back to the United States?

Mr. FLUET. We were supposed to penetrate around Boca Raton and then fly west and then south. I don't know from there.

Mr. ELLRICH. The point of drop was supposed to be out in the Everglades in the vicinity of the jetport, just a little bit northeast of the jetport.

Senator CHILES. That is where you were supposed to drop the marihuana from the air?

Mr. ELLRICH. Yes, sir.

Senator CHILES. Will you describe, Mr. Fluet, what happened once you entered the United States?

Mr. FLUET. We had some winds we didn't know about, weather, and we didn't enter where we were supposed to. We came in around Pompano. We flew enough to avoid radar but that transponder was working the whole time. So we were broadcast as to where you are.

We flew northeast for a while, then west, then dropped down to about 500 feet and flew down toward the Everglades.

Senator CHILES. By that time you had gotten tired of hearing the beep, so you had taken the headset off so the beep wouldn't bother you?

Mr. FLUET. That is exactly right.

Mr. ELLRICH. About 18 or 19 hours had gone by since we left Fort Lauderdale and we were at a point where we were so tired we didn't really care about anything.

Mr. FLUET. That airplane was really hard to fly. It took both of us all the time on the controls.

Senator CHILES. It took you 10 hours down and 3½ to 4 hours on the ground. How long was the flight back?

Mr. ELLRICH. About 10½ hours. We had headwinds on the way back.

Mr. FLUET. It was longer coming back. We were heavier.

Senator CHILES. You had really been in the airplane and on the ground 24 hours; you hadn't had any sleep?

Mr. ELLRICH. No sleep, nothing to eat.

Senator CHILES. Both of you were having to literally fly the plane to stay on the controls?

Were you to make radio contact with the ground crew?

Mr. ELLRICH. On arrival?

Senator CHILES. Yes.

Mr. ELLRICH. Yes, we were.

Senator CHILES. Did you make that?

Mr. ELLRICH. No. We were unable to.

Senator CHILES. Did you drop the marihuana over the Everglades?

Mr. ELLRICH. Yes, we did.

Senator CHILES. What altitude were you flying at the time of the drop.

Mr. ELLRICH. About 150 feet.

Senator CHILES. Didn't you have a lot of turbulence that day? Was that a concern to you to be flying?

Mr. ELLRICH. That is why we were both having to be on the controls. It took both of us to manhandle the airplane.

Senator CHILES. You were just literally trying to muscle the airplane.

Senator NUNN. Why did you drop the marihuana? Was it to be able to land safely or were you afraid you were about to be apprehended? What was the reason for dropping it?

Mr. ELLRICH. It was a predetermined thing.

Senator NUNN. You had already determined where you were going to drop?

Mr. ELLRICH. Yes.

Senator NUNN. At that stage did you know the law enforcement people had you under surveillance?

Mr. ELLRICH. We had suspicion or that feeling.

Mr. FLUET. Because we couldn't find radio contact. We hadn't seen anybody. We couldn't make radio contact, couldn't see anybody on the ground, didn't know where anybody was. So we were guessing, but we hadn't seen anybody in the air.

Senator NUNN. What time of day or night was this?

Mr. ELLRICH. It was about 11 o'clock in the morning, Saturday morning.

Senator CHILES. Did you drop all the marihuana in the drop zone?

Mr. ELLRICH. Yes, we did.

Senator CHILES. You dropped that into the right area?

Mr. ELLRICH. I wouldn't say in the right area. We had strung it around quite a large area. It was all out of the airplane.

Senator CHILES. The plane flew a little better after you got all of the marihuana out of it?

Mr. ELLRICH. Much better.

Senator CHILES. What transpired after all the marihuana had been dropped from the airplane?

Mr. ELLRICH. We proceeded north or northeast and flew up to Orlando.

Senator CHILES. That is where you had planned to land?

Mr. ELLRICH. Yes. We landed the airplane where we had planned, to land it at the Orlando airport.

Senator CHILES. Which airport?

Mr. ELLRICH. Herndon.

Senator CHILES. What happened when you landed the plane?

Mr. ELLRICH. Subsequently we were apprehended by an Orange County and Orlando, is it? The county sheriff's office apprehended us when we shut the airplane down; held us until customs officers got there, which took about a half hour after we landed. They showed up.

Senator CHILES. The customs people showed up about half an hour later?

Mr. ELLRICH. Yes.

Senator CHILES. Mr. Ellrich, what were your motives for becoming involved in this operation?

Mr. ELLRICH. Mainly, of course, it is money. But we had had several prolonged strikes at the company and some large medical bills that I had from a couple of accidents my wife had been in.

Senator CHILES. Mr. Fluet, what were your motives?

Mr. FLUET. After counseling for 1 year to try to find out, money was part of it but not the whole thing. Sense of disenchantment with my life, the adventure, the excitement. I don't know anything else.

Senator CHILES. I understand that with the concurrence of the U.S. attorney's office that Federal prosecution in this case was declined in favor of State prosecution and then the State of Florida granted both of you immunity for your testimony before the State attorney.

Do either of you have criminal charges pending against you at this time?

Mr. ELLRICH. No, sir.

Mr. FLUET. No, sir.

Senator CHILES. At this time, Mr. Chairman, I would like to put in as exhibits, sworn statements of both Mr. Fluet and Mr. Ellrich. Senator NUNN. Without objection.

[The documents referred to were marked "Exhibit Nos. 52 and 53" for reference and are retained in the confidential files of the subcommittee.]

Senator CHILES. Would you explain to the subcommittee, if you could, the impact this incident has had on your lives as well as some of the events which occurred after your arrest?

Mr. FLUET. The first person I talked to other than law enforcement officers and officials, whatever, after we were arrested was a man from the company I worked for who told me I was fired. So I lost my job, I lost my career. My career came to an abrupt halt.

The months that followed, my wife left me. I lost my children, my home, put it up for sale because I needed money.

Senator CHILES. Mr. Fluet, what advice would you give to some person that \$50,000 is held out to, that you can make a trip, in a plane, deliver one package on a plane, marihuana, cocaine or anything like that, you could make just one trip and be on easy street?

Mr. FLUET. The incident ended up as a very positive experience for me because it has given me a much more clear awareness of my own personal values. My priorities are quite clear. The problem is that the money seemed great in the first place. Then it cost me everything that I had.

But then it gave me the courage and the insight to establish my priorities and my children live with me again now. I have them back and I have built another career, started in a new profession.

Now this has come up. I don't know if that will happen. I hope my name won't be mentioned in the papers. But I don't know.

Senator CHILES. Would you say that it was really more positive that you were caught on the first trip?

Mr. FLUET. The best thing that ever happened.

Senator CHILES. Than if you had been successful?

Mr. FLUET. Yes, sir. My advice would be that the answers are at home, not in Colombia.

Senator CHILES. The answers are at home, not in Colombia?

Mr. FLUET. Yes.

Senator CHILES. Easy go was not always so easy.

Mr. Ellrich?

Mr. ELLRICH. I don't think there is an easy way. I think I would advise anyone that is thinking about doing anything of this nature not to do it. Absolutely not to.

Senator CHILES. What kind of impact has this had on your life?

Mr. ELLRICH. Of course it has cost me a tremendous amount of money and I have had to sell my house and move my family. I was fortunate enough to keep my job. I hope I still keep it.

Senator NUNN. Mr. Fluet, after you were arrested and you related all of that to us, were you ever threatened as to your testimony?

Mr. FLUET. Yes, sir, one time. A man, right after I got out of jail. We spent the weekend in jail after we were arrested, it was a holy day weekend. I think it was the first night, or perhaps the second night, whenever I got home. I got home, I received a call from a, I don't remember his name, a man from the DEA who made the obvious statement; says that, you know, I have had a good life up until then. If I cooperate he would give me immunity. All that sort of thing.

I was scared, confused at the time, and remembered people were reading my rights for 3 days and all. I told him I didn't know what I was going to do, but the rights statements told me to talk to an attorney and that is what I was going to do.

Hung up the telephone; 15, 20 minutes later the phone rang again, and I don't know who it was. Someone at the other end told me if I spoke to the DEA, anybody else, whatever, threatened me.

Senator NUNN. What did they say?

Mr. FLUET. They threatened me, me and my family, whoever it was. No one told me, but talking to the DEA was insanity. Obviously, if they couldn't keep a secret for 20 minutes, it would be absolutely worthless.

Senator NUNN. You mean you think there was a connection between the two calls?

Mr. FLUET. It happened 20 minutes apart. I don't know that there was, but it was enough of a coincidence, it damned sure set my mind.

Senator NUNN. Were you threatened any more? Was this the extent of it?

Mr. FLUET. I was never threatened again.

Senator NUNN. Mr. Ellrich, were you ever threatened by any one concerning your testimony?

Mr. ELLRICH. Not other than law enforcement people that arrested me off an airplane that I came in on, my job, the airplane I came in on when I landed at Miami and six law enforcement people there, customs, Dade County police, two unidentified people arrested me on the State warrants and took me over to a room in the west side of the airport and questioned me for about 1½ to 2 hours and said that they had arrested some known hitman and that he had a list in his hip pocket and my name was on it. If I didn't cooperate with them, they were going to turn him loose. That is the only threat that I have had in connection with this as far as I know.

Senator NUNN. Nobody from the criminal element ever threatened you?

Mr. ELLRICH. No.

Senator NUNN. Mr. Fluet, nobody ever directly threatened you except that phone call?

Mr. FLUET. Not an overt threat. That phone call was an overt threat. There may have been some veiled ones, nothing that really stood out.

Senator NUNN. Do you know Piazza?

Mr. FLUET. No. I met him one time shortly after we were arrested; went to his house, and there was some friendly veiled statements then but nothing overt.

Senator NUNN. What kind of thinly veiled statements?

Mr. FLUET. It is wise to keep my mouth shut, to be good.

Senator NUNN. Just implied, but not direct?

Mr. FLUET. That is right.

Senator NUNN. Why did you go to his house? Did you ever put up bond?

Mr. FLUET. I didn't know. I was very confused at the time. It was the first night I got out of jail. I was really just in kind of semishock. I didn't understand what was going on. I was just kind of fooling around; I am not sure what his association was. I know I was not, didn't receive any questions from him—

Senator NUNN. Did not what?

Mr. FLUET. I knew he wasn't going to be my lifelong friend.

Senator NUNN. Is that the only time you had met him?

Mr. FLUET. The only time.

Senator CHILES. You went there with some of the other people in connection with the arrest?

Mr. FLUET. Yes.

Senator CHILES. Did anybody tell you he was behind this whole operation or anything of that nature?

Mr. FLUET. Sir, I was then and I continued to be under the impression that I shouldn't know anything about it. Any time somebody would start talking about it, I would excuse myself and walk out.

Senator CHILES. You didn't talk about in any detail who was behind it that night?

Mr. FLUET. No.

Senator CHILES. Were you there, too, Mr. Ellrich?

Mr. ELLRICH. No, sir, I wasn't.

Senator NUNN. Do you know Piazza?

Mr. ELLRICH. Yes, I do. I have already testified that I know him through the body shop.

Senator NUNN. You weren't in his house that night?

Mr. ELLRICH. No, I wasn't.

Senator NUNN. Mr. Fluet, you weren't directly threatened, you were just given sort of an implied warning. Is that right?

Mr. FLUET. Yes.

Senator NUNN. Not to do what?

Mr. FLUET. Cooperate with the authorities, whatever, just to sit back.

Senator NUNN. When did you decide to cooperate with the authorities?

Mr. FLUET. I found myself, I was subpoenaed and given immunity which I did not ask for in Naples, and then I went into a room, was told that someone had testified and had implicated me specifically and it was definitely strong enough to convict me and further told if I didn't testify, I would go to jail on contempt in addition.

Senator NUNN. So you were given immunity and compelled to testify?

Mr. FLUET. Yes.

Senator NUNN. Is that the same with you, Mr. Ellrich?

Mr. ELLRICH. Yes, sir.

Senator CHILES. I want to thank you very much for your appearance and your testimony today.

Senator NUNN. Thank you very much for your cooperation. We are most appreciative and also my thanks to your attorney.

Our next witness is Mr. Joseph D'Alessandro, who is the State attorney of the 20th judicial circuit. We have another witness that is going to be coming in a few minutes. But we wanted to go ahead with Mr. D'Alessandro at this point.

Mr. D'Alessandro, we appreciate your being here. Do you want to introduce your associate with you?

Mr. D'ALESSANDRO. Mr. Ralph Cunningham, chief investigator, with my office.

Senator NUNN. We are glad to have you.

We swear in all of our witnesses before the subcommittee. Mr. Cunningham, are you going to give testimony, too?

Mr. CUNNINGHAM. Yes.

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

Mr. D'ALESSANDRO. I do.

Mr. CUNNINGHAM. I do.

TESTIMONY OF JOSEPH P. D'ALESSANDRO, STATE ATTORNEY, 20TH
JUDICIAL CIRCUIT FLORIDA; AND RALPH CUNNINGHAM, CHIEF
INVESTIGATOR

Senator NUNN. We appreciate very much your appearance today, deeply grateful for your cooperation, and the cooperation of Mr. Cunningham in assisting our staff in their overall investigation and work here in Florida. You have been most helpful.

I understand that you have a brief statement, and we will be glad for you to start off with that before we get into any questions.

Mr. D'ALESSANDRO. Thank you.

Mr. Chairman and members of the subcommittee, I want to thank you very much for giving me an opportunity to testify before you today and to explain to you some of the problems that I and local law enforcement on the west coast of Florida have encountered in regard to the smuggling of marihuana and cocaine from Colombia through the west coast of Florida.

Before I go into details, I want to explain the type of circuit which I represent and the Federal manpower which is available to us to enforce the Federal laws. I might state I apologize for my voice. Something hit me in the throat and I am just getting it back.

Senator NUNN. I have got the same thing exactly. So I fully sympathize.

Have you got some water there?

Mr. D'ALESSANDRO. I believe there is some.

In the 20th judicial circuit, made up of five counties, three of those counties, Charlotte, Lee, and Collier, are located along the shores of the Gulf of Mexico. One of the counties, Collier, is located within the jurisdiction of the U.S. Southern District of Florida, headquartered in Miami, and the other two counties, Charlotte and Lee, are located within the jurisdiction of the U.S. Middle District of Florida, headquartered in Tampa.

Mr. Chairman, we are faced today with a law enforcement problem which does not limit itself geographically to the Fort Myers area alone, nor is this problem confined solely to the State of Florida. Our problem of dealing with an area heavily concentrated with narcotic smuggling activity has produced adverse consequences to law enforcement authorities throughout the eastern seaboard, and possibly throughout the Nation. If one is to look at this problem in its entirety, the impact extends even to that of an international concern.

What I'm talking about is supply and demand. What we have today is an enormous demand with an almost unlimited supply. What we also have today is high profits and very low risk. Without full cooperation of all those involved in the criminal justice system, we can never reverse this order of high profits and low risks.

I feel certain that what I speak about before this subcommittee is reflective of most other local law enforcement agencies. We are the ones that suffer from the impact. We have to live with it. We are most willing to cooperate fully with other agencies, including the Federal authorities, but we are limited in our capabilities like everyone else.

From my experience, this cooperation has developed into a one-way avenue, coming to a bottleneck at the Washington, D.C., level, tied up in a massive amount of redtape.

Mr. Chairman, I am most appreciate of the subcommittee's interest in proceeding to clear up this mess.

I would be pleased to answer any questions you and Senator Chiles may have.

Senator NUNN. Thank you very much. We have just heard testimony, and I think you have been here for most of it, from Mr. Fluett and Mr. Ellrich about narcotics, particularly marihuana smuggling out of Colombia.

Is this a typical kind of case? Is this unusual in many respects or do you have a lot of this kind of activity?

Mr. D'ALESSANDRO. No; we have quite a bit. This is a typical narcotics smuggling case. As you are aware, this is one where the U.S. Customs got the information on it. They obtained a Federal court order to put electronic surveillance on this DC-3. They intercepted it when it came into the United States and followed it to when it dropped its tonnage in the circuit in which I am State attorney.

At that time, the U.S. Customs requested help from the Collier County Sheriff's Department and they notified DEA. They came in. Arrests were subsequently made. We were advised by the Department of Justice that they declined prosecution.

U.S. Customs asked the Sheriff's Department of Collier County and my office if we would proceed with the investigation. We did, and as part of that, we saw fit to grant immunity to the two individuals that just appeared here before you because we were attempting to work up the ladder to get some persons we thought were much higher involved, that specifically being John Boyd, Tracey Boyd, and John Piazza.

We subsequently, through the immunity in this matter and other information developed, did convict on numerous cases John and Tracey Boyd.

Senator NUNN. How many people did you convict out of this episode?

Mr. D'ALESSANDRO. To my recollection, there were three.

Is that right?

Mr. CUNNINGHAM. That is right.

Senator NUNN. Three people in addition to the two we have heard from who received immunity and were not prosecuted?

Mr. D'ALESSANDRO. Yes.

Senator NUNN. Did you in fact go up the ladder to the Boyds?

Mr. D'ALESSANDRO. We did get the Boyds. It took us a couple of years. But from information developed in this matter, that led us to other things, we were able to successfully prosecute the Boyds.

Senator NUNN. They weren't convicted on this case, but this information helped you get them later on. Is that right?

Mr. D'ALESSANDRO. Yes.

Senator NUNN. How about Piazza, did you prosecute him?

Mr. D'ALESSANDRO. No.

Senator NUNN. He was prosecuted by Federal authorities?

Mr. D'ALESSANDRO. Federal authorities are handling that.

Senator NUNN. How was it that you got involved in this particular case? Why did the Federal Government decline jurisdiction?

Mr. D'ALESSANDRO. I am not really sure why, but that is one problem we have had in the past. I think there are two or three reasons

why the Federal Government in my experience have declined prosecutions of this nature. One is our geographical area that we reside in. As I said, my circuit is partially in one Federal district and partially in another Federal district.

It has been my experience that DEA, I guess because of time or space, distance and travel, they are reluctant to come into our area and handle the cases. If they can find a way out of it, they do.

I don't really know why the Federal Government declined jurisdiction.

Senator NUNN. Does that happen frequently?

Mr. D'ALESSANDRO. Yes, sir. Prior, in the other administration, it was very difficult to get the Federal Government to prosecute drug cases. That has improved.

Senator NUNN. Any kind of drug cases or particularly marihuana cases?

Mr. D'ALESSANDRO. Marihuana. It has improved a great deal but I think the U.S. attorney is still hampered by lack of prosecutors, lack of staff. I think that is a consideration that the Federal Government considers.

Third, and I think an important factor, is the time that could be gotten in the State courts versus the Federal courts. Our State law used to have a period of time of 5 years for possession of marihuana. I prepared legislation and got it to our legislative delegation where they amended the law in the State of Florida to where you can get up to 15 years if you possess over a certain amount with intent to deliver or sell.

We have had numerous occasions where the Federal Government when we have gotten someone or someone has been arrested where they are pretty high up in the criminal activities, where they have specifically requested that we prosecute because of the potential time that they could receive in a State court system versus a Federal system.

Senator NUNN. Is this a burden on you or do you welcome the opportunity to prosecute marihuana cases?

Mr. D'ALESSANDRO. I am not sure I welcome the opportunity. We do it and we do it well, but it is a burden. It is a drain on manpower of staff, just tremendous. It is a drain on the financial abilities, the manpower of local law enforcement to a tremendous degree.

Senator NUNN. I understand that you work pretty closely with the Customs Service. Is that right?

Mr. D'ALESSANDRO. Yes, sir; we do.

Senator NUNN. Do they have a more active operation in your particular area than DEA does?

Mr. D'ALESSANDRO. I think that is where the problem is. We have, and have worked with Customs for a long time. I say we, I am talking all law enforcement in my circuit. But I think Customs has gotten to the point through rules and regulations recently that there is just not much assistance that they can give us anymore.

At one time they could investigate their cases, but the rules and regulations that have come down now, Customs cannot investigate a case. They can't actively work any investigations and they have to call in DEA.

The problems that I see is DEA doesn't cooperate, doesn't come in. I see these as very real problems. We cannot anymore, if we get lead

time that something is coming down, that we are going to need a helicopter, a plane, or something is occurring out in the Gulf of Mexico, we have 15, 20, 30 minutes notice, in the past Customs was very efficient, would attempt to help us if they were available.

They still came from Tampa and Miami, give us manpower and the aircraft, but now you can't even go through that.

Senator NUNN. When did all of this change? Has it been in recent months, recent years? When did the rules and regulations binding and restricting Customs activities come down?

Mr. D'ALESSANDRO. I believe within the last couple of years.

Mr. CUNNINGHAM. It basically started when DEA was formed and the legislation took away Custom's international narcotics enforcement priorities and gave those priorities to DEA. And DEA was formed, as you well know, by the merging of many Customs agents into DEA and changed from the old BNDD to the new agency DEA.

But even after that merger was completed, we progressively—the cooperation got less and less and less as administrative policies and rules came from the head of Customs as to what involvement they could have in ongoing narcotics investigations.

As to the last memorandum that have come out in just the last few months, where it even limits Customs air details to not being able to take a State or local law enforcement or another Federal agency aboard their craft to work any cases without getting prior permission from Washington, D.C.

Mr. CUNNINGHAM. Yes; it has. They also have started the marking of their vehicles and the marking of their aircraft which is in my opinion ludicrous to the apprehension of any narcotics smugglers. Once you fly into an airport with an aircraft with Customs signs all over it, that pilot is useful—his usefulness to infiltrate any narcotics groups is completely aborted.

Senator NUNN. When did they start marking their automobiles and airplanes?

Mr. CUNNINGHAM. In the past few months.

Senator NUNN. 1978?

Mr. CUNNINGHAM. Yes.

Senator NUNN. Has anybody given any reason why they have done this, why they have tightened up so much in terms of their informants and so forth?

Mr. CUNNINGHAM. The basic reason is that—the reasons we get is that they have been forced to do this by administrative rules, the ever going conflict, I guess, between DEA and Customs Service.

Senator NUNN. You think there still is a conflict between DEA and Customs as far as you observe?

Mr. CUNNINGHAM. There is no doubt about it. You could talk to any law enforcement agency in the State of Florida and I am sure they are going to tell you the same thing.

Mr. STATLER. Do you also sense that from the DEA angle? Do the DEA agents tell you this?

Mr. CUNNINGHAM. Yes. On the street level, the Customs agents, the locals, us, the State, and DEA could get along fine, but as it progresses to the regional and to the Washington, D.C., level of administration, it just comes to a complete halt.

I believe a perfect example of that would be Operation Stopgap, which as you are well aware, was the overflight of South America, clandestine airports in the Guadalajara Peninsula where probably 80 percent of the marihuana is coming out of right now.

Customs and DEA were involved in that operation with taking aerial photographs, transmitting that information back to the intelligence center where it was disseminated to local and State law enforcement agencies.

As Senator Nunn is aware in his home State of Georgia, a DC-7 aircraft, large four-engine aircraft was apprehended with a large amount of marihuana on it from this information. But when you see memos, which I have copies of, that have been party to conversations, from DEA saying that Customs was completely, their part in the operation was fruitless and they should be omitted from any further operations. When you have that type of bickering and fighting—

Senator NUNN. You viewed that as a good operation?

Mr. CUNNINGHAM. Tremendous. It was the best thing that has ever been done since I have been in narcotics and that has been 13 years that I can testify, that has ever been done to identify the problem.

There is absolutely no doubt when you look at the films which your staff has been made aware of and you see hundreds of thousands of pounds of marihuana scattered along the beach and you see trucks and trucks and trucks, one after another, uncovered, hauling bales of marihuana, there is no doubt in anybody's mind that this is clandestine. This is covert, this is a complete covert operation.

It would be identifiable to any Government agency that wished to pursue it at the South American level which is not being done.

Senator CHILES. You said you saw memos yourself from DEA saying that Customs had no part or performed no role in this operation?

Mr. CUNNINGHAM. That is correct.

Senator CHILES. A meaningful role?

Mr. CUNNINGHAM. Yes; your staff has been provided with those.

Senator NUNN. What level did those memos come from?

Mr. CUNNINGHAM. That memo was initiated from Mr. Chasen, who is the head of the Air Wing of the DEA Office in Miami, to Mr. Miley, who is the Assistant Regional Director, I believe.

Senator NUNN. The thing that is puzzling to me about this is that at the Washington level, DEA and Customs appear to be working together better at least at the very head than ever before, but you are saying basically that is not the case as you see it in the field?

Mr. CUNNINGHAM. That is correct. Maybe it is the case of one hand not knowing what the other is doing.

Senator NUNN. Somewhere the bureaucracy is getting lost.

Senator CHILES. Relate to me the incident that I understand you mentioned about Customs not being able to take a phone call from an informant having to have you all—

Mr. CUNNINGHAM. They have been basically instructed that they are not to pursue any of their intelligence contacts in the Caribbean Islands, in the South American countries. As you know, before DEA took over the International Enforcement and Customs was involved in it, they had an enormous intelligence built up, and very good.

These people continue to act as informants and give information on planes and boats coming this way.

Now we are put in a situation that they are not allowed to have informants because, basically, that is an investigation and they are not supposed to do investigative endeavors. So, in some cases our office will accept the collect calls from the foreign countries and pass the information on to Customs that aircraft is coming, since they cannot put these telephone calls on their bills.

Mr. STATLER. I think it is fair to say that this subcommittee of the Governmental Affairs Committee is largely responsible for Organization Plan No. 2 which established DEA in 1973.

Nothing in our wildest imagination would have prevented Customs from receiving telephone calls from their own sources overseas. So if this is standard operating procedure at this point, it is not what was intended by that plan.

Under the plan, DEA was to be the lead agency in dealing with narcotics. Customs was to continue to cooperate with DEA. Receiving phone calls would certainly be consistent with that kind of cooperation.

It is important for us to know and to do something to correct this situation. If the Customs agents are unable to proceed, then that has to be corrected. If this is true, it is a sad commentary.

Mr. D'ALESSANDRO. Some of the problems in the coordination of that, as you know, through this subcommittee, and through Congressman Lester Wolff's committee, they have gone into this problem.

I testified in Hollywood, some months ago, and along with other persons in the State of Florida. As you know, efforts were made to get Customs offices, DEA offices established within the Fort Myers area, the 20th Judicial Circuit.

We went for a long time, when are you coming, when are you coming? What is the problem? Office space. They couldn't get the space through GSA.

Finally, Customs was advised that they had no money, couldn't get the space. I offered Customs and I offered DEA temporary space in my office, let's get this on the road.

DEA came down, looked at it, I haven't heard from them ever since. Customs came down, looked at it.

Senator CHILES. How long ago did DEA come down?

Mr. D'ALESSANDRO. They came, to the best of my recollection, sometime in July, I believe. Customs came down, looked at the space; they said fine, we had three offices remodeled, they are working there right now.

But without the other part of the team, DEA, we still have those same problems. Then there is a bunch of administrative problems involved, but when Customs got down, GSA lost their forms, they didn't have the furniture, phone requisitions weren't in, things of that nature.

So they have been operating basically out of our office.

Senator NUNN. Senator Chiles is the expert on GSA. I guess we will turn that matter over to him. [Laughter.]

Senator CHILES. GSA is having their problems right now. You have provided office space. You provided that yourself and they are now, Customs is availing themselves of that, but you haven't heard from DEA.

Mr. D'ALESSANDRO. That is correct.

Senator CHILES. Having Customs is like having half the arm because they can't go forward with an investigation. They are supposed to turn it over to DEA once they find the narcotics.

Mr. D'ALESSANDRO. That is correct. We have seven Customs officers and one supervisor, Customs personnel, presently in Fort Myers in the space we gave them.

Senator CHILES. We listened to the testimony with a little shock today about the two pilots saying this military convoy comes out to the plane, they think they are about to be arrested, they set up a defense perimeter around the plane, they are actually protecting the loading of the drugs on the plane.

You got that same information. Do you put any kind of credence into that kind of information?

Mr. D'ALESSANDRO. When we first took statements from these individuals, first learned that military police, army personnel were helping load a plane with marihuana in a commercial airport, we didn't put much belief in it.

But through subsequent investigations and information that we have developed on our own, received from other agencies, I am totally convinced that it is true. I am convinced the drug smuggling activities in South America reach into all levels of the Government.

It can't go on without high officials allowing it to go on. We have traced money. When I say we, I don't mean just myself and my office but many, many agencies have traced moneys, and we know they are coming through banks in the Miami area.

Senator CHILES. What kind of sums of money are you talking about?

Mr. D'ALESSANDRO. We are talking in excess of \$70 million, \$80 million; this money is being funneled to persons in those countries in high Government areas.

Mr. CUNNINGHAM. That money is basically from one group. I think the total money picture going through 9 or 10 south Florida banks is going to represent \$1, \$1.2, \$1.3 billion.

Senator NUNN. You are talking about how much?

Mr. CUNNINGHAM. \$1 billion.

Senator NUNN. In what period of time?

Mr. CUNNINGHAM. Probably 23 months, close to 2 years.

Senator NUNN. You are talking about \$1 billion flowing through south Florida?

Mr. CUNNINGHAM. Through south Florida; yes.

Senator NUNN. A billion dollars flowing through south Florida in a couple of years period of time?

Mr. CUNNINGHAM. Yes, that money is being transferred to various foreign markets and offshore banks.

Senator NUNN. Have you got a money flow investigation going on now?

Mr. CUNNINGHAM. Yes; we do.

Mr. D'ALESSANDRO. Yes.

Senator NUNN. The subcommittee has been looking for many months at the whole money flow situation here in south Florida and the potential of doing more work on money flow at the Federal level.

We are very interested in that subject. Senator Percy has been vitally involved in that investigation. Of course, Senator Chiles and I have also. Since Senator Percy could not attend these hearings, we decided to delay witnesses that will testify about money flow until we can have hearings either here or in Washington after the first of the year.

We wanted to make sure Senator Percy could be in attendance when we talked about money flow. We look forward to continuing to work with you on that. I think that is one of the most important potential law enforcement vehicles for really getting the people who are at the top of these organizations.

I assume you are pursuing those kinds of investigations more now than in the past. Is that right?

Mr. D'ALESSANDRO. Yes, we are, sir.

Senator CHILES. Since your office has been involved in so many extensive drug smuggling investigations, have you reached any conclusions or deductions of what the U.S. Government can do to help this problem?

Mr. D'ALESSANDRO. Yes, I have, Senator. I think the decision has got to be made that they are either going to enforce the Federal laws that are on the books and make the commitment and devote the manpower, the effort, whatever is involved in enforcing, or to go ahead and tell the public that in reality we are not enforcing the laws, that we are doing it from time to time not to be criticized by the media.

In my opinion, an all-out effort has not yet been made. We are talking about from a law enforcement point of view, we are talking about some of the most vicious type activities. You are talking money, you are talking killing people, contract killings.

We had one recently in Naples, and a fellow down in the *Boyd* case with contracts on people's lives. These are things that are of great concern to the public. I think the Government has got to make a commitment to do it.

I think very importantly one other aspect, you have an opportunity, I think everyone knows that this type of activity is organized. You are talking organized criminal activity. You have an opportunity for law enforcement to make inroads and climb that ladder in this field than you do in any other area.

You are not going to—prostitution doesn't get you in it; loansharking doesn't get you in it, but this puts you in the direct step in the ladder to climb up the ladder.

I think the commitment is needed if we are going to do it.

Senator CHILES. What do you think has to be done to actually make that commitment and to see the Federal Government carry out their commitment?

Mr. D'ALESSANDRO. I think basically two or three things. One, the manpower commitment, the money commitment to enforce the laws.

But second, no matter how much law enforcement you have, you are not going to stop the trafficking in marihuana. It is going to continue. The only way I know it can be stopped is from the other level, through the legislative process to put pressure on the countries where it is being grown and imported into this country, to either cut off their foreign aid, or some type of matter of something of that nature, or to coordinate efforts between our Government and governments in

South America, Mexico, very, very strongly, coordinate in this matter; to enforce the laws.

But I am not sure I see that happening. We have difficulty coordinating between Customs and DEA. I am not sure we can do it.

Senator NUNN. Are you saying if we can't even coordinate between our own Federal agencies properly it will be hard to coordinate between our country and another country?

Mr. D'ALESSANDRO. That is right.

Senator NUNN. Were you encouraged at all by the announcement by the Colombian Government that they were going to vigorously enforce the law and perhaps even shoot down airplanes? What was your view about the announcement?

Mr. D'ALESSANDRO. I heard it. Let's say I hope it comes about, but I will wait and see. I am not very encouraged with that statement.

Senator NUNN. We should mark you down as skeptical?

Mr. D'ALESSANDRO. Yes, sir.

Senator CHILES. What kind of problems do you have in trying to share information or get information back from the different Federal agencies? Let's take them: the FBI, then IRS, Strike Force, U.S. Attorney's Office, DEA, Customs.

Mr. D'ALESSANDRO. Let me preface my answer with some exceptions on a person-to-person type basis or relationship that we have developed with someone in those agencies. Other than that, it is a one-way street. It is give from the State and get nothing back.

Senator CHILES. You have got to explain that a little bit more. I think that is a term one-way street that a lot of people in the trade understand, so the public can understand. What do you mean when you say a one-way street?

Mr. D'ALESSANDRO. They want our information, and we give it to them, and assist them in whatever they need assistance in. But when we need assistance, or information, we don't get it. There are numerous times when we are doing an investigation, facts have been brought to us, and arrest has been made, and it doesn't develop enough where you can prosecute.

We feel that there is something there IRS should look at. It is nearly impossible to get their attention, to get them to look at it from my experience.

Mr. Cunningham deals with them daily and he probably could answer that in much more detail.

Senator NUNN. Are you talking about the IRS in particular?

Mr. CUNNINGHAM. Yes, but the Internal Revenue Service, as you know, in their defense, I would like to say they are precluded by law from disseminating any information that they receive or any information that is on any income tax disclosure forms.

Senator NUNN. That is a law we are taking a close look at in this subcommittee. We have heard of one complaint after another about how this law ties the hands of IRS. We even heard a case of where they discovered a whole narcotics ring in the course of investigating a tax return and couldn't make that information available, or were very reluctant to.

Mr. CUNNINGHAM. That is true. It is an absurd law, I think. It is a situation where you have a law enforcement agency such as IRS that becomes aware of possibly even murders, contract killings, ex-

tortion, narcotics, and it is punishable by 5 years if that IRS agent discloses that information to another Federal agency or another State agency.

Senator CHILES. What about the provision that requires IRS to notify someone when they are a target of an investigation? Have you seen any change that this has made in regard to your dealings with IRS?

Mr. CUNNINGHAM. Most definitely.

Senator CHILES. Has it affected you in regard to whether you will share information with IRS now?

Mr. CUNNINGHAM. Certainly. Local law enforcement is not going to provide information that they have on an organized crime target when they know that target is going to be warned. We have the same problem with the telephone company now in doing wire intercepts.

When you do a wire intercept, within a matter of 90 days, that person is going to be notified that his telephone was intercepted or even shorter period of time, depending upon the company. That would make you think a long time in analyzing your investigation to see, are we going to be hampered by this disclosure, will we have it completed in this amount of time, or do we want to go further from here up the ladder to other people involved? That disclosure will prohibit that. It most definitely is so.

So we have to look at all of those angles and analyze them and see where you want to go.

Senator CHILES. What about the Freedom of Information Act? Have you seen that give you any problems with information that you have shared?

Mr. CUNNINGHAM. Yes, sir; it has.

Senator CHILES. Tell us how that occurred.

Mr. CUNNINGHAM. When you have an individual that is entitled to, and privy to, the investigative matter that the Federal agencies have put together on him, very often from that information, even though the reports are written in a way to try to camouflage informants and witnesses, it is pretty easy to determine who gave up information within the organization.

That information has resulted in contract killings. It is a definite problem.

Senator NUNN. Have you known that personally? Have you seen that kind of example personally?

Mr. CUNNINGHAM. Yes, sir.

Mr. D'ALESSANDRO. I know of instances we have had—when I am talking about this one-on-one relationship with people in law enforcement, the FBI—a lot of times we get into something and the agent will tell us, look, I will help you, but I can only go this far.

If I go further than that, I have to put it in writing, and then it has got to be opened up. I see areas where that just creates problems and hamstrings you in law enforcement. You find ways to help each other but not as fully as one can.

Senator NUNN. Are you saying that the agents themselves and the people you work with in the Federal agencies like IRS, and so forth, deliberately withhold this kind of information and deliberately make it a one-way street? Or are you saying that the Federal rules, regulations, and laws, like the Freedom of Information Act, and some of the

IRS regulations and rules inhibit them from this kind of cooperation, or is it somewhat of a combination?

Mr. D'ALESSANDRO. It is a combination of both. One of the rules and regulations and the other has just been my experience on the State level dealing with Federal, on the Federal level, that in the 10 years I have been involved in it I have come to the common conclusion that the Federal Government, dealing with them, is a one-way street. They want what you have and they won't help you and share information if they can get away from doing so.

Senator NUNN. It is a matter of attitude.

Mr. D'ALESSANDRO. Yes.

Mr. CUNNINGHAM. To be successful the rules are going to have to be broken, some of the rules in the Federal agencies. That happens quite often. Sure, if Customs, to give you a perfect example, didn't break some of the rules that they are not supposed to fly out over to the Caribbean Islands without permission from Washington and notifying DEA and all that they are doing so they wouldn't seize half the vessels that they did.

Senator NUNN. Would it be an overstatement to say in sort of paraphrasing that you feel like the Customs agents have really been handcuffed in their ability to effectively enforce the law?

Mr. CUNNINGHAM. They have been destroyed. To give you an example, the freighter, the largest shipment ever made, 115 tons off of Jacksonville last month, Customs agents flew out and detected that freighter and nominated for award, got the award out in Texas, and then that was fine.

That was great, but in doing so, he said, well, I had to break two or three rules and regulations to even do that. That is ridiculous.

Senator NUNN. Would you also say that the Internal Revenue Service has been basically handcuffed in their ability to vigorously deal with organized crime from a tax evasion point of view?

Mr. CUNNINGHAM. Most definitely, and I think ever since Operation Leprechaun, which occurred right here in south Florida, the whole IRS policy has changed completely.

Senator NUNN. They have gone into the foxholes, haven't they?

Mr. CUNNINGHAM. Yes, sir; definitely.

Senator NUNN. There is a definite change since that incident here in south Florida?

Mr. CUNNINGHAM. Definitely. They had a lot of press, a lot of political pressure, some justly and some unjustly, as to how it was run. But in any instance because of that situation Washington has decided to change their priorities.

Senator CHILES. We have effectively lost them as being a participant in the war against organized crime?

Mr. CUNNINGHAM. Right. They were very effective, as you know, in getting Hoffa and several organized crime people. They were effective.

Senator CHILES. I think if you look back to the old days when Capone owned half the town you couldn't make a case any other way, we ended up getting somebody on the tax evasion of the profits off the illegal enterprise when we couldn't get the information to convict them against the enterprise itself for their conspiracy or the enterprise itself.

Now it looks like we have pulled them out of the game.

Mr. CUNNINGHAM. I think it is a tragedy when they call IRS and ask them to work on a multimillion dollar money flow case or narcotic operation, and they advise you they have to be working on the waitresses at Hot Shoppes of the University of Miami for not turning in their tips.

There is no comparison. Somewhere along the line, Government has to put some prerogatives on where we are going, and what we want to accomplish.

Senator NUNN. Is that what is happening right now? When you are trying to get the help from the IRS they are telling you they are working on the tips and waitresses? Is that literal or hypothetical?

Mr. CUNNINGHAM. That was not a hypothetical case; that was an actual case.

Senator NUNN. What kind of case did you want them to work on?

Mr. CUNNINGHAM. Narcotics. Basically, we wanted them to work on the *Boyd* case, at the time, and a couple other individuals that are ongoing investigations.

Senator NUNN. They were too busy checking tips?

Mr. CUNNINGHAM. There may be many other reasons, administratively, why they can't. I don't know.

Senator CHILES. We certainly want to thank both of you for your testimony and for the work that you have done. I think that attitudinally there is something really wrong where you find strike forces and the Federal authorities will not participate in, and share where much of the information that they are receiving and getting from you all and from the cases that you are making and also in many instances you end up being the one that makes the case that maybe they start out with.

We want to thank you. That is again one of the big problems that this subcommittee is going to have and that is to try to determine how we put together that Federal team effort, what really must be a team effort between the Federal, State, and local law enforcement if we are going to get into really doing something about organized crime.

Thank you very much, Mr. Chairman.

Senator NUNN. Let me ask you one other question, if I could. Do you have a good witness protection program at the State level?

Mr. D'ALESSANDRO. No, sir; we do not. It is very nonexistent. It is nonexistent, unless what a State attorney would do on his own. I have had problems with getting witnesses protected within the Federal level.

Senator NUNN. That is what we are looking at, the Federal level. I am just wondering if there is a model here in Florida we can follow.

Mr. D'ALESSANDRO. No, there is no model in the State of Florida you can follow. In the Federal level we had one under the Federal protection, we ended up having to transport him back and forth because they couldn't do it. We have no program in Florida to model after.

Senator NUNN. On a scale of 1 to 10, if you care to, how would you rate the importance of a good witness protection program in trying to come to grips with organized crime?

Mr. D'ALESSANDRO. I think without it, you are never going to solve the problem. I think it is very, very important.

Senator NUNN. You are sadly lacking in the State level and we are sadly lacking at the Federal level, based on your observation.

Mr. D'ALESSANDRO. Yes, sir.

Senator NUNN. Mr. Cunningham, do you have any statement about that?

Mr. CUNNINGHAM. I think you are definitely right. I would like to see our legislative branch try to initiate some type of system and definitely see the Federal program remodeled.

As it is now, due to publicity and the cases where a lot of witnesses have received enormous amount of problems in this system, you can't even hardly talk a person into going into the witness program.

That is not of benefit. It is not a plus side for us to say, hey, you testify, we are going to get you protection; we are going to get you in a witness program; you are going to be relocated, identity, name changed.

It is just something that requires enormous problems, tied up with bureaucratic red tape to ever get a person in the program to begin with.

Senator NUNN. Do you believe that we can have a good witness protection program? Is it one of those things that because of the type of people you are dealing with, because of the prison systems, and so forth, it is beyond our reach, or do you think it is practical and possible to have a good witness protection program at the Federal and the State level if we really make that a priority?

Mr. CUNNINGHAM. I am not ready to give up on anything. I don't want to throw up my hands and say, "I give up." I definitely think there is some hope for improvement and changes and I would like to see them. It is going to be up to people like yourself to do it.

Mr. D'ALESSANDRO. I believe it can be done. It may not be totally perfect. It would be expensive, but it is something that is very, very drastically needed.

Senator NUNN. Could we take some LEAA money and help both the State and Federal level with the witness protection program? Wouldn't that be more productive than the way some of the LEAA money is being tossed around now?

Mr. D'ALESSANDRO. Yes, sir. That is a whole other area. My experience, one time I applied for LEAA money and it is the last time. There is more redtape in that than—

Senator NUNN. Not worth fooling with?

Mr. D'ALESSANDRO. Not in my opinion unless you change those criteria and guidelines.

Senator NUNN. We appreciate both of you not only testifying today, but your splendid cooperation. You, demonstrated what cooperation can do in terms of trying to work together with the Federal and State people as far as our subcommittee and our investigation is concerned.

We really do appreciate your assistance, both of you. We look forward to continuing to work with you in the future.

At this point, we are going to take about a 10-minute break, maybe 15 minutes. We will be back here at 25 minutes to 1, at which time we will resume the hearings.

[Brief recess.]

[Members present at time of recess: Senators Nunn and Chiles.]

[Members present at time of reconvening after a brief recess: Senators NUNN and Chiles.]

Senator NUNN. The subcommittee will come to order.

We had intended to call before the subcommittee today John Charles Piazza III, who is now serving a 15-year sentence in a Federal institution for conspiring to distribute narcotics and possession of narcotics.

Mr. Piazza allegedly ran the Nation's largest narcotics trafficking operations. He has not been called before our subcommittee today because of the objections of the Department of Justice. The Justice Department raised grave concerns about Mr. Piazza's safety during his travel to and from Miami, and during his stay here, because he has been cooperating with this subcommittee and law enforcement officials since his incarceration.

Mr. Piazza is in the custody of the Bureau of Prisons of the Department of Justice. Though he himself agreed to testify before these hearings in Miami, the subcommittee must take into account the judgment of those charged with his safety. Since the subcommittee has neither the facilities nor the staff to provide for the safety of witnesses, we must rely on the Department of Justice.

The Justice Department also voiced its objection to the testimony before this subcommittee of Charles Keck, one of Mr. Piazza's former associates, for another reason. The Justice Department has said that it opposed his appearance before this subcommittee because Mr. Keck is appearing in a public trial here in Miami this week.

Since we will avoid the matters at issue in the trial as well as other matters under active investigation by law enforcement authorities in this hearing today, the subcommittee will call Charles Keck to appear for this hearing.

Mr. Keck will be appearing voluntarily. I will ask the cameras, as I did in the case of the previous witness, to please turn away from the front of the room as we bring the witness in.

This witness has also requested, under the rules of our subcommittee on grounds of distraction, harassment or physical discomfort, that during his testimony, television, motion picture, and other cameras and lights should not be directed at him. Such requests, of course, have to be ruled on by the subcommittee.

Under the circumstance, I think it is a reasonable request and I recommend the subcommittee approve it. Is there objection? Without objection, the witness is accorded that privilege under the rules of the subcommittee, and I will again ask that all cameras be turned away. I will ask the marshal to let me know when we can bring the witness in.

Bring the witness in.

If you would please stand, Mr. Keck; the cameras are turned the other way. We swear in all of our witnesses.

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

Mr. Keck. Yes, I do.

TESTIMONY OF CHARLES KECK

Senator NUNN. Before we begin your testimony today, the cameras can resume—I want to explain to you your rights and obligations as a witness before this subcommittee.

First of all, you have the right to have an attorney present with you today. Do you understand that you have that right?

Mr. KECK. Yes, I do, sir.

Senator NUNN. You do not have an attorney. Is that correct?

Mr. KECK. That is correct.

Senator NUNN. Do you waive your right to have an attorney present?

Mr. KECK. Yes, I do.

Senator NUNN. Do you understand that if you choose to have an attorney, you would be able to consult with him at any time before you answered a question?

Mr. KECK. Yes, I do.

Senator NUNN. You have also sworn to testify truthfully before this subcommittee. Do you understand your obligation as a witness under oath?

Mr. KECK. Yes, I do.

Senator NUNN. Do you understand that you have sworn to testify truthfully before this subcommittee in response to our questions?

Mr. KECK. Yes, I do, sir.

Senator NUNN. Then you understand your rights and your obligations as a witness before this subcommittee?

Mr. KECK. Yes, I do.

Senator NUNN. Thank you.

Senator CHILES is going to begin the questions.

Senator CHILES. Will you state for the record your full name, sir?

Mr. KECK. Charles Frederick Keck.

Senator CHILES. When and where were you born?

Mr. KECK. I was born in Philadelphia, December 26, 1938.

Senator CHILES. Did you grow up there?

Mr. KECK. Yes, I did.

Senator CHILES. Where did you go to school?

Mr. KECK. I went to public and parochial schools in Philadelphia.

Senator CHILES. How much education did you receive?

Mr. KECK. Tenth grade, sir.

Senator CHILES. Were you in the military service?

Mr. KECK. No, sir. I was not.

Senator CHILES. When did you first come to Florida and for what reason?

Mr. KECK. It was approximately in 1970, sir; I came down here for medical reasons.

Senator CHILES. When did you come down to Florida to stay, and why?

Mr. KECK. It was about 1971 or 1972. I came down here to be operated on by a doctor at Jackson Memorial Hospital.

Senator CHILES. What kind of activities were you involved in in the Philadelphia area prior to coming to Florida?

Mr. KECK. I was a fence of stolen goods.

Senator CHILES. What kind of fencing operation were you associated with?

Mr. KECK. I was associated with diamonds, guns, stocks, bonds, just about anything, sir.

Senator CHILES. Were you also involved with the pornographic, fencing of pornographic materials?

Mr. KECK. Yes; I was, sir.

Senator CHILES. What was the source of the pornographic material?

Mr. KECK. The source, I had two sources, sir. I had a Robert Pyne and a Buzzy Baldwin.

Senator CHILES. Did you ever see any indication that Casselli was actually involved with Sam DeCalvacante?

Mr. KECK. Yes, sir. Gene Casselli, "Cassel" was his other name, had originally started buying stuff from me, pornography and so forth for his own personal use. Then he decided that, and I told him that I needed some funds, that I had connections to buy a lot of jewelry, diamonds, and so forth, and some guns and he proceeded to lend me some money to go into this operation.

He, at one time, I was in his office, and he had always told me that he was connected to Sam the Plumber. Sam the Plumber is the man that runs the New Jersey organized crime. He had showed me documents to this effect, that Sam had used him as a place of employment for IRS purposes.

Senator CHILES. You saw those documents?

Mr. KECK. Yes. I did, sir. They were in his office. He showed me the documents.

Senator CHILES. This would be how they would employ different members to show that they had an employment and to cover an IRS document?

Mr. KECK. Yes, sir, correct, that they were withholding taxes, statements, things like that.

Senator CHILES. What did you do to support yourself when you first came to south Florida?

Mr. KECK. I opened up a body shop named Jet South.

Senator CHILES. Was it during that time that you met Bob Ellrich of National Airlines?

Mr. KECK. Yes, sir. Mr. Ellrich lived in the same trailer park that I lived in and we became friends. I had got him interested in the body shop. He wanted a little extra income.

Senator CHILES. Did he buy an interest in your body shop?

Mr. KECK. It wasn't actually my body shop. The body shop belonged to two other pilots from Eastern Airlines. I was like the general manager. He did buy an interest from another gentleman that was involved in it.

Senator CHILES. Did you have a body shop in Philadelphia before coming to Florida?

Mr. KECK. Yes. I did.

Senator CHILES. Did you use that body shop as a front there for your fencing operation?

Mr. KECK. Yes. I did, sir.

Senator CHILES. Was there any illegal narcotic activities going on at the Jet South Body Shop, the one that you worked at here?

Mr. KECK. No, sir, not at Jet South. I had another body shop in Homestead, Fla., that there was illegal activities going on as far as narcotics.

Senator CHILES. Did you and Ellrich leave the Jet South Body Shop operation?

Mr. KECK. We did. We opened up Quality Auto Body in Homestead, Fla.

Senator CHILES. What other partners did you have?

Mr. KECK. I had a Joseph Bowers, that had been a partner of mine in Philadelphia.

Senator CHILES. Ellrich was also——

Mr. KECK. Yes; Bob Ellrich, Joseph Bowers, and myself.

Senator CHILES. How long had you known Bowers?

Mr. KECK. I had known Mr. Bowers since we were children together.

Senator CHILES. When did you open the Quality Auto Body with Ellrich and Bowers?

Mr. KECK. I believe, sir, it was in 1973.

Senator CHILES. When did you first hear of John Piazza?

Mr. KECK. Probably 6 months or so later. I had been doing some work for a fellow that owned a used-car lot in Homestead and he had told me about this gentleman that he knew, named John Piazza, that needed some paint work done on some of his Ferraris, his fancy cars.

Senator CHILES. When did you first meet him?

Mr. KECK. In this used-car lot, I had walked in there one day, he happened to be sitting there.

Senator CHILES. What was your impression of him when you first met him?

Mr. KECK. Very wealthy, had a tremendous amount of jewelry on, he carried himself very well. He had a new Eldorado sitting outside.

Senator CHILES. Did he have any firearms?

Mr. KECK. Yes, sir. From then on, every time that I ever seen Mr. Piazza, he was armed; always had numerous weapons, automatic pistols, shotguns.

Senator CHILES. Did he carry those on his person or in his car?

Mr. KECK. No. He always had them in his car.

Senator CHILES. He impressed you as a man of some substance?

Mr. KECK. Yes, very much so.

Senator CHILES. What was the next contact that you had with him?

Mr. KECK. A few months later—well, at that time, we had a conversation in reference to painting his Ferrari and he called me up about 2 or 3 months or so later and asked me if I would be interested in coming down to his shop, looking at his Ferrari, which I did. I went down and looked at the car.

Senator CHILES. This is the Ferrari that he left for you to paint?

Mr. KECK. Yes; correct.

Senator CHILES. Did you see any guns or narcotics in the car?

Mr. KECK. No narcotics, but I did see a pistol he was carrying with him because he took it out and put it in another vehicle that he and his girl friend left in.

Senator CHILES. Did he have any other cars for you to paint for him?

Mr. KECK. Yes, sir. Right after that I did some work on a Lambroghini Espada, then an El Camino, a brandnew El Camino that he wanted custom painted.

Senator CHILES. Did you see any marihuana or other narcotics in any of the other cars?

Mr. KECK. No. I saw quite a few weapons. He had a chrome sawed-off shotgun that was mounted in the El Camino.

Senator CHILES. Where was it mounted?

Mr. KECK. Between the seats, right behind the console in the car.

Senator CHILES. At some point, did you discuss with Piazza your need for money to improve your body shop operation?

Mr. KECK. Yes, I did.

Senator CHILES. Describe that for us.

Mr. KECK. Yes, sir. He kept telling me that he had always wanted an interest in a place like this. He had a lot of interest in automobiles, he had a tremendous amount of automobiles that he frequently painted because he was never satisfied with the paint work on them. He needed just someplace to hang out and he said to me, I told him to further my business I needed some money to make the paint work look much better.

He said that he would lend me \$10,000 to buy some equipment, spray booth, some odds-and-end equipment that we would need to make the business better.

Senator CHILES. Did he loan that money to you?

Mr. KECK. Yes, he did.

Senator CHILES. You mentioned that you saw guns in the automobile. Where did drugs first come up, or how did marihuana or drugs first come up?

Mr. KECK. At one time he had pulled into the shop, in a Sedan de Ville, which was a new one. It was a 1973 or 1974 automobile. He had a couple hundred pounds of marihuana in the trunk. He had a lot of trust in me because we had talked about numerous things. Apparently he had claimed he had me checked out with some people up north and that I was OK.

I told him at that time that I had seen the marihuana, if he had any more, I felt I could do something; I could earn some extra money that I sure could use.

Senator CHILES. At what price did you talk that you would be interested in buying marihuana?

Mr. KECK. At that time it was about \$185 a pound.

Senator NUNN. Excuse me just a minute; why doesn't the clerk help him get some water there? He may be testifying for some time. He had already had a pretty rigorous morning.

Let me just mention this to you. If you want to smoke, take your time, relax; if you want a cigarette, go ahead and have one.

Mr. KECK. We can talk while I am having a cigarette, if you don't mind, if it doesn't bother you.

Senator NUNN. I just don't want you to feel rushed.

Mr. KECK. Thank you, sir.

Senator CHILES. Who were your people that you had in mind when you mentioned this to Piazza?

Mr. KECK. Mr. Bowers, I had known from our operation in Philadelphia, and connections with a motorcycle gang up there, and with

quite a few people in Philadelphia; also there was a Mark VonMandel that owned a motorcycle repair place here in South Miami, was a friend of Mr. Bowers at that time, that had been interested or had done some dealings with marihuana.

Senator CHILES. My understanding is the first transaction of marihuana you were involved in had to do with Bowers. Describe that for us, if you would.

Mr. KECK. Yes. Mr. Bowers called some people in Philadelphia and they came down and they came to the shop and they had brought, they had driven two cars with them.

We went out to Mr. Piazza's house. I took this gentleman out there. Mr. Bowers stayed at the shop. The gentleman looked over the marihuana, which was all over. It was in trucks, in the back of the house; it was in the house itself, piled up in closets.

He inspected what he wanted to buy and I believe it was around 300 pounds at that time that he did buy, sir.

Senator CHILES. How much marihuana was there around the house and in these trucks?

Mr. KECK. About 7,000 or 8,000 pounds, sir.

Senator CHILES. Were the trucks closed? What kind of trucks were they?

Mr. KECK. The one truck, sir, the large, which I had been instrumental in buying, was a large type van, straight job. That was in the back of the house with a roll-up door. There was marihuana piled up in that; in the showers, in the bathrooms.

Senator CHILES. How well hidden was that in the house?

Mr. KECK. It wasn't at all, sir. Anyone who went into the bathroom, went into a closet could openly see it. It was there.

Senator CHILES. It is our understanding that the next time that you were involved in narcotics with John Piazza had to do with a delivery of a load to Tampa and Atlanta. Describe for us what happened in this situation.

Mr. KECK. Yes. It was the end of this particular 7,000 or 8,000 pounds that I am telling you about. There was about 800 pounds left over. Mr. Piazza was having a hard time getting rid of it because it was the low part of the grade of marihuana.

There are many grades of marihuana. It is graded as you bring it in and if they consider it like A, B, and C grade. This was like a C-minus grade. In fact, it could even have been a D-plus. It was that bad. It had been well picked over.

This is all that was left. He wanted to get rid of it. I spoke with some people that I had met through people in south Florida, from Atlanta. They flew down here and spoke to me.

I told them that I had access to marihuana, all they wanted. We made arrangements to meet in Tampa. I would drive a load to Tampa, or have someone drive it. I didn't drive it. We put it in John Piazza's father's van, which was a construction van and just covered it up with truck construction equipment.

When I say equipment, I mean like saws, canvases, paint buckets; things of that nature.

It was delivered over to Tampa. A gentleman over there from Atlanta met us by the name of Bob Williams and a Mr. Joe Prado. At that time he gave me \$50,000 for the delivery of the marihuana.

It was stored in his home that he had, what they called stash house is a place where you have no connection to, but you store the marihuana there, and you have people watch it so that no one takes it from you.

In the course of about a week, Mr. Prado probably gave me another \$25,000 to \$50,000. He realized that it was a very inferior grade of marihuana, but he was having a hard time selling it.

Mr. Williams felt that if we took it to Atlanta, he had a better chance of selling it in Atlanta. So we loaded it back up in the van and drove it to Atlanta.

Senator CHILES. Who is Bob Williams?

Mr. KECK. Bob Williams is a bookmaker and a loanshark in Atlanta, Ga.

Senator CHILES. Had you met Piazza's brother before and, if so, when and where?

Mr. KECK. Yes; I had the occasion to meet Carl Piazza many times, coming into my shop, doing odds-and-end things. For instance, like one particular time, I had taken about 700 pounds of marihuana, driven it for Mr. Piazza, out to meet his brother and drop that alongside his brother's house while another van backed up and loaded it into the van and drove away; just on many occasions I had the occasion to meet Mr. Carl Piazza.

Senator NUNN. What was Piazza's brother's name?

Mr. KECK. Carl.

Senator NUNN. Where is he from?

Mr. KECK. He lives in Homestead, Fla. I don't know. Originally, I believe they were born in, around Atlanta, then went to Texas; the family did.

Senator NUNN. Does Bob Williams still live in Atlanta?

Mr. KECK. To the best of my knowledge, yes.

Senator NUNN. Has he been prosecuted for narcotics traffic?

Mr. KECK. Not for narcotics traffic. I believe he was prosecuted on bookmaking.

Senator NUNN. Is he free now, or still in the penitentiary?

Mr. KECK. I couldn't tell you if he is or not.

Senator NUNN. But you had direct dealings with him in marihuana traffic?

Mr. KECK. Yes, I did.

Senator NUNN. Was this a one-time proposition for him, or do you have any way of knowing? Was he in the traffic on a big basis?

Mr. KECK. No; he was just more or less dabbling in it at that time, sir. Later on, in the future, I understand that he got into it with other people. I only saw Mr. Williams a few times after that occasion.

Senator NUNN. How many times did you deal with him personally?

Mr. KECK. About five times, sir.

Senator NUNN. On marihuana exclusively?

Mr. KECK. Marihuana, some guns. I believe that was just the occasion, some marihuana and some guns.

Senator NUNN. Were you buying guns from him or selling?

Mr. KECK. No; I was buying guns from him.

Senator NUNN. Did he bring them from Atlanta?

Mr. KECK. Yes; but he didn't bring them. I bought them in Atlanta, brought them back to Miami.

Senator NUNN. Were those legal gun transactions?

Mr. KECK. No, illegal. They were stolen guns out of Atlanta.

Senator NUNN. Was he a fence? Where did he get the guns?

Mr. KECK. No; I had no idea where he received the guns.

Senator NUNN. Did you ever swap marihuana for guns or were they strictly deals for cash?

Mr. KECK. No; it was strictly a cash deal with Mr. Williams. I dealt with other people in Atlanta for guns. I never swapped any marihuana for them, but I did do quite a few transactions for weapons in Atlanta.

Senator NUNN. Who else did you deal with illegally in Atlanta when buying guns?

Mr. KECK. Mr. McCraney, Jeff McCraney; Blue Brilland.

Senator NUNN. How do you spell that last name?

Mr. KECK. I am not positive. I only know him as Blue Brilland. There was two other fellows; we bought quite a large load of some weapons from that I just don't recall their names right now.

One of the gentlemen I understand is dead. He was killed by one of the other people who was involved in the gun deal.

Senator NUNN. What kind of guns were they?

Mr. KECK. Collector's items, automatic weapons, pistols, all the way from hunting rifles all the way down to old antiques.

Senator NUNN. Were most of them stolen?

Mr. KECK. Every one of them was stolen. A collection had been stolen.

Senator NUNN. What did you do with the guns? Were you in the business of selling them or did you want them for your own use?

Mr. KECK. No, sir. I wasn't in the business of selling them; brought them down. They had been delivered by my arrangements to a gentleman, Mr. John Piazza, in Florida. And in fact, we used Mr. Williams, one of his cars that he had gotten in Atlanta, to transport these guns.

Senator NUNN. How did Williams get the marihuana to Atlanta? Do you know?

Mr. KECK. Yes. It was my van and my driver that drove from Tampa to Atlanta.

Senator NUNN. So he paid for the marihuana but you actually delivered it for him?

Mr. KECK. Yes. He couldn't do much with the marihuana in Atlanta. It was pretty bad stuff.

Senator NUNN. That was the one time. You said you dealt with him before?

Mr. KECK. Yes. I dealt with him over a period of four or five times. Another time I sold him and his partner, his partner's name was Thomas, his last name was Thomas—no, it was Thomas Wilson, if I recall now right. He has been convicted of loansharking, dealing in drugs; I believe in the pill market.

They bought 100 pounds from me on another occasion and I believe 25 or 50 pounds on another occasion.

Senator NUNN. Did you always deliver it to Atlanta for them?

Mr. KECK. Yes. It was always delivered from Miami to Atlanta.

Senator NUNN. In a van?

Mr. KECK. A van, trunks of automobiles. There are numerous ways that you take, you transport marihuana; all the way from the trunk of an automobile up to U-Haul trailers, to large trucks.

Senator NUNN. How about trains? Did you ever use trains?

Mr. KECK. I didn't have the occasion to use trains. But I do know that John Piazza at one time moved quite a large load to Atlanta and also in some place in Virginia, I believe.

Senator NUNN. On a train you mean?

Mr. KECK. Yes, sir.

Senator NUNN. Was that disguised in some way? How would you cover up marihuana in train shipments?

Mr. KECK. No, sir. It was in crates. It was crated up. There are many, many ways that drugs are transported within the United States. They crate them, put them on the planes as machinery shipments, sent all over the United States. They are transported in large trailers, some of the loads are concealed, some of the loads are wide open, automobile trunks, rental cars. It is vast, sir.

There is stuff that is being sent in at one time through Bekins Moving & Storage out of Hawaii, was being sent to any place in the United States that you wanted to, container supposedly to be containing furniture.

It is brought in, smuggled in in so many ways, it is so vast it is unreal.

Senator CHILES. It is our understanding that at some point John Piazza began to pressure you for the \$10,000 that you borrowed from him. As a result of that, you agreed to deliver some marihuana to Philadelphia.

Where was that marihuana stored and how much was involved?

Mr. KECK. It was 3,700 pounds that Mr. Piazza and myself had a shop off of 87th Avenue in South Miami. We opened this place on the pretense that it was going to be to store Mr. Piazza's vehicles which was quite numerous. It was actually just a front to offload this stuff and to offload the marihuana to weigh it, repack it, place it into U-Haul trailers to be taken to Philadelphia.

I took on that particular occasion 3,300 pounds. I drove this particular load myself in a U-Haul trailer. I bought some furniture and, used furniture, and covered the load. That disguised it.

Also I had set up inside of it that if anyone opened the doors, I had deodorizing things that squirted periodically inside the car, actually the pickup truck that I towed the U-Haul in, so it would deodorize the smell of the marihuana.

I drove that 3,300 pounds to Philadelphia, delivered it to Mr. Parrotta.

Senator CHILES. How much money did Parrotta give you at that time?

Mr. KECK. A couple thousand dollars at that specific meeting. That was just more or less for my expenses of getting there and until we started to break the loads down, break the load down and grade it and then bring his people in to buy it.

He proceeded to, I believe, approximately, he at that time I think, gave me around \$100,000, sir.

Senator CHILES. After that you took another load to Philadelphia, some 2,800 pounds. To whom did you deliver that load?

Mr. KECK. I delivered that to Mr. Parrotta again at a different location. The first time I dropped it, I dropped it at Jules Krenzel's house while his mother and father were conveniently out of town. They were paid money to leave the house by Mr. Parrotta. They used that as a stash house.

The second time I delivered it to New Hope, Pa., which is a suburb of Philadelphia, to Lenny Parrotta's cousin, sir.

Senator CHILES. You were told to take 1,000 pounds?

Mr. KECK. Yes. I was instructed by Mr. Piazza with a lot of reluctance on my part to deliver a partial part of this load to New York to a Pat Tamarro and a Joe Curly, which were at that time, had been down to Florida to Mr. Piazza's home and they had also been to the racetrack, called a racetrack, with Mr. Piazza. Pat Tamarro was working at that time as a strong-arm for Mr. Piazza and he told me to deliver this 1,000 pounds, but Joe Curly was stuck, to the sharks in Philadelphia for \$50,000 and he needed some help.

Senator CHILES. You mean the loan sharks were into him?

Mr. KECK. Yes. It was into Jerry Curly supposedly for \$50,000, and they were pressing him very hard for the \$50,000.

Senator CHILES. Who is Pasquale Tamarro?

Mr. KECK. Pasquale Tamarro is an ex-New York City policeman that was thrown out of the department for selling information. He is a strong-arm man for anybody that wants to use him in the mobs in New York. He was a union organizer in New Jersey.

Senator CHILES. Who is Joe Curly Tataglia?

Mr. KECK. Joe Curly Tataglia is the other party in this matter. He is another one that is used in many things, enforcer, supposedly hit man, along with Pat Tamarro.

They are both supposedly hit men.

Senator CHILES. Describe the events involving your delivery to Tamarro and Tataglia.

Mr. KECK. It took a course of the better part of a day; when I say a day, sir, during, from around 10 o'clock in the morning until around 3 o'clock in the afternoon. Mr. Tamarro kept changing the location where he wanted me to deliver this marihuana. I knew there was something wrong at that point, and I had made many phone calls to Mr. Piazza, arguing with him that I didn't want to take this stuff there because New York people are known to be just rip offs.

I had a dead fear of New York City. I didn't want to go into the city no place.

Mr. Piazza kept insisting that; why should these fellows want to be, to do anything, that they were part of us.

Finally, we settled on an agreement in New Jersey. They told me the directions on how to get there. They told me to come up Route 9 in New Jersey, which at that time was quite tore up and it was a lot of barricades on it.

I, using my extra sense that I have, decided that that wasn't the plan of attack that I was going to go to the spot that they asked me to go to. Instead of going up this highway, I went above the immediate location from another point and drove into this diner coming south on the road that I was supposed to be going north on.

I find out later that if I hadn't made that decision on my own, that the original plan was for them to take me out on that ride up there and

never show up in front of Mr. Tamarro or Joe Curly. This way there would be no connection that I had delivered the load to them.

Senator CHILES. So they tried to hijack the load on the way before you got there?

Mr. КЕЕК. Yes. Correct. This was their plan. This never worked out that way because I just out thought them. After I stopped and met them, they told me that everything was all right, and that I didn't need a gun with me. I had a gun in the truck, sir.

I said, fine, let's go make a call. We went inside. I called Mr. Piazza. I told him instantly that I had delivered the load, that it was out of my hands, and it belonged to them now.

They had a conversation on the phone, Mr. Tamarro, John Piazza. He acknowledged that I did receive, that he did receive the 1,000 pounds that I was delivering to him.

At that point, we come back in, sit down, we ate. And from that conversation they told me that they wanted me to drive the 1,000 pounds to their stash house. I said under no circumstances. It is in your hands, you take it from here.

We walked out of the restaurant, and instead of me walking to my left, which is where my truck was parked with the U-Haul trailer, I—their vehicle was parked at the diner on the right side coming out and they talked me into coming around that way with them. They would drive me around to my vehicle.

So I didn't think nothing of it, because they were supposed to be the strong people, you know, toughies. As we proceeded to go around, a car pulled up and four to five gentlemen got out and I, paying no attention, because I am talking to Mr. Tamarro, Mr. Curly. The next thing I know, sir, I am hit behind the head and moved around and shoved into Mr. Curly's rental automobile.

They conveniently made sure that I got in the middle so that Mr. Curly was on my left, Mr. Tamarro was on my right.

There was a lot of screaming and shouting; guns, and they kept hollering that, watch out for the guy in the middle. You know, I am not supposed to be the bad guy. These two guys on either my left or right are the bad guys.

They are not seemed to be worrying about them, they are worried about me. They took us for a ride, told us to keep our eyes closed; if we opened them, they were going to shoot us.

They also said that if they kept screaming where is the money, where is the money—they had thought that by dropping off the previous 1,800 pounds that I had the money in my possession. That is not the way marihuana transactions are done.

Most things are done, and everything is front. These people didn't know that. When I say front, you drop the load off; you come back a few days later; you start picking up moneys.

They took us for a nice ride and kept insisting that I was going for a naildown, where they were going to blow me away.

At that point, I realized that Pat Tamarro and Joe Curly were involved in this ripoff.

I started putting two and two together, and it just come up that they were definitely involved by the way they were acting.

Senator CHILES. They were only threatening you, they weren't threatening them.

Mr. KECK. No. They supposedly hit Pat Tamarro. Pat Tamarro got in an argument with them, was saying some pretty nasty things to them, arguing back and forth.

Supposedly the gentleman that was doing all the screaming in the passenger's seat of the vehicle slapped him with a gun, hit him in the face with it.

Later on, there was absolutely no mark on his face. If you are hit with a weapon, you are going to come up with at least a rosy cheek. Pat Tamarro had nothing on his face. They were only really threatening me.

Joe Curly kept asking for his pills that supposedly he needed for his heart. He felt like he was scared, he was going to have a heart attack; kept telling me if there is any money, please give it to them, I don't want to die. Just ridiculous things he was saying.

At that point I was no longer scared because I knew that John Piazza knew that I had delivered the stuff and they were with me. They would have to kill all three of us.

I couldn't say if these two guys were involved in the ripoff.

Senator CHILES. What happened then?

Mr. KECK. They eventually drove us back to another restaurant, dropped us out of the car, took off in Joe Curly's car. We went in the restaurant, and I was at that time, after the scene was over, I became quite rattled. And all I wanted to do was get out of the area.

We got a taxicab, from that restaurant, and went to the original restaurant where they had pulled the ripoff and my vehicle was sitting there with the trailer. They stole the weapon that I had in the car. They stole my driver's license. They also stole approximately, around \$2,800 that I had on my person. Also, Joe Curly's car was there.

Senator CHILES. How about the marihuana?

Mr. KECK. No, sir. It was all gone. But when people in New York do a ripoff, or any place does a ripoff, they don't bring your vehicles back. There had to be some reason that they brought them back.

Senator CHILES. So the vehicle was there, but they had taken it somewhere, unloaded the marihuana?

Mr. KECK. Yes, brought it back. I then proceeded in, naturally went right to the phone. And I called Mr. Piazza; told him what had transpired. He started screaming to me on the phone, you know what I've got to do, you know what I've got to do; he is screaming at me, now I've got to hit someone.

I told him I didn't want to hear it; that all I was, was the mule delivering this stuff at this particular point. He also kept bringing up Santo; Santo's got to find out, Santo has to know.

Senator CHILES. Who is Santo that he was mentioning?

Mr. KECK. From other prior conversations that I had with Mr. Piazza, he had many times told me that he was involved with Santo Trafficante in a roundabout way.

Senator CHILES. In what kind of way did he say he was involved with Santo?

Mr. KECK. He said his uncle, Fred Sabella, had connections with Skooph down here which is, I believe, Mr. Indelicato, and he said that he had received funds from him at times. He had done things through him that it was his—in other words—

Senator CHILES. He received funds from who now?

Mr. KECK. Mr. Trafficante, and that also he worked down here under his protection and that Santo would get to the bottom of this situation, this ripoff of 1,000 pounds.

Apparently, from the conversations later on he told me that the people that originally owned the marihuana, because it was fronted from offshore smuggling people; everybody had to pay up to the man down here; insinuated the man was Santo. Naturally, I always took it to be Santo Trafficante.

Senator CHILES. When you say the marihuana was fronted and you take it all the way back to the offshore, explain again. Does fronted mean that somebody owns it originally, they sort of sell it on consignment, they get their money as the other people start selling it?

Mr. KECK. Yes. Let me explain that whole realm of thing to you, if you would like. Most of your marihuana that comes from South America or actually any country, they take—there is no money changes hands. If the people in South America have trust in you, they deliver it to a big conglomerate here, we will say, then people turn around. The only way to move that volume of marihuana, you know, when you talk 25,000-, 50,000-pound loads of marihuana or any drug for that matter in large quantities, it is given to you, to the main distributor, the main distributor gives it out to his large distributors, his large distributors give it out to people that can do the 1,000 pounds or the 500 pounds or so for them.

So it is a long chain of events that come around. It all starts in South America. It is brought up here on freighters, we will say, it is offloaded. There is no money actually changes hands—very, very little at that given point.

Most of the money, as the load starts coming back, the money comes back; it is filtered through banks. It is cleaned, laundered; it is sent to people in Venezuela through banks, Panama, Mexico City. It is just filtered all over the place to feed the money back. The money is not handed directly to anyone. It is well taken care of.

Senator CHILES. Where was it your impression that Santo fit into this?

Mr. KECK. Santo apparently was from what, to my understanding, was that he had to—anything that was done in this area he had to be the one that was responsible. In other words, he was the man that said you could do it, somewhere, somehow. You just didn't have a large group of people doing things and they would let you get away with it. They just don't go for that. They must get their taste of the money. You got to pay aims to these people.

Senator NUNN. Have you heard the term "Rabbi" used in that regard?

Mr. KECK. Yes. A Rabbi is a person that you speak to, you know, he is the boss and you must go to him with all your problems or what you are going to do, how you are going to do it.

Senator NUNN. Was that the relationship Piazza had with Santo?

Mr. KECK. I don't believe so, sir, not directly. I think from my opinion, my opinion of the thing is that his actual direct contact would have been a Mr. Fred Sabella which is deceased now, and then it would have been Skootch Indelicato.

Senator NUNN. So he wasn't dealing directly with Santo in your opinion?

Mr. KECK. To my opinion, no, sir; I don't think he was.

Senator CHILES. But he did say over the telephone that night that Santo was going to have to know about this?

Mr. KECK. Yes. He related that two or three times along with someone who have to be killed over this situation.

Senator CHILES. Did you ever see Piazza with Santo Trafficante?

Mr. KECK. No, sir; I did not.

Senator CHILES. I know a lot transpired immediately subsequent to this with regard to your hiding out for a week or two. When and why did you return to Florida?

Mr. KECK. Mr. Piazza called me on the phone on numerous occasions after this thing, told me what was—how the situation was standing at that time. He told me that something had happened, it was very urgent that I get back to Miami to do something and I was the only one that could be trusted to do it.

He didn't elaborate on the phone at that given time when I was in Philadelphia.

I flew back to Miami and had the occasion to go to my home and pick up some newspapers and seen that there was a murder.

Senator CHILES. Did you carry any money with you?

Mr. KECK. Yes, I did. Approximately around \$175,000, maybe \$200,000.

Senator CHILES. Where did you get that money?

Mr. KECK. From Mr. Parrotta in Philadelphia, some people in Michigan had delivered some to me. It was like the initial start of payment of the original load that I had taken, the first 3,300 pounds that I had taken up.

Senator CHILES. Go ahead with what you were saying when you returned home.

Mr. KECK. Yes, sir. I got home; my wife had saved quite a few newspapers, which she always did when I was out of town. I happened to pick up the newspaper and read about this particular murder that Mr. Piazza had told me was going to happen.

The reason for the murder he had stated to me and my own thinking of this, too, also, sir, was that he didn't want the original people to find out who got this 50-some hundred pounds of marihuana. That person was the go-between, between the original group of people that received it from the offload people, the people that brought it up in freighters, and I have to watch, I am being very skeptical here.

Senator NUNN. We understand that. We know this is an open case. We appreciate that.

Mr. KECK. Yes. I am trying to hedge around this thing.

And that he would have to cut that connection off because at that time, he didn't have the funds to pay. Apparently, the reason he didn't have the funds, he had owed these people quite a few dollars from previous loads that he hadn't fully paid for and he was in a bad position right at that time, because he had started into the racehorse business. He was just spending money hand over foot. So he would have to take this person out of the picture.

Senator CHILES. I think that is far enough. We won't go any further with that.

Let's turn to the period from March to June 1975. It is our understanding that you made numerous trips back and forth to Philadelphia, collecting money for the marihuana which you delivered on these two occasions. Is that correct?

Did you make a number of trips?

Mr. KECK. Yes, sir; numerous times.

Senator CHILES. About how many trips and involving what amount of money?

Mr. KECK. We are talking a couple million dollars total, probably, for previous things, the 5,800 we will say or whatever it was, I believe; 33 and 28 would be 61 for 6,100 pounds.

Senator CHILES. How did you transport this money?

Mr. KECK. Mostly in attaché cases. I took it in over the shoulder bags, I took it in helmet bags for race helmets, and just walked on the plane with it.

It is very simple.

Senator CHILES. Did you have any hair-raising experiences?

Mr. KECK. Yes, sir. I had a couple with the amounts of money that I was carrying. For instance, I was walking into the Philadelphia airport; there are certain ways that you lay your luggage down at that time that it wouldn't show what was in the case, if it was laying down flat. The screen just took the overall picture of it and it didn't show that there was any metal or anything and they just put it through.

This particular time someone turned it up as it was going through. I was stopped on the other side and they asked me was it lead lined. I told them no, it wasn't. They said would—there was two attache' cases—they asked me would I be interested in showing them what was inside. I said, well, sure I would, but I would like to go in the room on the side and show you.

We went into a room, I popped open the one suitcase. It was full of money. It was thick with money. At that time I proceeded to give them a story that I was going to Ocala to the race farms to buy racehorses and I presented them with a card that said "JB-3 Racing" on it.

That was sufficient for the officer, because he was just an ordinary guard in an airport. I don't think he really had the full knowledge of police authority which, if he had been a policeman, I am sure he would have went into a little more detail.

At another time I had it wrapped in rubberbands. They delivered it to me. It was in packages. We will say \$5,000 packages. It was wrapped in rubberbands and when it went through, it looked like dynamite because of the rubberbands holding these round, circular packages of money.

At that time I had disclosed myself again and gone through the same procedure of telling them that I was on the way to Ocala to buy racehorses.

Senator CHILES. So twice you opened it up, showed it was full of money?

Mr. KECK. Yes. There are two occasions that I am telling you about that come to my recollection right now.

Senator CHILES. Did you turn all of the money over to John Piazza?

Mr. KECK. Yes, I did.

Senator CHILES. Where did you keep all of this money?

Mr. KECK. Just anyplace, everyplace. He was very haphazard with money. He had no consideration for money. There is many things that happened with money; for instance, one time I picked up the El Camino, the window was down. They had problems with the window going up and down at the Redland Country Club at Homestead.

As I was driving the vehicle, I hit the brakes and going around a corner I had to hit the brakes real fast. A bag flew out from under the seat with \$47,000 in it.

He made the statement to me when I chewed him out about the money; he said I had completely forgot it was—I put that there a couple of months ago. He kept this money in safes, attaché cases that he carried with him. He frequently displayed his wealth.

Senator CHILES. What is the largest amount of money you have ever seen or handled while working for Piazza?

Mr. KECK. At one spot?

Senator CHILES. Yes.

Mr. KECK. Couple million dollars.

Senator CHILES. In cash?

Mr. KECK. Yes, sir, all cash. I have never seen nothing but cash in dope transactions. There is no such thing as checks.

Senator CHILES. Mr. Keck, it is our understanding that at some point John Piazza became involved in cocaine dealing. Describe for us how this came about in the first such transactions you know about.

Mr. KECK. Yes, sir. We got into the cocaine business. As things went on, I became more of a trusted person with John Piazza. Mr. Piazza trusted me more than he trusted his own family and his brother, his mother, or his father.

I knew of a couple fellows that had originally worked for Mr. Piazza. One fellow's name was Jack Mullenix and the other fellow's name was Michael Santocante. Jack Mullenix is a fugitive right now and Michael Santocante is in a Federal institution right now.

They told me that they had 1 pound of cocaine, that they needed to get rid of it and it was the last of 1 pound that they had done. I told them that I would be, I had somebody that was interested in buying it. This was with John Piazza knowing what was going on, because John knew everything that was going on between him and I.

I tried to set up a deal that I would buy this pound of cocaine from him. In the meantime, back and forth on the phone, they decided to front it to another fellow and this fellow got arrested with selling it hand to hand to a DEA agent.

They got very scared, felt this man was going to kick back on them and say, well, he had got it from them. They called me on the phone and told me that they had a 55-gram rock which is one large massive piece of cocaine which is very rare that you see that big of a rock.

Senator CHILES. What is rare about that?

Mr. KECK. Most of the cocaine, when it comes from over there, it is in rock form but the rocks are not that large, 55 grams. From the way it is handled, transported, they have a tendency to break down, come apart, get broke.

Senator CHILES. A lot of times when it is broken down it has actually been cut, too?

Mr. KECK. Yes. Well, that is a complete other issue, sir, of cutting cocaine. There is a process. There is a press that they have that can

make any type, here in the States, if someone wants a soft rock, they will make them soft rock. If they want flake, they can make flake out of it. If they want shale, they can make shale. If they want large rocks, they can make large rocks.

Then like you say, when it is cut, it is cut with many things. You can buy a lot of the things right over the drug counter.

Senator CHILES. There is no way, you didn't have any additional feeling that you were getting pure cocaine because it was in the rock form?

Mr. KECK. No, sir. I didn't. In fact, the best cocaine is not really rock cocaine. It is more of a shaley cocaine or flaked cocaine.

Senator CHILES. Go ahead.

Mr. KECK. I proceeded to meet these gentlemen in a Ramada Inn, in a room, with a Mr. Leonard Parrotta, Jules Krenzel.

Leonard is also deceased. And we talked terms of buying this 55-gram rock. I believe, sir, I bought it for around \$5,000, then sold it to Mr. Parrotta for around \$8,000.

Senator CHILES. Who was your source in Tampa?

Mr. KECK. That comes a little later stage of this thing. I eventually got a call from Jack Mullenix, because they were scared. They went into hiding. They went to Tampa to the source. The source of cocaine was a fellow named Roy Corbin and they told me that Roy would be interested in dealing with me direct because they wanted to stay away from it right now because they felt they were hot.

I flew over to Tampa, and I had Jules Krenzel and Leonard Parrotta fly down from Philadelphia. This is a later date. Roy Corbin brought a pound of cocaine into the room, showed it to me. I proceeded to leave the room with the pound, take it to their room and show it to them. They were interested to buy it. They wanted to buy it at that time.

Mr. Corbin was selling this stuff at around \$13,000. And I told him, Mr. Parrotta, it was going to cost him \$20,000. This was relatively uncut cocaine. It was, had a very little cut on it, if it had any at that time.

We consummated the deal. Mr. Parrotta and Jules Krenzel, Jules Krenzel was just going to be the mule. He was going to take this pound of cocaine to Philadelphia and start showing it to his people so he could do more cocaine.

Roy Corbin told me that he had just an undetermined amount of cocaine, all that I could possibly ever even think about doing.

Senator CHILES. What is the largest amount of cocaine you have ever seen in the possession of Roy Corbin?

Mr. KECK. I would venture to say around 50 pounds, 25 kilos, 50 kilos. It was a room, sir, that was in his grandmother's house that was just, the kilos of cocaine were just all over the place.

Senator CHILES. When you say kilos, you mean——

Mr. KECK. Kilos is 2.2, sir.

Senator CHILES. Kilos?

Mr. KECK. Yes; it is a kilo.

Senator CHILES. 2.2 pounds?

Mr. KECK. Yes.

Senator CHILES. Where was that?

Mr. KECK. At his grandmother's house.

Senator CHILES. Was it hidden?

Mr. KECK. No, sir. It was just laying in a laundry room of his grandmother's. It was on shelves, just stacked up. They had it all over inside the house.

Senator CHILES. Did Parrotta contact you to supply him with more cocaine?

Mr. KECK. Yes, he did. I eventually did approximately 50 pounds, I will say, with Roy Corbin over a course of a month. I transported this stuff by the way. I did it myself, after he started fronting me the cocaine, sir, after a couple of deals.

I would put up to 5 pounds in an attaché case and do the same thing, walk on a plane with it; flew to wherever I was going; get off the plane; and just take it and meet people and distribute it.

Senator CHILES. You originally did about \$1 million worth of transactions?

Mr. KECK. Yes, approximately.

Senator CHILES. Where was Roy Corbin getting his cocaine?

Mr. KECK. Sir, he had a girl friend that he had met down here. I remember her first name. Right off the top of my head, I know it is Nubia, but I can't remember the last name.

Senator CHILES. Was it Gonzalez?

Mr. KECK. Yes, that is it; that he had met down here in Miami when he was on vacation. He just by accident met upon this girl.

Her father was an official in the Colombian Government and she had told him that Roy had made these statements to me, as long as he would stay with her, and never ask questions, he would have accessibility to all the cocaine that he could possibly ever want as far as sale, doing whatever.

Nubia Gonzalez, by the way, is also deceased. She was found in New York, floating in the bay up there, in the Hudson River, I believe it was.

Senator CHILES. Was she murdered?

Mr. KECK. Apparently she was.

Senator CHILES. What is the largest amount of cocaine that you would get from Roy Corbin at any one time?

Mr. KECK. Five pounds, sir; approximately.

Senator CHILES. Did you always go to Tampa to pick it up?

Mr. KECK. Yes. I would fly into the Tampa Airport. I would stay at the Tampa Airport Hotel. Mr. Corbin would call me. I would go down the rear escalator of the hotel, get into his car.

We both had the same type suitcases or attaché cases and he would have this cocaine in that. He would take me around to the front of the airport. I would get out just like he was dropping me off.

I would grab his suitcase or attaché case, step out of the car, go in and get my flight to wherever I was going, which would be Atlanta, Philadelphia, numerous places on the eastern seaboard.

Senator CHILES. You just carried the attaché case that contained the cocaine through the airport again?

Mr. KECK. Yes, even if it was a suitcase, it was a small type suitcase that I would carry, just carry it, like nonchalantly, like it was luggage. You can steal more in daylight than you can in the dark.

Senator CHILES. Did Corbin dry up as a source of cocaine to you?

Mr. KECK. Yes, he did. He was so haphazard about his business that he was being robbed blind and people were getting cocaine, not paying for it, not only our deal, but other deals.

What had happened was with us, I had given, come into town one night. I had given John Piazza \$60,000 that was to be delivered to Roy Corbin. Unbeknownst to me, because I had been doing many things at that time for Mr. Piazza and myself, I had given John the 60, and he had never given it to Roy Corbin to pay for this one pick 5 pounds.

When I had the occasion to go back to Mr. Corbin for some more cocaine, he told me that until he got paid for the initial \$60,000, he could not give me any more. I tried to make a deal with him at that time, that if he fronted me more cocaine, that I would be sure to pay him more money and he could take, you know, some of the profit of mine back into the \$60,000, because I had a ton of people that wanted to do this cocaine.

I had sold the cocaine to people in Florida, people in Atlanta, people in Philadelphia, and everybody was wanting it because it was extremely excellent cocaine. It was very good grade of cocaine. Now I developed the clients, couldn't deliver the product.

Senator CHILES. At some point, did Piazza also lose his source of supply of marihuana?

Mr. KECK. Yes, sir. Over the ruboff and the murder of a certain individual, we lost the marihuana connection as far as the large quantities of it.

There was still small quantities from small people that we had did business with before and it was over the original 1,000-pound loss and the murder that our connection was cut off.

Mr. STATLER. Pardon me. On the cocaine dealings that you had, during what period was that that you were dealing with Corbin?

Mr. KECK. It was in, roughly, I would say the summer of 1975. Sir, I am pretty bad on dates and especially right now.

Mr. STATLER. It was over a relatively short period?

Mr. KECK. Yes, it was relatively short period.

Mr. STATLER. Was it Piazza at the outset who was giving you directions to deal with Corbin, or did you bring Corbin to his attention?

Mr. KECK. I actually cultivated Roy Corbin through Jack Mullenix which, through a roundabout way, John Mullenix preceded me with John Piazza. He had been before me with Mr. Piazza.

Mr. STATLER. So you weren't just an employee of Mr. Piazza. You were something of an independent operator who would bring about deals yourself?

Mr. KECK. He was actually supposed to be. I was a partner of Mr. John Piazza.

Mr. STATLER. What was the nature of the financial agreement that you had with Mr. Piazza?

Mr. KECK. We were supposed to be a 60-40 split. It never worked out that way because I felt I didn't need nowheres near the amounts of money that Mr. Piazza needed to keep my image. I kept a low profile. Mr. Piazza kept a very high profile. I have seen myself bring him \$100,000 and take \$10,000 out of that 100 and give him the rest.

I just didn't need that kind of money because I wasn't really interested in it.

Mr. STATLER. How much money did you make from the Corbin cocaine transactions?

Mr. KECK. How much money did I make off of that? I would probably say around \$50,000.

Mr. STATLER. That would represent 40 percent of the total amount?

Mr. KECK. No, nowhere near it. As I said before, sir, John Piazza and myself had a completely different lifestyle of living. I would buy a Volkswagen, John Piazza would buy a Ferrari. I would buy a gold ring, John Piazza would buy a 5 carat diamond ring. It was just a vast difference in our lifestyles.

Mr. STATLER. So if you got \$50,000 he probably got several hundred thousand dollars?

Mr. KECK. Yes, sir. I would venture to say so; yes, sir.

Mr. STATLER. Were there other kinds of transactions that you brought to his attention? In other words, were you more of an independent operator rather than someone who took orders from him?

Mr. KECK. Well, sir, when you are partners, we are both bringing transactions together and sitting down talking about them. I felt that I was on his level. I felt, I was not only on his level, John Piazza really didn't know the business.

Mr. STATLER. Did not?

Mr. KECK. Did not, none of the business. He was a highflier, had connections with some very strong people.

Mr. STATLER. At the outset it was he that brought you into the business?

Mr. KECK. Yes, it was.

Mr. STATLER. Yet you learned the business better than he did?

Mr. KECK. Well, sir, they claim I have a very good street sense of business. Illegitimate business, which I am not proud of.

Mr. STATLER. Does this go partly back to your fencing operation in Philadelphia?

Mr. KECK. Yes, sir. I was raised on the streets in Philadelphia. My parents never had that much money, and I had been around many, many things.

Mr. STATLER. Was narcotics new to you when you came to the Miami area?

Mr. KECK. No, I had seen narcotics, not to any extent. I had never done any narcotics; I had never smoked anything. At one time I took speed to work.

Mr. STATLER. I am less concerned with your individual habits than your dealings. When you were in Philadelphia, did you have dealings in narcotics?

Mr. KECK. No, sir; no transactions.

Mr. STATLER. So Piazza really brought you into that?

Mr. KECK. Yes.

Mr. STATLER. You developed contacts of your own down here?

Mr. KECK. Yes, sir, though a lot of them came through Mr. Piazza. But what happens there is they can't maybe deal with John. They didn't like his ways of dealings, how he would handle transactions.

Mr. STATLER. Because he was untrustworthy?

Mr. KECK. He was very untrustworthy. He would rip you off as quick as look at you. Get money from you, never deliver.

Mr. STATLER. Was his flamboyance a problem with those that you began—

Mr. KECK. Yes. Mr. Piazza always felt he was a star. He wanted to be always in the limelight. He wanted to be always just on out front with everything, a braggart. He just liked the limelight.

He was on television for being the most eligible bachelor; they wrote an article in the paper on him. He just, he lived out front. I lived a low profile; he lived a high profile.

Mr. STATLER. Were there people who came to you because of that flamboyance on Piazza's part, who didn't want to deal with him, but just wanted to deal directly with you?

Mr. KECK. Yes, sir; that is correct. They felt more comfortable with me. They knew that when I told them something I tried to live by it, if I told them it was a set figure on a particular product, that is what they were getting; they knew that I wasn't in any way; way, shape, or form was I going to set them up in the position where they were going to lose their money.

Mr. STATLER. In situations like that, where they didn't want to deal with Piazza, did you take them as individual clients without bringing Mr. Piazza into the picture?

Mr. KECK. On occasions, yes, I did. They knew that Mr. Piazza owned the stuff because his top—his name would always come up in the topic of conversation. In roundabout ways, when it came right down to the nitty-gritty on a lot of things, I would always call Johnny and talk to him about certain things.

If I was out of town; if not, I would go see him and we would get the problem resolved.

Then he would let me go back to handle certain people. It was certain people that he would handle and certain people that I would handle.

Senator CHILES. Let's move forward now and try to focus on the calendar year 1975.

I believe you told the staff that in approximately January 1975 you and John Piazza were involved in a transaction regarding marihuana from Jamaica. Would you explain to us the circumstances of that first transaction?

Mr. KECK. Yes, sir. That was, I believe—did you say early in 1975?

Senator CHILES. I think so; January 1975.

Mr. KECK. Yes; this stems again, sir, from the original deceased party that was murdered. That is where we got the first Jamaican marihuana. There is all types of marihuana. You have all over the world, you have got marihuana being cultivated. The Jamaican marihuana is a relatively poor grade if it is commercial Jamaican. Commercial is just commercially grown; it is not cultivated properly; it is not treated properly; it is cut too soon, so forth.

We had about an 800-pound thing that originally was given to Roy Corbin. Mr. Roy Corbin couldn't do the product because the product was so inferior. It was trash. It looked like hay. Then a gentleman come down from Georgia that had known John Piazza. They had been busted together in Texas on a Mexican marihuana transaction, I believe. He had just got out of jail.

He came down, talked to John Piazza, John Piazza was going to help him get back into business. At this point, I can't remember the gentleman's name. anyhow, we fronted this marihuana to him.

Apparently he flew it to the Atlanta section of Georgia; it was up in Georgia somewhere, Augusta or Atlanta.

It got busted by law enforcement agencies and he lost it. He had told us a couple different stories about this marihuana. John felt that he had ripped it off of us because for the simple reason that this fellow, Barry—his name is starting to come to me—felt that Barry had in his head that for the 2 years or whatever he did incarcerated for this particular thing that John and him, by the way, got busted on and John didn't get no time out of it. He got probation—that Johnny owed him something for the time he did. John felt that he ripped this 800 pounds off us.

At a later date, we went looking for this gentleman. John claimed he owed \$106,000 for this 800 pounds. Jamaican marihuana is very cheap compared to Colombian or anything else. We never ran across the individual. The individual, to my knowledge, has never paid for this original 800 pounds.

Senator CHILES. Was there an occasion in 1976 when you were involved in a shipment of marihuana to Philadelphia?

Mr. KECK. Yes. I was involved in a lot of shipments of marihuana to Philadelphia. If you are speaking of the Jamaican marihuana—

Senator CHILES. Jamaican marihuana, yes.

Mr. KECK. Yes. We received 300, 400, 500 pounds—it really evades me just exactly how much—from a Mr. David Brazel of Miami, Fla. He had related to me that he had received this marihuana from a group in Jamaica called the Ching group. The Ching group is an infamous group of people in the islands that just have massive access to a lot of Jamaican marihuana, and they have actually access to a lot of marihuana of all types.

He had told me that he had set up a dummy receiving point, a front, to receive this stuff that was being shipped in in loads of lumber that were banded up, and it was inside these loads of lumber.

He told me that they would pick it up at the island, I think it is Dodge Island, on a flatbed trailer, have it delivered to a specific job site, they would unload this lumber; of course, they were not interested in the lumber. They were interested in what was on the side, which was marihuana.

He delivered, like I say I am not sure of the exact amount, but I know it was 300 pounds, maybe in excess of that.

We proceeded to put the stuff, John Piazza, myself, and Rhett Zambito, proceeded to cut these bales. They were quite large bales. I would say they were like 100-pound bales, which is—this is extremely large, a bale of marihuana—would cut these bales in half, stuck them in the trunk of a vehicle which happened to belong to me. We got Rhett Zambito's wife to drive this marihuana to Philadelphia.

Senator CHILES. Who was Rhett Zambito?

Mr. KECK. Rhett Zambito started actually out working with John Piazza and myself as a mechanic. After I left the Piazza organization, he started to do relatively the same type of thing that I was doing for Mr. Piazza. Mr. Piazza became very loose under the influence of tremendous amounts of cocaine, and I proceeded to leave the group.

Mr. Zambito went to work for him as his muscle, bodyguard. He was in a little different position than I was. I was never Mr. Piazza's muscle or bodyguard. He is now deceased, also.

Senator CHILES. In 1975 or 1976, your role in the Piazza organization shifted that you were no longer primarily involved as distributor of narcotics?

Mr. KŁECK. That is right.

Senator CHILES. How did that role shift? What did you do?

Mr. KŁECK. Mr. Piazza and I started arguing over moneys that he had parlayed people out of. I could never see the sense of it. There was enough money to be made in the drug business; you didn't have to steal from people. We would get into frequent arguments concerning ripoffs, people that he owed money to, just on many occasions, sir.

He decided that I was too, I had too much knowledge just to let me walk away. So he had to do something with me. So he put me as running some legitimate businesses that we were trying to get started at that time.

Senator CHILES. What kind of businesses did you run or buy or develop from Piazza?

Mr. KŁECK. Sir, we started to, we were trying to get a Honda motorcycle dealership, Honda car and motorcycle. We bought a building in Homestead, Fla. We opened it up primarily to start as a speed shop, parts and equipment for race cars. We did, in fact, get the dealership arranged with Honda. Mr. Piazza put up a phony \$50,000 in the bank. He was always manipulating bank moneys and so forth.

He put up a \$50,000 check, and when they called the check collateral, you needed the \$50,000 in the bank. He put up some mortgages and things like that that he had manipulated.

We started to open this Honda agency and motorcycles, cars, building race cars, and so forth.

Senator CHILES. Up until that time it is correct to say that the role of Piazza's organization was sort of that as a middleman, between the supplier and the distributor? Would that be correct?

Mr. KŁECK. Between his supplier and the people on the street, yes. We were actually like a distributor. We were actually middlemen; yes, sir.

Senator CHILES. At some point did Piazza desire to expand and develop his own sources of cocaine and marihuana outside of the country?

Mr. KŁECK. Yes; he had always been locking for the bigger connection outside, always trying to buy people, step on people, things like that nature.

Senator CHILES. Would you describe some of the actions that referred to this kind of desire of Piazza's?

Mr. KŁECK. Yes, sir. He brought in some people from New York and had some sitdowns with people here and people out of New York. He was going right by the distributors of cocaine. He decided to fly out of the country and fly to South America and see some people in South America, which was aborted. They just never made it there.

He also got involved with some planes. We had bought a plane earlier. We had bought a C-46 and it was at the Fort Lauderdale Airport. It was getting repairs done to that, looking to fly out of the country to pick up our own large loads from connections directly in South America.

Senator CHILES. What could you buy marihuana for in Colombia at that time?

Mr. KECK. At that time about \$50 to \$75.

Senator CHILES. It was costing you what in the States; approximately \$200?

Mr. KECK. No, sir. At one time we were probably paying like \$150 a pound for it. It had risen to approximately \$200 a pound.

Senator CHILES. Double in the States?

Mr. KECK. Yes; more than double. It was all fronted to you. So it was actually no outlay of money. You were in between. It was just a matter of getting your source and then selling it, paying for it, and it was just a manipulation of moneys.

Senator CHILES. I understand there was an original attempt to make a trip to Colombia to meet the supplier at the source.

Mr. KECK. Yes, sir. That is true. Mr. Robert Ellrich—no, sir. I am ahead of myself. We originally set up a flight down in a small plane that was leased from a south Florida airline company, leasing company, and a Mr. Gene Lento set up to get us a pilot and John and myself had to develop some people out of South America through some people here, a fellow by the name of Doug Ruble, and I can't remember Nick's last name—Castavnick, I believe it is, sir.

They had a tremendous connection in South America named Carlos that would front all we could possibly want or do, cocaine and marijuana. We tried to make this flight down there. We added tanks to the plane, the plane took off from Homestead International, Homestead Airport, we proceeded to go down to the Keys, to the Big Pine Key. There was a strip down there that we were going to use. It was not an airstrip, sir; it was a long strip of land that was just strictly going to be used for these flights coming in.

We went down there after they took off. The plane took off from here, Homestead. We were down there quite a few hours when something happened. We kept waiting, waiting and waiting, and finally one of the gentlemen walked in that was on the plane. We thought we heard him on the CB radios that we had sitting down there, and we lit up the airstrip and just running around like nuts, and finally we realized the guy was walking in to where we were at. They had apparently somehow, when they took off, one of the gentlemen set a can of soda up on the dashboard and it changed the compass on the plane. They flew over Cuba and were aborted by a couple of jets out of Cuba to turn around and head back to the States.

Senator CHILES. We heard testimony from Ellrich and Joe Fluet this morning with regard to that particular flight and their arrest upon its return.

Mr. KECK. No, sir.

Senator CHILES. I am not talking about that. This is the later transaction.

Mr. KECK. I am sorry.

Senator CHILES. Did that arrest and that particular transaction cause any falling out between you and John Piazza?

Mr. KECK. Yes, sir. It most definitely did. I had tried to stop the transactions to start with. I didn't like the people that were handling the main transaction. I said that I would like to use the people that I had developed, this Doug Ruble and Nick Castavnick, and let us use Carlos.

We got into a heated argument in a restaurant. I told him, Mr. Ellrich, that he was on his own. I didn't want him doing this particular thing. I felt that he was going to have problems with it, and, in fact, that it later on turned out that this is when everybody thought that I had turned over the load; in other words, I had given the load up because I had made such a stink about them going.

When they left, they came back, Mr. Ellrich was given \$10,000 or \$15,000, and I don't recall exactly how much. I believe it was \$15,000; not by us, by the gentleman that was running this whole complete mess. And he had \$10,000 at his house and when he got arrested in Orlando, they called down and told Mr. Ellrich's wife, Bob did, that he wanted this money not in his possession in case they went to his home. Mr. Piazza and I went over to his home, picked up this money, and in fact it was never given back to Mr. Ellrich.

Then there was just argument back and forth of who had given the load up. I had found some detrimental things that had happened. I understand that there was a load traded for a load—is the first load, the load that got in belonged to the Boyd brothers, and they had given us up on our particular load, so that they could get their load in.

Just multiple things happening. Then further on there was a list, a contract list that I found out that they were going to kill Mr. Ellrich and quite a few people that was on the plane, Mr. Piazza was and I told him that if anything happened to Bob, because he was only trying to earn some money for himself, his wife needed apparently, and he had some debts and so forth, that there would be hell to bear because I would blow the whole thing right out of the park.

Senator CHILES. Did Piazza, in effect, replace you at least insofar as your involvement in the narcotics distribution operation, and if so, who did he replace you with?

Mr. KECK. I think he replaced me with multiple amount of people. The main person, I think, was his mother, Cora Piazza, Rhett Zam-bito, and Al Benton.

Senator CHILES. Earlier you mentioned Gains Redman as being involved in the flight, the ill-fated flight to Colombia. Some time in the fall of 1976, did Gains Redman approach you to kill anyone?

Mr. KECK. Yes, he did, sir. In fact, Robert Ellrich was at the initial conversation. In fact, I think he was at both conversations. Also, there was another Douglas Ruble there at the same time. They approached me and asked me would I be interested in taking a hit, a contract, on a certain individual.

I told them I was interested; how much were they talking about? They said it would be \$10,000 or \$15,000. Mr. Redman told me this. They wanted me to hit a gentleman named Johnny Jackson.

Senator CHILES. Who was Johnny Jackson?

Mr. KECK. To the best of my knowledge, Mr. Jackson is an ex-policeman, Miami or Dade County. I am not positive of that statement, now, sir.

Senator CHILES. Why did they want him hit, killed?

Mr. KECK. Apparently he had got some drugs from the Boyds which Redman had been connected with. He had done some things with them. The Boyds were interested. They knew they couldn't get their

money and they were interested in killing this individual because of nonpayment of debt.

Senator CHILES. Did you go through with the deal to kill Jackson?

Mr. KECK. No, sir. I had no intentions of doing it in the first place. My intentions was at that time, I was desperate because Mr. Piazza owed me a great deal of money. He was in no way going to pay me. Oh, he was interested in taking the \$10,000, just claiming it was another mess-up and using the money for my own benefit as far as bills and things at my home.

Senator CHILES. Was John Piazza a heavy user of cocaine during this period of time, and did it affect his judgment?

Mr. KECK. Most definitely, sir. Mr. Piazza was going around bragging that he was the original snowflake.

Senator NUNN. Original what?

Mr. KECK. Snowflake. That is a term used with cocaine. It is called snow. It is called many things, but snow is one of them. He became so paranoid of everyone around him, he felt that, even down to his mother, his brothers and his aunts and everybody, that people were starting to say things about him; they were going to the Government about him; they were telling DEA things about him. He became—well, sir, I can make this statement to you: that this is, all of these things led up to me leaving this organization.

One day I happened to be standing there, I happened to see everybody snorting this cocaine, falling over on the place. It was on the carpets. It was all over, and I looked around myself and I felt this is going to be the exact same thing as what happened to the Cravero gang down here. Everybody is going to start killing one another because cocaine to me, it definitely breeds paranoia. It does something to the system when you use it heavily that you don't have no control of, and you start doing things that you are just, it is not you.

My wife even noticed this in myself, and I wasn't really a heavy user of cocaine. When she brought this up to me, I completely stopped. I realized what she was talking about.

This actually, like I say, has led up to the point where I saw this happening. I didn't want to see everybody getting killed. I could figure I would be the first one to be killed because I had the most vital information concerning many, many things.

Senator CHILES. Did you discover a plan by Piazza to kill certain people, and if so, describe what you learned.

Mr. KECK. Yes. I walked into his home one day. They had a bulletin board up there with many people on the list. I asked him, what was this going on? It was Rhett Zambito and his mother, Cora Piazza, had this list drawn up. They told me that this was the list of people that were organizing against John Piazza to take over his organization in south Florida, and they were going to kill all these people.

Senator CHILES. How many names were on the list?

Mr. KECK. It was at least 10 to 15 people.

Senator CHILES. Did they have any plans as to how they were going to try to kill them?

Mr. KECK. They had numerous plans, but the main plan was they were going to make this bigger than the St. Valentine's massacre. They was going to invite all these people to a mass meeting, and they were going to blow up the building that these people are inside. They were going to lock them in; just blow the building up.

Senator CHILES. Use explosives?

Mr. KECK. Yes, sir; dynamite.

Senator CHILES. Was Robert Ellrich's name on this list?

Mr. KECK. Yes. It was, most definitely.

Senator CHILES. At some later time did Rhett Zambito ever corroborate their intentions? If so, what did he say?

Mr. KECK. He had also told me that on the flip side of that page my name was the whole back of that thing. I was the major one that they were interested in killing, which is many moons after they, in fact, made a couple of attempts on my life, which aborted. They just could never pull it off. Mr. Piazza apparently paid them some money to kill me and to try to put me in traps.

Really, Rhett Zambito, my own opinion of this is that he took this contract in a sense to really protect me because I think that if they really wanted to take me out they could have, and if it had been given to someone else, I feel I would have been killed.

Senator CHILES. So you think Zambito actually took the contract to kill you so it wouldn't be given to someone else?

Mr. KECK. Yes. They made these bad attempts at it, him and Mr. Benton made an attempt. They also made a try to put me in a specific spot, and Mr. Piazza, Mr. Zambito, Mr. Benton was going to all three of them kill me and actually Rhett Zambito changed the plan in a little bit that they never caught on to. But it was John Piazza's main intention to kill me.

Senator CHILES. Do you think, again, heavy use of cocaine was responsible for this?

Mr. KECK. Most definitely, sir. Also, another occasion, I happened to leave the south Florida area, actually with some fear in me, and I went to the Ohio area and laid up with some people up there on a farm. Mr. Piazza made a phone call to these people while I was sitting there, had been sitting there for 10 days, and told these people, "Look out for Charlie Keck. He is going in to DEA. He has turned over." And they said, "John, how do you know this?" He said, "Well, I just saw him the day before. I followed him right there." John Piazza knows me well enough and knows my face, knows everything about me, my actions and everything. There is no way could it have been me because I had been there for 10 days to 2 weeks with these people.

Senator CHILES. But you think he actually thought he did see you?

Mr. KECK. Yes. Most definitely. He saw things. He was shooting at bushes, driving; for instance, he bought an Imperial automobile in Orlando, Fla., at the time of Robert Ellrich's trial up there, not trial, I imagine it was the arraignment up there. Him and Michael Cindicatti, this was a relatively new car, it was, I would say, maybe a 2-year-old automobile at the time. They truly believed they were being followed by agents, such to the point they burned the car out by the time they got to the end at Bird Road. Mr. Zambito and I had to go up there and pick them up. They burned the engine out. They drove this car so ridiculously and snorted so much cocaine that they were so paranoid, they saw people that weren't even there.

Cocaine just is, it is the worst drug that could ever come down the pike.

Senator CHILES. How much use is "heavy use," when you say they became heavy users?

Mr. KECK. I have seen John Piazza go through a pile of cocaine the size of probably the quarter of an ounce. I would say he did probably, in that quarter of an ounce, I would venture to say he did less than in 2 hours' time. This is so extreme that it is hard to believe; the stuff was running out of his nose. It could not stay up his nostrils. He used between him and Michael Cindicatti and a few other people, I would venture to say they were doing approximately an ounce a day. That is extremely hard to do.

Senator CHILES. Does cocaine get where you develop some kind of immunity; in other words, it takes more to get the same high?

Mr. KECK. Sir, you actually, by putting it up your nose like that, you don't increase the high; you do nothing. You are staying right exactly where you first got with your first two lines that you snorted. When it starts, there is no such thing as immunity to it. You are wasting it because it is not going to take you no further than where you have already got.

But over a long use of cocaine, it does something to your nervous system that I have seen from it, that it literally just blasts a person's mind. They see things, they don't sleep, they don't eat. Mr. Piazza and myself went 23 days, sir, without any whatsoever food. All we did was snort cocaine and drink bottles of wine.

Senator CHILES. Twenty-three days?

Mr. KECK. Yes, sir; no sleep. That is what cocaine will do to you. When I say that I completely quit, I quit a long time ago because I seen the ill effects of it.

Senator CHILES. Then the same thing that Bowdach was telling us about what happened to the Cravero gang with their heavy use of cocaine actually happened with Piazza?

Mr. KECK. Most definitely, sir; most definitely.

Senator CHILES. Going into the William Jack Mullenix, we understand that you had several narcotics transactions with Mullenix. Is he currently a fugitive?

Mr. KECK. Yes, sir; to the best of my knowledge he is a fugitive.

Senator NUNN. We have an exhibit on that we will put in the record, without objection.

[The document referred to was marked "Exhibit No. 54" for reference and is retained in the confidential files of the subcommittee.]

Mr. KECK. Sir, can I request a break, please?

Senator NUNN. Sure. We will take a 15-minute break.

Mr. KECK. That will be fine, sir; 15 minutes would be fine.

Senator NUNN. We will take a 15-minute break. We will ask all the cameras to turn away.

Senator CHILES. I think we are getting closer to the end. I think we can finish up our questions after the break before too much longer.

Mr. KECK. Thank you.

[A short recess was taken, at which time the following committee members were present: Senators Nunn and Chiles.]

[Members of the subcommittee present at time of reconvening: Senators Nunn and Chiles.]

Senator NUNN. The subcommittee will come to order.

Bring the witness in.

Mr. Keck, I hope you feel a little bit better. You have had a long day. We realize that. You are doing an excellent job in answering the questions direct'y.

The cameras can come back.

We have a lot more questions. As I have already mentioned to you, we plan to pursue in depth a lot of these issues that we are going over today without really getting into detail on. We want to get into a lot of areas that we are not even covering today with you at a later point.

We plan to have a good many more hearings on this overall subject either in Washington, here, or both, after the first of the year. So we will be pursuing many of these areas when you have had more time to rest and when we have more time allotted.

I think now we probably would be able to complete the questioning that we have left this afternoon within an hour. We want to give you time to rest.

We will look forward to hearing from you in more detail at a later date but we do thank you again for your willingness to testify.

Mr. KUCK. I just feel the public needs to know everything and I am not being able to say everything at this time. I am being suppressed in so many areas and there are things that need to be said.

As you well know, I am not in the best condition right now mentally. I am physically whipped right about this point.

Senator NUNN. I understand that. We are not going to take much longer. We are avoiding open cases.

Mr. KUCK. Yes, very many of them, and I am not being able to talk about any of the organized people, any of the major things. We seem to be increasingly on Mr. Piazza.

At this point, I am making him look like the biggest thing that happened in south Florida and he is a nobody, compared to the other people involved in, around this organization.

Senator NUNN. We want to get into all of that with you at the appropriate time. Until we do have a chance to look into it, we do honor the request from the Justice Department to avoid open cases. We may well get into those at a later point, but until we have a chance to go into the objections of the Justice Department in certain open areas, we feel like it would not be in the best interest of the subcommittee or the administration of justice to go into them blind.

So we want to honor those requests for the rest of this hearing, which we have been doing, and which you have been doing. We appreciate that.

Mr. KUCK. Sir, it seems like I am an open case. The Justice Department doesn't want me even here. Apparently they must know that I have something to say; apparently it is detrimental to the Justice Department because they didn't want me here in the first place.

They tried to abort that also. To the best of my ability, I think they did.

Senator NUNN. We are going to be getting into this matter with the Justice Department as to why they object to certain areas and what kind of likelihood they have of getting indictments in certain areas.

We don't want to interfere with their job of prosecuting cases. But, on the other hand, we have an independent responsibility in the legislative branch, and we will make the final judgments about when and to what extent we go into any of these matters.

We do appreciate your coming back and we won't take a whole lot more of your time knowing how tired you are.

Mr. KECK. Thank you, sir.

Senator NUNN. Senator Chiles.

Senator CHILES. I am kind of interested in trying to determine how—you testified earlier how Piazza had a different lifestyle than you had and how he lived it up, was very showy with the affluence that he had. I understand that he had, about how many automobiles during the time?

Mr. KECK. Approximately 70 to 80 automobiles.

Senator CHILES. About 70 to 80 automobiles, and a lot of those were the Ferrari type?

Mr. KECK. Ferrari, Masserati, Lamborghini.

Senator CHILES. Those are the most expensive showy kind of cars that anybody can possibly have?

Mr. KECK. Yes, that is true.

Senator CHILES. There aren't an awful lot of even Ferraris in Miami?

Mr. KECK. No. Mr. Piazza also owned a Daytona Spider that there is only 70 of them in the world. He owned quite a few very unusual automobiles.

Senator CHILES. He would have some of those cars painted every other week or every several weeks?

Mr. KECK. He would; he was never satisfied with colors. He always wanted special colors that attracted his eye at any given time.

Senator CHILES. Do you have any kind of estimate of what he spent on automobiles, in refurbishing of those automobiles?

Mr. KECK. Yes; approximately \$358,000.

Senator CHILES. That was during about an 18-month period?

Mr. KECK. That is correct, sir.

Senator CHILES. Wouldn't you think this would come to somebody's attention a little bit, during this time? Did he have any real meaningful source of income, legitimate source of income?

Mr. KECK. No, sir; he had no legitimate source of income. I am sure it came to the attention of the public because, as I said before, he was flamboyant; he made interviews on television; he gave statements to newspapers.

Senator CHILES. He also had marihuana stacked around his house in every closet, in the showers?

Mr. KECK. Yes; correct.

Senator CHILES. Everywhere you would walk?

Mr. KECK. Yes.

Senator CHILES. And coke at times; once you got into coke, you kicked the rug, the coke dust would come up from that?

Mr. KECK. Not just dust; a lot of little stones, rocks, shelf cocaine, I mean if it was laying, it was a little excessive laying on his desk at times when we were weighing it, he would just push it off on the floor, absolutely no consideration for anything.

Senator CHILES. He carried how much money, approximately, around with him all the time, \$100,000?

Mr. KECK. In an attaché case; he would always have \$10,000 in his pocket. If he didn't have at least \$10,000 in his pocket, he felt that he was broke.

Senator CHILES. I understand that; relate to me the instance he got caught in the rain or were you with him?

Mr. KECK. No; I wasn't with him. They were on motorcycles, his girlfriend, himself, Jack Mullenix, and his wife. They were in Fort Lauderdale and it started to rain and the girls started to complain.

He drove into a—not a Ferrari, I am sorry, a Fiat dealership and bought a Fiat convertible for the girls to drive home. That vehicle sat alongside John Piazza's house for quite a few months because the girl that he bought it for at that time was only 13 or 14 years old, which was his girlfriend.

Senator CHILES. He never drove that car again to your knowledge?

Mr. KECK. Eventually he drove it, I am sure, but eventually he gave it to his brother, Carl Piazza, and he wound up just beating it, driving it like it was a truck or a tank.

Senator CHILES. In addition to the cars that you are talking about, he owned a house. How many houses did he own?

Mr. KECK. Sir, he had a house in Homestead, Fla. He had a house in Coconut Grove, on a main highway; he had a house in Hollywood, Fla.

Senator CHILES. Was one of those houses worth \$400,000?

Mr. KECK. That is correct; that is the one in Coconut Grove. It was supposed to be a bachelor's pad. It was the most hideous thing inside. It had—it was wild but it was very—it couldn't be utilized too well by a family. It was strictly a one- or two-person home.

Senator CHILES. Did he have a horse farm in Ocala?

Mr. KECK. Yes; correct.

Senator CHILES. What was the approximate value of that?

Mr. KECK. About \$1.5; \$1.2 million.

Senator CHILES. Did he own racehorses?

Mr. KECK. Yes; he had as many as 40 at one given time.

Senator CHILES. It is my understanding at one time he leased an entire floor at the Holiday Inn at Calder Race Track?

Mr. KECK. That is correct. We used that for many purpose thing; people coming in from out of town, organized crime figures. We would pick them up at the airport in a Cadillac limousine.

We had a chauffeur that would do that. The bills at the Holiday Inn were as high as \$2,800 to \$3,500 a month. Anybody was signing the bills. In fact, the gentlemen would argue over who was paying the bill and finally the argument was settled who was paying it.

They would hand him the bill and he would—whoever received the bill, would sign John Piazza's name anyhow, J. P. III.

Senator CHILES. So they would have a fight among each other who would get a chance to sign?

Mr. KECK. That is about what it amounted to.

Senator CHILES. Did he have his own stable at the Calder Race Track?

Mr. KECK. Yes, he did. He had a stable at Calder Race Track that—it had a crest on the door; it was the only stable there that had the crest on the door.

Senator CHILES. Approximately how many horses did he stable there?

Mr. KECK. About 15 at that location.

Senator CHILES. Around what did that cost a day?

Mr. KECK. Approximately \$30 a horse, so roughly about \$450 a day, multiplied by 30 days. All this was done in cash. It was always

cash paid. They did set up accounts for a racing association account; money was filtered into that account.

It was all cash from dope transactions, marihuana, cocaine.

Senator CHILES. How many racehorses did he own at any time?

Mr. KECK. Forty, sir. He had at any given time, I don't have no idea over the course of the time that Mr. Piazza was in the sport of kings, is what he called it; how many horses he had.

But I do know that he also bought a lot of horses for \$25,000 and \$50,000 that weren't worth \$2,000. In fact, he sold a horse with a certificate of a thoroughbred and the horse was not alive. The horse was dead. It was another horse in its place.

These are just instances that I am bringing up.

Senator CHILES. Do you have any—did he ever cause any of his horses to be drugged?

Mr. KECK. Yes, sir. It had been done on numerous occasions that I know of. I had only seen it done, actually done twice. I didn't have too much to do as far as going to the racetrack.

I tried to stay away from them people because there was a lot of tough individuals hanging around that I didn't trust and I could see what they were doing to Mr. Piazza but he was too blind to see.

Senator CHILES. But you do know of a specific instance in which he caused one of his horses to be drugged?

Mr. KECK. Yes, sir. They used a drug, right now, sir, it evades me, the name of the drug: Methadone that is used in the drug program. They used this methadone on heroin addicts, and it is inserted with—it is given to the heroin addicts as, mixed with orange juice.

We happened to come across some vials of it that hadn't already been mixed and they proceeded to shoot one of the horses up. This shows—it does not show up in any testing, what I have been told. It has no effect, you know, on the test that they have to take; their urine test, and so forth.

Senator CHILES. What happened to the horse as a result of that?

Mr. KECK. The horse seemed very skittish. It wasn't the normal reaction of that horse. This horse happened to be one of my favorite horses that Mr. Piazza had, called Brown Wisdom. The horse was in the paddock, he was acting very unusual, very strange, and the horse did in fact win the race.

Senator CHILES. Where was this race?

Mr. KECK. Calder Race Track.

Senator CHILES. The horse did in fact win?

Mr. KECK. Yes, it did, sir.

Senator NUNN. Mr. Keck, let me move into another area. I want to talk to you a little bit about what happened after your arrest. When were you first arrested?

Mr. KECK. I was arrested April 8, 1977.

Senator NUNN. Where did the arrest occur?

Mr. KECK. Miami, Fla., at my apartment.

Senator NUNN. What was the charge?

Mr. KECK. Conspiracy to distribute, transport cocaine, marihuana.

Senator NUNN. How long were you in jail before you got out?

Mr. KECK. About 3 days on that particular, at first, then I bonded out 3 days later.

Senator NUNN. What was the amount of the bond?

Mr. KECK. \$50,000.

Senator NUNN. Did you put up the bond?

Mr. KECK. Mr. Piazza and some other people were interested, not interested, were instrumental in helping me raise the funds. Actually, they just signed collateral and I supposedly was to pay the gentleman that bonded me out \$3,750, which was my bond and my girl friend's bond.

Senator NUNN. Were you arraigned in Miami, or where?

Mr. KECK. I had a removal hearing in Miami. I believe I was arraigned in Atlanta, Ga.

Senator NUNN. Why were you arraigned in Atlanta?

Mr. KECK. That is where we were indicted at. I was a fugitive, arrested on a fugitive warrant here in Miami. The indictment was brought out of Atlanta, and the Strike Force.

Senator NUNN. Was your bond revoked in Atlanta?

Mr. KECK. Yes, it was.

Senator NUNN. Were you then put in jail in Atlanta?

Mr. KECK. I was. I was incarcerated in Fulton County Jail in Atlanta, Ga., along with Mr. Piazza, and Mr. Benton.

Mr. Piazza's bond was revoked; Mr. Benton never made bond.

Senator NUNN. Were all of you arraigned and indicted on the same kind of charges?

Mr. KECK. Yes, we were.

Senator NUNN. All of you were put in the jail about the same time?

Mr. KECK. No, sir. Mr. Benton was put in April 8, never got out, or April 7, I believe.

Senator NUNN. 1977?

Mr. KECK. Yes, sir. Then I went on April 8, but I was out a couple of weeks before I got my bond revoked. Mr. Piazza's bond was revoked in 3 or 4 days. We were supposed to be a threat to the CI's in the case, all three of us, and that is why they revoked our bond. Mr. Piazza wanted the CI's to be murdered or hit.

Senator NUNN. Who were the CI's? What is a CI?

Mr. KECK. A CI is a confidential informant, helping the Government to build a case. They testify for the Government in the grand jury and also against you in the case.

Senator NUNN. Piazza wanted them hit?

Mr. KECK. Yes.

Senator NUNN. Did he put out a contract on them?

Mr. KECK. Yes, he tried many times. I believe that he had tried to hit one of the CI's prior to her going in front of the grand jury.

Senator NUNN. How did he know who the CI's were?

Mr. KECK. When you read the indictment, it is very easy to see who your CI's are. Also when he originally took this person, he held her captive for a few days. She had come to him to tell him that the grand jury was wanting her to testify against him.

Senator NUNN. This was before he was indicted?

Mr. KECK. Yes. It was before he was indicted. He took this woman hostage, and, in fact, he gave the contract to Rhett Zambito and Zambito refused to do it; released the girl, let her go.

Senator NUNN. Did you learn that Piazza had put out a contract on you?

Mr. KECK. Yes, I did.

Senator NUNN. Before you were in the Fulton County Jail with him?

Mr. KECK. Yes, I did. He put out a contract on me, either in late October, early November 1976, and I had been warned that he was looking to murder me.

He put a contract on me. Then when I was arrested I was stuck in the same, exact county jail as he was knowing that. Everybody knew that he had a contract on me.

Senator NUNN. What did you do about that? Did you talk to him about it?

Mr. KECK. Yes. Eventually we was in a yard at Fulton County. It took me a little bit to get up the nerve to approach Mr. Piazza. We went out in the yard. John Piazza and I got into a hell of an argument in the yard.

I asked him about it and he kept denying it. I also got into some heated arguments with Mr. Benton, told him that he had nothing to do with this because this was between John and I, and he came after me and I wanted him out of the picture, so John and I could argue about this.

We argued back and forth. Finally he admitted that he did put the contract on me, but he thought that I was going into the DEA, that I had turned over, that there had been an attorney of mine, a personal friend, that we had got from Mr. Ellrich and this attorney told John Piazza that I was considering going into DEA or the police departments and tell them my story.

With that, Mr. Piazza put a contract on me.

Senator NUNN. Did you tell him that wasn't true?

Mr. KECK. Yes, I did. I told him, I was the only one who would stand, everybody else in the group would fall around him.

Senator NUNN. Did he believe you?

Mr. KECK. No. At that time I don't think he did. I don't think-- I think when they eventually put us in the hole, the hole being a very small cell with no accommodations, then he finally realized that I wouldn't turn over on him.

Senator NUNN. Where was Rhett Zambito during this period of time when you and Piazza were both in the Fulton County Jail?

Mr. KECK. He was, I believe, sir, by accident I found this out, that he was being kept in another county jail in the Atlanta area. And the way I found that out was that they moved John Piazza. They tried to separate us because they were under the impression which wasn't an impression, it was a matter of fact truth, that Mr. Piazza was going to breakout of the Fulton County Jail. They thought that I was going with him because naturally I had been the closest person to him.

They put me in a jail in Cobb County, which is another section of Atlanta, and I was in there about an hour when they discovered that Mr. Zambito was in the cell right next to me. They moved us instantly. They moved me out of there and took me to Rome, Ga.

Senator NUNN. Did you think Zambito was going to kill you?

Mr. KECK. I didn't really know at that time. John Piazza had told me at Fulton County that he wanted to kill Rhett Zambito too because he told me that Rhett Zambito had turned over on him.

Senator NUNN. So Piazza was after Zambito, too?

Mr. KECK. That is correct.

Senator NUNN. Did he tell you he had put out a contract on him?
Mr. KECK. He said he was definitely going to hit him and he was going to hit the CI's.

Senator NUNN. How many CI's were there?

Mr. KECK. Three, not counting Mr. Zambito, to my knowledge, sir.

Senator NUNN. Do you know anybody else that threatened Zambito or wanted Zambito to be murdered?

Mr. KECK. Yes, Mr. Allen Benton.

Senator NUNN. Why did Benton want him murdered?

Mr. KECK. He knew of another murder which was Lenny Parrotta, that Zambito and Benton had done together. They had killed this gentleman under Mr. Piazza's orders; that it was Rhett Zambito to be the only one to testify against him in that particular murder.

Senator NUNN. Was there anybody else besides those two that might have wanted Zambito murdered?

Mr. KECK. Anybody else?

Senator NUNN. Besides Piazza and Benton? Did Gene Naples ever mention anything?

Mr. KECK. Yes, sir. That was later on. That happened in FCI in Miami when we came down here, I came down here on a writ.

Senator NUNN. When was that?

Mr. KECK. I believe it was the end of February, possibly early part of March. I just don't recall exactly.

Senator NUNN. Of 1977?

Mr. KECK. No.

Senator NUNN. 1978?

Mr. KECK. Yes, sir, 1978. Mr. Gene Naples told me that Rhett Zambito owed him \$60,000 from the previous drug deal and that he said that he was going to make sure something happened to Rhett Zambito.

I told Mr. Naples at that time that I couldn't see the sense of it, Mr. Zambito had a lot of time. He was never going to see the street again. He had already admitted to murder, to killing different individuals and that what was the sense of it, what was \$80,000 to him?

Finally, he calmed down and listened to what I had to say.

Senator NUNN. During this course of time you were moved from the Fulton County Jail down to Miami. Is that right?

Mr. KECK. No, sir. I went out on the street for about 2 months. I got my bond reinstated in August 1977 and then I went into an institution in Texas in November, and I was brought down in 1978 on a writ.

I was taken, to start off with, I was taken to Dade County Jail, which the witness protection program, they are not supposed to put me in any county jail in south Florida because of the danger to me.

I was taken by the marshals to the Dade County Jail, left in there overnight, which by the way, sir, is a very very bad jail. It is just filthy. It is terrible.

From there the next day they transported me to FCI in Miami. I was put into the closed section, which is the Federal lockup for prisoners in FCI in Miami.

I was there about 4 hours when I discovered Rhett Zambito standing there. a man that had a contract on me to kill me.

Senator NUNN. When was this?

Mr. KECK. I believe, sir, it was late February, early March.

Senator NUNN. Of 1978, this year?

Mr. KECK. Yes, correct.

Senator NUNN. Did you have a conversation with Mr. Zambito then?

Mr. KECK. When we both saw one another, we became very frightened, him more so than me because he didn't know what to do, how to confront me. I had to keep my cool because for the simple reason it is the only reason I could stay alive, by keeping my cool.

We did have a conversation. We went in a room which is one of the cells. They are open. There are just doors that you walk in and out of. We talked in length about different things that had happened as far as Leonard Parrotta, the contract on me, the one given to him by John Piazza.

Senator NUNN. He said he had a contract on you?

Mr. KECK. Yes. I had seen it originally in testimony of Rhett Zambito; given as a statement and my attorney had it.

Senator NUNN. You knew about it?

Mr. KECK. That put the icing on the cake when I read about it.

Senator NUNN. Did he tell you that he had a contract on anybody else, that he had been asked to kill anyone else?

Mr. KECK. Yes. He told me of this whole complete plan of bringing all these people in, all these people were trying to take over John Piazza's organization, and how they were going to kill them, put them in a building, blow the building up with dynamite.

Senator NUNN. What did Zambito tell you about the murder of Leonard Parrotta?

Mr. KECK. At first, I couldn't understand why they would ever kill Leonard Parrotta. He was a harmless individual. He told me that John Piazza and Michael Santocante had decided that they felt with all the drugs that Leonard Parrotta was doing, that he was becoming dangerous to them as far as turning, going, get caught, just spilling his insides.

He told me that at first, he told me he held him, Mr. Benton killed him, they cut his throat. Then he finally admitted to me after some arguing back and forth that Mr. Benton held him and he killed him.

Senator NUNN. When did that occur approximately?

Mr. KECK. I believe, sir, it was in early January 1977.

Senator NUNN. 1977?

Mr. KECK. Yes.

Senator NUNN. This was before Zambito was put in jail?

Mr. KECK. Yes, right before he was busted coming down in Stuart, Fla., apparently. I am only guessing at that point, sir.

Senator NUNN. Did Zambito discuss with you the Bureau of Prison's plan to transfer him to the Atlanta Penitentiary?

Mr. KECK. We had many discussions over the course of a couple weeks before he was moved.

Senator NUNN. When would this have occurred, January or February 1978?

Mr. KECK. Yes, sir. I am not really sure of the exact month. I have been through so much in the Bureau of Prisons that I am not too well on dates. Then we had quite a few discussions. He happened to come out of the phone booth one day. He told me that he had spoke to someone in the marshals' office and they were moving him in the early part of the week.

He said he was going to Atlanta. I said, Rhett, you can't go to Atlanta, because if you do go to Atlanta, they are going to kill you.

He said, "What do you mean they are going to kill me?" I said, "Just what I said." He said, "Is Al up there?" I said, "Yes, he is going to get you."

Senator NUNN. Al Benton?

Mr. KECK. Yes, sir, Al Benton. He said that it was him against Al Benton. I said, "No, you are wrong. It is you against the population of Atlanta." I said, "As soon as they find out you are a snitch and you are in there, you are dead."

Senator NUNN. Who had Zambito testified against?

Mr. KECK. To my knowledge, sir—

Senator NUNN. You say he was a snitch. What do you mean by that?

Mr. KECK. That he had come over and did a lot of things for the Government as far as putting John Piazza, myself, Al Benton, people in indictment. He had apparently—was going to testify against us which by, if I recall—I don't think too many of us went to trial. We all pled not guilty.

But he told me that they were going to move him. This was on, I believe, a Saturday or Sunday. I told him I think you had better talk to someone, there was no way you could go to Atlanta, Ga., to the Federal penitentiary.

He then proceeded to go upstairs and he talked to one of the lieutenants in the institution. He came down; I don't know which lieutenant he spoke to. He convinced him that his life was in danger going to Atlanta.

Senator NUNN. What institution were you in?

Mr. KECK. FCI in Miami, Fla. That is a Federal correctional institution at Miami, Fla.

SENATOR NUNN. Go ahead.

Mr. KECK. When he did come down, he told me that he had told someone up there, they were going to take care of it. I said, I hope so because you can't go there. I said, Al has already made the threat in the marshals' office in Atlanta that you and I were dead the next time he saw us. Al Benton said this.

People overheard it, and the information filtered back to me. Then I believe it was on a Monday, he called again to the marshals and asked them when they was going to move him. They told him Tuesday morning. Like I said, sir, I am not sure of my days, but I do know that this transpired because I was there.

The day that he left to go to Atlanta, I stood right in there in front of quite a few other people and I told him, Rhett, you can't do this, you are going to your death.

He kept saying, no, I am not. He said, they got it all taken care of. He left, and the next thing I know, I am sitting in the phone booth in FCI and the gentleman walks in the door down there, one of the inmates, and he said to me they just hit your friend in Atlanta, Rhett Zambito, and you are definitely next.

This information came through the channels from Atlanta prison to FCI in Miami by nobody but word of mouth, faster than the Bureau knew it themselves as far as FCI knew it.

This was brought in by the man that brought our lunches or breakfasts in that morning and told him that Mr. Zambito had been killed in Atlanta.

Senator NUNN. That had not even gotten out in the news at that stage?

Mr. KECK. No, sir. It couldn't have. It was early in the morning, 7 o'clock in the morning that Zambito was found dead.

Senator NUNN. What time did you find out about it?

Mr. KECK. I would say around 7:30, 8 o'clock.

Senator NUNN. How long was Zambito in Atlanta?

Mr. KECK. A few hours, to my knowledge. That is what I have been told.

Senator NUNN. How could word of mouth have gotten from Atlanta to Miami?

Mr. KECK. The grapevine, inside the prison, the Bureau of Prisons. They decide to move us; just to give you a for instance, before I ever hit an institution, they know I am coming. They know what it is in my jacket. They know everything about us.

The word was probably in Atlanta, Ga., 2 days before Rhett got there. It is faster than any newswire or wire services has. It is the most unbelievable thing you could ever—people, the public doesn't realize what goes on inside institutions.

Senator NUNN. We want to talk to you about that at length. This would have to come through a phone call?

Mr. KECK. Apparently somebody made the phone call to the people on the streets in Atlanta, had the people down here make the phone call to them, then come in through the institution. It is just the quickest wire service in the world.

Senator NUNN. Zambito left; even though you were warning him he was going to be killed? He was not that worried?

Mr. KECK. No, because Mr. Zambito was dumb to the fact that he hadn't been behind anything other than Dade County, FCI, and some county jails. I had been behind the walls in Atlanta. I was there when they hit Vinnie Papa, and I seen another man killed there.

It was in the hospital there and these people laid right directly in front of my window where I could look out my door; it was a little window.

Senator NUNN. Who else did you see killed? You actually saw it in person?

Mr. KECK. I saw them dead. I didn't see them killed. I didn't see Mr. Vinnie Papa killed neither. He happened to be dead when they brought him in right in front of me.

But Rhett Zambito had no idea how fast or how quick they can take you out when they decide to hit you. If they even think that you are going to do something, they will definitely kill you so fast and it is the most hideous killings you ever want to see.

I have seen people in automobile accidents that weren't chopped up as bad as Vinnie Papa, and the second man after Vinnie Papa, which only was 1 week or 10 days. I would know the man's name if you said it, but I don't know it at this stage.

Senator NUNN. What did you do to protect yourself after Zambito was killed and you were told you were next?

Mr. KECK. I went to one of the guards in the institution and told him I wanted to see a lieutenant right now. I didn't want to wait. I wanted to talk to someone instantly.

He said he would make the call. He spoke to the lieutenant, Lieutenant Durez, and he told Lieutenant Durez that I wanted to see him. Lieutenant Durez said he would be right there. He was over in the compound with some inmates taking them to the commissary and as soon as he was done he would come back.

He came back about an hour later, hour and 15 minutes later. At this time I am just, I don't know what to do. I am scared. I mean it is me against 100 people inside of there. I have got no way of protecting myself in any way, shape, or form.

Senator NUNN. Did you think Piazza still had a contract out on you, or did you think it was Benton that was after you, or both of them?

Mr. KECK. No. I knew that John Piazza had been in the marshals' office here in Miami a few days prior to this happening. He had also told some people that were in FCI with me. I found this out the day that Mr. Zambito, they told me that he was dead, Mr. Piazza had made some statements to these people that Rhett and I didn't have a snowball's chance. We were definitely going to be hit.

Senator NUNN. Do you know who killed Zambito? Do you have any way of knowing?

Mr. KECK. Well, sir, the word come through the vine that it was Allen Benton. But I couldn't say for sure.

Senator NUNN. You have no personal knowledge of that?

Mr. KECK. No, sir. I just know that whatever was said was going to happen, it sure did happen. Rhett Zambito is dead.

Senator NUNN. Were Benton and Piazza working together?

Mr. KECK. Benton was Mr. Piazza's strong arm at the end of the realm of his career.

Senator NUNN. Where is Benton now?

Mr. KECK. He is in Atlanta Federal Penitentiary. To my knowledge, that is where he was at when Zambito was killed. I don't know if he is still there. I understand he has been moved.

Senator NUNN. Has anyone been charged with the Zambito murder so far as you know?

Mr. KECK. Nobody to my knowledge.

Senator NUNN. Were you actually moved?

Mr. KECK. Yes. The next morning I was moved; brought to the marshals' office in Miami here and two marshals took me on a plane, took me back to the institution I was at in Texas. They didn't take me personally; we met another marshal at the airport. He took me to the institution.

We walked into the institution. I wasn't there 10 minutes; I was put in the hole. I was in the hole for 33 days. I was not able to know anything, call anyone, talk to anybody; it was just, the conditions were horrible.

Senator NUNN. We want to talk to you at length about your experiences in the Bureau of Prisons. We will do that at a later date. I just want to ask you one other series of questions very briefly.

Did Piazza try to escape from the Fulton County Jail?

Mr. KECK. Yes, sir. He made many, very haphazard attempts at escaping from Fulton County Jail. He spoke to me a couple of times

on his plans of what he had intended to do. He had so many plans. One of the plans was they were going to have some jeweler's wires smuggled into the institution, and they were going to cut the bars, break out that way.

Then he came out with a plan, he was going to have a gun smuggled in by his attorney's daughter and he was going to pay some people inside the county jail to help him, which were officers inside the county jail. He had access to a large amount of money. I mean his attorney used to bring money in to him, slip it to him, in the attorney's boot.

He told me that we were also going to engage a force; that the Sellers individual had just previously escaped out of Fulton County Jail.

Senator NUNN. Willie Foster Sellers?

Mr. KECK. That is correct, sir. His people he told me on the outside, he was being able to make phone calls at just any given time he wanted because he was paying officials inside the prison, inside the county jail.

Any time he wanted to use the phone, he was taken to the phone. So he had access to the phone, many, many occasions. He said his people had been in contact with the people that had broken Willie Foster Sellers out.

Senator NUNN. Was Piazza telling you this?

Mr. KECK. Yes, sir, and that they were going to take and cut the fence as we were out in the yard, little by little, and when the day came that it was ready, they was going to hit the tower with a vehicle, which is a tower there, a gun tower, knock the guard out of the tower with the vehicle, knock the tower completely down, and go out through this fence. Then he come up with a master scheme which was his downfall, and mine, too, sir, by the way, because I was just listening to him.

I had no intentions of going anywhere because I couldn't see myself getting that much time in this case. He told me that some people from New York were converging on a small town in Georgia. They were going to take the jail over as the shifts changed; that they were going to hold the guards coming out of the county jail and catch the new guys going in. They were going to release the whole, complete population of that jail, which is approximately, I would venture to say 1,000, 1,500 people.

Senator NUNN. Where is that?

Mr. KECK. Fulton County. They were going to turn open every cell. They were going to create such mayhem that they wouldn't know who escaped and who didn't, or who did it and for what reason.

With that, Mr. Piazza and myself was put in the hole at Fulton County Jail. I didn't have no idea why because he was the one that was doing all of this mouthing and not myself.

Senator NUNN. You mean he talked about it and the officials found out?

Mr. KECK. Yes. Apparently they had someone in his cell with him, that was listening to everything Piazza had to say in many matters, including everything he has done.

Senator NUNN. How did Willie Foster Sellers escape? Do you know that? You weren't there, were you?

Mr. KECK. No, I wasn't there. But I had the opportunity of being in the same exact cell that Willie Foster Sellers went out of. I spoke

with two gentlemen that was incarcerated in that cell at the same time I was.

He had made arrangements, prior arrangements, with two of the guards in there and they had told this one individual about this, this Gary Venable, that this is how they had it done, how it was going to come down.

They arranged that these guards wouldn't be walking up and down the catwalk and checking on the cell blocks. Two men came across a big open field, through fences cut, cut the fences, cut the fences right outside the window of the cells that we were in. Cut the window, cut the bars on both sides of the window, handed in a set of torches. The set of torches was used. They also handed in machineguns and Gary told me that a man hung in each side of the window, pointing down each way on the catwalk.

It was a funny coincidence that happened there. Mr. Venable had been in there about 9 months or 5 months at that time. He said that it was unusual that the doors on this catwalk were closed on this particular night. He had never seen them in the whole time he was there closed.

They cut the bottom bars of the cell by the stall shower, pulled themselves out through there, out through the window and were gone.

I understand they just apprehended Willie Foster Sellers recently.

Senator NUNN. Mr. Keck, we have a lot of other things we would like to go into, but we are going to reserve them until we can have a more lengthy hearing with you. We also want to pursue with the Justice Department the areas of open cases that they have asked us to refrain from going into.

We want to determine whether they have indictments that are about to come down and whether they have legitimate objections in these areas. We do appreciate very much your appearing today. We look forward to having you back at another time, either in Washington or here.

Mr. Keck. I would hope so, sir. I have got a lot to say and I want it heard.

Senator NUNN. Thank you very much for being here. You have been very helpful to the subcommittee.

Mr. Keck. Thank you, sir.

Senator NUNN. Thank you. I will ask the cameras now if you will please turn away so we can have the witness leave the room.

Tomorrow morning we will begin at 9 o'clock in this room. We will have Mr. Ed Austin, State attorney, Jacksonville, who is the head of the statewide grand jury. We will hear from Maj. Steve Bertucelli, head of the Organized Crime Bureau of the Dade County Department of Public Safety; Mr. Leo Callahan, Fort Lauderdale chief of police; Mr. Atlee Wampler, attorney in charge, U.S. Strike Force and we will also hear from two distinguished Federal judges, Hon. Peter Fay, judge, fifth judicial circuit; and Hon. James Lawrence King, district judge for the southern district of Florida.

The subcommittee will adjourn until 9 o'clock tomorrow morning.

[Whereupon, at 3:35 p.m., the subcommittee recessed to reconvene at 9 a.m., Wednesday, October 25, 1978.]

[Members of the subcommittee present at time of recess: Senators Nunn and Chiles.]

ORGANIZED CRIMINAL ACTIVITIES

South Florida and U.S. Penitentiary, Atlanta, Ga.

WEDNESDAY, OCTOBER 25, 1978

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Miami, Fla.

The subcommittee met at 9 a.m., pursuant to recess, in Central Courtroom, U.S. Courthouse, 200 Northeast First Avenue, Miami, Fla., under the authority of S. Res. 370, agreed to March 6, 1978, Hon. Sam Nunn (vice chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; and Senator Lawton Chiles, Democrat, Florida.

Members of the professional staff present: Owen J. Malone, chief counsel; F. Keith Adkinson, assistant counsel; Stuart M. Statler, chief counsel to the minority; Jerry Block, general counsel to the minority; David P. Vienna, investigator; William B. Gallinaro, Investigator; Peter Roman, investigator, Government Spending Subcommittee; Larry L. Finks, captain, U.S. Park Police; Mary B. Donohue, assistant clerk; and Kathy C. Bidden, assistant clerk.

Senator NUNN. The subcommittee will come to order.

[Members of the subcommittee present at time of reconvening: Senators Nunn and Chiles.]

Senator NUNN. The Permanent Subcommittee on Investigations resumes hearing today on overall scope of our inquiry which is organized criminal activities in south Florida.

We had three witnesses yesterday. We have six witnesses today. We start with Mr. Ed Austin and Mr. Leo Callahan this morning, but before we get started, Senator Chiles may have some opening remarks he would like to make.

Senator CHILES. Thank you, Mr. Chairman.

I just have a short opening statement. I think we are going to learn today that there ain't no free lunch. Yesterday we heard testimony from a criminal who said, in effect, that crime pays, and pays well. He testified that he generated huge amounts of money for little effort and small risk—from the police at least. For him, of course, there is also no free lunch. He got caught, his life might be in danger.

For over 100 people in recent months, the reward in the Miami area for drug operations was death—that is some of the people; many of them that were innocent. These involve only unsolved murders. Statewide, known and unknown, the numbers of straight-out murders relating to drugs and organized crime is large enough to be very frightening.



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1 OF 3

For us, for the law-abiding citizens of Florida, we run the risk of having our beautiful State wrestled away from us by some very nasty people. We run this risk because too many people thought you could get something for nothing. They thought underfunded and under-trained law enforcement agencies could overcome the great numbers of skilled and ruthless operators of criminal activities.

By announcing that organized crime doesn't exist around here, some hoped that it really wouldn't. They still might be hoping, but there is not much hope left of that.

By passing permissive legislation designed to help nice people, many assumed that it would be unsportsmanlike for organized crime figures to use these laws for evil purposes, and so they would not. Organized crime figures, by definition, are unsportsmanlike.

Now, heaven help us, we think we can restore the Gold Coast through legalized gambling without having to pay the inevitable prices. We think the Federal Government will defeat organized crime for us and will bear the burden and costs of our local and statewide law enforcement efforts. We think that if we wait, and are patient, things will get better by themselves.

I think we will see again today some clear evidence to support the old thesis: there is no free lunch.

Senator NUNN. Thank you, Senator Chiles.

Our first two witnesses this morning are experts in law enforcement; different aspects of law enforcement. Our first witness is Mr. Ed Austin. He is going to be joined here by Mr. Leo Callahan.

If you gentlemen would come forward. Mr. Austin is the State attorney for the Fourth Jurisdiction Circuit in Jacksonville, Chairman of the Governor's Council for the Prosecution of Organized Crime, and legal adviser to the third statewide grand jury.

Mr. Leo Callahan is the chief of the Fort Lauderdale Police Department. Fort Lauderdale, as I understand it, has about 158,000 people. I have been there several times. You have a lovely area, 80 miles of waterway. Fort Lauderdale has many special problems, and I assume that we will be discussing some of those this morning.

Gentlemen, we have a rule before our committee that all witnesses be sworn. Before we start your testimony, if you would both take the oath, I would appreciate it.

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

Mr. AUSTIN. I do.

Mr. CALLAHAN. I do.

TESTIMONY OF ED AUSTIN, STATE ATTORNEY, JACKSONVILLE, FLA., AND LEO F. CALLAHAN, CHIEF OF POLICE, FORT LAUDERDALE, FLA.

Senator NUNN. Senator Chiles, why don't you lead off?

Senator CHILES. I want to thank both of you gentlemen for being here and testifying before us at our hearing.

Ed, you have been conducting statewide grand juries, as well as your efforts as a State attorney, for many, many years. We know of the time and effort that you put in this regard.

Leo, we are delighted to have you here to offer your expertise for some of the good work that you have done in trying to combat organized crime.

Ed, do you have an opening statement?

Mr. AUSTIN. No; if it is all right, I would like to respond to whatever inquiry the Senators may have.

Senator NUNN. Before Senator Chiles begins the questioning, I want to thank both of you for being here this morning, not only for your appearance this morning, but also for your splendid cooperation in our entire investigation for a long time. We are very grateful to you.

Senator CHILES. Mr. Austin, you directed statewide grand juries into narcotics, gambling, and other activities. From your view, what are the most serious criminal activities affecting the people of Florida?

Mr. AUSTIN. I would place at the top of this, Senator, the major problem we have in the State right now as being narcotics, the importation of narcotics, our proximity to the producers Colombia, Jamaica, other places, of marihuana and cocaine; the huge cash flows that results from that activity that is used to penetrate the legitimate business.

I would say, really, the importation of narcotics is probably our major criminal activity. Of course, the evolution of groups of people who have the skills, knowledge, ability to intimidate, exploit the public through organized criminal act activities, I think is also a technique, the way they are doing it, very dangerous to the State.

Senator CHILES. In hearings before the subcommittee in August, Gary Bowdach testified about his involvement in the Cravero gang. That gang was notorious for its narcotics trafficking in Florida and throughout the South, and do you think the testimony that we heard in regard to the Cravero gang and what was happening, is that trafficking still going on? Are there gangs still today like the Cravero gang that are functioning, that are operating, even though that gang has been broken up?

Mr. AUSTIN. Yes; there have been a number of gangs, probably similar magnitude that Piazza, some Latino groups, others have been rather significant ones that have been brought down. Others continue to operate obviously.

The answer directly to your question, we have had an increase of 7,000 percent of seized marihuana in the State of Florida since 1973. So far this year, we have seized 2 million pounds in the State. That is what we caught. The best estimate we can get is about a \$4 billion a year business in the State of Florida. So the problem is still here.

We have murders in Jacksonville, Miami, Tampa, Panama City, a lot of other places, that are spinoffs from drug trafficking. So I don't think there has been any abatement at all. I think there has been an increase in the importation of narcotics into the State because the reason I answered the first question as I did——

Senator NUNN. May I ask you one question right here? Do you have any way of estimating how much of the narcotics, let's say marihuana and cocaine, that comes into Florida stays here as opposed to how much of it is shipped elsewhere? Do you have any way of making any kind of estimate on that?

Mr. AUSTIN. I talked to sources that would indicate to me that we are, the wholesaler, so to speak, that comes in here because of our proximity, as I said, to the raw material. I imagine we are probably typical on the street, use of it, but most of it is going through.

We have major shipments to New York out of here, major shipments to Denver, other cities all over the United States out of Florida, from the source of information that I have. So I really have no way of knowing whether our people use more dope than other people. I doubt it, but I know a lot more flows through this particular geographic area than any other section, probably, of the world.

Senator NUNN. So this is a major distribution point for the whole United States?

Mr. AUSTIN. I think, based on the information I have, I would think so. I hope that nobody else is in as bad as shape as we are.

Senator NUNN. Chief, do you have any kind of estimate on that, or any comments you would like to make on the question of distribution versus consumption of narcotics?

Mr. CALLAHAN. No, sir. only to back Mr. Austin's comments that our own intelligence data as well as our street operatives, plus some pretty reliable evidence does indicate that we are the major point of entry in this country and as such, a major distribution point.

I think one of the reasons that we make such large seizures is the fact that we are a distribution point. I would have to say that we would be unable to provide you with an accurate figure in terms of how much of that narcotic trafficking product stays here and what is distributed throughout the country, other than to have to take a logical position, that most of it does leave here because it is a point of distribution.

Mr. AUSTIN. What these hoodlums do with this money bothers me a great deal. We have had information that in one instance they would embark upon urban renewal in Jacksonville, a major hotel to be built with money that was earned, cash money, that was earned in narcotics and cocaine, marihuana, and cocaine trafficking.

We have had one, you can imagine the impact of one man owning 106 racehorses and raising them under different people's names at one time, what that could do to that particular activity if the hoodlum owns them to start with.

So that is what the people can do with all of this cash, and the cash is astronomical. We find cash reserves of millions of dollars in boxes, stashed around, that they can operate with to hire the lawyers, keep the lawyers on retainer, to do whatever they need to do.

Senator CHILES. You are just pointing out that a lot of this money is coming back in, no tax dollars have been paid on it, it is coming back in, competing with the legitimate businessman who is trying to pay his taxes, there is no way you can compete against that kind of cash flow.

Mr. CALLAHAN. He uses it for a lot of other things.

Senator CHILES. Chief, I think you are familiar with some of the extortion that goes on as a part of organized crime. Do you see any slack up in that as a scheme that they use?

Mr. CALLAHAN. No, sir. There is no slack in that at all. I think that if legalized casino gambling does pass on this November ballot, we will probably see an even greater increase in it.

I think the problems that are attendant to that gambling are going to lead to an increase in both loansharking and extortion, particularly, of business people. As you pointed out, the amounts of money that are generated by narcotics are absolutely astronomical.

To give you an example of how that relates to my particular budget, for example, and the impact of certain amounts of money would have on me, we are currently trying to, through legal procedures, confiscate a 53-foot boat from which we obtained 6 tons of marihuana and made two arrests.

Senator CHILES. Six tons?

Mr. CALLAHAN. Yes, sir. It is interesting to note that we have been able to trace back the ownership of that boat to the previous owner. We cannot find the present owner, but we have been able to get copies of cashier's checks in the amount of \$195,000 that they paid in cash for that boat. No one has made a claim on it.

It is obvious then that the cost of doing business, even if it amounts to the \$195,000, doesn't mean a lot. My overtime budget last year for our Organized Crime Bureau was the magnificent sum of \$25,000. If I had had this \$195,000, we really could have done some work.

Our procedures now, if we are successful in getting this boat through the courts, is unfortunately, as my city does see the scope of the problem, that they cannot pour that money back into our organized crime unit for further investigation. It must go into the general fund. It seems to me that it is just a tough shame that municipalities are hit with the fiscal impact on trying to deal with organized crime.

Senator CHILES. If I hear you correctly, it sounds like you are trying to fight a war in a climate in which you have to go out and seize your weapons from the enemy in order to fight the war. I have seen a lot of sort of revolutions where you had to sort of take the guns away from the army in order to try to wrest the control from the army, but here it is the good guys, the police, that are having to seize the weapons in effect.

Do you have any boat that will approach the speeds of this boat?

Mr. CALLAHAN. No, sir.

Senator CHILES. Do you have any boat that has the kind of navigation equipment?

Mr. CALLAHAN. No.

Senator CHILES. I assume this boat was pretty well equipped?

Mr. CALLAHAN. Yes; it has everything on it, including radar.

Senator CHILES. What kind of radios?

Mr. CALLAHAN. Any you need: CB, ship to shore, marine band; anything you wanted was there.

Senator CHILES. You had no equipment like that. So you are put in the position that you have got to go out and try to seize from them. Do you use other seized equipment?

Mr. CALLAHAN. Absolutely. In fact, some of the best CB radio equipment we have now is confiscated equipment. I have to go out and really shop because of a tight budget and hope I can get a good pair of binoculars for \$69.95. I now have a beautiful set of \$300 binoculars that were confiscated. I couldn't afford to buy those out of my allocated budget funds.

If I can find someone out there who has violated the law and the court will allow me to confiscate the property, we might be able to do a better job on the fighting of these elements.

Senator CHILES. Normally, you are trying to combat \$300 binoculars with a pair of \$69 binoculars because they have the better equipment?

Mr. CALLAHAN. That is right. I have \$12,000 boats that will probably do 20 knots wide open if the operator crouches down behind the windshield and I am trying to catch a 50-miles-an-hour cigarette type of speedboat that is going by with a half ton of grass on it.

We did confiscate one of those speedboats through the courts and we used it successfully for awhile, but it came to the point of operating costs. We can't afford it, so we sold it, bought two smaller boats so we can provide local service to our people. It gets pretty discouraging, to the point that sometimes I would like to take the boats we have and go on an invasion of our own.

Senator CHILES. I can understand that. Again, we see, if you wanted to take one of your boats, go back one trip, you could get enough money to get yourself a whole fleet of boats?

Mr. CALLAHAN. Yes. In fact, the average cost, according to the people we have arrested, one trip to a mother ship by one of these \$35,000, \$40,000 speedboats will almost pay for the cost of the boat. They are averaging \$25,000 and \$30,000 a trip for bringing that grass in. Anything after the second trip is all free money.

Senator CHILES. Mr. Bowdach, in testifying to us, talked about loansharking activities. As a prosecutor and statewide grand jury, what is your view about loansharking in Florida?

Mr. AUSTIN. We have worked with public safety and law enforcement, other agencies, made one case down here involving a man named Gagliardi and there are some spinoffs from that that are still in investigation, still in progress, I understand.

This particular activity, it is very difficult to police. The victim is willing. He goes to the loanshark. We have seen instances of businessmen on the ropes taking one last grasp and they lose their credit at the bank, and trying to borrow \$20,000, \$30,000, two, three, four, five points a week interest.

It is a particularly heinous crime because the obvious threat is if you don't pay back, you are going to be thrown to these people, involved with the threatening, they let the victim know what is going to happen to him if they don't pay. I think we have had evidence that some of the increases in arsons, that type of thing, results from these people getting into hock with these loan sharks.

It is a vicious activity; place where they can put their narcotics money, their other money to be used at tremendous interest rates. It is insidious. We have a couple of other cases under investigation. That is about all I can provide that would be useful at this time.

Mr. CALLAHAN. We also see a problem in loan sharking and extortion. We have been able to make very few cases because of the fear involved in their personal safety. In fact, we had a couple of witnesses that would like to have come down here and testify before this committee in person, but they were fearful of what might happen to them if they were to do that. These were both extortion cases, one of which a man lost, or they were attempting to take away the parking lot concessions that he had.

Mr. AUSTIN. I hate to interrupt, but really, Senator, I think there are many experts in organized crime. I have been somewhat amazed in the last 1½ years that the names of the people that surfaced with us, own loan sharking and narcotics and surface somewhere in gambling. It is tied.

Senator CHILES. It is the same players is what you are saying?

Mr. AUSTIN. I have come from a skeptic, 18 months ago, to being convinced that there is an overall criminal conspiracy going on, managed by a relative small number of people, the same names keep surfacing in whatever the criminal activity, massage parlors. It just keeps coming up.

Senator CHILES. Chief, do you find the same thing?

Mr. CALLAHAN. Absolutely. This one extortion case that I mentioned, these were people who had been known associates and close associates of people who have been previously identified in other hearings. Again, we find the same people involved in the narcotics transaction.

We worked one case, a multi-jurisdictional case where there were some arrests made in the Keys, several tons of marihuana were seized, people identified and arrested. Several months after that, in my own community, through the gracious involvement of civic minded people who brought the suspicious circumstance to our attention, we ended up arresting 10 people and confiscating over \$1 million in cash.

One of these people that were arrested in our city was a part of the same operation that had been investigated by multi-jurisdictions, resulting in arrests in Monroe County. The fellow was booked through under a phony name and he slipped through and has since been picked up, but the tie was there.

We are seeing in our investigations that there is definitely a linking of the same people over and over again, with the same ties to organized crime associates. Again, this gets rather discouraging when you make an arrest and you confiscate \$1 million in cash.

It was in seven suitcases, just tossed willy-nilly about the room. They didn't even know how much was in each individual suitcase. That is the light way with which they deal with it.

My own daughter is a law enforcement officer, a narcotics agent herself. In the scope of her duties, she came across a suitcase that had \$1.2 million in it. The person gave an excuse that they were looking for a good real estate deal. They have no hard evidence to link them to any other conspiracy, no drugs, and they had to turn the individual loose and just notify the IRS of this man's amount of money.

Senator NUNN. What happened? Did the IRS follow up on it?

Mr. CALLAHAN. I would presume that they have. I don't know. She works for her department and I work for mine. I would assume that IRS followed up on it.

In our particular case where we confiscated \$1.2 million, attorneys did make claims on a portion of that money. We did have a court hearing on it, but we didn't turn the money back to the people. The hearing became moot because we had transferred the money to DEA because we had decided to go to a Federal court with it.

But IRS, in that particular case, did put a lien on 240 out of the \$260,000 that the lawyer was trying to get back. So I know in that case they are doing some follow-up on it. Unfortunately, at this point

there have been no indictments, but the case is still wide open and we are still hanging on to, or rather DEA is still hanging onto the money. We are still hanging onto a \$900,000 turboprop airplane and a couple Cadillacs that we would like to confiscate. This is what we are dealing with.

Mr. AUSTIN. We don't get the complaints in the loan sharking we should. Of course, I can understand why. You listen to an intercept and the caller will tell him if I don't get my money in 3 days, I am going to have your guts cut out, and then tell him you are going to do it, make him believe it, and we will do it. We hear that kind of conversation. We understand why we don't get complaints from the victim of the loan sharking. They are afraid.

Mr. CALLAHAN. We have a tape here this morning that is 4 or 5 minutes long. It is the cleanest one we can find out of the language that pretty well points it out. They are flat out telling this individual that if he doesn't come up with the money, he is going to become history.

Senator CHILES. Is that in the condition where we could hear it?

Mr. CALLAHAN. Yes. You will have to excuse some of the swear words. We tried to find some of the cleanest ones we had because of the ladies in the audience.

Senator CHILES. Senator Nunn is from Georgia and he is not used to that.

Senator NUNN. If they pronounce the words very slowly, I can probably understand them. [Laughter.]

Mr. CALLAHAN. While my officer is bringing that tape, I would like to again verify what Mr. Austin is telling you on the difficulty of prosecution. We had a witness come to us to relate a story of extortion, involving a known figure, one that had been arrested, and had been charged on some narcotic violations. They wanted a portion of his business. The man refused and they slapped him around. He came to us, gave us a sworn written statement.

We went to our State attorney, he thought we had a good case, but unfortunately when it came time to go to the grand jury, this man had been reached and his testimony before the grand jury was contrary to the sworn statements he gave us. So, no indictment. This is a classic situation of a person being afraid of his own life and safety.

Senator CHILES. He had actually been intimidated and threatened.

Mr. CALLAHAN. Yes. He gave us a sworn statement to that effect, but he got cold feet when he appeared before the grand jury. This particular tape involves an individual talking to the person from whom he is trying to extort the money. The story that they gave him was that there was a contract on his life.

The person that they tried to extort the money from was not exactly lily white himself. They didn't feel that he would go to the police, but he did. We handled the case properly with legal counsel and electronic intercepts. We did make tape recordings of it. The extortion did go down.

The man delivered the money, our officers closed in on the deal, and in an attempt to flee the scene, one of the extortionists who tried to run down a police officer, was shot and killed. The person that you hear on the tape has been convicted of the charge. So it is also a case of a successful prosecution.

[Tape played.]

Mr. CALLAHAN. That is a classic example of what Mr. Austin is talking about, the way in which that works. In this particular case, the man did come to the police, we were able to successfully conclude the case. It resulted in the death of one man, and the arrest and successful prosecution of the other.

Senator NUNN. Death of one?

Mr. CALLAHAN. Yes, the death of one and the successful prosecution of another. We had another case similar to that, a Federal judge sentenced the two arrested parties to 13 to 16 years, respectively. They appealed, it was overturned, and the Federal Government is currently appealing that in an effort to bring it up again.

Senator NUNN. What happened in the killing in this case? Who got killed?

Mr. CALLAHAN. One of the two extortionists. He tried to run down one of my police officers, and the police officer shot him and killed him.

Senator NUNN. We would like to make this tape an exhibit, if we can. If we could get a copy of that and make it an exhibit in our hearings, we would like to have it.

Thank you, Chief.

[The tape referred to was marked "Exhibit No. 55" for reference and may be found in the files of the subcommittee.]

Senator CHILES. What types of white-collar frauds are you uncovering, Chief, and also, Ed, if you are looking at any statewide grand jury.

Mr. CALLAHAN. Yes, we have a great deal of problems in the white collar crime area. I think the reasons that we do have as many problems as we do, and the problems are primarily in the area of advanced fee rackets, real estate rackets, vending company operations, franchise operations.

I think the reason we have these problems is our proximity to the offshore banking interests, the fact that we have an awful lot of wealthy people who retired down here and are looking for things to do.

It is a cosmopolitan area. I think these things combined make us a lucrative market for white collar crime. We have made several cases, successful prosecutions, and have some pending, particularly in the area of the advanced fee racket.

Senator CHILES. Tell me how the advance fee racket works.

Mr. CALLAHAN. In the advance fee racket generally, an individual will set up an operation and give it a fancy name, open a fancy business office and offers to assist you, the businessman who needs a loan, to get that loan.

You go to him because you have stretched your credit out to the point that banks no longer find you attractive, or perhaps you don't have a good enough financial background to go to a bank to get a large loan.

So he will guarantee that he can get this loan for you because he has a consortium of people who have the money to put up. But to assure that he gets that loan for you, he asks to receive 1 percent of that loan as his fee for handling and for making the arrangements for you, in advance.

So what happens, if you need \$1 million, and you put up the advanced money up to him, he will start with negotiations with his group to get you your money. He will continue to stall you off until

he has done this with several victims, made himself a substantial amount of money and then disappears.

If you make enough noise right away, he will give you the money back, but if he can stall you, he will do that. We have had an operation that was as complex as having telex machines that ran from one building to another and they sent each other messages back and forth regarding the state of the negotiations, how close the loan was coming, "we will call you back Monday," all of this.

The fellow gets himself 5 or 10 suckers, he has picked up \$100,000; folds up his tent and goes away. When we hear about it, the businessman goes to the office, it is no longer there.

Senator CHILES. That is a con game?

Mr. CALLAHAN. Yes. It is a con game. We have had problems in the area of stolen securities and forged securities. I think it is interesting to note that today a lot of municipal agencies such as mine, who are medium size agencies, have had to, sometimes against our will in spite of budgetary problems, assume some responsibilities I think really belong to other agencies, particularly investigations which are multi jurisdictional.

I think what is happening is we are finding ourselves doing what should be the Federal Government's job, but it has to be done.

We are having to train our people so that they have the expertise to deal in a complicated stock fraud. We have three of our members who have been through training at one of the brokerage houses in how to identify good stock, and they are in effect miniature brokers themselves, so that they can work this deal.

Fortunately, this brokerage company did this free of charge for us. But we have had to do this because of the overwhelming number of frauds that are coming in for investigation. It is just too massive to handle.

We can't depend on Federal authorities to do it. We find ourselves getting into the game.

Senator CHILES. Why not? You say you are finding yourself to be assuming what you consider to be a Federal job. Why is that?

Mr. CALLAHAN. I think part of the problem is that there is some question on the part of the Federal Government in setting priorities, what is most important; what are they going to do?

They also have one of the same problems that we are faced with, I am sure, and that is budget constraints. But I think the real heart of it is that, unfortunately, sometimes what is a priority is based more on political consideration than a real life situation.

I say that with all due respect to the Senators. I cast no aspersions in that regard. I understand that there are things that have to have political considerations. But I think the political considerations can also stretch down to the real life problem and the real life problem is that the effort in this country to keep from having a police state with all the safeguards that we are building into the system for the criminal, we have successfully built a crime state.

Senator NUNN. We are hearing more and more of that, Chief. I think that is an observation which bothers me a great deal because I am afraid there is a lot of truth to it. I don't know how we can always properly balance the rights of the individual versus the rights

of society, but somehow we have got to get the pendulum in the middle of the scale.

We seem to swing one way or the other. We never seem to be able to stop that pendulum in the middle. I think in the last 8 or 10 years, perhaps even longer, that pendulum has swung so far against society that we have an awful lot of laws that are sound, good, and theoretically sound, and protect the rights of individuals, but they are being taken advantage of by organized crime.

Ultimately, the individuals in this country are the ones that suffer.

Mr. CALLAHAN. Absolutely. Let me assure you every professional law enforcement officer does not want to take away the rights of any individual.

Our society is built on that. We agree with that. All we are saying is we have got to weigh the right of every individual. We have got to weigh the right of that innocent individual, also.

I don't think we are doing that properly. I think sometimes for whatever the reason we don't really look into the heart of it, and I don't mean to get back to narcotics but that bothers me a great deal.

I am always asked the question what harm marihuana does. I will ask you the question; what good does it do? I think Mr. Austin clearly indicated that the heavy trading in marihuana is creating a subculture in this country, particularly in this State.

It is creating a false economy. It is having an effect on real estate. These people that have all this money to spend don't care what they spend for a waterfront home.

Senator NUNN. Some people say the answer to that is just to legalize marihuana. I am not one of them.

Mr. CALLAHAN. Absolutely not. That is a copout; that is a copout. I am sorry. I think we can get to the heart of the problem if we would show a little backbone in this country and I think quite honestly that the only way it is going to be dealt with effectively is to deal with it at the source.

I want clean air as much as anybody and I think some of the environmentalists' attitudes are great. But I think it is kind of dumb when, because of the environmental impact, this country is prohibited from selling to Colombia, for example, some herbicides that they could very quickly defoliate the marihuana fields in that country.

But it might have an environmental impact that might kill some little fish that no one is going to eat anyway, so we won't sell them that herbicide. We are prohibited from doing that. That is kind of dumb.

I think also that there comes a time when you have to go to the woodshed. We try to be diplomatic, and perhaps there is a good reason for it. But it would appear to me sometimes it is time to take off the gloves, quit worrying about the striped pants and top hat and maybe we ought to tell a country like Colombia, they would like to give them a choice; they are either going to give up the money that they are receiving in graft, in bribes, to allow freighters to load up at the ports to come to this country or they can have our foreign aid, mutual exchange, or whatever. If the day has come that the smugglers can provide them a better income than this country, then we are in one heap of trouble.

Senator NUNN. In other words, you think it is time to give a country like Colombia the choice to deal with us on an amicable basis, diplomatic, economic relations, foreign aid relations, or to go totally to the source of income that is growing there; that is, marihuana and cocaine, and have them make a choice one way or the other?

Mr. CALLAHAN. That is about it basically. Like I say, I am not an experienced politician; I am not an experienced diplomat. I don't know if what I am saying is possible, but it surely ought to be considered.

Senator CHILES. Do you think there is any way we are really going to be able to effectively cut off the marihuana or cocaine unless we can go to the source?

Mr. CALLAHAN. Absolutely not. My officers tell me that their best estimate for every boat that we catch, we are missing 9 or 10 coming through. So if we are getting half a ton, we are missing five. Just overwhelming tonnage that is confiscated now. Mr. Austin alluded to it. There is no way to do it except going after the source.

When I was a young officer, back in 1956, if a policeman confiscated one of those wooden matchboxes full of marihuana, that was good for 2 days off with pay, because it was such a big bust. Now my men come in with a ton at a time. It is hardly worth going out for anything less than 100 pounds.

That gives you an idea of the growth. How do you stop it? You sure as hell can't stop in at our coast line, so you have to stop it at the source. If that means standing up and getting tough, it is about damned time to do it.

Senator NUNN. Let me ask you one other question along that line. When you talk to some of the foreigners and I have done that in Turkey, Mexico, and other places, and we haven't had total failure in this regard, heroin sources in Turkey has much diminished and the heroin coming across the Mexican border is going down now finally.

A lot of that has to do with the relationship between our country and Turkey and the relationship between our country and Mexico. So far we haven't made much progress, if any, in Colombia.

But the first answer you get when you talk to any of these people is, we are doing what we can; perhaps we can do more. But why don't you in your country do something about the demand? If you could do something about the demand, there wouldn't be this kind of supply coming from our country.

What is your answer to that? Can we do anything about the demand side of it in this country with the people who are the consumers of cocaine and marihuana?

Mr. CALLAHAN. I don't know how we are going to change philosophy or personal feeling. I think it is a case that we have to cut off the supply and then maybe the desire for it will go away, because they can't get it.

But how are you going to change that? I really don't know. It is interesting you talk about the foreign viewpoint. They have an interesting viewpoint. I have talked to some foreign nationals. I have talked to some Colombians and some Peruvians. Their answers are kind of interesting because it immediately puts you on the defensive.

They tell you: We are not corrupting our people, you are; you are the ones who come down here and give them the money. If a family

can make \$100 a year farming and he can make \$1,000 a year growing marihuana, you are the one corrupting him. It is your people, your money coming down here and doing it. So you have created a false economy for us. We are now farming marihuana.

So I think the answer to that has got to be regional cooperation between the countries, perhaps now that Colombia has a new president, this might be a time to make some inroads.

Senator NUNN. Do you find any encouragement in the recent announcement that they are really going to get tough and if necessary start shooting down airplanes if they don't have the proper identification and flight plans?

Mr. CALLAHAN. The rhetoric is great. When they shoot down the first one, really start to do something about it, I will believe them.

Senator CHILES. I know we have a sister city relationship with Colombia. Does Fort Lauderdale have a sister city relationship with Colombia?

Mr. CALLAHAN. Yes.

Senator CHILES. What is the basis of that sister city program?

Mr. CALLAHAN. It is supposed to be a cultural exchange, good neighbor policy. The city is Medellin.

The unfortunate thing about it according to recent information from both the Drug Enforcement Administration and, I believe, the State Department, they have good reason to believe the city of Medellin is also involved in the process of cocaine paste, in clandestine laboratories.

I have spoken about this to some of my city officials, I am sure the next visit that we have they will make some comments about the problems. So what is happening in effect is this sister city is creating a problem for the sister city here.

Maybe in this particular area, diplomacy between city officials might do some good. I don't know.

Senator CHILES. That is not exactly what we consider to be good neighbor policy is it?

Mr. CALLAHAN. No. If my neighbor was giving that to my children, I would be kind of upset about it. I would be upset about it if that neighbor is giving it to our city, or at least is a part of that chain.

Senator CHILES. Maybe it is a way of trying to express through our city-to-city programs our concern with what is happening to our neighborhood.

Senator NUNN. Chief, while you are talking about this pendulum and the situation we find ourselves in with the rights of individuals versus the rights of all of us, society, to protect ourselves against organized crime, if you were given the authority to change any laws in this country that you could, Federal level, State level, without getting into all of the details—I don't expect you to be prepared on that this morning—but what laws would you look at, what laws would you change to give law enforcement and society more protection?

Mr. CALLAHAN. I would have to seriously take a look at the Freedom of Information Act and the Privacy Act. Regardless of the good intentions behind those laws, I think the United States has effectively put a damper on police intelligence operations. I think it has done a terrible job on the Federal Bureau of Investigation. I think it is about time that we got off their back and let those folks do the job that they are supposed to do.

I think I would have to seriously look at legislation that would prohibit the U.S. corporations from dealing with any banks other than banks within the 50 United States or those recognized world banks. What in effect this would do would keep people from dealing with banks in the Grand Cayman Islands, which is nothing but the washing machine for the organized crime money.

Senator CHILES. I think so people will understand, why is it that dealing with the Grand Cayman banks, what is the problem with that law enforcement wise, because we have people that deal in a lot of foreign banks and we don't prohibit that? What is it about those banks that give us a problem so people will understand that?

Mr. CALLAHAN. That is why I said dealing with "recognized foreign banks" poses no problem. But the problem with the Grand Cayman Island banking system is that some of those banks are nothing but garages. They are really not banks as we know banks. They will not cooperate at all with law enforcement in terms of divulging any information regarding a banking transaction.

I note now that the Swiss banks are at least starting to become a bit more cooperative, but the Grand Caymans will not help law enforcement at all.

Senator CHILES. We have treaty provisions with many countries, do we not, wherein we take certain steps to get and have certain things done even through the State Department, then we can get to a so-called numbered account, find out what is in that numbered account after we take certain steps, but with the so-called offshore banks you can't do that at all.

Mr. CALLAHAN. No, sir. I think that that is important. I also feel that there should be determinate sentences for people involved in organized criminal activity.

Senator NUNN. Minimum type sentences?

Mr. CALLAHAN. Yes. I think that there should be mandatory minimums. I think if you include as a cost of business the fact that they are really going to spend some time in jail that is a lot more effective than fines. Right now, our court system as far as I am concerned is a shambles in terms of being effective in that particular regard.

But I would certainly want determinate sentencing. I think there should be provisions for extremely high bonds for people who are on a second or third arrest for organized criminal activity, whether it be narcotics, loan sharking, or what have you.

I think we might even want to explore the area where there might be no bond for some arrests.

Senator NUNN. How about denial of appeal bonds under certain conditions?

Mr. CALLAHAN. I think that that also should be addressed. I think also when we talk about appeals, I think we ought to consider some type of time constraint on appeals.

Mr. Austin can well point out the speedy trial rule, the 90-day, 180-day rule, that law enforcement and prosecutors must be ready to go, but an appeal might take 5 years.

Maybe there ought to be something on that to balance that scale, that the appeal must be done within a certain period of time.

Senator NUNN. Do you think law enforcement agencies around the country, and the people of this country are ready at some point to make a political fight to change some of these laws?

Mr. CALLAHAN. Yes.

Senator NUNN. Usually when you introduce a bill in Washington on something like this, all you hear are those opposed to it. Do you sense among your fellow police officials and law enforcement officials that they are fed up enough, with some of the problems, to really make an all-out drive to make these changes that are necessary?

Mr. CALLAHAN. Yes, sir. I think the public has finally reached a point that it is fed up because it is now affecting so many of them. I think that yes there would be public support for it.

I think you would find police officials and prosecutors would aid in that particular area. The International Association of Chiefs of Police of which I am an officer has taken a strong position on determinate sentencing.

They have taken a strong position on bond provisions because this is what the membership tells us that they want.

Senator NUNN. This is not uniquely a Florida problem. It is probably worse here than a lot of places, but I hope out of this we will have enough suggestions that some time next year the subcommittee members—we are not a legislative subcommittee, we are an investigative subcommittee—but the subcommittee members, certainly Senator Chiles and myself and Senator Percy would be able to put together a package of legislative changes that we propose at the Federal level. When we do that we, of course, are going to get a lot of ideas from you and this is one of the major purposes of this hearing, to hear from law enforcement officials and we are going to need an awful lot of support in terms of trying to get that legislation through or at least a large part of it.

So we look forward to continuing to work with you in this regard. We are not just here trying to discover a few little facts about marihuana and cocaine. We are here looking at the overall thrust of our laws in this country and what can be done to improve the situation to protect society.

Mr. CALLAHAN. I can assure you that the law enforcement continually support those efforts.

Senator CHILES. We were able to pass in the closing days of the session a bill on cigarette smuggling in which we made it a Federal crime and also a part of the RICO statute, to put it in with the provisions of that.

How do you see that helping in the Florida problem?

I understand we are losing about \$46 million a year in revenues or at least that much in cigarette smuggling.

Mr. AUSTIN. I think there are people that deal with the collection of revenue that can chart that to you pretty conclusively, that we are not smoking that fewer cigarettes than other States.

In other words, obviously they are getting into other States. I don't know how much has been done by passing that bill, to be perfectly frank with you. I think the problem is catching these people. They are coming down the interstates and the cigarettes are really very easy to conceal in campers, pickup trucks.

There are large amounts of money involved. They don't come in tractor trailers, as a rule. They come in other ways.

Senator CHILES. Organized crime is very much involved in that?

Mr. AUSTIN. I can't prove it. The information we have is that they are. But we just haven't been successful enough to my knowledge in making, catching these people smuggling these cigarettes.

We know there is about \$50 million a year coming in, putting them in the machines and so forth. But passing another law, I don't think you have really gotten to it yet. I really am home rule oriented and I would have to bump something up to Washington. But I am afraid anything short of the standardization of the State taxes where you have 2 cents in North Carolina, 21 cents in Florida, I think somebody is going to be figuring that out.

I don't know if passing a law, I don't think the Federal people are going to be any more successful in catching them than we have been. I think it is something that continues to—needs to continue to be studied.

I don't know the answer to it, but they are obviously bringing in large numbers.

Senator CHILES. Now that you will be able to get some Federal help in surveillance, tracing, getting into the warehouses, and where it is beginning, you still see that as problems and the best thing would be if we have a standardization of the tax?

Mr. AUSTIN. Senator, respectfully, if you didn't have any more people in the field, and passed that law, you are not going to catch any more people than you are catching now. It would seem to me, again, I really say this reluctantly, because I hate to ask Washington to pass anything. I think we can do a lot of this back home. I think as long as you have got a 2-cent tax in North Carolina and 20 cents in Florida, whatever it is, that they are going to smuggle these things.

They can bring \$15,000 worth of those things in a pickup truck, just in a pickup truck. You can't see them. They don't have to stop. There is no legal way we can stop them.

I don't know any way to really discourage that except standardize the State tax in some way.

Senator CHILES. Florida might be better off if there was a 10- or 12-cent Federal tax that was rebated to the States because it would be standard and they would get all the money?

Mr. AUSTIN. I am in a philosophical box here. I don't like the idea of asking Washington to pass that law, but I think we have to have it.

Senator CHILES. Ed, I wonder if you could give us a little idea about what you see in regard to cooperation between—we had some testimony yesterday from State Attorney D'Alessandro about cooperation between the Federal and the local and State officials. I would like to have your views on this, too.

In your position as a State attorney and also in regard to heading up the statewide grand jury, how do you see the present kind of mutual effort of cooperation between State and Federal?

Mr. AUSTIN. I would say, I have been working with this for about 1½ years and obviously the most frustrating thing you could have is the difficulty of getting our own side together, our side, against organized crime, making a cohesive effort.

Senator CHILES. When you say our side?

Mr. AUSTIN. I am talking about the good guys and bad guys. Everybody wants to catch the bad guy. I don't know of any Federal agency or State agency that isn't working to try to catch these people; to prosecute them. But there is a fragmentation that is clear.

You obviously can't create a monstrous police agency with one hand. That would be more dangerous than organized crime, but on the other hand the degree of fragmentation that we can tolerate is something else and I think we have got more than we can tolerate because I think law enforcement is costing too much money for what it is returning, a lot of it because of the fragmentation. It is frustrating.

I think it is getting better. I think the cooperation is getting better. I think the Florida Legislature is throwing light on the organized crime problem by hearings and so forth, put the State attorneys into gear to get themselves organized statewide.

I think that we have got from my observation more harmony between law enforcement and prosecution statewide than we have ever had. I think that is true in south Florida. I think it is a more cohesive effort in the south Florida and the State level than there has ever been.

We have had one problem over in Tampa that we have not resolved on the Federal side yet, but I haven't had an insurmountable problem. It is frustrating and aggravating, but when we get down, sit down and talk, we normally resolve the problem we have.

But little things come up. We have been screening some Federal prisons, and it is not the fault of the U.S. marshals. They do the very best they can to cooperate, but I found here in looking at our records that in 3 months we have paid \$20,000 out of the budget that is almost nonexistent. I have got something like \$100,000 to operate on. We have paid \$20,000 back to the marshals, \$111.47 a night for us to keep a Federal prisoner down here just to talk to him.

These marshals, and the Bureau of Prisons and my people are paid by the same taxpayer. It seems to me like we are acting like it is a different world over here on the Federal side and the State side. I don't understand that.

Senator CHILES. If you want to talk to a Federal prisoner you are having to pay for—what are they charging you for it?

Mr. AUSTIN. I think we pay the marshal's salary—why? I don't know. We are paying airfare for the marshal. I had the exact figures—\$111 a night to keep them in jail. I don't understand that. But we have spent over \$10,000 in 3 months talking to Piazza and three other Federal prisoners out of our very limited State budget to reimburse somebody in Washington.

They won't cooperate with us if we don't pay them. It is not the marshal's personally.

Senator CHILES. Do you know whether we charge the Federal Government when they want to interview a State prisoner when they come into your jails? Do you charge them, Chief, for interviewing?

Mr. CALLAHAN. No, sir. We charge a meal fee for their prisoner, but we don't make them pay for the police officer's time or any assistance that we give them. No, sir.

Mr. AUSTIN. There has been a dropoff, too, since the Freedom of Information, Privacy Act. There has been a dropoff. I think the Federal side is, I think, more out of apprehension of violating some rule

or law or interpretation of that law by the court. I think that they are just being careful and conservative not to get themselves in trouble, are not as free with information as they want to be.

I see a fragmentation, an increase of separation. We are all collecting this information from the same taxpayers' dollar. That is the frustrating part of it.

You see them from all these sources getting the information. They feel like they have to keep it under the law, we have to go out and collect that information with the same taxpayers' dollars. It is really not fair to the public for the law enforcement to operate that way.

I think it goes back to your other question. I think the most pressing need is to have a commitment from the President of the United States down through the Justice to the U.S. attorney and from the Governor down to the State attorneys to have a cooperative effort against organized crime by prosecutors who will in turn bring the law enforcement agencies together. It can be done because the commitments has to be at the top. It has got to be from the man who is chief of law enforcement. Once you get that, if he can make that bureaucracy move, if the President can tell the Attorney General and the Governor can tell the State attorney and make them do it, I think we can get it together within the free framework of our government with good, tough, hardnosed leadership.

We need to get our State and local prosecutors together. I think there should be provisions for cross-sharing. There is no reason for the mistrust, the backbiting, badmouthing if you will pardon the quote. It goes on in the law enforcement community. It is just lawfully frustrating. But there aren't that many people in there that you can't trust.

Senator NUNN. I had somebody tell me in recent days that there are enough criminals to go around and there is no need in law enforcement fighting over them. Is that what you are saying?

Mr. AUSTIN. Yes, sir. I understand there is some turf. I have been guilty of it as anybody else in protecting my backyard or my backside, whatever you want to call it. I think we are big enough to overcome it, but it is just like if you go to the football team, and with good strong leadership we can bring the law enforcement community together.

Senator CHILES. What is your relationship with the various Federal agencies? Start with DEA because we have been talking about narcotics.

Mr. CALLAHAN. We find the same thing is happening, that there has been an improvement in the relationship between Federal agencies and my own. It is a job that you really have to work at. It has taken quite some time to do it. I think that now the level of cooperation is so much better than it was, say 3 or 4 years ago. I think a lot of that credit has to go to the individual detective who starts that ball rolling with the 1 to 1 relationship.

Quite honestly, if you got the chiefs and the top administrators out of the way and leave the working men alone, you can probably do a better job. We don't like to admit that. That is really the truth. There are some identity problems that some administrators have that they really need credit.

My personal philosophy is if you are in the Federal agency, if you will at least mention the Fort Lauderdale police helped you in this

investigation, that makes our people happy enough. As far as DEA goes, an awful lot of credit has to go to Mr. Pete Bensinger. I think Peter has done a magnificent job of trying to turn this thing around and to try to improve relationships.

Just recently, Senator Nunn if you will recall, I attended a meeting that Mr. Bensinger called of all the local administrators to try and eliminate some of the problems that exist. In my own particular city, when the new Federal building opens, we will have five DEA agents assigned solely to Fort Lauderdale. In the interim, we have had two DEA agents assigned to our office. We have leased them some office space and phone lines and we have had two people working with us. This has helped the relationship between agencies.

Customs also leases space from us. So we have the interrelationship between Customs and police, the interrelationship between our narcotics investigators and DEA, but you really have to work at and spend so much time building up this trust and confidential ability to trust each other that you waste an awful lot of time that could be spent working on cases.

I think the Federal agencies have got to realize that there are many good municipal police agencies who really have as much expertise or knowledge and are just as good as any one of those Federal agencies, the same is true on the State level. Until this feeling starts to permeate itself through the law enforcement community, we are going to have backbiting.

Mr. AUSTIN. That has got to come from the top. The Federal people have to be told. I think it evolves. We had an Attorney General Saxbe about 4 years ago. All of a sudden he got a lot better. Therefore, we know that it can be done.

I would echo what the chief said. The DEA has not failed to respond to a request made by the staff prosecutors and law enforcement people working for the statewide grand jury. We have made a major effort in the narcotics. They have been very helpful. Internal Revenue disappeared. I haven't seen them in a couple of investigations for 2 or 3 years. I don't know what happened.

Senator CHILES. They are just gone. They are not on the scene anymore?

Mr. AUSTIN. We used to have a good relationship.

Senator NUNN. We have done everything possible to turn that around. I have had the head of the IRS before the subcommittee and cited example after example of why they weren't doing their job.

IRS have become shellshocked after this situation in Miami. Critical articles have appeared in the paper, and some of our colleagues in Congress, and some organized groups are raising Cain with them.

They have backed up; they have gone in a foxhole. They have got their helmets down; they are on the defensive completely in the organized crime area. I don't know anybody short of the President of the United States that can turn it around.

I think at some point this country has got to decide whether we are going on the offensive against organized crime or whether we are going to be on the defensive against criticism of law enforcement.

We are on the defensive now. I think law enforcement is still on the defensive, particularly at the Federal level. Somehow it has got to turn around. I think the public mood is turned around.

I am not sure the public mood was ever in the position that has been alleged. But if it was, I think it has turned around. But law enforcement at the Federal level is still on the defensive in many cases. It is not the fault of individual law enforcement officials, the tone has got to be set at the top. You can't be backing up all the time and still get the job done.

I know of no one who has been more frustrated with this than the individual Internal Revenue Service agents, many of whom know things that could be done, but their hands are tied. It is not their fault. This is definitely coming from the top.

Senator CHILES. What about relationships with the FBI?

Mr. CALLAHAN. Again, I have to speak from my own personal viewpoint. Our own personal relationship with the FBI has always been an excellent one.

We have a resident agency office in Fort Lauderdale and the cooperation from them particularly on our organized crime activity has been a good one. We had a major case going that took well over 1½ years to investigate.

During that 1½ years we had an agent assigned to our detective division by the local office to work that case with us because of the involvement in some Federal violations. So our own personal relationship has been a good one.

Again, I anxiously await to see what Director Webster's posture is going to be. Director Kelley was a great one for cooperation with local law enforcement. We have had no personal problems in that particular area, whether it be our own local office or the Miami office.

Senator CHILES. How about Customs? You have already said. What about Strike Force?

Mr. CALLAHAN. The Strike Force has been a situation where we have had a mixed bag. The biggest problem that we have had with the Strike Force is a lack of timely response to a request for assistance.

I don't know of any real case where we didn't finally get some help from them. But there has been a difficulty sometime in the timeliness of it.

Again, we get faced with the problem of priority, what we feel is top priority they might not. Until we can get some mutual agreement on something really important to all of us, that may continue to be a problem. But in terms of the overall effort it has been slow but it has been there.

Mr. AUSTIN. Senator, the Strike Force concept, I don't think there has been a major organized crime case made in the United States in 50 years that has been made with the law enforcement people working together.

Tom Dewey, in New York, started it, where they just sat down and pulled it off together. They had the clout, the subpoena power, the grand jury, that now wire intercepts, that type of thing, that they have now.

I think the concept of the immunity for prosecution and law enforcement is sound. Just everybody says we just don't have enough help.

I know that is sort of like crying wolf. Law enforcement is spread much too thin. We don't have the prosecuting sources to put in south Florida to make a successful cohesive effort against organized crime.

We need more prosecutors to put in to help these law enforcement people.

But State prosecutors need more help. If we could put 15, 16, 18 prosecutors in to work with organized crime full time, working with the Chief, working with Bertucelli, working with the Miami PD, we could move this thing forward by lightning. We don't have the prosecutorial horses right now to get the job done.

Senator CHILES. What cases did you send to the Strike Force? Do you get reports on them?

Mr. CALLAHAN. We have had several cases that we have at least discussed. What happens with a municipal agency, it gets involved in cases that goes well beyond the city limits and ends up being either a case of local, State, or Federal prosecution or sometimes all three.

We have to make a determination of which is the best way to go. That involves sitting down with your own prosecutors to see if you are going to go State charges on conspiracy, or whether you are going to go Federal cases. We discussed the Farese case with the Strike Force.

It didn't go the way we wanted it to go. We felt it should have gone under the RICO statutes because we felt that the case was there.

But that would have been a long time-consuming investigation, very difficult. We think it would have been a successful one in time.

There was a philosophical disagreement. So they pursued the Farese investigation from a narcotic angle. It was much quicker, the indictment came back quicker, but I would still like to some day try it with the RICO violation.

Senator CHILES. Do either one of you see any changes that we should make in the RICO statutes? Are there other crimes that you feel should be included?

Mr. AUSTIN. I think our States have copied it. It did copy it. Of course we can't go ex post facto. We have to wait to build cases after October 1, 1977.

But I can't think of any offhand, where major changes need to be made in the RICO statute. I think a recommendation, I am repeating myself, a recommendation that good RICO causes aren't going to be made without adequate prosecution resources being put side by side, working day in, day out; talking over, working and having a community effort with law enforcement, no matter how many RICO changes you make.

Senator CHILES. How about training for both your prosecutors and your investigators? We are now talking about more sophisticated crimes; we are talking about some of the white-collar crimes; we are also talking about conspiracy causes under the RICO statute.

Do you feel that you have adequate resources, or that we do in the State or local government, now for the training, and is there the place that you can get to send your prosecutors; how do we train our prosecutors and our investigators?

Mr. AUSTIN. They are improving. LEAA put on a pretty good program. The problem is, the ones you have got is backed up against the wall prosecuting and the guy can go 5,000 felonies, 60,000 misdemeanors; you can't break the people loose to go get training.

We are reacting instead of acting. We are not proactive. We are reacting too much. The answer to the training, it is better than it was, but I think it is a part of the problem.

Senator, you mentioned white-color crime a minute ago. Can I go back to that for 1 second?

Senator CHILES. Yes, sir.

Mr. AUSTIN. If somebody picks up the message, it might help one elderly person. But in our looking at economic crimes, white-collar crime, which we define as cheating, stealing, lying, basically is what it is, that the land frauds, the manufacturing efforts that they sell people to produce a home.

They will sell you a product if you will give us, buy \$10,000 worth of materials, almost invariably the elderly are the victims of these things. They are suffering from inflation and they see a 15-percent return in the land fraud, 12-, 14-, 15-percent return.

If anyone, and these things are organized and they are sophisticated, but I don't think there is anybody that is hit harder in our society in these schemes, looking at the land frauds and everything, than the elderly.

If they would just think before they take their money out of a good sound lending institution, I think it would save them an awful lot of grief.

Senator CHILES. Trying to get that information and to keep that information out there to people I know is tremendously important.

Mr. AUSTIN. That is my only focus of making the statement, hoping somebody would heed it.

Senator CHILES. During the course, Mr. Austin, of your investigations of the statewide grand jury, have you received any information that organized crime has tried to penetrate casino gambling?

Mr. AUSTIN. I have spent considerable amount of time, probably 15 hours or more, with Federal inmate prisoner, John Piazza. I talked with Piazza at great length, when I say here, what I say Piazza said, from what Piazza said to the grand jury and what he said outside the grand jury.

I can't disclose what he said in the grand jury room, but I have talked to him both places, obviously, in and out of the grand jury room.

John Piazza told me that he did meet with Meyer Lansky, a man named Dimus Covello, a fellow named Joe "Scootch," they call him Joe Scootch. I think his name is Indelicato, if I am pronouncing it correctly, and he gave me the name of Sam DeCalvacante, and a fellow named Malnick, that they met in the fall of 1974.

I recognize some of these names as organized crime people who have been identified in the past.

In answer to your question, I would say that our investigation in discussing it with Piazza was that they had a meeting at a place called the Forge Restaurant in the fall of 1974, and discussed Piazza, who at that time had not been convicted in Florida and held two permits in Florida; one as a contractor and one connected with racing, I believe it was, and so forth, to front the casino, or one or more casinos.

They discussed, according to Piazza, the ways to make money out of the casinos, the skimming operations which I think I understood for the first time when he explained to me, discussed the fact that large profits were made from contracts through the services to casinos,

such as the linen, food, garbage, janitorial services, and so forth, which showed the reduction in profit, but showed huge profits to the people who provided the services to these contracts.

Piazza told me that those things were discussed at this meeting. He told me that the meeting did take place in the restaurant and suggested to him that he front one or more of these casinos, which they hoped would operate in this area, this section of the State.

Senator CHILES. The subcommittee staff has developed some of that same information in an interview with John Piazza and William Gallinaro, of the subcommittee staff, conducted that interview.

I think it might be proper if we could swear William Gallinaro in here if his interview does corroborate what Mr. Austin has said.

Senator NUNN. Mr. Gallinaro, would you please come forward? Before you sit down, would you hold up your right hand?

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

Mr. GALLINARO. I do.

TESTIMONY OF WILLIAM B. GALLINARO, INVESTIGATOR, PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Senator NUNN. Mr. Gallinaro, you are a staff member of this committee?

Mr. GALLINARO. Yes, sir.

Senator NUNN. How long have you been here?

Mr. GALLINARO. Approximately 8½ to 9 years.

Senator NUNN. What year did you come to the subcommittee staff?

Mr. GALLINARO. 1970 or 1971; I am not sure.

Senator NUNN. What is your job?

Mr. GALLINARO. I am a staff investigator, and prior to coming here I spent 15 years investigating organized crime throughout the country.

Senator NUNN. Who did you work for before?

Mr. GALLINARO. The Department of Justice and the New York State Crime Commission.

Senator NUNN. You have been investigating the overall area of organized crime in south Florida with Mr. Adkinson and others?

Mr. GALLINARO. Yes, sir.

Senator CHILES. Who is John Piazza; what is his background?

Mr. GALLINARO. Senator, John Piazza has relatives that were members of organized crime. I gained this information from my personal investigation and other information I received from law enforcement agencies.

His cousin is Eddie Coco, a "capo" or captain in the late Lucchese family, and he had an uncle, now deceased, by the name of Sabella, who was a member of organized crime. Therefore he did have that type of credentials.

Senator CHILES. How is it that he would be at such a meeting?

Mr. GALLINARO. I put that question to Mr. Piazza when I interviewed him, I believe, on October 5, 1978. He said one reason was because of what I just mentioned concerning his relatives. He had that type of credentials; the other was he was a good prospect to front

certain casinos because he already held a parimutuel license because of his racehorses, and it would be no problem for him to get a casino license since he has already gone through the investigation.

Senator CHILES. Did he confirm at that time that there was a meeting and, if so, when did the meeting take place, and who was there?

Mr. GALLINARO. Mr. Piazza stated that there was a meeting at the Forge Restaurant in 1974 in the fall, and the people present were Meyer Lansky, Alvin Malnick, Joseph Covello, also known as Dimus and a member of the late Carlo Gambino crime family, Joseph Indelicato, also known as Joe Scotch, and a member of the late Carlo Gambino family.

By the way, that family is now the Dellacroce family and Joseph Paterno, Gambino.

Senator CHILES. What was the purpose of that meeting now?

Mr. GALLINARO. The purpose was to discuss the possibility, if casino gambling was approved in the State of Florida, of using their influence and moneys to make profits from the gambling.

Senator CHILES. This was prior to an attempt to put casino gambling on the referendum back in 1974?

Mr. GALLINARO. Yes. Senator, may I add there was another person who was supposed to be at that meeting but was unable to attend, according to Piazza, and that was Santo Trafficante. According to Piazza, the reason he did not attend was that he was under heavy surveillance at that time.

Senator CHILES. How many casinos did the group intend for Mr. Piazza to buy?

Mr. GALLINARO. According to Piazza they were talking, to start off with, these were his words, approximately two or three.

Senator CHILES. How much money was to be involved?

Mr. GALLINARO. Twenty to twenty-five million dollars.

Senator CHILES. Where was that to come from?

Mr. GALLINARO. According to Mr. Piazza, it was to come from the banks in the Cayman Islands and from the Florida banks.

Senator CHILES. How were profits supposed to be made out of this venture?

Mr. GALLINARO. According to Mr. Piazza, it was going to come from skimming; he stated that he was told how to do this; also from the catering of the casinos; linen; garbage pickup; all of this stuff. They were going to control that.

Senator CHILES. Did he tell you anything how the skimming was to work?

Mr. GALLINARO. He went into that briefly. He said that he was told that the first count was the most important count in the casino, and whatever had to be taken off the top would have to be done at that time, on the first count.

He said also that during the hours the casino would be operating, they would make a pickup approximately every 3 or 4 hours. One of the pickups would just not appear on the records.

Senator CHILES. You say Sam DeCalvacante was at that meeting?

Mr. GALLINARO. Yes. I don't know if I mentioned his name prior. He was there.

Senator CHILES. Who is he?

Mr. GALLINARO. The boss of the New Jersey crime family.

Senator CHILES. When did you interview Mr. Piazza?

Mr. GALLINARO. On October 5, 1978.

Senator CHILES. Mr. Austin, during the time that you have debriefed or had used Piazza as a witness before the grand jury, have you had a chance to make a judgment as to his credibility? Whether he is credible as a witness or not?

Mr. AUSTIN. Yes, sir. I have spent quite a bit of time with John Piazza. I think it appeared at one time, perhaps here in Miami, that I was having some disagreement with Janet Reno and her office on Piazza and it was not at all.

We have had some discussions on how to proceed. You get two lawyers together to discuss those things vigorously at times, but we agreed in the final analysis that we were proceeding properly.

Janet is doing a tremendous job and she is really contributing to the effort, real effort, I think. I just put that out, because Senator, there was a case that came out of the original contact with Piazza, came out of south Florida since he was operating here.

In answer to your question, Senator, I have spent a number of hours with many, many hours with him. I have been conned before. I don't think I am being in this instance. I have talked to law enforcement people that I have complete trust in that, and rely on.

They agree with my assessment of the situation; the law enforcement people that have been "working Piazza," quote unquote.

I have checked out things that he has told me that I could check out, such as the attempt to build a major hotel in downtown Jacksonville. I happened to be general counsel of the city when that was being discussed.

I knew these facts are in order. He couldn't have known unless he was there. He has told us things about the ontrack bookmaking that were totally accurate. It has established in recent days as being operating just as he described it to us.

I would say that basically, to my mind, additionally he has not—he is certainly bright. He is in prison but he is not dumb.

Senator CHILES. Have you or your agents ever had an opportunity to polygraph, subject him to a polygraph examination?

Mr. AUSTIN. Yes. Let me say that along the line, that being bright, he knows that in a split second we would prosecute him for perjury. He can see some light at the end of the tunnel in the sentence that he is now serving. I don't know what his motive would be to sit down and lie to me under oath, knowing full well we could corroborate and prove the lie, we would prosecute for perjury.

I don't know what his motive would be to lie to me, or others. I don't know. So the answer is the motive gives him some additional credibility.

He did pass, he has been around two unrelated, by two unrelated and qualified polygraph operators, examiners, and they, both on questions put to him, both told me and reported to me that it was unequivocal that it was truthful about the questions put to him.

Senator CHILES. This particular instance was not put to him in a polygraph exam, was it?

Mr. AUSTIN. No, sir. We were in a different criminal investigation at the time, but I think the polygraph results go to his credibility to some extent.

Senator CHILES. What does John Piazza's report of the 1974 meeting with Lansky and others mean? How important is this information?

Mr. AUSTIN. It would indicate that the intelligence reports that came out of a meeting in Mexico, in 1969-70, that Lansky and the people met down there, discussed pushing for casino gambling in Miami Beach and Atlantic City, would give, those raw intelligence credibility. I don't know.

It just appears to me that they are just a group of vultures in the wings hoping for it to open up for them. They will come through then.

Senator CHILES. This is 1974. This isn't this particular current election. So we can't say this meeting took place here, but tell me if the casino gambling passes on November 7, what do you intend to do about, for example, Piazza's statement as the head of the statewide grand jury?

What do you intend to do if we have passage of it?

Mr. AUSTIN. Senator, there is not very much other than in the report, that the grand jury can report, obviously sitting down, talking about this, the statute would have run, all I can do would be to advise the legislature, the Governor at the conclusion as prosecutors, that we have reached and seek as vigorously as possible, the laws to keep it from happening and the prosecution and law enforcement resources to prevent it from happening, and police it once it starts.

I know it will sound self-serving to say it is a coincidence I am here. I had no idea these hearings would be held, I have been speaking against casino gambling which have nothing to do with my testimony here.

I think, personally, whatever sources the State gets out of casino gambling would be necessary to plow back into policing the system to keep these thugs from taking it over.

Senator CHILES. What kind of problems do you see, Chief, that would be posed in Fort Lauderdale with the passage of the casino gambling?

Mr. CALLAHAN. I would have an immediate fiscal problem. I would have to again evaluate the goals and objectives of my department for the coming year. I would have to establish new priorities.

I would have to put increased emphasis on the attendant problems of legalized casino gambling, and I would start making immediate preparations for a mid-year budget review because I would need substantially more people in that organized crime unit, and in patrol operations.

I would need substantially more people in the patrol division for the attendant problems that surround the area of organized casino gambling, such as muggings, strong-arm robbery, that would go on.

If my city was unable to provide those funds for me, the other alternative I would have would be to cut some services, because I would at that point have to establish new priorities.

Mr. AUSTIN. You would see, I believe, if it passed, Senator, a tremendous increase in the other types of criminal activity. I think it is established: narcotics, prostitution, the other types of criminal activity. You are going to need more street police.

Senator NUNN. Mr. Austin, let me ask a couple of questions of you and Mr. Gallinaro about this 1974 meeting.

As I understand it, the circumstances of this meeting were related to you by John Piazza in oral conversation. Is that right?

Mr. AUSTIN. Yes, sir,

Senator NUNN. Did you ever talk with him?

Mr. AUSTIN. Yes, I talked to him.

Senator NUNN. You talked to him personally?

Mr. AUSTIN. Yes.

Senator NUNN. Did you ever attempt to verify or investigate that 1974 meeting?

Mr. AUSTIN. You are getting awfully close, Senator. Yes, it is continuing. I would rather stay away from that.

Senator NUNN. It is continuing?

Mr. AUSTIN. Yes.

Senator NUNN. Let me ask you a question, Mr. Gallinaro. When did you interview Piazza about the 1974 meeting?

Mr. GALLINARO. October 5, 1978.

Senator NUNN. In the course of that interview, was anybody else present?

Mr. GALLINARO. Yes, Investigator Larry Finks.

Senator NUNN. Of this staff?

Mr. GALLINARO. Yes, sir.

Senator NUNN. Mr. Finks was present. Who did the interviewing? You or Mr. Finks?

Mr. GALLINARO. I guess I asked most of the questions.

Senator NUNN. Was anybody else present?

Mr. GALLINARO. No, sir.

Senator NUNN. Where did the interview take place?

Mr. GALLINARO. In New York City.

Senator NUNN. Was Mr. Piazza under oath?

Mr. GALLINARO. No, sir.

Senator NUNN. Did he ever submit any kind of affidavit on this subject?

Mr. GALLINARO. No, the interview was conducted on tape with his consent.

Senator NUNN. Do you have a copy of the tape?

Mr. GALLINARO. Yes, sir.

Senator NUNN. Did that tape go into other matters also?

Mr. GALLINARO. Yes, sir.

Senator NUNN. I would like a copy of that tape to be admitted as a sealed exhibit because it does relate to many other matters pertinent to this overall investigation.

[The tape referred to was marked "Exhibit No. 56" for reference and is retained in the confidential files of the subcommittee.]

Senator NUNN. Did you make any investigation of this allegation by Piazza?

Mr. GALLINARO. Yes, sir. I went out to interview the people that he stated were present at that meeting.

Senator NUNN. How many of them did you interview?

Mr. GALLINARO. I interviewed Sam DeCalvacante with the assistance of the Organized Crime Bureau of the Dade County Department of Public Safety.

Senator NUNN. Where and when did that interview take place?

Mr. GALLINARO. That interview took place at the condominium where Mr. Sam DeCalvacante lives.

Senator NUNN. Where does he live? Is it in Miami, in Florida? We don't need the address.

Mr. GALLINARO. It is in Miami.

Senator NUNN. Was anybody present when that interview took place?

Mr. GALLINARO. Yes, Sgt. John Waymire, of the Organized Crime Bureau of Dade County.

Senator NUNN. What was the result of that interview?

Mr. GALLINARO. Senator, I would like to explain that. Mr. DeCalvacante drove up in front of the condominium. Sgt. Waymire and I were standing outside. We observed Mr. DeCalvacante get out of his car and walk towards the doorman who usually picks up his car. As we approached him, he appeared to be getting some kind of an attack.

We assisted him into the lobby and he sat down.

Senator NUNN. You don't mean he was acting as if you were attacking him?

Mr. GALLINARO. No, he was getting some kind of seizure. That is what it was. We settled down and told him to take it easy. We informed him that his name may be mentioned at these hearings. We offered him an opportunity to respond if he wished, to whatever was going to be said about him. He showed no desire to respond. He told us he had just returned from his doctor for treatment. He gets treatment 7 days a week.

Senator NUNN. Did you ask him about this—

Mr. GALLINARO. About this meeting? He never gave a direct response except to say that, if you want me to say what he said, sir.

Senator NUNN. I want to know what question you asked him first. Did you ask him whether he—

Mr. GALLINARO. If he was at a meeting at the Forge Restaurant in 1974.

Senator NUNN. What was his reply?

Mr. GALLINARO. He never did give a direct reply. Every time I put the question to him, he went into something else, except for the fact to say that he thought gambling would ruin the State and America and he was for America.

Senator NUNN. He thought gambling would be bad?

Mr. GALLINARO. Yes. He said just like in Atlantic City, the welfare roles would go higher, and only a few people are going to make money off the thing.

Senator NUNN. Did you have occasion to interview anybody else who was allegedly at that meeting?

Mr. GALLINARO. Yes, sir. I interviewed Joseph Indelicato, known as Joe Scootch.

Senator NUNN. Where did that interview take place, and when?

Mr. GALLINARO. Senator, I don't have my report in front of me here. That interview took place on October 22, 1978, at approximately 11:25 a.m.

Senator NUNN. What I want to know specifically is did you ask him the question about whether he attended that 1974 meeting?

Mr. GALLINARO. Yes, sir; I did.

Senator NUNN. What was the response?

Mr. GALLINARO. He didn't care to want to respond to us, Senator. He didn't care to talk to us.

Senator NUNN. He didn't acknowledge it?

Mr. GALLINARO. No, sir.

Senator NUNN. He didn't deny it or admit; is that right?

Mr. GALLINARO. That is correct.

Senator NUNN. Tell us who else you interviewed.

Mr. GALLINARO. Dominick Paterno, on October 22, 1978. I am sorry, October 23, actually we were at the premises on 2 days. We couldn't catch him on the 22d. We got him on October 23.

Senator NUNN. Did you ask him whether he attended that 1974 meeting?

Mr. GALLINARO. Yes, sir, I did. He said he had been at the Forge Restaurant one time in his life. I asked him when and he said 4 years ago.

I said that would have made it 1974. He said, I guess so. I asked when. He said he couldn't remember if it was in the winter or fall.

Senator NUNN. Did he recall the meeting?

Mr. GALLINARO. No, sir.

Senator NUNN. Did he deny the meeting?

Mr. GALLINARO. Yes, sir.

Senator NUNN. He said he had been there one time?

Mr. GALLINARO. Yes.

Senator NUNN. He denied having participated in this meeting?

Mr. GALLINARO. Yes, sir.

Senator NUNN. Did you interview Mr. Covello?

Mr. GALLINARO. Yes, sir.

Senator NUNN. When did that interview take place?

Mr. GALLINARO. On October 22, 1978, at approximately 10:35 a.m.

Senator NUNN. Did you ask him about that 1974 meeting?

Mr. GALLINARO. Senator, I must correct myself. That was October 23. I have been there twice and I see the date on top was October 22. He was not home. I did interview him on the 23d.

Senator NUNN. Did you ask him about that meeting?

Mr. GALLINARO. Yes, Senator.

Senator NUNN. What was his response?

Mr. GALLINARO. He did not respond, Senator. He had his attorney on the phone. His attorney requested that I put no questions to Mr. Covello, and I did not.

Senator NUNN. Did you interview Mr. Malnik?

Mr. GALLINARO. No, sir. I attempted to several occasions. I was informed that Mr. Malnik was out of town, possibly in the city of New York.

Senator NUNN. So you never interviewed him?

Mr. GALLINARO. No, sir.

Senator NUNN. You never had a chance to ask him that question?

Mr. GALLINARO. No, sir.

Senator NUNN. Did you interview Meyer Lansky?

Mr. GALLINARO. I attempted to interview Meyer Lansky and I was informed Meyer Lansky was also out of the State and in the city of New York.

Senator NUNN. So you never interviewed him?

Mr. GALLINARO. No.

Senator NUNN. So you never had anyone that specifically acknowledged that the meeting took place other than John Piazza?

Mr. GALLINARO. That is correct, sir.

Senator NUNN. You had some that didn't answer the question, some you did interview and some that denied it. Is that right?

Mr. GALLINARO. Yes, sir; that is exactly right.

Senator NUNN. Mr. Gallinaro, did you run across any evidence that organized crime is involved in the current campaign on the casinos, one way or the other?

Mr. GALLINARO. Senator, except information supplied by confidential sources which is uncorroborated.

Senator NUNN. You don't have any corroborated evidence?

Mr. GALLINARO. Not at this time.

Senator CHILES. I think we might want to quickly put on Larry, Mr. Chairman—I think we might put on Larry Finks just for a moment, if we might.

Mr. Finks, would you take the stand? I think, Mr. Chairman, if we swear him.

Senator NUNN. Mr. Finks, if you would hold up your right hand. Do you swear the testimony you will give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FINKS. I do.

TESTIMONY OF LARRY L. FINKS, CAPTAIN, U.S. PARK POLICE

Senator NUNN. State your name.

Mr. FINKS. Larry L. Finks.

Senator NUNN. Who do you work for?

Mr. FINKS. I am employed with the Department of Interior, on detail with the subcommittee.

Senator NUNN. You are detailed to this subcommittee?

Mr. FINKS. Yes.

Senator NUNN. How long have you been detailed to this subcommittee?

Mr. FINKS. Since February of this year.

Senator NUNN. Have you been working on this investigation, the scope of which we have been discussing the last 2 days?

Mr. FINKS. Yes.

Senator NUNN. Working with Mr. Gallinaro?

Mr. FINKS. Yes.

Senator CHILES. You are familiar with the testimony Mr. Gallinaro just gave in regard to the interview with John Piazza?

Mr. FINKS. Yes.

Senator CHILES. Were you present when that interview took place?

Mr. FINKS. Yes, sir.

Senator CHILES. Is your recollection the same as Mr. Gallinaro's in regard to the answers Mr. Piazza gave, and you did take a tape of that conversation, is that correct?

Mr. FINKS. Yes, sir.

Senator CHILES. That tape would reveal what Mr. Gallinaro has said in regard to Mr. Piazza's testimony of what took place in the meeting in 1974?

Mr. FINKS. Yes, sir, what I heard, as long as I was in here. I just stepped out for a minute.

Mr. STATLER. Were you also present during the meeting with Sam DeCalvacante?

Mr. FINKS. Would you repeat that, sir?

Mr. STATLER. Were you also present with Mr. Gallinaro during the interview of Sam DeCalvacante?

Mr. FINKS. No, sir, I was not

Senator NUNN. Thank you, Mr. Finks.

Mr. Gallinaro, Mr. Finks, I don't think we have any other questions on this at this point.

Senator NUNN. We will put those interviews in a sealed exhibit and will appropriately number them as sealed exhibits for the record.

[The documents referred to were marked "Exhibit Nos. 57A-57G" for reference and are retained in the confidential files of the subcommittee.]

Senator CHILES. In testimony before the subcommittee in August, Mr. Austin, law enforcement officials have said that corruption of public officials is a vehicle for organized crime.

I would like to ask you both whether you agree with that statement.

Mr. AUSTIN. Organized crime still goes to the soft underbelly of society, the victimless-type crime, the victim volunteers, narcotics, gambling, prostitution, pornography.

They go to those types of activities where the victim comes in and consents. All of those are victimless crime; all of them organized crime; people need a market. They need to make; they need to sell their wares and they need to sell it on a volume.

In my judgment, those traditional forms of organized crime activities which are still the big money makers of organized crime, gambling, narcotics, prostitution, narcotics, and loan sharking and, in my judgment, they can't operate on a large scale in any community, those types of activities can't operate on a large scale, on a long-term basis in any community without some segment of the governmental structure.

So I would say that organized crime and public corruption do interface.

Mr. CALLAHAN. I would agree with Mr. Austin's statement. There are some very subtle ways in which they can affect law enforcement, subtle ways in which they can affect prosecution. Among those subtle ways are the gentle application of pressure to city officials, not to fund either the local police agency or the prosecutorial agencies.

There can be subtle pressures as to what should be the real priority type of crime for a community to be investigating. It is rather insidious and very gentle but it is very effective. I think there has got to be some protection for police chiefs in this country to protect against becoming victims of political whim, victims of subtle pressure from organized crime.

My suggestion is we not have total tenure and immunity, but I think there has got to be protection for dedicated law enforcement officials, dedicated prosecutors, so that pressure can't be brought to bear to just summarily dismiss them from the job.

When you get into the area that you start conducting investigations, that start to touch the pillars of the community, or start to touch public officials, the pressure can get pretty unbearable.

I can tell you that it gets real rough. Sometimes you survive it; sometimes you don't. It can get pretty ornery, and the pressure is there.

Senator NUNN. Chief Callahan, Mr. Austin, I want to thank you both for coming. I think you have given us a great deal of assistance.

Mr. Statler may have questions. I will have to go to take a phone call. Before I leave, I want to express my personal appreciation to both of you.

Chief Callahan, not only have you helped us in testifying here today, but also your cooperation for a long time with our subcommittee has been splendid.

We appreciate your cooperation, and we hope you will convey our expression of thanks to all of your staff.

Mr. CALLAHAN. Thank you.

Senator NUNN. Mr. Austin, we appreciate very much your testifying. I have heard a great deal about your excellent reputation. You have got a tough job. We hope, to some degree, we will be able to help law enforcement in the coming months in Washington.

Mr. AUSTIN. I thank you, Senator, for holding these type of hearings. I appreciate it.

Mr. STATLER. Two brief questions: The first is directed to both of you. About 2 weeks ago, in a national news magazine, recently resigned high Federal official, Dr. Peter Bourne, once in charge of the Nation's drug program for the White House, was quoted as saying, and I hope I paraphrase him correctly, that with respect to cocaine trafficking, basically, there is not too much we can do about it as a government, but that it is an activity that we don't want to encourage.

By the same thinking, just as we have not succeeded with respect to our law enforcement efforts regarding marihuana, he predicted we probably wouldn't be succeeding any better than we are right now with respect to our law enforcement efforts dealing with cocaine.

It led him to conclude, therefore, that we might best consider not legalizing cocaine in this country, just as he wouldn't recommend legalizing marihuana, but also not devoting too much in the way of law enforcement to combating the trafficking in cocaine just as for years he recommended we shouldn't with marihuana. He concluded that rather than legalize it or establish it as a very high law enforcement priority in this country, we probably ought to just continue the way we have been doing. In effect, he recommended that we preserve the status quo with respect to how the Federal Government deals with cocaine and cocaine trafficking.

Do you have any comments on that?

Mr. AUSTIN. I think if you follow that they will own us all, with the profits they make off of it, if you don't do something. I think it is a copout. I think we can police it. We can curtail it. We can't eliminate it, but we can greatly curtail it.

We can make it awfully difficult for them to operate and hurt them. I think it is a copout to go, to legalize these type of drugs. I think the sociologists, psychiatrists, tell us that every society has its drug, its national drug. Ours is alcohol.

I just don't think we can afford two of them in this country. I think we have got a duty to come down on this illegal activity. I think it is harmful to society.

Government and State has a responsibility in policing it; they have a duty to police it. Under the constitutional mandate, to maintain society, and I just couldn't be more adamantly opposed to that philosophy.

I think we can do the job if we get our act together.

Mr. STATLER. Chief?

Mr. CALLAHAN. Mr. Bourne has not been a friend to law enforcement. The statement sounds like he was on funny weed himself at the time he said it.

Mr. STATLER. Sorry?

Mr. CALLAHAN. Funny weed at the time he made the statement. I think the statement is asinine. I think that Dr. Bourne for too long exerted too much influence on the present administration. I think that is why the priority got kind of screwed up.

I am happy to see him out of the way.

Mr. STATLER. Finally, Mr. Austin, it has always been a great treat for people in all areas of this country to come down to south Florida. It is one of the most beautiful States and for years I believe the major industry here has been tourism. Yet in recent news magazines and newspaper articles, there has been speculation to the effect that tourism has now been surpassed as Florida's No. 1 industry by drug trafficking.

Is there anything to indicate from your own investigations that that statement is true?

Mr. AUSTIN. It is very difficult to put into the record figures, pretty much speculation. A figure that our people, our professional people put together, is about \$4 billion flowing in the marketplace in Florida a year in the drug trafficking.

I don't know how that relates. I am not familiar with the gross of tourism. I doubt it comes up to that.

Mr. STATLER. \$4 billion in drug trafficking?

Mr. AUSTIN. That is the figure that has been given me. It is a big, big business; \$4 billion a year is almost as much as a State budget. So it is an awful lot of money. But it is untaxed too. It must be \$100 million with a \$1 billion untaxed.

There is so much you can do with it, buy legitimate businesses. What they are doing with their money, it is frightening. I think we will establish more RICO statutes in the future, which leads me to one more thing. We don't have enough. I know I don't.

We need some pros on the white collar economic crime, tracking the money, cash flow, more sophisticated investigative technicians. We need some more auditors.

Mr. STATLER. Whether drug trafficking has surpassed tourism or not, you would conclude that certainly dollar for dollar, it's one of the major industries and probably is the very top industry in—

Mr. AUSTIN. No question.

Senator CHILES. We would like to say that is more of a problem in that industry because there are not too many people sharing in that industry.

Mr. AUSTIN. Whatever it is, there is a lot of money involved, and a tremendous cash flow. I suspect whether it comes out of Washington on this trip, balance, cash, we put out weekly or monthly, I think if they put it in the drug field, I think we are in a little worse position than people realize.

Senator CHILES. Thank you.

I want to thank you; again add my thanks to both of you for your help here.

Our next witness will be Maj. Steve Bertucelli, who is in charge of the Organized Crime Bureau of the Dade County Public Safety Department.

The Organized Crime Bureau was created in 1969 by E. Wilson Purdy, the director of the department. The OCB was created in response to a growing presence of organized crime figures and activities in the south Florida area.

Today, the OCB has a staff of I understand over 100 supervisors and detectives.

Major Bertucelli, do you have Lieutenant Sommerhoff, Sergeant Green, Sergeant Pearson; are they going to appear with you?

Major BERTUCELLI. Yes, I would like to have them come up front.

Senator CHILES. In the event they might be testifying, I will swear you all.

Would you raise your right hands? Do you swear the testimony you are about to give before the subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Major BERTUCELLI. I do.

Lieutenant SOMMERHOFF. I do.

Sergeant GREEN. I do.

Sergeant PEARSON. I do.

TESTIMONY OF MAJ. STEVE BERTUCELLI, DIRECTOR, ORGANIZED CRIME BUREAU, DADE COUNTY DEPARTMENT OF PUBLIC SAFETY, ACCOMPANIED BY LT. ROY SOMMERHOFF, SGT. DAVID GREEN, AND SGT. WILLIAM PEARSON

Senator CHILES. I want to express my personal gratitude and the appreciation of Senator Nunn and the other subcommittee members for the longstanding cooperation with the subcommittee and its staff by the Organized Crime Bureau and the Dade County Public Safety Department.

Since our inquiry began more than 1 year ago—even before that—you and your staff of the Organized Crime Bureau have been of extraordinary assistance to us. I remember when I was first trying to find out something about this myself, and I came down and you all started educating me a little bit about the problems, and I hope you will convey our thoughts and best wishes to Director Purdy.

The Public Safety Department and the Organized Crime Bureau are each and together examples that have been innovative and effective local law enforcement efforts. You have every right to be proud of the Organized Crime Bureau. We believe it is one of the best organized crime intelligence units in the Nation.

Senator Nunn and I are personally and deeply grateful for your personal interest and assistance in this inquiry and each member of your staff has willingly provided the subcommittee with every courtesy and needed assistance.

I want especially to note the tireless efforts of Sergeant Waymire and Detective Lloyd Hough. They are fine officers; they are credits

not only to the Organized Crime Bureau but the law enforcement in general.

While I today know that your testimony and those that you brought with you will be a substantial contribution to the subcommittee's record, I would like to suggest that in a way your appearance is also very symbolic.

You and the men of the Organized Crime Bureau and the department in general represent the hundreds of thousands of men and women who have dedicated their lives to law enforcement.

Major, I understand in the past few weeks the Organized Crime Bureau has made some major seizures of narcotics. Could you tell us about that?

Major BERTUCELLI. Yes, sir, we have. Let me make one point clear. I often get kidded about this. I am not a member of the Mafia. I am open, clear on that one. We have experienced some success in this field because of the development of what we call a courier intercept system.

Sergeant Pearson initiated this program. In the last couple of weeks they seized over 83 pounds of cocaine worth about \$18 million. But what we found through the establishment of this investigative endeavor is that we are having an impact in suggesting that perhaps we are the cocaine capital of the United States; that the influx and the movement of the shipment of cocaine coming into this country, detected by the courier intercept program and with the limited knowledge that we have, we impact approximately 45 different cities, showing the Miami area, as a point of transshipment to other parts of the country.

What we are finding just in the system of couriers, that much of the cocaine is in fact moving through this community.

One other thing to note is that it all doesn't leave here. Stash pads are located at residences, and what we are finding in the whole cocaine area is more and more involvement, not only in the traditional sense of organized crime, we are finding independent operators, we are finding too many of our residents and citizens involved in the impact of cocaine and drug trafficking.

We have found a number of deaths and violence related to it. We are seeing the deterioration or involvement of people that normally would not become involved in crime.

Perhaps I can ask Sergeant Pearson to describe what he found in the courier intercept program and remind you that this is just one facet of cocaine investigation. I am not talking about the wiretapping investigations or electronic surveillances, or the seizures in the area of marijuana and illicit drugs. This is just one small program.

Senator CHILES. Thank you.

Sergeant, is it 83 pounds that you seized?

Sergeant PEARSON. Yes, sir.

Senator CHILES. Isn't that just a huge amount of cocaine? How many sort of bags does that break down into? The way it would go down to the street level, I know everybody tossed around big figures. That is like seizing a shipload or more than a shipload of marijuana, 83 pounds, would it not?

Sergeant PEARSON. There is approximately $\frac{1}{2}$ a gram of cocaine in every street dosage unit. There is 28 grams in 1 ounce. So if

you can start figuring, I am not very good at mathematics. I will have to agree with you it is a tremendous amount of street dosage units of cocaine seized at that particular time.

Senator CHILES. I will get somebody to multiply that out. So we are talking about 83 pounds times 16 ounces times 28 times 2?

Sergeant PEARSON. Yes, sir.

Senator CHILES. Before we finish, I would like to get a number on that. Go ahead.

Sergeant PEARSON. I think what has been significant, so far as south Florida is concerned with this airport intercept program, is that the intelligence that we have developed through the program, the fact that south Florida does still remain the cocaine importation capital of the United States, the fact that in that particular investigation we were involved in, which was just a 3-day investigation, but what it showed is a well-organized, highly organized group of Latins which is what we have to contend with here in south Florida in drug trafficking, the Latin population.

It went as far as to, No. 1, recruit couriers from South America, from Colombia, illegal aliens, bringing them into the country and actually setting them up with phony ID, clothing, and everything else in what we call "safe houses," where they await instructions to where they are going to go, how much drugs they are going to take, what part of the United States they will travel to.

The next phase would be arranging the shipment of cocaine from Colombia to the United States. Pending the arrival of the shipment, they would send people up from Colombia to handle the distribution of the shipment through the courier process. The people would have arrived well before the shipment was destined to reach south Florida. They would set up stash houses, places where the cocaine is to be stored, and once it has arrived and awaiting its distribution throughout the United States, the couriers would be told to go to specific places and pick up suitcases or whatever it was that the contraband was going to be used to be transported in.

They wouldn't be told anything else, other than how much they were going to be paid and where they were to deliver the cocaine to. They would be provided expense money and in this particular situation, there was \$3,000 a person plus their airline travel tickets to wherever they were going.

I think the thing which is significant is that they were all told one thing, that if they are caught, the worse thing that can happen to them is they will be deported back to Colombia. So there is very little fear of apprehension or of the law insofar as the United States is concerned.

I don't think there is anything fearful or threatening about being sent back to the place where you are born and raised and came from originally.

Senator CHILES. You are imported here just for that purpose and I guess the risk of gain would be pretty good.

Sergeant PEARSON. What it showed also was the impact that the Latin population is having on the drug trafficking. The evidence that

we seized at that one particular place indicates that in an apartment house at one time, as much as between 100 and 200 pounds of cocaine had been there and had been repackaged for distribution throughout the United States there.

Senator CHILES. What is the street level value of one-half gram?

Sergeant PEARSON. If my memory serves me right now, it is going for about \$70 a gram. That would be about \$35.

Senator CHILES. When it is broken down into that half gram bag?

Sergeant PEARSON. Yes.

Senator CHILES. You say that you can find where over 100 pounds had gone through?

Sergeant PEARSON. Through that one particular operation, and that is only one of the many operations that we have here operating out of south Florida.

Senator CHILES. Could you identify for us the States and cities? Charles Keck yesterday told us about shipments of marihuana going from Miami to Atlanta, Philadelphia, New Jersey, and Michigan. He also delivered the cocaine from Florida to areas including Colorado, Massachusetts, and Maryland.

Can you identify those States and cities to which you all are able to see where these drugs are transported out of the area?

Major BERRUCELLI. Yes. I have a copy which I have submitted as an exhibit. I would like to have it entered in the record.

Senator CHILES. Without objection, we will enter it in the record. [The document referred to was marked "Exhibit No. 58" for reference, and follows:]

EXHIBIT No. 58

MEMORANDUM

Date: October 19, 1978.

To: Steven Bertucelli, Major, Organized Crime Bureau.

From: J. E. Rafferty, Captain, Narcotics Investigation Section.

Subject: Activities—Airport Unit, Narcotics Investigation Section.

The Airport Unit of the Organized Crime Bureau's Narcotics Investigation Section has seized in excess of 220 pounds of cocaine and 2,300 pounds of marihuana since its activation in 1977. These seizures resulted in the arrests of 157 different individuals who were acting as couriers and attempting to board flights for other cities within the United States. A considerable number of these subjects were enroute to a few select locations, which are identified as follows:

Destination	Subjects	Cocaine seized (pounds)	Marijuana seized (pounds)
Los Angeles.....	49	86½	1,135½
San Francisco.....	14	23½	136
New York.....	29	64	379
Denver.....	15	17	90
Atlanta.....	4	½	20
Miscellaneous, includes Dallas, Houston, New Orleans, etc.....	46	30½	583
Total.....	157	221¾	2,328½

The Airport Unit developed a considerable amount of intelligence information reference narcotics being shipped to various locations in the United States. This information resulted in the arrest of 113 individuals and the seizure of more than 120 pounds of cocaine and 2,100 pounds of marijuana by various different police

agencies. A considerable amount of these narcotics were shipped to a few locations, which are identified as follows:

Destination	Subjects	Cocaine seized (pounds)	Marijuana seized (pounds)
Los Angeles.....	45	91	776
San Francisco.....	10	8 $\frac{3}{4}$	230
New York.....	12	3	302
Denver.....	5	5	180
Washington, D.C.....	5	1	18
New Orleans.....	4	1 $\frac{1}{2}$	101
Seattle.....	3	8	1 $\frac{1}{2}$
Atlanta.....	3	1 $\frac{1}{4}$	1 $\frac{1}{2}$
Miscellaneous, includes Dallas, San Diego, Las Vegas.....	26	6 $\frac{3}{4}$	553
Total.....	113	126 $\frac{1}{4}$	2,161 $\frac{1}{4}$

The activities of a major heroin distribution ring were sharply curtailed through the combined investigative efforts of the Los Angeles Airport Unit and ours. These investigations resulted in the arrest of 14 subjects and the seizure of 20 pounds of almost pure heroin.

The estimated street value of the drugs seized by our Airport Unit is computed as follows:

Heroin.....	\$6,400,000
Cocaine.....	10,608,000
Marihuana.....	1,047,000

NOTE.—When these drugs are cut further to street user doses, these figures will become at least tripled or quadrupled.

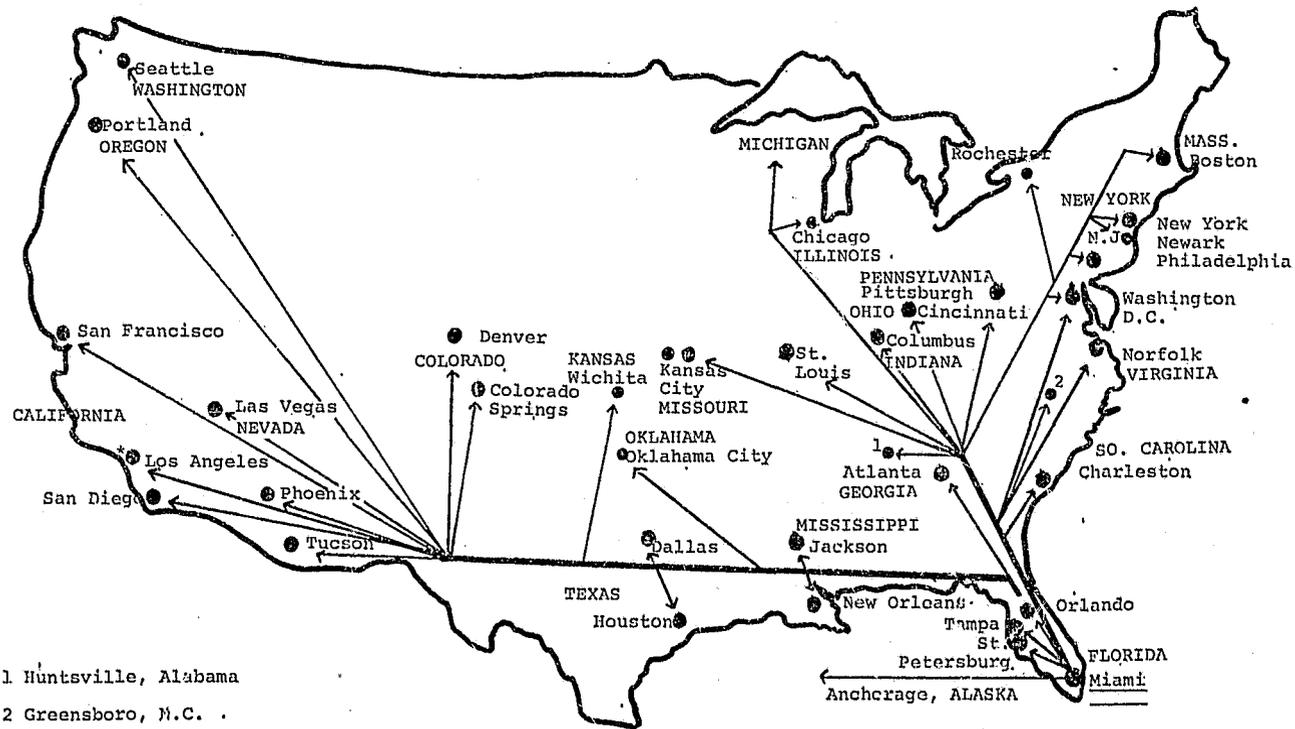
The street value of the drugs seized by other jurisdictions, while acting upon intelligence supplied by our Airport Unit is estimated at \$3,024,000.00 for cocaine and \$972,450.00 for marihuana.

Prepared by:

R. LAMONT,
Lieutenant, Narcotic Investigation Section.

DOCUMENTED COCAINE AND MARIJUANA ROUTES FROM THE MIAMI, FLORIDA AREA

38-746—pt 3-79—9



1 Huntsville, Alabama

2 Greensboro, N.C.

* Documented Heroin Traffic
Los Angeles to Miami

739

P.S.D. O.C.B.

Senator CHILES. Do you have a way of displaying that?

Major BERTUCELLI. Yes. For example, Boston; New York; Washington, D.C.; Norfolk, Va.; Seattle, Wash.; Portland, Oreg.; we have had some up in Alaska. That is only part of the work they have been doing.

Since the inception, we have seized in excess of 220 pounds of cocaine. We have arrested over 57 different couriers. That is just one facet of the organized group.

We are talking about cocaine distribution, marihuana, because this system is using the airways throughout the country and we are talking about airports. We refrain from describing in detail our operation because we have been successful and hope to keep it successful, but I would like to enter that into the record.

Senator CHILES. If someone will pick that up, that will be entered as an exhibit in the record. I note we are talking about approximately 75,000 half-gram units out of that bust that you just made. The street level price on that would be about \$3,250,000 and with the prices that you gave us. That was a 3-day operation, a 3-day intercept?

Sergeant PEARSON. Yes, sir.

Senator CHILES. From what we have seen and what you have said, the success in the combined Federal, State, and local law enforcement effort here in south Florida could have a tremendous impact not only in Florida, but all over the Nation.

Major BERTUCELLI. I don't think there is any question about that. I think when you speak of the combined effort of Federal, State, and local law enforcement, I think unfortunately the realities of law enforcement today is that we speak of coordination and we suggest it occurs, but that is lipservice.

In effect, what occurs in law enforcement is we are disorganized, we are disjointed in our efforts, and we really don't pull together like we should. I think what is happening is you have too many agencies that have too many jurisdictional responsibilities or different policies; each moves in its own direction.

I think the IRS is a good example of that. The FBI really has never been particularly involved in the drug movement, and just recently was included in the coordinated effort of the task force with DEA. DEA has its own policy, but as to exchange systems or intelligence, I would say that we have more success with local agencies, across this country, with organizations like the LEIU or the Florida intelligence unit, than we do within the establishment.

We speak of it, but in reality it is not working. One of the problems that we need to be addressing in this area is to develop a concerted effort, and I mean open the door and exchange intelligence that we need; and to work together. That is probably the most critical problem that we are faced with.

Senator CHILES. You don't feel now that you have that kind of open door relationship?

Major BERTUCELLI. No. I do credit individual agents within the jurisdictions. We investigate a lot of our cases with combined Federal agencies. We have had success on a limited basis, but when you speak of overall policy, or procedure, it is restricted, and really is a barrier to effective law enforcement.

What is needed to be done is overcome that barrier and perhaps look at legislation or some real impact policy so that we can sit down and make some progress and work together. We spend too much of our time putting out fires because of lack of cooperation.

I am not blasting the local agents in this jurisdiction. I think part of their problem comes from Washington, part of it is in the policy level at Washington; it is inconsistent with the problems they are faced with in this jurisdiction.

Senator CHILES. So it is the bureaucracy and what happens in regard to the overall policy as it comes down from Washington?

Major BERTUCELLI. I think you have to be looking at the level of discretion allowed at the regional offices. They understand the problems of organized crime that exist within their community. There is often an inconsistency in the position taken at the Washington level; perhaps decisions are turned around or perhaps too much concern about the politics of an investigation rather than protecting the public interest.

If they would decentralize perhaps at that level and they had the discretion and they were able to open up the agency's doors in terms of intelligence or information or share the use of equipment that one agency would have, I think we would be in better shape than we are today.

It is too fragmented. It reads like a storybook, petty jealousy, lack of information exchanged, too many sessions of notetaking and nothing occurs. And I think we have to look realistically at it, because the drug problem is impacting the State critically.

Senator CHILES. Bowdach when he was testifying said he and others have used such laws as the Freedom of Information Act to identify informants against them. Does the present administration of the Freedom of Information Act cause you any concerns?

Major BERTUCELLI. Yes, it does.

Senator CHILES. Are you concerned that in cooperation with the Federal officials, the names of your informants might be released?

Major BERTUCELLI. It concerns me, the public revelations as to testimony in the committee in the past with Bowdach to find that he could receive more information as a subject of an investigation than I can receive as a law enforcement agency. That is what occurred.

The other thing is the Freedom of Information Act is something, what we are talking about here—

Senator CHILES. You have to become an expert on the Freedom of Information like Bowdach so you can write that out to get information from the Federal Government?

Major BERTUCELLI. Exactly. Perhaps what I should do is use the same access route he did and perhaps I could follow up on investigations. I have a concern for that. The other concern I think we are seeing is reluctance on the part of local law enforcement to pass on information to the Federal agencies, particularly in the area of intelligence, because they understand that access by citizens, particularly of intelligence or investigative information, may be revealed.

We are creating barriers by this intent to protect the individual rights of the citizens, creating barriers for law enforcement.

What is happening is you are putting the block up. We are not exchanging as effectively as we could. That is the most disastrous piece of legislation that I have ever heard of.

Senator CHILES. We have been told that through the administration of the Privacy Act and in policy determinations the Internal Revenue Service agents have been effectively withdrawn from the law enforcement.

What has been your experiences and experiences of your department?

Major BERTUCELLI. Our experiences has shown that IRS is no longer a viable agency in the fight against organized crime. We find that they removed themselves from this position where they were very effective. They were effective in the past and historically have shown that perhaps they were the most successful.

I watched them emasculate several of their agents when they dealt with public corruption back in 1973 and 1974. These agents were doing an excellent job, knew what they were looking at, knew the direction they were going in. They had a change of policy; left out in the cold, no backing from the agency.

Then there was a turnaround. They pulled away from the organized crime effort, away from the special offender narcotics program, and in effect, what you have today, they will meet with you but they will openly state it is against the law for them to provide information that they have to a law enforcement agency, because it is a third-degree felony.

Senator CHILES. What types of gambling activities are legal in the State of Florida?

Major BERTUCELLI. Essentially in Florida you have the parimutuel, horse racing, dog racing. You have the jai alai. You have some forms of bingo. That is essentially four forms in the State.

Senator CHILES. Has your organized crime bureau conducted inquiries into each of these areas?

Major BERTUCELLI. Yes; we have. And some of the indications we have found in these areas, that the influence of organized crime has found its way into the legal establishments. Some of the experiences we have had from 1973 on in the investigation of Lansky, and I noted in listening to previous testimony about Lansky's meeting with some organized crime families in the Miami Beach area, what we found is on-track bookmaking, illegal on-track bookmaking that at times exceeded the handle of the track.

Senator CHILES. Explain to me how on-track—I have heard of off-track bookmaking before. What is on-track bookmaking and how in the world would it exceed the handle—When you say exceed handle of the track, you mean it would exceed, more than the amount of money bet through the windows?

Major BERTUCELLI. Yes, sir. The indications there, I would like to have Sergeant Green address some of that as soon as I finish.

The high rollers, level of action with high rollers, even some of the investigations we do with Piazza showed that he was capable of manipulating the odds on the board at the track.

The high rollers, the bookmakers actually set up shop on the track itself. They are involved with illegal operations and also involved with work from a business viewpoint on the track and took the action from the high roller.

The volume of action was in the \$5,000 range; the \$25,000 range. What I would like to do at this time is turn that over to Sergeant Green.

Senator CHILES. \$5,000 and \$25,000 a bet?

Major BERTUCELLI. A bet.

Senator CHILES. Sergeant Green.

Sergeant GREEN. The on-track bookmaker specializes and deals only with very wealthy people that would not normally go to a race-track if the bookmaker wasn't there. They would call their bets into New York, Chicago, or somewhere, because they are talking about betting possibly more than \$2,000 a race for 10 races every day; carrying a great deal of money on their person, if they had to put money up to do this type of wagering.

Therefore, the on-track bookmaker establishes a pattern of credit for these customers. They bet each and every race, the entire period of time they are there. They also bet on sporting events and anything else that is going on in the country that normal bookmakers handle, World Series, professional football, college football, basketball, whatever it is.

Our undercover activities have substantiated these allegations and it is a multi-multimillion dollar operation.

Senator CHILES. How much does the State of Florida get from a track, from a bet that is made with an on-track bookie?

Sergeant GREEN. They get zero.

Senator CHILES. How much does the Federal Government get from the gambling returns from someone who wins a bet or for the bookmaker, if he is the winner, if the person loses? What kind of income taxes are paid on this?

Sergeant GREEN. My 8 years experience of working the bookmakers in this area, it was proven to me that there is very little civic pride among bookmakers and the people that bet with them, and they don't declare any of this money. There is zero money to the Government.

Senator CHILES. Again, one of the reasons in addition to not having to carry a lot of cash to the track would be that if you win you don't have to report to the Government, where, on big bets, the tracks themselves are supposed to make a report of the winners, are they not, on a bet—what is it now, over \$500 winner? What is the winner?

Sergeant GREEN. It is on odds of 300 to 1, you have to report all wagers. There are many reasons why people bet with bookmakers on the track. One of them is that wagers made with a bookmaker on the track does not affect the odds of the horse that is racing, whereas if you go to the window, you automatically—through the parimutuel system, totalators, everybody that bets on a horse, the more money that is bet on that particular horse the odds go down and there is a smaller payoff on the horse.

People betting, say, \$10,000 on a horse with a bookmaker will not affect the odds and if the horse goes off at 5 to 1, he can win a substantial amount of money.

Take \$10,000 and put it through a window on any parimutuel establishment and you will knock the odds down to almost even money.

Senator CHILES. Have you recently made a case, or have you just made some arrests in this regard?

Major BERTUCELLI. Yes. We are reluctant to name them. We arrested four in that determination, in an undercover operation, where with the assistance of a Federal grant we had the capability to

bet at the level we wanted to reach to make the impact, we were successful.

We feel we finally made that inroad in terms of what we have seen through the intelligence system over a number of years.

Mr. STATLER. If I can interrupt, you explained the advantages to the bettor. What are the advantages to the bookmaker if he is giving better odds than the parimutuel system?

Sergeant GREEN. It is not better odds, sir. The odds that a bookmaker gives are track odds up to 20-to-1. Bookmakers won't give any higher odds than 20-to-1. But because of the large wagers that don't go through the parimutuel system and go directly to the bookmaker, the odds don't change. You don't see a change in odds.

So if you are betting, say, \$10,000 on a horse, 5-to-1, with the bookmaker, when that horse finishes and if you win, you will win 5-to-1 on your \$10,000 bet. Had you gone through the windows of the parimutuel establishment your odds would no longer be 5-to-1. It would be even money. Therefore, you are decreasing the amount of money you could win by going through the windows.

Mr. STATLER. Does the bookmaker take any action to protect himself further? He knows the odds would be lowered if these bets were counted in the parimutuel system. Does he in turn do anything?

Sergeant GREEN. Yes, sir, he will. This goes on daily. There are races we have determined to be fixed. If a bookmaker picks up the feeling or gets an inside tip that a race is being fixed, and he is holding a lot of money on that particular horse, or if he just feels like it on his own, he himself can take the money that is being bet to him, slip it to somebody that is in his organization. They, in turn, will slip it to other runners and systematically bet the money into the windows, reducing the odds. Then when the horse wins, they are paying back even money.

They use the totalizer system to protect themselves.

Senator CHILES. How in the world would anybody get any money out of a bingo game? That is supposed to be a charity game.

Major BERTUCELLI. I know what occurs there, I think. What happens is if you have a set up of commercial operators, and we found indications in the New Jersey family, New York family, setting up, in essence, a racket. They use the name of charity. They give it \$50 a night. Their gross income or revenue from the operation would be \$1,500 a night. They may spend out \$300 or \$400, but that other \$800 or \$900 goes into their pocket.

In effect, what they are setting up is illegal and they are using the name of charity. And the unfortunate thing there is charity, some of them have taken the attitude it is more money I would have gotten if I hadn't run the game itself. That is unfortunate. They are playing into the hands of an organized group.

The funny part here—

Senator CHILES. In Florida there is not supposed to be any bingo unless it is for charitable purposes and the proceeds are only supposed to go to charity. But you are saying, in effect, very small amounts of the proceeds are going to charity, the vast amount is being siphoned off?

Major BERTUCELLI. Yes, sir.

Senator CHILES. And that the games themselves, the operators or some of them, are organized crime people?

Major BERTUCELLI. Some of those are organized crime people, associates. We found them involved in fencing operations. We found them involved in illegal bookmaking, because what you see is a common thread in organized crime. They don't specialize. They go where the money is. Wherever the money is, whatever scheme they can devise is where you are going to find them.

Senator CHILES. The testimony received by the subcommittee today, as you noted about the meeting, the 1974 meeting with Piazza and Lansky and others. Do you have any information linking any of these individuals with other illegal activities on previous investigations? I am talking about Meyer Lansky, Sam DeCavalcante, Joseph Paterno, Joseph Covello, and Alvin Malnick?

Major BERTUCELLI. Yes; the participants of that meeting, I think the significance of that meeting, No. 1, is it reinforces the position that we maintain, and we know it is true, is Florida is an open State. You have a sit down with a number of organized crime families for the purpose of distribution or dividing territory.

Sam DeCavalcante is active and continues to meet today. These people are not retired. They meet on a regular basis. He has met with Russ Bufalino, presently in the Dade County jail for contempt. He has met with other family heads. He meets with principal non-associates.

Indelicato continues to be active with arrest records and background of extortion. These same people are investigated; Covello was arrested and investigated by the second statewide grand jury. They were called before the second statewide grand jury for their involvement with illegal bookmaking activity on an extensive basis because within south Florida we feel we are a focal point and have been for a number of years.

Florida is historical as to the activity of the illegal syndicate gambling. Meyer Lansky, himself, was called before the second statewide grand jury in regard to questions concerning illegal gambling, and also the third statewide grand jury.

I think what may be significant, maybe what I should offer, is we have had some extensive experience in the investigation of Lansky as it relates to illegal gambling, illegal operations. We started an extensive investigation in 1973 which involved the question of infiltration of legitimate business by front people for organized crime or Meyer Lansky; illegal bookmaking and gambling activity as it relates to ontrack activities and offtrack of bookmaking activity.

We have some information we feel would be of benefit to the committee to show the design in how the organized crime element moves, and perhaps I can ask Sergeant Green if the Senator would permit, perhaps to get into that investigation because it was concluded the other day. Not concluded, but at least one other phase of it was concluded.

Sergeant GREEN. What I am going to try to do here is take you through 6 years of investigation as quickly as I can, and tie it up into one package. I am going to mention some names and locations that we worked, identify some people, and I may have to jump back and forth a little bit.

I am going to leave a lot of people out of it. I am going to stick strictly with what we consider identified mobsters, or bookmakers.

In 1973 we engaged in the investigation of Lansky and his associates, using as a common denominator one Hymie Lazar—Hymie Lazar, I will use the common denominator through 1973 and 1974. He was a junketeer, having an office on Miami Beach and he flew people who wanted to gamble in Las Vegas back and forth from Miami Beach or from the International Airport to Las Vegas to the Riviera Las Vegas Casino.

Our observations of Lazar produced approximately four primary associates that we continued to investigate up until this point.

The No. 1 person at the Riviera Las Vegas was a local businessman by the name of Jack B. Cooper, who has part ownership in a local parimutuel establishment, the Flagler Dog Track.

He has also appeared before this subcommittee years ago in the investigation of the Serv U Corporation.

Mr. Cooper was seen with Lazar at the Riviera Las Vegas office. In November of 1973, one David Marder was observed also with Hymie Lazar at this office.

The significance of the date of November is the fact that David Marder had just got out of the Federal penitentiary in October of 1973 for interstate bookmaking and racketeering charges made by the FBI.

One Irving Harry Katzen was also observed with Lazar at the junket office. The fourth principal is an Abe Roth. Irving Katzen, Abe Roth, and Hyman Lazar were the principals of our on-track bookmaking in 1973 and 1974 at the racetrack in Dade and Broward Counties, Gulfstream, Calder, and Hialeah.

We were new to on-track bookmaking. In fact, this was our first shot at it. We didn't even know what it was. We just watched these people go to the track, exchange \$100 bills in packages one after the other, but nobody went to the window.

The race would go down, and then the cycle would repeat; \$100 bills would exchange again and nobody went to the window.

So we determined that it was on-track bookmaking.

Another focal point of the investigation at this time was a restaurant, Wolfie's Restaurant, 21st Street and Collins Avenue. During the surveillance we observed Meyer Lansky, who by the way is extremely healthy and alert, meet with Hymie Lazar frequently, Jack Cooper, and other people.

We then covered meetings that occurred at a tennis court at 2128 North Bay Road, Miami Beach, tennis court and a houseboat owned by Mack B. Cooper. Surveillance produced meetings there continuously with Lazar, Meyer Lansky, and numerous other people, with Mr. Cooper.

Another principal surveillance location was Lincoln Road Mall, a small street called Lincoln Lane, one block north of Lincoln Road Mall. At these surveillances we observed Hymie Lazar meet with David Marder, a person just out of the State penitentiary, and another suspected bookmaker, Marty Ash.

In 1973 and 1974, we could bet maybe \$2 at the window in our undercover capacity, and we weren't impressing any on-track bookmakers with spending \$2 at a window. So we continued to conduct physical surveillance off the track.

These surveillances led to 13 court-authorized intercepts of bookmakers over a period of approximately 8 months, stemming from Hymie Lazar's association with Marty Ash to a bookmaker by the name of Sam Newman. Sam Newman was a constant visitor at Hymie Lazar's junket office.

We intercepted his phones. We managed to get a chain reaction, a string of continuous intercepts. When we finished the intercepts, we made application for a second statewide grand jury to prosecute these cases. They did have multicounty ramifications.

The second statewide grand jury was impaneled, and a Federal grand jury commenced a probe at the same time. Irving Harry Katzen was subpoenaed before the grand jury, forced immunity, and refused to testify. He was put in jail. I have a copy of the commitment order here on Katzen.

Senator NUNN. We will make that part of the record.

[The document referred to was marked "Exhibit No. 59" for reference, and follows:]

EXHIBIT No. 59

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF
FLORIDA

G.J. No. 74-7

UNITED STATES OF AMERICA

v.

IRVING KARL KATZEN, a/k/a HARRY KATZEN

ORDER

JUDGMENT AND COMMITMENT

This cause came on to be heard upon application of the United States to have Irving Karl Katzen, also known as Harry Katzen declared a recalcitrant Grand Jury witness and confined pursuant to 28 United States Code § 1826, and the Court having heard testimony and arguments of counsel, and the defendant having stated to this Court that he will not comply with its Order directing him to answer the questions propounded to him before the Grand Jury for the Southern District of Florida, despite the grant of immunity in that Order duly provided him under 18 United States Code § 6002, the Court finds that the said Irving Karl Katzen has refused and refuses without just cause to comply with this Court's Order directing him to testify and provide information to the Grand Jury, it is therefore,

Ordered and adjudged, that the said Harry Katzen is a recalcitrant Grand Jury witness and in contempt of this Court, and that he be, and hereby is, committed to the custody of the United States Marshal to be confined in jail, there to remain until such time as he is willing to give, and does give, such testimony and provide such information to said Grand Jury, said confinement not to exceed the life of the term of said Grand Jury which was empaneled on May 14, 1974: Confinement not to exceed 18 months.

Done and ordered at Miami, Florida, in the Southern District of Florida, this 3rd day of Sept., 1974.

United States District Judge.

Sergeant GREEN. Mr. Katzen will be a key figure of 1977-78, also.

After Mr. Katzen got out of jail and the bookies began to move freely, the second statewide grand jury was impaneled. We issued subpoenas for Irving Katzen, Hymie Lazar, and Marty Ash; and for the first time, as a police officer working in south Florida—I was born and raised here, and I have been a police officer for 18½ years—this

was the first time I have ever had anybody flee from Florida avoiding subpoenas.

Normally, they flee to Florida avoiding the subpoenas. Katzen, Ash and Lazar fled, and they were gone the duration of the statewide grand jury.

The statewide grand jury, the second statewide grand jury that I am speaking of, had its problems. It was, as the title says, the second State grand jury, and as any new baby there were problems with it. It was limited in scope. Numerous problems, but I think it was the most effective tool we had since the Kefauver hearings in the 1950's which exposed the S. & G. syndicate of bookmakers on Miami Beach.

Our barometer on the second statewide grand jury was the street—The hoodlums and the mob—and they live in total fear of the second statewide grand jury and any panel that investigates them.

During the second statewide grand jury, we made substantial cases. We were faced with problems that bookmaking was only a misdemeanor at that time; that once it became a felony, during the term of that grand jury, it only became a felony off the racetrack. It is still a misdemeanor on racetracks. This means that we took \$2,000 in wagers off the track and \$1 million on the track, the off-track was a felony and the on-track was a misdemeanor. These things led to problems and made the grand jury indictments ineffective.

There were substantial indictments, and during the time that I worked the entire 18 months of the grand jury, we did not lose one case in court on any indictment for bookmakers, and we indicted numerous bookmakers. They were all lost on technicalities. We have never testified in court and lost a case.

At the ending of the second statewide grand jury, certain things had not been accomplished. The on-track bookmaking investigation had not been finalized. We still assumed that they were bookmaking, and it was a multimillion-dollar project. We could not prove it.

Certain recommendations from the second statewide grand jury along with our probable cause on on-track bookmakers helped establish the third statewide grand jury that Mr. Ed Austin is now running, is impaneled now.

This grand jury is not limited in scope to gambling as was the second. This grand jury is much more effective. When the third statewide grand jury got impaneled in late 1976 or early 1977, the police agencies of south Florida, our department, the Florida Department of Criminal Law Enforcement, Miami Beach Police Department, the grand jury staff, the Dade County State attorney's office, and the FBI engaged in a combined effort to investigate on-track bookmaking.

These investigations were going back to the same type of investigation we conducted previously: street surveillances. We conducted approximately 200 street surveillances of the old Hymie Lazar group which were back in town after the ending of the second statewide grand jury.

These surveillances, once again, produced evidence of continuous daily meetings of some very important people, one being Harry Katzen, meeting with two people I would prefer to call X and Y at this time, because we just arrested them and we have pending charges on them.

Also at these meetings was a fellow by the name of Yiddy Blume who was identified all over the country as one of the primary principals in the Minneapolis combine. He is a top associate of Meyer Lansky. They own a lot of land together.

Another figure that was meeting was Isadore Blumenfeld; his alias is Kid Kahn. He is the brother of Yiddy Blume and also a principal of the Minneapolis combine. Alex Lassaw (phonetic) was another person at the meetings. He has been connected by the Canadian authorities as a very close associate of one Willie O'Bront, who the Canadian authorities consider to be their Meyer Lansky.

Marty Ash reappeared after the grand jury and showed up at the meetings with these people. The meetings consisted of money exchanging hands in a restaurant daily; as close as we could get to them, we could hear they were talking about sports, wagering, and horses.

They also utilized a stock exchange for the meetings which was directly across the street from the restaurant.

The combined efforts of the officers involved convinced everybody to apply for a Federal grant which we got. We were assisted by the second State, or the third statewide grand jury funds.

So we had a combination of a lot of manpower, third statewide grand jury funds, and Federal funds.

We then commenced a program where we actually infiltrated the ontrack bookmakers to where we could bet daily with them, on the track, and I mean you could bet on anything. If you wanted to bet on an airplane flying by, you could bet on it.

We bet the world series that just ended. We bet football, college and pro. We bet on horses, not only running at Calder Racetrack, but we bet on horses running in Belmont in New York. We bet a substantial amount of money. We bet over \$200,000 with the bookies ourselves. That doesn't mean that we spent \$200,000, because the majority of the betting with bookmakers are on credit until you settle up.

We probably expended some \$25,000 in betting money with the bookmakers.

Senator CHILES. Did you win any?

Sergeant GREEN. Yes, sir. We now have, we won in two ways. We won directly from them, resulting from bookmaking with, betting with the bookmakers. We have \$11,000 in our property room, and recently we won a little from them when we raided them. We took another \$51,000 from them, all packaged up in \$1,000 packages, \$4,000 packages, rubberband, all \$100 bills. They were under persons at the track. They carried \$51,000 on them.

The investigation as far as I am concerned proved that this particular type of crime is a multimillion-dollar operation. You have to realize that we bet \$200,000 with them while we were only one customer, even though we had other people involved.

They only considered us one account.

I have got photographs of the individuals involved in this operation that I have named—and locations. I would like to introduce that.

Senator NUNN. Are these open cases now? Would you like for us to have this as a sealed exhibit?

Sergeant GREEN. No; these are all closed cases with the exception—the people that I have named here, only X and Y are defendants.

The people of Yiddy Blume, Isadore Blumenfeld, all we have pertaining to them is a pattern of association, daily association. They are not defendants.

Senator NUNN. How could we describe this exhibit? Would this be an exhibit based on people that you have actually observed making bets in bookmaking operations ontrack?

Sergeant GREEN. This is, or being associated with them on a daily basis.

[The documents referred to were marked "Exhibit No. 60A and 60B" for reference; exhibit 60A is retained in the confidential files of the subcommittee, and exhibit 60B may be found in the files of the subcommittee.]

Sergeant GREEN. These photographs go from 1973 all the way to 1978.

Senator NUNN. Should this be an open exhibit?

Major BERTUCELLI. It can be an open exhibit. It is public information.

Senator NUNN. All of the people referred to in this exhibit have not been charged with a crime. Is that right?

Major BERTUCELLI. All of the people, no, sir. Those indicated arrested for bookmaking, yes. But several of the associates, top associates, for example, as far as the bookmaking of Mr. Cooper, and I have to speak with some caution, presently there is a civil suit against the department for some of our investigations in the past. But we do have sufficient public record information and we should indicate that that is now so when we speak to Cooper and Lansky and the obvious association that we have some indications of a problem that has existed in the past with Mr. Cooper and some possible funding from numbered accounts in Switzerland, and some other negotiated deals. I will ask Mr. Sommerhoff to refer to that.

Senator NUNN. All right, sir.

Senator CHILES. You might pull that mike up.

Lieutenant SOMMERHOFF. As the major said, the Public Safety Department is being sued civilly by Mr. Cooper because of our surveillances of him and Mr. Lansky. Because of that reason, we are not going to be able to make known all those that we have seen Mr. Cooper associated with in the past.

We do know, that Mr. Jack B. Cooper is a longtime resident of Miami Beach. He is 63 years old and he listed his occupation as investor. We know that Mr. Cooper has met with Meyer Lansky on numerous occasions, has been associated with him in the past. Mr. Cooper and Mr. Lansky have held stock in the same corporation, known as the International Airport Hotel System.

We know that Mr. Cooper has been in a business venture with another very close associate of Mr. Lansky's, in a corporation called the Serv U Corp. This would be Mr. Benjamin Sieglebaum of Miami Beach. We know that Mr. Cooper and Mr. Lansky have a mutual friend that both Cooper and Lansky have been associated with in business, and that would be a convicted casino skimmer by the name of Morris Lansburgh, who is now deceased.

We know Mr. Cooper is associated with persons who had Las Vegas casino interests in the past and whom he has been in business with, the subject of that particular business was subject to Senate inquiry in

the Bobby Baker hearings in 1964, and we do have an exhibit we would like to enter, the testimony of Mr. Cooper, Mr. Sieglebaum, Mr. George Simon, and Mr. Edward Levinson, and their testimony and role in that particular corporation.

Senator NUNN. Without objection, that will be an exhibit.

[The document referred to was marked "Exhibit No. 61" for reference and may be found in the files of the subcommittee.]

Senator NUNN. We will ask that these exhibits be temporarily marked as sealed exhibits because the staff has not had a chance to look at those in detail. Those that we think can appropriately be made available to the public will be made available as soon as we are able to examine the contents. But they will be admitted to the record and marked at this stage as sealed exhibits, without objection.

Lieutenant SOMMERHOFF. Further, on Mr. Cooper, we know Mr. Cooper attempted to borrow \$7 million from a Mr. Morris Lansburgh, who was an associate of Meyer Lansky. This particular \$7 million was in a Swiss bank account of Mr. Lansburgh. Mr. Lansky and a Mr. Sam Cohen were indicted in the early 1970's for skimming \$13 million from the Flamingo Hotel in Las Vegas, and the money was never recovered.

We know Mr. Cooper had a business partner in two of his businesses in which he is involved in Florida, a gentleman by the name of Martin Segal. Mr. Segal was indicted with one of our most notorious central Florida gamblers, Harlan Blackburn, in the past.

We know of Mr. Cooper and Mr. Lansky having met together on several occasions with one of our on-track bookmakers at Mr. Cooper's tennis and houseboat complex. I think Sergeant Green might be able to elaborate on that a little bit when he goes further on after I finish here.

This particular complex of Mr. Cooper's was the subject of many surveillances where Mr. Lansky and Mr. Sieglebaum, Mr. Hyman Lazar, and people from Cooper's old ties in Las Vegas met on several occasions.

Senator NUNN. Basically, you are saying that these are associates of Mr. Cooper. You are not saying all of them have been convicted of crimes, and you are not saying they are specifically being charged here of crimes? You are talking about being associates of people who have been involved?

Lieutenant SOMMERHOFF. That is correct, the common denominator being they are also associates of Mr. Meyer Lansky. We know Mr. Cooper was convicted of income tax evasion in the early sixties and spent time in the Federal penitentiary. We know Mr. Cooper has had business associates close to some of the traditional Mafia families, who attempted to intercede for him with certain organized crime figures in business ventures, which Sergeant Green will go into as he explains how Mr. Cooper, with Swiss bank money, attempted to buy into the World Jai alai, Inc., which is a parimutuel establishment.

Mr. Cooper, I think it was, testified to being an 18-percent stockholder in another parimutuel business in Florida, the West Flagler Dog Track, which was the subject 18 to 19 months ago of a mass computer skimming fraud which was discovered there and worked by the State attorney's office.

Senator NUNN. Were there any indictments flowing out of that?

Lieutenant SOMMERHOFF. I believe there were two indictments that came out of that, Senator, and the persons were convicted.

Senator NUNN. Was Mr. Cooper himself indicted?

Lieutenant SOMMERHOFF. No. Cooper was not involved. He was a major stockholder in that track. What I am saying is that particular track did have problems with computer skimming on the tote machines at the dog track.

Senator NUNN. What you are saying here is not that you have specific evidence of direct criminal violations by Mr. Cooper, but by way of association you are showing he has been associated with people who are known to be organized crime figures. Is that right?

Lieutenant SOMMERHOFF. That is correct. At this point, I would like to ask Sergeant Green to show how Mr. Cooper, through one of Sergeant Green's investigations, did attempt to buy into another parimutuel establishment here with money from Swiss bank accounts, that was registered and belonged to Mr. Morris Lansburgh who was indicted with Lansky in the \$13 million skim.

We would like to hand in one other exhibit, which is Mr. Jack B. Cooper's depositions, involving a suit with another gentleman in the jai-alai industry where most of this information became known about this money and where it came from.

Senator NUNN. We will have that admitted in the record. It will be taken as a sealed exhibit. After examination, we will determine whether we can open it up for public examination.

[The document referred to was marked "Exhibit No. 62" for reference and is retained in the confidential files of the subcommittee.]

Senator NUNN. Mr. Green?

Sergeant GREEN. On the World Jai-Alai located in several cities of the State of Florida, including Miami, frontons—it has frontons in Connecticut also—in 1974 there was a shuffle of top management personnel and the people that had been running World Jai-Alai were voted out and a man by the name of John B. Callahan was voted president of World Jai-Alai. He was out of Boston, Mass.

In 1975, the Connecticut authorities requested Mr. Callahan to come in to a meeting of parimutuels in Connecticut. Mr. Callahan resigned as president of World Jai-Alai. The purpose of the meeting was allegations that John B. Callahan met with identified members of the Mafia in New England, directly under Patriarca, or his subboss, Jerry Angela. So you have the president of World Jai-Alai resigning his commission.

At the same time this was going on, there was an attempt to merge World Jai-Alai with some unknown buyer, one of them being Jack B. Cooper. Rumors got out that Cooper was an associate of Meyer Lansky, so he was not necessarily what World Jai-Alai wanted. They still used Jack Cooper to reach out. He went to a Sam Klein who lives in Boca Raton. Sam Klein has been a principal stockholder in the Bally Manufacturing Co.

This began the negotiations which started in 1975 to merge World Jai-Alai with Bally Manufacturing. Bally Manufacturing being the leader of the slot machine makers in Las Vegas. Bally Manufacturing and Sam Klein got their start back in the early sixties.

Bally manufacturing was formed with Sam Klein and a fellow by the name of Gerald Catena, a high-ranking member of organized

crime. Catena was one of the principals controlling Bally through hidden ownership which were uncovered in or about 1965, subsequently, Catena had to divest himself of Bally Manufacturing interests.

Jerry Catena appeared before a commission of inquiry in New Jersey about organized crime and failed to testify and, I think he spent some 4 or 5 years in confinement. Being released from confinement, Mr. Catena moved to south Florida and by coincidence he moved within two blocks of Sam Klein in Boca Raton.

In 1975 or 1976, Mr. Klein was forced to divest himself of interests in Bally because of his relationship with Catena. Sam Klein is the person that Jack Cooper went to, to merge Bally Manufacturing with World Jai-Alai.

Senator NUNN. Did any indictments flow out of this series of transactions?

Sergeant GREEN. No. This was strictly a parimutuel type investigation, regulatory investigation.

Senator NUNN. I assume they have rules and regulations on parimutuel gambling and ownership that relates to prohibiting people who are known associates of organized crime from being owners and getting involved. I assume there is something along that line that is civil and regulatory in nature. Is that right?

Sergeant GREEN. Yes.

Senator NUNN. So rather than being criminal violations, this basically goes to the question of whether these particular individuals are entitled under the law and under rules and regulations to be owners and operators of parimutuel establishments. Is that correct?

Sergeant GREEN. Yes, sir. It is.

Senator CHILES. Did you get into where the money was to come from for this merger or for this purchase of World Jai-Alai?

Lieutenant SOMMERHOFF. The money that Jack Cooper was attempting to borrow for his part in his attempted purchase was to come from the Swiss bank account of Morris Lansburgh.

Senator CHILES. It was to come from?

Lieutenant SOMMERHOFF. The Swiss bank account of Morris Lansburgh who early in 1970 was convicted with Mr. Meyer Lansky and Sam Cohen for skimming \$13 million from a Las Vegas casino.

Senator CHILES. Lansky actually did not, because of health reasons, stand trial.

Lieutenant SOMMERHOFF. That is correct, sir.

Senator CHILES. Lansburgh did stand trial on the same charges?

Lieutenant SOMMERHOFF. He was convicted.

Senator CHILES. And was convicted?

Lieutenant SOMMERHOFF. Yes.

Senator NUNN. That was a skimming operation in Las Vegas?

Lieutenant SOMMERHOFF. Las Vegas.

Senator CHILES. That was in 1973?

Lieutenant SOMMERHOFF. The early seventies, I believe, 1971 or 1970.

Senator CHILES. I thought Nevada was supposed to have gaming laws that would prohibit anybody from underworld connections from being involved in casinos. How in the world would somebody like Meyer Lansky or Lansburgh be involved in the ownership of a Casino in Nevada?

Major BERTUCELLI. I think speaking of that, it is a current issue obviously in the community and what we found in looking at the history of Nevada, which is important, from its inception, at least from 1946 on when Bugsie Siegel first invested his money. He was an identified member of organized crime and he was later killed after he had purchased the Flamingo Hotel. What we found there was a series of about 10 or 12 hotels taken over by organized crime.

From that they established the Nevada Gaming Commission to try to police and keep out the undersirable element and hidden interest of the mob. We have looked at that record and what we are finding is specific instances and there is a current Federal probe going on into the corporation in the Star Dust where they found as an executive manager, for example, to show how the mob works and how book-making gets into legal gambling, Frank "Lefty" Rosenthal, who is barred from the State of Florida from any race track because of illegal bookmaking, was the executive manager of the Star Dust.

That same casino we find has been charged by the SEC for \$9 million to \$15 million worth of embezzled slot machine revenue and they are having difficulty with it. He was later changed to the entertainment manager or director.

We found one casino that had a double set of books. We have a record of the New Frontier and what we found is that the mob had never left New Jersey. What happened is people were used as fronts. The Piazzini suggestion is accurate. The mob works in strange ways.

One way is, it gets someone clean, surfaces them, puts them up front, then he operates, but what happens is the mob moves in the union area, and begins to place selected personnel.

We saw that in labor racketeering where they were paying for ghost payrolls, paying for people that were never employed, never worked there, found they were paying for services never rendered. That same pattern is the pattern that you find in the casino industry, the service area.

In looking at that, in looking at Nevada, I would say they have not been successful. There are a number of reasons for that. They don't have the tools. Electronic surveillance you can't use in the area of prevention, infiltration or organized crime because that in itself is not a crime, but it is association and what it represents that concerns many people.

The Federal agencies, through wiretaps, have exposed these. What we are finding even from New Jersey is that there are, I call it mismanagement or mismanagement by design because the greatest strength of the mob is in terms of mismanagement, in terms of accomplishing the skim.

What we are finding is we have been unable to, and law enforcement has been unable to really police the casino industry, as suggested that they can now, and it is a misstatement. It is a bad representation to the public.

Senator CHILES. So what you are saying is that from the time casino gambling went into Nevada to the time which the gaming commission was formed, the Nevada Commission was formed, they have never been able to police it, they are aware that the mob was involved in skimming and owners and all the ancilliary operations and that there is currently now an investigation going on with the

Federal strike force today in Star Dust, you mentioned one other hotel.

Major BERTUCELLI. This was the New Frontier Hotel.

Senator CHILES. Which is right now going on and, as I understand, there are already problems in New Jersey in regard to the one casino operating there in what appears to be a mismanagement.

Major BERTUCELLI. I think what it suggests also is the pervasiveness of organized crime as it impacts the country. We are talking about a wiretap out of Detroit. We are talking about initiated wiretaps out of New Jersey investigating casino involvement in Las Vegas.

When you talk about Miami Beach, what you talk about here, and some of the investigations that we have described is that the very players that have the greatest expertise and competence in the achievement of skim, Lansburgh is dead, Sam Cohen, the Meyer Lanskys, the Hymie Lazars, the Alfie Marts are arrested and convicted of bookmaking, that these people, the entertainment director, that come from Florida, are not going to skip. They continue to involve themselves in illegal activity. The players are here.

In the event we get casinos in this jurisdiction, I think they stand in a ready position, and probably 10 years ahead of law enforcement.

Senator CHILES. We are also finding as your current investigation is, that in our legalized gambling now, parimutuels, operations are going on right there or have been going on right there with the on-track betting. It is going on in bingo, also in our legalized gambling.

So even the existing forums of organized gambling that we have, or legalized gambling that we have today, we have not been able to keep the underworld out.

Major BERTUCELLI. Yes; the position in Florida, policing parimutuels, they merely give the impression to the public that they are policing by placing a parimutuel investigative division. They put four men in there. We have 5,000 races a day in Florida. It is a farce.

The recommendation is you give the impression of policing. In effect, you don't police. In effect, you just give the impression so the public becomes satisfied. It would be the same thing if law enforcement made a series of statistical arrests. I can suggest to the public that we are doing a hell of a job when I know we are not.

I think the same thing is happening in parimutuels. They have not been able to police it. They have not had the expertise that they need to police the casinos.

Senator CHILES. My daddy told me a long time ago you should never hold aces in the other man's game. That is really what we seem to think we can do there. We are talking about the game of which they are the experts.

Let me ask you if the casino gambling passes in Florida, how do you see that impacting on your job?

Major BERTUCELLI. I see the impact this way. I submitted an opening statement as to the extent of organized crime in southeast Florida because we have to deal with it in a multijurisdictional way. We are ranking first in cocaine trafficking, we rank, I think, as a focal point for legal syndicate gambling in the country as it impacts here and relates to Vegas.

We have over 17 families represented in this community. We had had some success in the investigation of organized crime. We have

indicted some identified members. We made cases in loan sharking, obviously in cocaine smuggling and marijuana. The problem is too great for the resources that have been committed today.

With the advent of casinos, we are going to multiply those problems and what is going to happen here is that we are opening up an area that is foreign to police. You are talking about infiltration of legitimate business and the tracing of cash flow. That is a capability we have not achieved in looking at illegal money from the drug area. We have not reached that level of sophistication.

So now we are suggesting that we move to a new area, completely foreign, that will probably take us 5 years to understand. By that time, the infiltration will be so great that we are going to have difficulty.

Senator CHILES. So that we have time to get into your questioning, we really have not accepted your statement that you were going to present for the record, your overview of organized crime in Florida.

Mr. Chairman, I think, for the record if we could enter that statement, it covers the areas of Dade County, unique problem, financial fraud, economic crimes, bookmaking, lottery, prostitution, pornography, labor racketeering, Canadian organized crime, enforcers, murders, activists, and terrorists in narcotics.

Senator NUNN. Without objection, that will be made a part of the record. I had a chance to read all of that. I found it to be an excellent statement. It will be very valuable to us and our inquiry, so it will be admitted to the record without objection.

[The statement follows:]

STATEMENT BY MAJOR STEVEN BERTUCELLI, COMMANDING OFFICER, ORGANIZED CRIME BUREAU, DADE COUNTY PUBLIC SAFETY DEPARTMENT

OVERVIEW: ORGANIZED CRIME IN SOUTH FLORIDA

ORGANIZED CRIME

The existence of Organized Crime and the control it exerts upon all levels and aspects of society has been extensively documented. U.S. Senate Subcommittee Hearings, reports by law enforcement officials, sociologists, authors, investigative reporters, and many others have told of the power wielded by Organized Crime, its associates and representatives. Organized Crimes' existence is felt nationally with its membership entrenched in most major cities. Dade County attracts a large percentage of this organization's leadership as either residents, seasonal visitors, investors or, those persons who will come to enjoy the climate while avoiding subpoenas while basking in the sun.

The most popular definition of Organized Crime is:

"A continuing criminal conspiracy for power and profit, using fear and corruption, seeking immunity from law" (Oyster Bay Conference).

Organized Crime can be subtle and insidious. On the surface it does not appear offensive or threatening to the majority of citizens, especially those who purchase the black-market goods or take advantage of the available vice activities. Organized Crime is not limited to the Mafia or "La Cosa Nostra" and is inclusive of local, independent organized crime operations.

DADE COUNTY—A UNIQUE PROBLEM

Current intelligence has provided us with information revealing the existence of 27 Mafia structures throughout the United States which are combined in the national crime cartel and present a rather ominous situation to law enforcement.

The existence of these 27 Organized Crime families, along with the local Organized Crime structure, places a significant burden upon the Dade County Public Safety Department and causes insurmountable problems involved in the investigation, surveillance and conviction of organized crime figures.

The heaviest concentration of the Mafia family structures (27), dominates the New York area with "five" of the most powerful families maintaining control of a wide range of criminal activity.

This concentration, of course, is not typical, as most areas are only concerned with one family structure. The exceptions to the rule being in Dade County, Miami, Florida area and Las Vegas, Nevada.

In 1963, Joseph Valachi, an identified member of the Vito Genovese family of New York City, testified before a Senate Subcommittee Hearing and disclosed the membership, structure, and inner workings of Organized Crime. His testimony also revealed that Dade County (Miami) was designated as an "Open area" by Organized Crime, thus allowing any Organized Crime structure to operate within Dade County without any immediate family domination or control.

Investigation by the Organized Crime Bureau has revealed 17 identified Mafia families represented with members residing in this area.¹ (See footnote). There are approximately 117 identified hardcore mafia members living in Florida. These figures are augmented by the estimate of 60 to 65 individuals in the Dade County area who are members of the various family structures, however, due to legal technicalities, these individuals cannot be classified as "identified".

Lastly, there are valid estimates that 1,000 organized crime figures (not identified) operate in Florida. It is impossible to present accurate totals of which family members are "visiting" in the South Florida area. Educated estimates place the annual influx of Organized Crime figures to the Dade County area between 600-1500 members and non-member associates.

The existence of permanent representation and influx places a great deal of stress upon the resources of the Dade County Public Safety Department. The irony of the problem lies in that South Florida's problem increases as other state's effectiveness rises. When commissions of investigation begin to subpoena witnesses, South Florida's influx of organized crime figures begins to rise.

INFLUX OF ORGANIZED CRIME FIGURES

In the last few years, an increase in activity on the part of Organized Crime connected individuals has been apparent. The reasons for this influx of known criminals to South Florida appears two-fold: (1) the success of other states in conducting official inquiries; numerous New Jersey Organized Crime family members now reside in South Florida. Efforts on the part of the New Jersey Commission of Investigation, and the New Jersey State Police to expose Organized Crime in that state resulted in the migration to the Dade/Broward area.

This trend is further witnessed by the migration to South Florida by members of the Canadian Organized Crime "family" of Vincent Cotroni in the wake of the Canadian Provincial inquiry into Organized Crime.

(2) The second reason for the high activity in the South Florida area is the potential for lucrative criminal enterprises. The lack of sophisticated enforcement in the area of "white collar" or business frauds until recent years have made South Florida a "mecca" for highly-skilled perpetrators in sophisticated business crimes.

The promise of legalized casino gambling has been perceived by Organized Crime members and/or associates as an easily manipulated industry in which they are well-versed. They have gambling expertise gained in Las Vegas, the Bahamas, pre-Castro Cuba, Puerto Rico, Europe and England.

FINANCIAL FRAUD

Law enforcement has become increasingly aware that financial fraud infects significant segments of South Florida industries. Investigations have exposed sophisticated schemes controlled or funded by identified organized crime figures or their associates. The economic impact of such crimes is incalculable. Direct monetary losses run into the hundreds of millions of dollars annually. Not so obvious are the deliberating losses suffered through job losses, decreased tax revenue, higher costs for law enforcement and social services, and the diminishing confidence in the South Florida business community.

These crimes encompass land sales, telephone solicitations, advance fee schemes, ponzi schemes, fraudulent insurance companies, worthless surety bonds, planned bankruptcies, "bust out" schemes, securities swindles, and loans secured by worthless or stolen collateral.

¹ Herein we must define "Identified" as an individual who has been exposed as a member of a specific Mafia family through either Senate Subcommittee Hearings or some other legal tribunal.

Practices in restraint of trade appears to exist in greater quantity than formerly believed. Overall, trash hauling industry revenues have risen, yet the number of firms has contracted to the point where several dominate the field. Surface cargo transport firms and shipping companies must contend with teamster and I.L.A. labor unions. Recent investigations and indictments suggest that unions influence is pervasive and coercive, and acts to inhibit free trade. Limited intelligence information relative to the Miami garment industry intimates that organized crime penetration has occurred. Such penetration is usually accomplished by "Sweetheart" contracts that serve to inhibit trade.

Construction industry frauds are common, and relatively safe for the perpetrators. They enhance withholding of down payments, contractor and supplies kick-backs, diversion of funds to unauthorized uses, and refusal to pay lawful debts. Organized crime involvement has been documented on numerous occasions. However, creditable evidence has been difficult to acquire.

The extent of organized crime involvement in financial frauds has continually expanded. The cost to South Florida has been marked by business failures, loan defaults, and lessening of confidence in the local business community.

ECONOMIC CRIMES—STOCKS AND BONDS

Economic crimes utilizing stocks and bonds have grown with the expanding population of South Florida.

Stolen or fraudulent securities have been posted on loan collateral, or to inflate sagging corporate assets. Viable, healthy companies have been acquired with worthless stock as payment, and the acquired firms quickly stripped of assets. Manipulators have profited on opportunities and facts that artificially escalated or depressed share values.

Complex and sophisticated schemes have been employed by organized crime figures and their associates to bilk victims of millions of dollars. The more successful of these schemes are never credited with being criminal; resolution is usually effected through civil litigation and is seldom adequate to recoup the victim's lossess.

From the security and protection of the corporate structure, criminal conspiracies are mounted against the sturdiest of industries. A growing trend seems to be acquisition or control of offshore or domestic insurance companies. Surety bonding and loan commitments based upon fictitious company assets, can then be used to augment advance fee schemes, fraudulent collateral loans and performance bond frauds.

Manipulation of stock values has been successfully achieved on numerous occasions. Organized crime involvement in many of these schemes is well documented. Manipulation is sufficiently profitable that one gambling casino organization is now soliciting nationwide for firms, to enact their manipulation scenarios. Their claims of legality may or may not be valid.

BOOKMAKING

Intelligence gathered recently indicates that South Florida has long been a center for national sports and horse race betting, and continues to lead the nation in this illegal activity. These illegal operations have been protected by long standing, multi-faceted organizations.

Bookmaking rings investigated over the past years have been very complex and well-organized with national connections. This vast geographical diversity has served to insulate persons at the top of the organization. In an effort to resolve this dilemma, the Organized Crime Bureau developed close ties with Federal agencies. Additionally, a statewide grand jury was impaneled in 1975 to investigate gambling on a statewide basis.

Recent investigations and intelligence point to the use of pari-mutuel horse tracks by top echelon bookmakers. For example, bookmakers frequent every South Florida thoroughbred race track and are alleged to handle as much wagering as authorized tellers working in the legal pari-mutuel booths.

Obviously bookmaking is a very profitable business with little risk in regard to the possibility of incarceration and conviction. Organized Crime families most active locally in illegal bookmaking activities are the Genovese, DeCavalcante, Trafficante, Montreal and Colombo families.

LOTTERY

Intelligence information supported by the knowledge gained from recent investigations points toward a decrease in the number of lottery organizations active in South Florida. The level of lottery activity, however, appears to have increased. The trend seems to have been toward decentralized operations. Instead of forty "writers" responsible to one "counting house" we now see twenty to twenty-five writers per counting house and two or more counting houses within each organization. For example, one operation (believed to be headed by Oscar Alvarez) involved six different counting houses with twenty writers each. Each counting house grossed approximately \$1.5 million per year. The entire operation was believed to gross over \$10 million per year.

Totally separate organizations appear to have combined their operations and then decentralized them along somewhat similar lines in order to maximize profits and minimize losses due to law enforcement action.

Latin, primarily Cubans, control the market in South Florida and comprise 95% of the "bankers" and operators of these organizations. That they have developed sophisticated operations of significant stature was evidenced during a court authorized wiretap in early 1977. Communications between Puerto Rican lottery operatives in New York and a target figure in Dade County were intercepted. The target figure received "lay-offs" from the operators in New York indicating that he "banked" or headed a vast lottery network.

The relationship of these Latin groups to traditional organized crime groups often becomes apparent. It is believed that this association is most often with the Santos Trafficante family of Tampa, Florida, as is the case with the Oscar Alvarez organization mentioned earlier. Others, however, have confirmed affiliations with organized crime groups in the New York—New Jersey area, notably the Genovese and Gambino families. Most of these others, however, comprise the 5% of the non-Latin operators and even those appear to associate with the Latin groups. They also appear to follow the style of one banker controlling several operations. Representative of this type are the Robert Whisnant (Genovese) operations.

Dade County has also encountered several new Cuban lottery groups. It appears that some Cuban terrorists, in addition to their involvement in narcotics trafficking have recognized the fund raising potential of even small lottery operations. Since even a small operation with only ten to fifteen writers will gross over \$1 million annually, it is surprising that the terrorists did not enter the field earlier. And as with their entry into drug trafficking, their arrival has often been heralded by incidents of violence and murder. This brings a situation virtually inconceivable in this area of criminal enterprise long known for its relative lack of violence.

One other trend that has continued involves the continued participation of nationally known bookmakers in the operation of lottery organizations. The converse of this trend, recently emerged, concerns the long established Cuban lottery dealers becoming heavily and massively involved in bookmaking, particularly sports bookmaking.

Most of the organizations operate nightly with the winning numbers based on the result of the local dog races. Another drawing is held on Wednesday mornings with the winning numbers based on the results of the Puerto Rican National Lottery.

Thus, while the level of illegal lottery activity cannot be labeled "wide open" it is definitely widespread—especially throughout the Latin and Negro segments of South Florida society.

PROSTITUTION

Organized prostitution in Dade County is veiled under a facade of legality in the form of escort services, body painting and exotic dance studios, health spas and massage parlors. These services openly advertise in the local telephone directory and numerous South Florida publications.

At the present time there are over thirty-five (35) escort services in Dade County alone. These businesses usually function independently with the women acting as freelance operators. However, one of the larger businesses presently operating has been linked to a criminal organization in Houston, Texas.

Presently there are over twenty (20) massage parlors and a minimum of fifteen (15) dance and/or art studios in Dade County. One individual will usually own two or three studios in Dade County, and will be closely affiliated with other such operations in different parts of the State. Many of these corporations are linked

with other out-of-state corporations, namely New York, California, Louisiana, and Virginia. The women usually appear to work for the owner instead of a particular studio and are often transported from one studio to another. There is no way to estimate accurately the annual earnings of either the businesses or the individual girls.

Law enforcement's efforts have been seriously hampered due to the cooperation between illegal establishments, up to and including forming their own intelligence networks. Whenever one business is confronted by law enforcement officials, the names of officers, physical descriptions, and techniques used by the police are passed along from one business to the next. This same situation applies whenever one business is confronted with subpoenas, warrants, etc.

PORNOGRAPHY

Investigations indicate conclusively that pornography has become Organized Crime's latest business, producing profits of an estimated \$70 million or more a year nationally. The profits derived from the sale and distribution of pornography are then fed into other various organized crime enterprises; including loansharking, importation of illegal controlled substances and consumer fraud, to name a few.

Organized Crime dominates the national distribution network of pornographic magazines, films and peep machines. Their interest is primarily focused on the mini-movie industry which is controlled by the Gambino and Colombo families, through one individual who operates out of Broward County.

At the present time there are more than thirty (30) adult book stores in South Florida which usually operate as corporations which will include two or three stores. Each corporation is owned by an individual or small partnership with no traceable organized crime connections. The link is through the distribution of pornographic materials and peep machines which gross approximately \$12,000 per month. When one considers most stores have a minimum of six (6) peep machines, and some as many as twenty (20), the estimated gain is tremendous.

Additionally, it appears that organized crime elements are pressuring Dade County bookstore owners to use only their machines and divide the profits in a 50-50 fashion—but, only after they have skimmed 25% off the top.

Perhaps the most frightening facet of this business is the emergence and growth of child pornography in the South Florida area. Within the last year various ties have been shown connecting this area of endeavor with homosexual pornography producers out of New Orleans, San Francisco and Los Angeles.

LABOR RACKETEERING

Due to current proliferation of labor-racketeering problems experienced in South Florida, this illegal activity is of paramount importance to Southern Florida Law Enforcement Agencies.

As the ranks of labor unions grow, so do the coffers of money collected from dues paying members. Often times resulting in corruption, bribery, embezzlement, kick-backs, and sometimes murder.

Another area of concern is Union pension funds which have been so abused that the United States Department of Labor has established a special investigative arm to look into questionable loans, over financing, embezzlement and other illegal activities of individuals in positions enabling them to perpetrate such crimes.

As the port complex within Dade County grows, so has the proliferation of labor racketeering which has been an important adjunct to the growing organized crime interests in South Florida.

In June of this year, George Barone, president of local 1922 of the International Longshoremans Union, along with over twenty other individuals affiliated with the longshoremans union was indicted by the federal authorities as part of a national probe into the illegal activities of the longshoremans union. The investigation was named UNIRAC, an acronym for union racketeering.

Through infiltration of Labor Unions, Organized Crime figures are able to gain control of legitimate business or at least intimidate the operations of those concerned. The end result of organized crime's activities is that the general public suffers, either by higher consumer prices, inconveniences caused by strikes, or a general attitude that these people are somehow above the law.

Collusion between labor racketeers and industry management results in the employees becoming unwilling victims of "sweetheart" labor contracts. If any employees dare to object, they are faced with the possibility of some form of

retaliation. This can be in the form of threats, physical attacks, loss of their jobs with no chance of being rehired, or other forms of intimidation. One of the attacks on non-complying employees will demonstrate to other employees that they must comply with Union demands.

Management is also subject to extortion in various forms. The vast amounts of money generated by Union activities, such as pension and welfare funds, can be appropriated by Organized Crime to further enhance their endeavors. This can occur in the guise of loans or the outright misappropriation of funds. There are Federal statutes, such as the Taft-Hartley Act, the Hobbs Act, and the Landrum-Griffin Act which are useful in controlling labor racketeering.

Several attorneys serving with the United States Department of Justice have suggested that these Federal statutes be toughened in order to be even more effective in controlling labor racketeering.

In South Florida many representatives of Organized Crime families are active in labor racketeering, including the Genovese, Gambino, Colombo, Lucchese and Maggadino families.

CANADIAN ORGANIZED CRIME

During recent years, the South Florida area, particularly Dade, Broward and Palm Beach Counties has become an area of great attraction to Canadian Organized Crime groups and individual Canadians who, due to enforcement pressure in their own country and attracted by South Florida's burgeoning economy, have moved into the Dade-Broward-Palm Beach area.

The Canadian Organized Crime structure is similar to its counterpart operating in the United States, with both groups maintaining a close liaison. Information from the Royal Canadian Mounted police reveals that several Canadian Organized Crime figures have moved to the United States to avoid investigative actions in their own country.

Past experience with Canadian organized crime figures revealed that the major types of illegal activities in which they were involved were: infiltration of legitimate businesses to launder money or perform planned bankruptcies; investments in real estate, stocks and securities; loansharking; prostitution; gambling; narcotics; pornography; tax evasion; counterfeiting and fraud. Further information reveals that vast legitimate sums of Canadian dollars are being invested in South Florida. Therefore, there is a possibility of more Canadian organized crime figures moving to South Florida due to the unstable economic and political conditions in Quebec, renewed pressure by the Quebec Police Commission Inquiry on Organized Crime, and the legalization of casino gambling in South Florida.

It is estimated that 250,000 French Canadians visit South Florida annually. This figure represents twice as many tourists coming from an American state of comparable population.

Ten years ago the figure was only 30,000 French Canadian tourists per season. Although the majority of French Canadian visitors to South Florida are tourists, it is estimated that numerous French Canadians are planning to make South Florida their permanent home due to the following reasons.

The Separatist government faction advocates a break with the Canadian Union and this has had disastrous effects on the political and economic conditions in Quebec; unemployment is on the rise and the inflation rate is rising rapidly thereby causing several potential native investors to forsake their country and transfer funds into South Florida as well as other areas of the United States. Thus far Canadians own 450 million dollars worth of property in the State of Florida and of that total, 350 million is concentrated in Dade, Broward and Palm Beach counties.

Bankers and real estate brokers agree that French Canadian investments are accelerating and, in addition, Canadian development consortiums plan to invest more than 1.3 billion in the next 15 years in Florida. The South Florida economy is conducive not only to domestic investments but foreign investments especially in the areas of land development, real properties, financial investments and tourist oriented businesses.

With billions of Canadian dollars flowing to South Florida, elements of Canadian Organized Crime will be utilizing every conceivable scheme to garner every possible dollar from this mass of wealth.

ENFORCERS AND MURDERS

Within the network of organized criminal activity, there is the necessity for discipline, control and internal regulation as well as intimidation and enforcement

of the public sector upon which Organized Crime preys. This is done by the Organized Crime "enforcer" or "hit man" who maintains discipline by use of necessary fear and force including murder, to keep recalcitrant members or customers in line or to "encourage" participants to conform to the organization's standards.

During the past several years there have been a number of gangland type homicides within Dade County which remain unsolved due to the method of perpetrating the crime. Usually there have been no witnesses to these homicides and the method of killing the victim fits the pattern of gangland type killings.

The fact that these cases remain unsolved is due to the extreme difficulty the police face in investigating a gangland homicide. This is due to the criminal hierarchy bringing in an unknown and unrelated professional killer who professionally carries out the murder and leaves the area with no clues, therefore, making the homicide difficult to investigate.

Such investigations cross jurisdictional boundaries, require interstate and intral state cooperation between investigative and intelligence units of various law enforcement agencies, and require more financial resources to reach a successful conclusion.

An interesting example of a local gangland type homicide that remains unsolved, is that of John Roselli, an organized crime figure who testified before a Senate Investigation Committee concerning Organized Crime's involvement into the plot to overthrow the Castro government. Roselli was murdered by persons unknown who killed him, placed his body in a chain-wrapped oil drum, and was dropped into the intracoastal waterway in Northern Dade County. (August 76)

Another execution type homicide that occurred locally was a retaliation for an earlier homicide in which Craig Teriaca was killed. Teriaca was the son of Vincent Teriaca, an associate of many organized crime figures.

The subject of the Teriaca killing was Richard Schwartz, Meyer Lansky's stepson. Less than 4 months later, Schwartz was gunned down in broad daylight outside his restaurant. (October, 1977)

During February of 1978, Stanley Gerstenfeld, characterized as a gambler, loanshark and bookie was found shot 7 or 8 times in the Miami Beach Convention Center parking lot. Gerstenfeld was killed two days prior to the beginning of a murder trial, a case he was linked to by a witness's testimony that Gerstenfeld had been hired as the hitman.

Many other gangland murders could be reviewed to illustrate the effective means and methods organized crime uses to maintain control. Obviously such incidents serve their purpose by further documenting the authenticity of fears and threats surrounding organized crime.

ACTIVISTS AND TERRORISTS

From the period 1974 through 1977, within Dade County there was a marked increase in terrorist bombings and assassinations of Cuban exile leaders, however, since 1977 there has been a dramatic decrease in these activities. These acts of violence are ostensibly perpetrated by individuals and Cuban exile groups whose end goal has been the violent overthrow of the Cuban revolutionary government. This has led to political in-fighting amongst the individuals and groups, and random terrorist activities that seem to run more to extortion than to revolution.

Some small success has been made into activist/terrorist cases by the utilization of a multi-agency task force composed of Federal, State and local agencies. These task forces made the first large bombing arrest resulting in the apprehension and conviction of Antonio DeLaCova and also the case against Rolando Otero being convicted of bombing in State Court. It would appear that at the present time, that the task force concept of investigation is the most profitable when dealing with the activist/terrorist menace.

The success of Cuban terrorist groups in South Florida is due in large part to the makeup and design of the organization itself. Most of the organizations such as CORU which encompasses the FLNC, 2506 Brigade and others are loosely organized and constantly change in that the names of the groups change and they appear not to maintain documents which list the organization's membership or

planned terrorist activities. This makes the group extremely fluid and mobile and almost impossible to infiltrate. The close knit terrorist organization is always in transition and in scope conduct their activities interstate and internationally and are not hindered by mobility as local law enforcement, therefore, offers no specific entity which can be investigated successfully.

In the past, the Cuban terrorist groups received the full support of the Cuban community. This community support is now split due mainly to the controversy involved in the recent release of political prisoners initiated by the Cuban government.

NARCOTICS

There can be no doubt that Florida, with its proximity and accessibility to Mexico, Central and South America, and the Caribbean, has become the major point of entry for illicit drugs into the United States. Its hundreds of miles of shoreline interspersed with thousands of rivers, inlets, coves, and canals, as well as its numerous airfields—public, private and clandestine—have long served to make South Florida a smugglers paradise. The interception—and seizure of thousands of tons of marijuana and many hundreds of pounds of cocaine and heroin by law enforcement agencies in South Florida alone certainly serves to document this fact.

This interdiction rate is not due, to any great extent, to increased law enforcement effectiveness but is merely indicative of the tremendous volume of drug traffic that goes completely undetected.

That is not to say that law enforcement agencies have not become more effective—they have. For example, the nine members of the Dade County Public Safety Department's Airport Narcotics Squad have seized over 220 pounds of cocaine and over 2,300 pounds of marijuana since the unit's inception in May of 1977. But law enforcement capabilities have in very few areas kept pace with the capabilities of organized crime groups to conduct their operations.

There is abundant evidence to indicate that drug smuggling and distribution is organized along several different lines, both ethnic and otherwise. The Latins for example, are firmly entrenched with a portion of their sales being funneled into the funding of activist/terrorist operations.

Since South Florida is considered an "open" area no one specific mafia-type organized crime family has cornered that segment of the local market; instead we see several of the traditional organized crime groups involved, notably the Trafficante, Gambino, Genovese, Zerilli and Colombo families.

Additionally, we have seen significant black organizations, involved primarily with the distribution of cocaine and heroin throughout the United States. And of course, we have distinct groups of apparently non-aligned whites with extensive drug smuggling and distribution organizations, again with tentacles reaching from Florida to the farthest corners of our nation.

Further compounding the magnitude of the situation (and therefore, the difficulty of investigating the various groups), are strong indications that from time to time all of these different groups interface with each other and work to mutual advantage.

There is ample evidence also that all too frequently the vast profits accrued from illicit narcotics activity is invested in "legitimate" businesses which in turn can be utilized as a "cover" for further narcotics activity or at least to "launder" the funds therefrom. At the very least the funds so utilized provide these criminals with a degree of insulation and an aura of respectability while they continue to destroy our society, hiding all the while behind our Constitution and the "high-powered" attorneys drug money can buy.

It becomes quite obvious, then, that no one law enforcement agency—local, state, or federal—can successfully curtail or even hold its own against the criminal organizations currently waging war on our society through the smuggling and distribution of narcotics on so massive a scale. In fact, under present funding restraints it is doubtful that even a combination of agencies would have significant impact.

The only answer seems to call for increased federal funding at all levels of law enforcement and an enhanced spirit of cooperation, interaction and coordination between agencies at all levels.

Name	Date of birth	LCN status	Florida residency status
Carlo Gambino "family," New York, N.Y.:			
Dellacrocce, Aniello		Acting boss	
Lombardozi, Carmine John	Feb. 8, 1913	Capodecina	Visits south Florida.
Paterno, Joseph Dominick	Aug. 5, 1923	do	Resident, Miami Beach.
Scotto, Anthony M.	May 10, 1934	do	Seasonal resident.
Silesi, Joseph Albert	Sept. 15, 1896	do	Resident, Miami Beach.
Zappi, Ettore	Dec. 22, 1924	do	Seasonal resident, Fort Lauderdale.
Gagliardi, Frank Sebastian	Apr. 2, 1905	Member	Resident, Fort Lauderdale.
Indelicato, Joseph Anthony	June 11, 1910	do	Resident, North Bay Village.
Mancuso, Aniello	Jan. 27, 1930	do	Visits south Florida.
Plate, Anthony	Apr. 2, 1913	do	Resident, Bay Harbor Islands.
Acceturo, Anthony	Oct. 18, 1938	Nonmember associate.	Resident, Hollywood.
Vito Genovese "family," New York, N.Y.:			
Tieri, Fank (Funzi)	Feb. 22, 1904	Acting boss	Influence in south Florida.
Catena, Gerardo	Jan. 8, 1902	Underboss	Seasonal resident, Boca Raton.
Alo, Vincent James	May 26, 1904	Capodecina	Resident, Hollywood.
Eboli, Pasquale Raffaele	Aug. 10, 1924	do	Seasonal resident (missing person.)
Frasca, Cosmo	Dec. 4, 1907	do	Visits south Florida.
Generoso, Michael James	Jan. 25, 1918	do	Resident, Dade County.
Generoso, Vincenzo	Aug. 15, 1895	do	Seasonal resident.
Agone, Joseph Michael	June 30, 1913	Member	Seasonal resident, south Florida.
Alongi, Dominick Joseph	Apr. 17, 1927	do	Resident, Miami.
Ardito, John Gregory	Oct. 28, 1919	do	Resident, Surfside.
Caponigro, Antonio Rocco	June 22, 1912	do	
DeMartino, Anthony	July 28, 1910	do	Seasonal resident, Fort Lauderdale.
DeMartino, Benjamin	Dec. 21, 1913	do	Influences Florida.
DiQuarto, Domenico	June 22, 1922	do	Visits south Florida.
Lanza, Joseph Louis	Oct. 25, 1902	do	Seasonal resident, Miami Shores.
Lombardo, Phillip	Oct. 5, 1908	do	Seasonal resident, Hollywood.
Ricci, Anthony	Jan. 1, 1893	do	Resident, Hollywood.
Sialerno, Anthony	Aug. 15, 1911	do	Resident, Miami Beach.
Smurra, George	Jan. 1, 1910	do	Resident, Hollywood.
Somma, Gaetano	Jan. 31, 1916	do	Seasonal resident.
Tourine, Charles	Mar. 26, 1906	do	Resident, North Bay Village.
Dinietro, Carlo	Oct. 15, 1930	do	Influence in south Florida.
Sebastian John Larocca "family" Pittsburgh, Pa.:			
LaRocca, Sebastian John	Dec. 9, 1902	Boss	Seasonal resident, Pompano Beach.
Mannarino, Gabriel	Oct. 31, 1915	Capodecina	Seasonal resident, Broward County.
Regino, Joseph	Oct. 18, 1907	do	Visits south Florida.
Thomas Luchese "family," New York, N.Y.:			
Reo, Vincent John	Apr. 27, 1907	Consigliere	Seasonal resident.
Tramunti, Carmine	Oct. 1, 1910	Acting boss	Influences Florida.
Coco, Ettore	June 12, 1907	Capodecina	Resident, Miami Shores.
Corallo, Anthony	Feb. 12, 1914	do	Influences Florida.
Laratro, Joseph Albert	Feb. 7, 1916	do	Resident, Hallandale.
Ormento, John	Aug. 1, 1912	do	Seasonal resident.
Vario, Paul	July 19, 1914	do	Do.
Dioguardi, John Ignazio	Apr. 28, 1914	Member	Influences Florida.
Migliore, Aniello Joseph	Aug. 2, 1933	do	Resident, Homestead.
Joseph Bonnano "family," New York, N.Y.:			
Balanto, Carmine	Feb. 21, 1910	Underboss	Visits south Florida.
Sabella, Michael	Dec. 23, 1913	Capodecina	Seasonal resident, South Florida.
Angelo Bruno "family," Philadelphia, Pa.:			
Bruno, Angelo	May 21, 1910	Boss	Visits south Florida.
Magalo, Peter J.	Nov. 3, 1920	Capodecina	Influences Florida.
Simone, John James	Feb. 25, 1911	do	Resident, Wilton Manors.
Testa, Phillip Charles	Apr. 30, 1924	do	Visits south Florida.
Grasso, Michael J., Jr.	Apr. 20, 1936	Nonmember associate.	Do.
Russell Bufalino "family," Pittston, Pa.:			
Bufalino, Russell Alfred	Oct. 29, 1903	Boss	Seasonal resident, South Florida.
Chicago "family," Chicago, Ill.:			
Accardo, Anthony Joseph	Apr. 28, 1906	Acting boss	Visits south Florida.
Cerone, John Phillip	July 7, 1914	Underboss/capodecina.	Seasonal resident, Miami.
Alaisio, William A.	Oct. 9, 1906	Member	Visits south Florida.
Caifano, Marshall	July 19, 1915	do	Do.
Delmonico, Charles James	May 20, 1927	do	Resident, Miami Beach.
DiBella, Dominick	Feb. 5, 1910	do	Seasonal resident, South Florida.
DiVarco, Joseph	July 27, 1911	do	Do.
English, Charles	Nov. 7, 1914	do	Visits south Florida.
Euto, Frank Paul	Feb. 17, 1907	do	Resident, Holiday.
Lardino, John	Feb. 27, 1907	do	Visits south Florida.
Messino, William Joseph	Jan. 7, 1917	do	Seasonal resident, South Florida.
Pesanova, Louis Frank	Mar. 3, 1922	do	Influences Florida.
Alex, Gus N.	Apr. 1, 1916	Nonmember associate.	Seasonal resident, Fort Lauderdale.

Name	Date of birth	LCN status	Florida residency status
Joseph Colombo "family," New York, N.Y.:			
Aloi, Sebastian	Feb. 24, 1907	Capodecina	Resident, Hallandale.
Aloi, Vincent	Sept. 22, 1933	do	Visits south Florida.
Fontana, Harry Raymond	Sept. 16, 1899	do	Resident, Tampa.
Fransese, John	Feb. 16, 1919	do	Visits south Florida.
Misuraca, Giovanna	May 3, 1897	do	Resident, St. Petersburg.
Persico, Carmine Jr.	Aug. 8, 1933	do	Influences Florida.
Sorrentino, Nicholas	Feb. 8, 1896	do	Resident, North Miami.
Samuel Decavalcante "family," State of New Jersey:			
Decavalcante, Samuel Rizzo	May 1, 1912	Boss	Visits south Florida.
Cocchiaro, Frank	Oct. 29, 1920	Caporagima	Resident, North Bay Village.
Russo, Anthony	July 13, 1916	Nonmember associate.	Seasonal resident, Hallandale.
Carlos Marcello "family," New Orleans, La.; Marcello, Carlos Joseph.			
Stefano Magaddino "family," Buffalo, N.Y.:			
Falcone, Joseph	Jan. 27, 1902	Capodecina	Visits south Florida.
Mantell, Dominic Bruno	Jan. 13, 1918	Member	Resident, Hollywood.
Pieri, Salvatore Joseph	Jan. 29, 1911	do	Visits south Florida.
Raymond Patriarca "family," New England States:			
Patriarca, Raymond	Mar. 17, 1908	Boss	Influences Florida.
Zannino, Harlo Anthony	June 15, 1920	Capodecina	Visits south Florida.
John Scallish "family," Cleveland, Ohio:			
Licavoli, John	Aug. 18, 1904	Acting Boss	Do.
Angersola, George J.	Aug. 26, 1902	Nonmember associate.	Resident, Miami.
Angersola, John	Apr. 10, 1898	do	Resident, Dade County.
Santo Trafficante "family," Tampa, Fla.:			
Trafficante, Santo Jr.	Nov. 15, 1914	Boss	Resident, North Miami and Tampa.
Bedami, Ciro	Apr. 4, 1925	Member	Resident, Brandon.
Bruno, James Guida	Oct. 26, 1904	do	Resident, Tampa.
Oiciedue, Frank	Feb. 20, 1915	do	Do.
Furci, Dominick	Mar. 8, 1911	do	Do.
Longo, James Costa	Nov. 28, 1910	do	Do.
Lorenzo, Salvatore Joseph	Feb. 19, 1927	do	Do.
LoScalzo, Angelo	Dec. 24, 1907	do	Do.
Scaglione, Alfonso	Sept. 6, 1918	do	Resident, Lakeland.
Scaglione, Nick	Nov. 30, 1917	do	Resident, Tampa.
Trafficante, Henry	Nov. 23, 1924	do	Do.
Trafficante, Sam Cacciatore	Nov. 14, 1916	do	Do.
Blackburn, Harlan Alexander	Apr. 13, 1919	Nonmember associate.	Resident.
Joseph Zerilli "family," Detroit, Mich.:			
Corrado, Domenic Pietro	Apr. 20, 1930	Capodecina	Influences Florida.
Giacalone, Anthony Joseph	Jan. 10, 1919	do	Seasonal resident, Miami Beach.
Polizzi, Michael Santo	Jan. 2, 1924	do	Visits south Florida.
Tocco, Giacomo W.	Oct. 29, 1925	do	Influences Florida.
Giacalone, Vito Billy	Apr. 16, 1923	Member	Seasonal resident, Hay Harbor Island.
Giordano, Samuel Joseph	Apr. 6, 1920	do	Visits south Florida.
Meli, Vincent Angelo	Jan. 2, 1921	do	Do.

Senator NUNN. On the question of these exhibits, it is my intention to have all the information that can be made available to the public appropriately available to the public as soon as the staff has a chance to go over them. We haven't had a chance to go over all of these, so the staff will have authority after examination, both minority and majority staff together, to make this information available to the public to the greatest extent that we can. We appreciate it.

Do you have any other exhibits there that you would like to submit? I understand a great deal of this information is already in the public domain, is that right?

Major BERTUCELLI. What we have discussed is basically in the public domain. Much of it is public record. We try not to speculate or suggest people that are involved that are not. These are active.

There is one exhibit we would like to enter because it is significant as to the syndicate gambling and that is a copy of the Second Statewide Grand Jury Report and the impact of the experience at that time.

Senator NUNN. Without objection, that report will be made an exhibit.

[The document referred to was marked "Exhibit No. 63" for reference and will be found in the appendix on page 807.]

Senator NUNN. I would ask if you could, to have somebody on your staff that is very familiar with these exhibits stay and go over them so that we can make them available to the public as rapidly as possible, and we will give staff the authority to do that.

Senator CHILES. I think we just want to thank you, all of you very, very much for your testimony and, again for the work that you are doing in this area. We look forward to continuing to work with you.

Senator NUNN. Major Bertucelli, let me just say this: Your staff has been tremendously helpful to us since we undertook this investigation. I think you have one of the finest units of any law enforcement agency unit at the local level that I have seen. The staff has kept me constantly in communication as to the help you have given.

We appreciate very much your assistance. This is the opening round. We are looking at organized crime all over the United States. We are particularly focusing on what we can do in the legislative branch to correct some of the law enforcement problems that are caused by the lack of resources and the lack of laws that protect society.

Of course, we can't and don't pretend, and never have pretended that we can come down and cure the problems of organized crime in south Florida. We know that. Your people know that. But we do very much appreciate your input as to how laws can be changed.

We anticipate a very strong effort in this regard sometime during the next year. So we look forward to continuing to communicate with you and get the advantage of your perspective and your expertise and those of your staff. I hope you will convey the subcommittee's appreciation to each member of your staff.

Major BERTUCELLI. Thank you, and we appreciate the opportunity to appear and express our opinions.

Senator NUNN. Thank you.

I believe that we have our next two witnesses, Hon. Peter Fay, Hon. James Lawrence King, both of whom are distinguished members of the Federal bench.

I have never had the pleasure before of swearing in a Federal or a State judge. I will take delight in that.

We swear everyone in. This is a rule before the subcommittee. Before you take your seats, if you will hold up your right hand.

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

Judge KING. I do.

Judge FAY. I do.

TESTIMONY OF HON. PETER T. FAY, CIRCUIT COURT JUDGE FOR
THE FIFTH JUDICIAL CIRCUIT; AND HON. JAMES LAWRENCE
KING, DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF
FLORIDA

Senator CHILES. That was your prerogative, I didn't want to interrupt. But nothing would have given me greater pleasure than to be able to swear in these two distinguished judges. They both have certainly distinguished careers on the bench.

If we wanted to go back completely into their background, though, I can tell you going back to the University of Florida days, they are under oath and I am not and I won't continue that. I won't go into that too much.

[Laughter.]

Senator NUNN. I don't know whether I will read them their rights or not. What do you think, Senator? I will abide by your judgment.

Senator CHILES. I don't think we need to do that.

Judge KING. If he is going to the University of Florida, I would appreciate your reading our rights, too. [Laughter.]

Senator CHILES. The statute has run out on all of those activities. [Laughter.]

Senator NUNN. We do appreciate your both appearing here today. We also appreciate all the help you have been to our staff in making arrangements here for the courtroom, and witnesses and all the other assistance you have given us.

We have a good many questions we would like to ask you, but before we do that, I would like to give each of you an opportunity to make any comments you would like to make, if you have any. If not, we will go to the questions.

Judge FAY. Both of us appreciate being here, Senator, and I think, as we discussed with you earlier, one of the problems I believe we have in this country today is probably a lack of communications between the judicial branch and the legislative branch.

We are delighted to be here, to have this opportunity to discuss some of the problems we see in the third branch.

Very briefly, I think our attitude is just one of being grateful to you for giving us this opportunity. If we can be of any assistance, if we can give you any thoughts or ideas that are peculiar, or come to us through our peculiar position within the judicial branch, we would like to do that.

Senator NUNN. Thank you.

Judge KING?

Judge KING. I don't think I really have anything to add except and perhaps I was intending to close with this, that is that I think that this opportunity for judges or members of the third branch as Judge Fay has referred to is having the opportunity to talk to responsible and proper committees of Congress, of the Senate and the House, is a very good thing and hopefully this opening of this dialog, if that be the right word, between the two branches will benefit the people of Florida and indeed the Nation.

We are happy to be here.

Senator NUNN. Thank you very much.

Senator CHILES, do you want to lead off?

Senator CHILES. Thank you, Mr. Chairman.

I think the record should reflect that Judge Fay has a distinguished career as a Federal district judge from 1970 to 1976, when he was appointed to the fifth judicial circuit. And prior to that time he had been in private practice for approximately 15 years; and that Judge King has had a distinguished career as a Federal district judge since he was appointed to that position in 1970. Prior to that time he served as a Florida circuit judge during which time he was invited to sit many times on the Florida Supreme Court and that he was in private practice for some 11 years before he went on the bench.

I think both of these men are uniquely qualified by their experience to give us some valuable information. We don't get an opportunity very much to enter into this kind of dialog with the judiciary.

Judge Fay, as a trial judge for some 6 years how many of the cases coming before your court as a trial judge were criminal and how many were civil or some breakdown of that?

Judge FAY. Yes; without dealing with numbers, because they wouldn't have much meaning, but back when Judge King and I both came on the court in the southern district of Florida, about one-third of the cases that were filed were criminal cases and about two-thirds of the cases filed were civil cases.

At that time during the trial, trials of those cases, I think both of us spent approximately 50 percent of our time trying civil cases, 50 percent of our time trying criminal cases.

So even though the filings were a little different than that, the courtroom time was about 50-50.

Senator CHILES. And at that time how much of that was narcotics, of the criminal trials were sort of narcotic related?

Judge FAY. Very little. I would guess 10 percent, 15 percent at the most. We didn't see many cases involving narcotics.

The criminal cases were generally single defendant criminal cases that would involve a stolen motor vehicle, crossing State lines; it might involve income tax questions.

Senator CHILES. Untaxed whisky?

Judge FAY. Untaxed whisky. We even had a few migratory bird violations back in those days that came to the Federal court. We at one time even had a large number of cases involving whether postal employees were buying the right type of shoe with their uniform allowance. We have seen a lot of changes.

Senator CHILES. Would you kind of relate to us what those changes have been since 1970, both of you?

Judge FAY. I don't know all of the reasons, but without going into all of the reasons we certainly noticed a big change when the Federal Government organized the strike forces, the special type of units that were designed to go after specific areas of criminal activity.

We have in general terms seen a tremendous skyrocketing of multi-theft, serious conspiracy cases, criminal enterprise-type cases that involve various areas of the law, certainly narcotics being one of the major areas, other areas as well.

The Federal gambling statutes, conspiracy, involving gambling, things of that sort.

But the cases have just changed. Their profile has changed totally. Senator CHILES. Judge King?

Judge KING. Yes; as Judge Fay described, there has been a dramatic change in the types of trials with which Federal judges are involved today. Almost exclusively we are dealing with criminal cases.

In the last 18 months, personally I have been presiding over fewer than six short civil trials. All the rest of it has been criminal cases.

Senator CHILES. Is part of this, or a large part of this a result of the speedy trial law that was passed in the Congress; that said you have to bring a criminal case within a certain period of time or say you couldn't prosecute it?

Judge FAY. I don't know what influence that has had, Senator Chiles, maybe some. All of the courts, as you know, had what we called 50B plans that provided for the prompt handling of criminal cases. So at the outset, or at least going back to that period of time, in the late 1960's, early 1970's, criminal cases were receiving a very prompt, very high priority very prompt treatment, fast, early trials, but they were different types of criminal cases.

They took far less time, far less involvement. So I don't, I can't really say that the Speedy Trial Act had much impact on when they were being tried. It is creating problems today.

Senator CHILES. With Florida becoming a more metropolitan State, gaining population all the time, are there less civil cases filed in Florida today? You are saying you only had six small civil trials; civil trials, I think, so the public also understands it, are those litigations between two citizens who have some kind of dispute as opposed to the State bringing criminal charges against someone in a criminal charge.

Are there less of the need for civil, settlement of civil disputes now?

Judge KING. No; perhaps I misled the viewing public or the reading public of these hearings. There is a greater need than ever for the trial of civil cases.

The requirement in the speedy trial law and other places in the law requiring judges to give first priority to criminal cases, has caused us to spend this inordinate amount of time on the trial of criminal cases, but no, there is a very dramatic need in this community and, indeed, across the fifth circuit and across the Nation for judges to spend time or involve themselves with civil trials. But we are simply not able to reach those trials because the heavy press of the criminal caseload.

Senator CHILES. Can you give me any idea of what the time lag is in regard to civil cases in your jurisdiction and what the backlog of those cases are? Maybe from both of your perspectives.

Judge KING. Let me back up to 8 years ago when Judge Fay and I were sworn in in this very courtroom on the 30th of the month, ironically just a few more days.

Eight years ago in the southern district of Florida each judge was assigned about 350 cases per year. Today, each judge is assigned about 804 cases per year. Of that number the vast majority are civil cases. The ratio on an 830-per-judge breakdown comes to about 240 or so criminal, and the balance are civil.

So if we were devoting the time on the basis of the numbers of the cases filed, we would be spending one-fourth on the criminal and three-fourths on civil. Actually we are spending 90 to 95 percent of the time on criminal and less than 5 percent or 10 percent on the civil.

But what has happened, in 1970, 1971, and 1972, this court was able to bring its pending backlog of cases, all cases, civil and criminal, down to about 100 cases. In those years we were receiving about 30 a month. So we had about a 3-month backlog.

The judicial center of the United States, the administrative office of the U.S. courts recognized this court was one of the leading courts in the Nation in disposing of cases and for some 5 years we enjoyed the No. 1 position in the Nation in disposing of litigation.

So we brought it down. That is how courts should operate under optimum conditions. Today, unfortunately, with the increase of these complex, multitheft, large criminal cases and the time we have had to spend on those types of cases, we have not been able to reach the civil caseload and as a result today I have pending as of the first of this past month approximately 340 cases which is far less than you will find in southern New York, or perhaps in northern California or Detroit or some other places.

But still it is not a satisfactory level. It is an intolerable level.

To put it in one word, and I don't mean to take Judge Fay's—Well, I will let—Well, I think we agree that effectively the doors to the Federal Courthouse in the southern district of Florida are absolutely closed to civil litigants at this time. That is a terrible predicament.

Senator CHILES. So if you have a civil dispute, you really can't look to be able to get any relief in your Federal court, but if it is a criminal charge, then you are entitled to a speedy trial and determination within, was it 60 days?

Judge FAY. The magic figure will be 100 days effective July 1 of next year.

Senator CHILES. Judge Fay, what is your overview from the fifth circuit?

Judge FAY. The same situation, and just supplementing what Judge King just stated, the law-abiding, taxpaying citizen really does not have a Federal court in the Southern District of Florida. Indeed, probably not in the fifth circuit. The situation is very similar in the Court of Appeals for the Fifth Circuit which, of course, encompasses Florida, Georgia, Louisiana, Alabama, Mississippi, Texas, and the Canal Zone.

We are obligated to handle the appeals under the same statutory priorities that Congress has given to these cases and as you gentlemen know, there are some 40 statutory priorities. Possibly they should be revisited. But certainly No. 1 are the criminal cases.

At the present time in the court of appeals there are pending over 600 nonpreference civil cases that have been classified or put in categories by the judges—In other words, the judges have read the briefs; they have read portions of the record; and they have determined that those cases warrant oral argument, oral argument would be helpful. So those cases are on the shelves, over 600 of them. They may never be reached because our oral argument calendars are filled up by the criminal cases first.

Of course, we have an equal number of serious criminal appeals wherein oral argument will be helpful and you can only take them one at a time and dispose of them.

Senator CHILES. And the influx of the criminal appeals continues to fill the vacuum so that the way it looks now, you might never reach those 600?

Judge FAY. Very few civil cases are placed on any of our oral argument calendars. A few, but very few. The civil cases now that are added to oral argument are generally cases that have been in the court of appeals for from 18 months to 2 years, the briefs are generally over 12 months old.

You understand the problems that that poses for any lawyer. The cases and authorities that he cited in his brief probably aren't even the controlling cases.

When the case finally gets to the oral argument stage, it poses all kinds of problems.

But the critical situation is just what you put your finger on. There are about 600 cases that may never be reached.

Senator CHILES. And to many civil litigants, this could involve their entire life, their fortune. It could involve things, their personal liberties because it might be in the neighborhood of some kind of guardianship. It might be in the neighborhood of whether they were mentally competent.

Judge FAY. Absolutely.

Senator CHILES. It might be in the neighborhood of any area like this, custody of children.

Judge FAY. They involve all types of serious questions. These involve verdicts that widows have obtained, orphans. They involve reinstatement to employment. They involve class actions of all sorts. Whether it is under the Securities Act or any other of the Federal statutes involved, it is across the board.

They are the most serious type of lawsuits that are presented to Federal courts every day.

Senator NUNN. Judge Fay, when you say they may not be reached, these 600 cases, do you mean they may not be reached for oral argument or not decided period? At what stage do you hear the oral arguments and go ahead and sit?

Judge FAY. If the Congress had not passed the omnibus judgeship bill, they in fact probably would never have been reached. That is the fact of the situation. They would never have been reached.

Senator NUNN. What happens in that case? Would the lower court's verdict, whatever it may be, just stand? Is that right?

Judge FAY. No. It doesn't even stand, because the jurisdiction is taken away from the district court while the appeal is filed, and the judgment has, in most instances, no meaning at all.

Senator NUNN. The parties are left where they were before the suit?

Judge FAY. Yes.

Senator CHILES. Many times money might be sequestered. There may be other things that are tied up pending that; almost you would be better off as a litigant to waive any oral argument.

Judge FAY. We have had situations where the parties have written us letters and have in essence said, please decide the case at this point,

we don't care how you decide it. If the court doesn't decide the case, one side or the other is literally going to have to go out of business.

You can imagine. There are manufacturers, for instance, that are operating under patents and various legal rights. Whether or not they continue to manufacture products depends upon whether the patent is valid, whether they have a right to operate under that license or not. It involves the most serious type of questions that you can imagine being presented to Federal courts.

Senator CHILES. How much help is the omnibus judge bill going to give you each in the district court and in the circuit?

Judge KING. It is going to be a tremendous help, Senator Chiles, and we are very, very appreciative that Congress has seen fit to pass this vitally important and needed legislation. It is in our court here in the southern district of Florida, we will receive five additional U.S. district judges, almost doubling the size of the court, and in the middle district of Florida there will be three added, and in the northern district one, for a total of nine for the State of Florida, which is one of the most dramatic increases of any State in the Union.

And in Georgia, Senator Nunn I am sure is aware of this, but in Georgia the northern district of Georgia will receive five additional judges, I believe—

Senator NUNN. Southern district, one. Right.

Judge KING. So it will be six added for Georgia.

Senator NUNN. We have the same kind of caseload problem in Georgia.

What about the appellate court?

Judge FAY. The Fifth Circuit Court of Appeals will receive 11 new circuit judges. We are delighted, equally relieved. I personally believe that when those 11 judges are onboard and working, that we will be able to eliminate the backlog.

I think we will probably maintain the same procedures we have now, which is a screening procedure, and I don't mean to complicate the record of your hearing, but I think we will continue to dispose of all the cases we can without oral argument. But we will, of course, have 11 additional judges for oral argument panels, and my guess is that within 2 or 3 years we will be able to eliminate this backlog to which I just referred.

Senator CHILES. One thing that concerns the American public, frankly an issue which we feel needs considerable attention, is the current tendency toward plea bargaining.

Judge KING, I believe some 5 years ago you stated that you would not accept plea bargaining in your court. Would you tell us the rationale behind that decision and the factors that came to bear in your making that decision?

Judge KING. Senator Chiles, it seemed to me that the Congress of the United States, specifically the U.S. Senate, went to elaborate lengths to make sure that people who are ultimately sworn in as U.S. district judges have experiences and qualifications to do the job.

Here we have this elaborate procedure set up to put people on the bench who have practiced law many years, and who have the requisite experience to handle the sentencing function which in our opinion is probably the most serious aspect of what trial judges do.

So it occurred to me that what was happening, whether totally innocently, but what was happening was that at the minute judges got appointed with all of this vast experience, with Senate, all their investigations and in checking made sure that they had, Justice Department, and the President, all these procedures, the first thing the judge did was to abdicate this responsibility in the sentencing area to usually two very fine, very decent, very honest assistant Federal public defenders and assistant U.S. attorneys with a combined total experience of perhaps a year or two out of law school, in terms of practice of law. I thought that the people did not understand this or approve of it.

I believe that the people of America do not like plea bargaining and don't understand it. I have no quarrel with it, if others wish to do it. I, myself, saw too many instances where either the person, the individual involved was bargained into a much longer period of time in jail than was appropriate, or on the other hand bargains were suggested or recommended to the court that were entirely inappropriate on the light side.

So, one, I was disappointed with the recommendations I was getting; two, I think that the people do not approve of it. Three, I think the judges have the responsibility to face up to this and to do this, and to bring to bear their years of experience in the practice of law or on the bench or elsewhere in doing it and should do it.

Hence, I elected to do this about 5 years ago. We arbitrarily picked a day of July 4, 1973 or 1974, whatever year it was, notified the strike force attorneys and the U.S. Department of Justice and all the bar associations that hereafter we would not have plea bargaining. It has worked.

Senator NUNN. Is that just in your court, or is that in other district courts here, too?

Judge KING. No. I took this initiative on my own originally and did not try to persuade my colleagues for the reason that it might have cast an intolerable burden on a judge.

You see, the theory that you always hear when you get into plea bargaining is the whole system will break down. Whitney Norris Seymour, Jr., prominent and outstanding U.S. attorney for the Southern District of New York, other authorities in the field have said, well, if you don't have plea bargaining the whole system will break down. Well, I thought it was appropriate that somebody find out and try it first if you believed as I did and do that it is not in the best interests of the people. So I tried it.

I did it and the system has worked. The system has not broken down but for the problem we described with the civil cases, but that has happened throughout the court. So, in other words, you can eliminate plea bargaining and the system will go forward, particularly now that we have the judges.

Senator NUNN. Do you have a recommendation made to you by the prosecuting attorney as simply a recommendation for sentencing on a guilty plea or do you have no recommendation at all?

Judge KING. Generally no recommendation at all although my sentencing hearings usually take longer than some of my colleagues because I very carefully listen to whatever the defendant has to say, his attorney has to say and if the Government has anything they wish to say. Usually the Government does not.

I do have, and this is vitally important to understand, a very thorough and comprehensive presentence investigation report prepared by very experienced and capable probation officers of this court.

So it is not just my own individual thinking. They do make a recommendation therein. They do give me all the details about the individual's family, background, training, experience and so on.

Senator CHILES. Are any of the other judges in the southern district following your procedure?

Judge KING. Yes, Senator Chiles. There are two that do it either—just one who does it just like I do it, and one who has a modified version. I actually think that all of them in a sense have some sort of modified version of what I do.

In the southern district I would say perhaps it is about half and half.

Senator CHILES. Judge Fay, what is your perception of the plea bargaining aspect of the criminal justice system?

Judge FAY. Senator, I am perfectly willing to accept two things at the outset in approaching plea bargaining. No. 1, I understand the position of the Department of Justice, that they must be able to work with certain defendants, that they must be able to make these deals and I will put the word deals in quotes, not indicating that they are favorable or unfavorable to society in general.

Secondly, I think we have to accept the fact that the U.S. Supreme Court has in essence said there is nothing improper with plea bargaining. So accepting all of this on that basis, the two things that concern me about plea bargaining are, first, plea bargaining is totally inconsistent with our judicial process. The foundation of our criminal justice system is that a person is presumed to be innocent. That presumption, of course, remains with anyone accused of committing a crime until and unless the Government is able to establish guilt beyond all reasonable doubt.

When you talk about plea bargaining, you are talking about settling a criminal case just as you talk about settling a civil case.

I don't know how you settle a criminal case, because the Government can either establish guilt or it cannot. So that is the first thing about plea bargaining that bothers me.

The second thing about plea bargaining that bothers me is the criticism that you often hear and I think there is some validity to it, and that is basically along these lines. The only people who are in a position to bargain with the Government are those that are the ring-leaders. They are the ones that are deeply involved. They know what is going on. They know who the other coconspirators are. They know who the suppliers are. They have all of this information, all of this at their disposal, so they are the ones that can deal. They are the ones that tell the prosecutor, if you go soft on me, I can help you here or there. Maybe those are the very ones we shouldn't be striking these bargains with. Maybe those are the ones that ought to be buried under the jailhouse, if you are going to do that to anybody.

It seems to be sort of the situation where the people that are most seriously involved should probably receive the most serious sentences, the longest term of confinement if indeed the Government can establish their guilt are those that are striking the bargains and those that

are sort of on the edges, the fringes, the periphery people are the ones that don't have any information to give. They go to trial, they receive their sentences, they serve the sentences, and they are treated just as the law says everyone should be treated when they are accused of a crime.

Those are the two aspects of plea bargaining that bother me, but I am perfectly willing to recognize the need by prosecutors and by the Department of Justice, possibly under some circumstances, to deal with those people and to work out these preference situations. But it is not easy.

Senator NUNN. Judge King, have you seen a backup in your criminal court because of plea bargaining or have you seen district attorneys and prosecuting attorneys trying to go to another judge with certain cases because they know they can't plea bargain under you? How has the caseload shifted by reason of your plea bargaining?

Judge KING. In the southern district of Florida we have a blind filing system so that there is no way that an individual or attorney even if he should wish to do so can pick his judge. You just can't get it before a certain judge.

We have carefully structured this over the years to avoid any possibility of judge shopping. So they can't go to another judge, although perhaps many of them would like to do so or might not like to do so. I don't know.

To answer your question specifically, Senator Nunn, I felt, I kept some records on this and I felt that the first 4 to 6 months after I instituted the court policy of no plea bargaining that more people went to trial in criminal cases, that I had more criminal trials. I think perhaps the lawyers were just seeing how this procedure worked and finding out about it.

Thereafter, it seemed to level off. And in our court we get about 40 percent of pleas in criminal cases. My percentage is about the same as anyone else.

So I think that the answer to Mr. Whitney Norris Seymour and other experts who say it can't work is that it is working here. I understand it is working in Colorado with a district court there, and another judge is using it in Oregon, and perhaps others. I know it is working. It can work.

Senator NUNN. We have a modified version, I think, in some of the district courts in Georgia. I am not up to date on it. But back when I was practicing law, the judge would not make any kind of advance agreement with the district attorney or the prosecuting attorney that he would accept the recommendation. Any criminal defendant or lawyer that was in any way negotiating with the prosecuting attorney understood that his recommendation was in no way binding on the court, but the bargaining took place only with the prosecuting attorney stating to the defendant and his lawyer, if you plead guilty I can tell you what I recommend or will recommend to the judge. I cannot in any way tell you whether he will accept that recommendation or reject that recommendation and sentence you to a much harsher term or a much lighter term.

So maybe that is middle ground. I don't know. Have you seen anything or heard anything about that kind of operation, or is that, Judge Fay, in any way offensive to the same kind of thoughts you had on the presumption of innocence?

Judge FAY. There are many judges that do that, approach it on that basis. Of course, under the ABA standards, the American Bar Association standards, when you are in a preplea agreement situation, if I can use that label, basically what you have is the situation where the attorneys agree. In other words, the attorneys agree on whatever it is they are going to agree to. It may be the Government will agree that they will make a specific recommendation; maybe the defendant will agree that he will enter a guilty plea to a certain charge in return for that. Under the ABA guidelines, the additional step is this: If the judge receives the guilty plea, then reviews the presentence investigation and decides that he cannot follow the recommendation, the joint recommendation being made, then the defendant is allowed to withdraw his guilty plea and proceed to trial.

I followed that procedure for some time. It was recommended by the American Bar Association, and I gave it a whirl, tried it, followed that procedure, and it can work under some circumstances.

As Judge King said, the judges have to look at the specific case and make their own determination and decide whether or not they can in good conscience follow that joint recommendation.

Judge KING. The Senator asked my good friend what he was going to do just about the time he got appointed to the fifth circuit, though, if he was going to change his procedure or not.

Judge FAY. I was getting closer and closer to Judge King's position. That is what he wants me to say. That I had about reached the point where I thought there were more evils connected with plea bargaining than benefits, and I was just about to adopt his procedure. Yes.

Senator NUNN. Judge King, do you preclude prosecuting attorneys from making a recommendation if they decide they would like to voice an opinion about what the appropriate sentence should be? Do you have any kind of rule that your can't make that recommendation?

Judge KING. Absolutely not. Anyone involved with the sentencing aspect is entitled to and invited to speak, because the judge, I am making up my mind as to what the sentence should be. So by comment of anyone, and there is where the Government is protected, you see. If the Government has worked out or has been getting cooperation from someone, they make that known at that point in time. They may urge me to put someone on probation or give him a little sentence. That is the protection for the Government where they have a cooperating defendant.

Mr. BLOCK. Judge King, does your ban on plea bargaining include a prohibition against dropping of counts? In other words, if a defendant comes in charged with six counts of various offenses, is it the case ever that the Government and the defense reach an agreement simply that a number of the counts will be dropped and leave it at that?

Judge KING. The actual requirement that I have is that the parties, a defendant has a choice. He may either plead guilty to the charges pending or he may go to trial. If he elects to go to trial, he will not be penalized for insisting on his constitutional right to stand trial. I firmly abide by that.

I recognize that the prosecutor has the absolute discretion to (a) bring or not bring a charge or going back to take a matter to a grand jury or not, to bring or not bring a charge. If he brings the charge and indicts someone on five counts, that person is going to have to decide

at time of sentence whether to plead to—guilty to five counts or go to trial.

However, the prosecutor in his prosecutorial discretion and under the law has the right to drop charges prior to sentences. If they arrive at sentencing and there are five counts there, then my question is a simple one: Do you plead guilty or not?

The prosecutors, of course, are very bright, able, sincere men and women, and they have figured this out. They are not inexperienced or inept. So frequently someone will appear and say, the prosecutor will say: Judge, yesterday we dropped counts 1, 2, 3, and we only have count 4 pending. The defendant stands up and says: I want to plead guilty to count 4.

I know what has happened, but that happens before I get to it.

Mr. BLOCK. Do you think that the prohibition on plea bargaining can work across the board not only in the Federal courts, but is it feasible to do something like this in New York City, or Chicago, or Philadelphia, where the volume of cases is much greater?

Judge KING. You challenge me a bit here now. The volume of cases, I don't want to embarrass our friends in New York and other places, but the volume isn't that much greater in the criminal field particularly, because you see in southern New York they have 27 judges and here we have 7. You have to look at the caseload per judge, which I am sure you do and have done.

We are actually, Florida southern is actually the third heaviest court in the Nation in terms of criminal cases tried last year, exceeded only by New York southern and California central.

So we have almost as heavy a caseload as any court in the Nation. We dispose of them in better time than any court in the Nation.

But the short answer, I am sorry, is yes; it can work in a heavy metropolitan court and it is working.

Mr. BLOCK. Would you extend your views to local court systems which handle a lot of the minor cases that the Federal courts do not?

Judge KING. Yes. I am not sure that I would recommend or suggest that this is something the Circuit Court of the 11th Judicial Circuit of Florida or State courts should do or metropolitan traffic courts should do, because they are handling hundreds or thousands of cases.

It may well be that in those situations it fills a need, a proper need. But I harken back to the one thing that is so important, that Senator Chiles and Senator Nunn and to the judges involved, and that is this: That the people do not approve of it. They do not approve of it because they do not understand it. I am not suggesting there is anything evil about plea bargaining. Under the ABA guidelines, it is a perfectly proper procedure, but the people do not understand it, in my judgment, do not approve of it, and I think they are much happier with the situation where you do not have it.

I received a number of letters and that sort of thing when it comes out, you know, when it comes up. Somebody writes a story about it in the paper or something, I get a flood of letters from folks saying, God bless you, this is the right thing to do.

Again, I am not criticizing those that do it. But in the Federal courts it can work, in my judgment.

Senator CHILES. How do each of you feel about minimum mandatory sentencing requirements, statutory requirements?

Judge FAY. I am not exactly sure how Judge King feels. I am opposed to it, Senator.

Briefly, the reason I am personally opposed to it is this basically: There is nothing wrong with Congress approaching crimes or setting what punishments will be for criminal activities. Certainly there would be nothing wrong with Congress setting up categories. It would be very appropriate. Sentencing is the toughest thing any trial judge does. The imposition of a sentence is a judicial function upon an individual, and the reason I have trouble with minimum mandatory sentences and if I could use a very gross illustration, let's take the drug area.

Certainly, you and I, anybody, could sit down and we could have a general discussion and decide that anyone involved in the importation of cocaine should go to jail for at least 10 years. We could convince ourselves that that would be very proper and very appropriate and the thing to do. That is fine. I have no trouble with that.

The problem comes in the courtroom. When the defendant involved is guilty, no question he is guilty. Again, hypothetically let's assume it is a young person, boy, girl, 18, 19, 20, been a straight A student all their life, go to church, good solid folks, fine people, the kind of young person you would like to have as your own child. No question they have been wrong. They got involved with the wrong people. They made a horrible mistake. Now, you and I know from our personal experience that if you sentence that individual to 10 years in jail, you might just as well put a gun to their head and shoot them. You have destroyed that individual.

So you can't take the general application of the minimum mandatory sentence and apply it to the individual.

Senator NUNN. I agree with you under those circumstances and you can't make sweeping rules in Congress that apply to every case. But what about the modified position that I believe is eventually going to emerge from the Senate if we bring up the criminal procedure bill again, that would allow for exceptions, simply have a rule that the judge would have to commit his reasons for those exceptions, why he made those exceptions to writing so that it would be a written part of the record that would require the judge to go through this thought process, starting with the legislative premise that there would be a minimum sentence, but making exceptions on a case-by-case basis with the public having the full right to review the reasons the judge has given for those exceptions.

Judge FAY. I would have no quarrel with that at all. I think that would be very appropriate because what we are talking about are situations that are exceptional. What you are really saying is that maybe Congress ought to require a judge to attempt to put down in writing or verbalize in the record the reasons for imposing that sentence on that individual. I would have no quarrel with that.

I would respectfully submit that it may be extremely difficult to do, but it is not unlike any other difficult chore that the U.S. Senators or Federal judges have to do on a daily basis. So I would think that might be very appropriate.

Another alternative that has come to mind—

Senator NUNN. Excuse me. You at least go through that thought process in making that exception anyway. So it would be a matter of taking that thought process and committing it to some form of record.

Judge FAX. Absolutely.

The other alternative has been approached by various States, and they have what they call enhancement statutes. In other words, they might treat a repeat offender far differently than they would treat a first-time offender. Congress could approach it on that basis as well. Giving the judge great latitude for first-time offenders but taking second- third-time offenders and putting them in a different category, imposing severe minimum mandatory sentences, or for instance the State of Texas leaves it up to the jury.

Third-time felony convictions, the jury can decide whether the defendant should be sentenced up to a lifetime confinement. So there are other alternatives. I am certainly not opposed to Congress seriously considering those alternatives. I just say to you, be careful if you are making blanket rules, because they can have disastrous results in cases that I think this public that we are referring to would understand just shouldn't fall in that category.

Senator CHILES. I think that your comments are very valid and if we should, I think the reason that mandatory minimum sentences is coming about, though, again stems very much from the people and from their tremendous frustration and disenchantment with what they see some of the sentencing, and many times it is not always in the area where it is the 18-year-old first-time offender.

We happened to look at one of the first major conspiracy cases that DEA was able to successfully bring, the *Alberto Cecelia Falcon* case that came out of the importation of heroin from Mexico into California. Some of it was in exchange for guns; heroin for guns. Multiple defendants in the case, tremendous sums of money, \$10 or \$12 million in a safety deposit box that was traced into this, in cash. All of the players including the hiring of private armies in which the Falcon had a better army than the Federales in Mexico in regard to the protecting of their fields and even combating the militia down there.

We looked at some of the sentencing on that. It was the greatest disparagement in sentencing, and some of the major conspirators were given suspended sentences, were given work-release, were given very, very minimum time. All of the law enforcement officers that operated, that participated in that, it was a great combined effort of State, local, and Federal law enforcement officers, and many branches of the Federal Government; at the end result, look at what some of the results were. And sentencing, just had to be tremendously, not only had to be, we found out how tremendously disheartened they were in regard to being able to bring a case like that. That operated across many States, operated for a long period of time, involved every kind of underworld character in the world. Then seeing some of the key conspirators come up with virtually nothing in regard to sentencing and overall very light sentencing, that is, I think, the reason for this great public disenchantment.

Judge FAX. Senator, certainly a lot is going on in the area of sentencing and no one could serve as a judge for any substantial period of time and not understand the controversy involving sentencing. As we all know, Congress is giving serious consideration to revising what the present situation is basically being that the trial judge has the total wide discretion to impose any sentence that he feels is appropriate in that case.

Appellate review of sentencing has been discussed. Minimum mandatory sentences have been discussed. I would only toss out a few thoughts to you that you might consider and I do it most respectfully.

If Congress is going to attempt to get into this problem, I would urge you to consider some sort of a review of sentencing but by trial judges, and I say that as an appellate judge. Try to use some sort of a system where you have a panel or a group of trial judges who are faced with the problem on an everyday basis.

My short term on the court of appeals has convinced me that we are even one more giant step away from real life and the trial judge is in the courtroom everyday. He is the one imposing the sentences.

The other thought I would like to throw out to you is this: If you are going to have some sort of a review of sentencing, give both sides the right to petition for that review, the defendant and the Government, and give that reviewing authority, whoever they are, not only the authority to reduce the sentence but the authority to increase the sentence for the reasons that you have just outlined so well.

Senator NUNN. If it is just a one-way review, everybody would appeal.

Judge FAY. That is what we have now. One of the problems we have now is the defendant takes an appeal, because under no circumstances can he ever receive a greater sentence, even if there was an error in his trial.

Senator NUNN. That means a well-financed defendant has every incentive to appeal and appeal and appeal.

Judge FAY. Unless there have been intervening circumstances. I should qualify. Every legal rule has an exception, but that is the general rule.

Senator CHILES. Again, under that same kind of review, if there was a review, you could address the problem that is also very much there, and that is again the disparagement of sentences between Federal judges sitting in the same district; for example, a judge might be easy on one class of crime but his hangup comes with another class of crimes.

You know that situation, and when it exists, and so depending on who you happen to get in that random selection, if you get the very severe sentencing judge, you may get 10 years; if you draw the other one, you may get 1 year because of how they just look at a particular crime. Yet both of those judges, if you looked at them in their overall sentencing context sort of, you might say they are fair within the overall.

So you could crank that into that kind of review if you had review.

Judge KING. Senator Chiles, you put your finger, of course, on the critical problem that is disturbing to the American people as far as sentencing is concerned, disparity of sentencing. There have been a number of studies done on this by the Federal Judicial Center, by committees of the Judicial Conference of the United States, and Federal judges across the Nation in the last 5 or 8 years have had a number of seminars, meetings, legislatures, studied the problem extensively. No one is coming up with any good answer, unfortunately, because there is the human factor.

Judges do look at things differently. Judge Fay has pointed out the minus factor or the evil inherent in mandatory sentencing, mandatory

minimum sentencing, and you certainly, you and Senator Nunn have clearly pointed out the advantages. And somewhere therein lies an answer to this which unfortunately we cannot suggest to you at this point in time.

I don't know that anyone ever can. I would say this, if I may, moving back to Senator Nunn's original question of Judge Fay on minimum mandatory sentencing. I think Senator Nunn that probably throughout the United States the Federal judiciary if they were surveyed on this point would not be in opposition to minimum mandatory sentencing provided there was the type of safeguard which you outlined.

It is extra work for the judge to articulate his reasons or to indeed write his reasons, if he should do that. But as you point out, he goes through that process anyway and most of us tell the defendant our reasons at time of sentencing; because you are dealing with a human being. It is only fair and reasonable.

You know, fellows just brought in as someone did this morning at Fort Lauderdale Airport—you may be interested to know that the law enforcement authorities apprehended this morning an individual who was flying an airplane and landed at Fort Lauderdale Airport with 40 pounds of cocaine. This typifies the type of offenses that are occurring in this community almost daily.

A few years ago 40 pounds of cocaine would have been a very substantial amount of narcotic substance. Without passing on the merits of the case, which I do not know at all, I am just advised this has occurred this morning, it is very pertinent to your hearings. Here you are having these hearings on this subject.

But I don't know. I got off the point that the Senator asked. You articulate your reasons. If someone has been tried and found guilty by a jury and you are sentencing him and he brought in 30 pounds of cocaine or 10 pounds of cocaine, you don't have to say a whole lot to him in explaining why you are sending him to jail for a long period of time, if he is found guilty after a fair and reasonable trial.

But if you are dealing with that young person that Judge Fay was talking about, I know Judge Fay always did this, I know that I always do this, we go into some detail with that person. Their parents are in the room, their families are there. You try to tell those folks, impress on them the seriousness of it and explain what you are doing and why because it may have an effect, a profound effect on that person.

Senator NUNN. Judge King, one of the things that is troubling to us in this whole narcotics area has been the number of people who have been apprehended and indicted, brought before the bars of justice for at least arraignment and left the country, or left the jurisdiction without ever appearing for trial because they basically skipped bond.

That gets to the whole question of bail and the Bail Reform Act. I know there are many different aspects of it. But do you have any observations about the present system as to whether it does work or whether there needs to be any kind of additional discretion to judges in certain circumstances to deny bail to people not just in the narcotics area but others who might be repeat offenders or people who are likely to leave the jurisdiction?

I guess my question to you is, do you have the authority now to deny bail in the kinds of circumstances wherein you think bail should be denied?

Judge KING. Your question now is directed to the situation before trial?

Senator NUNN. Before trial.

Judge KING. Before trial.

Senator NUNN. I want to ask you another question about the situation after trial. But I would like to ask you about pretrial matters now.

Judge KING. The short answer to your question about matters prior to trial when there is still a presumption of innocence that has attached to that individual defendant and remains with him throughout the trial, at that point in time, under the Bail Reform Act, 18 U.S.C. 3148, that was adopted back in 1966, there is no discretion to deny bail to such a person unless he is charged with a crime punishable by death.

Interestingly enough, the Federal statute provides that under those circumstances bail can be denied that individual. But that is the only instance in that. If we focus in on narcotics cases, which I think is a major part of your review here these last few days, there is no provision under the law as it now stands to require a person to remain incarcerated pending trial.

Senator NUNN. Do you think under certain circumstances, for instance, repeat offenders, people who are apprehended with huge sums of money on them, indicating that they could very readily put up bail and perhaps never show up for trial, those kinds of circumstances, do you think there should be even considering the presumption of innocence some additional discretion for the judge to deny bail in noncapital offenses?

Judge KING. Senator, I would like to answer you directly and my ultimate answer will be that yes with a lot of safeguards. I think that is something that the committee that you and Senator Chiles are on should take a good hard look at. It is something that properly written into the law, very carefully written in the law, is vesting a lot of discretion in the magistrate or judge, is something that I think is appropriate in the serious narcotics case.

But I have to say that we have got to very carefully balance the rights of individuals who are at that point cloaked with the presumption of innocence against benefits to society of insuring that person remain for trial.

If I may, I will refer to a case that I had about 7 years ago which is long since concluded and not pending to emphasize and perhaps dramatize what I am talking about. In that instance, an individual who owned a large commercial airline in Argentina and was in possession of extremely large financial assets and means was apprehended shortly before Christmas Day of 1969 or 1970 supervising the transfer of 200 pounds of almost pure heroin. It was the only time the man, the individual, had ever been in the United States of America.

He is a very prominent citizen in his country, close friend with a number of very influential people in government and in the military. His brother was head of the Army. He owned the airline. They were all friends with the then administration of Argentina.

I know this because I received letters from all these people at the time of sentencing telling me of his many charities and his good work and good deeds in Argentina, all of which I am sure is true.

But he was apprehended with this, in this situation, the supervising the delivery to some known Mafia people of enough heroin to get every man, woman, and child in the United States of America high or whatever happens, I don't know. But anyway, it was enough substance there to affect every man, woman, and child in America.

Well, here was a man with unlimited ability to flee. All he had to do was pick up the phone, have one of his pilots pick him up in a 707 Argentina jet or whatever. So in those days we didn't have magistrates. I fixed very substantial bond because he had the ability to make a very substantial bond. I think it was \$990,000 or so.

His lawyer, as the law permitted, came into court every few days to get the bond reduced because he was sitting in jail. We gave him a prompt trial which is the alternative and the judge's tactic for handling this problem. You give somebody a quick trial if they want out of jail. You see to it that they are tried promptly.

So we did. He was tried, convicted, he was sentenced to the maximum that the law provided, which in those times required no probation and no parole, and is in Atlanta Penitentiary today.

The point of the story is a few years later his lawyer passed me in the hall and said, Judge, we had three hearings on that and you reduced the bond by \$50,000. You got it down from \$900,000 to \$850,000, whatever it was, and he says, you know if you ever had gotten that bond down to \$800,000, we were going to post. I had a suitcase with \$1 million in it in cash, and we were going to go down to the clerk's office and dump it out on the table when it got to be \$800,000.

I said, why \$800,000, I am curious. He said, the difference between the \$1 million and whatever the bond was, was my fee.

[Laughter.]

Judge KING. There are those who would argue that that lawyer who now is retired, I am told, there are those who would argue he wasn't exactly looking for the best interests of his client. I am sure his client would think so. The point is the bond is no deterrent to someone deeply involved in the narcotics business, the type of person you have described.

So my recommendation would be carefully structured discretion should be granted in proper circumstances to a magistrate to deny bond, coupled with a prompt trial, just as we have in capital cases, in first degree murder cases in the State system, or capital cases in the Federal system.

Senator NUNN. We are still talking about pretrial. Do you have the authority to set the bond at such a high figure that you have in effect denied bond in those kind of cases? I know that is probably appealable.

Judge KING. Not to the judge who is trying to comply with the spirit of the Bail Bond Reform Act; in the spirit of what Congress intended. A judge should not set, and I know there are many judges across the country that do. We talk to them in the judges' meetings. We could give you districts and cite you examples, but it would serve no purpose. There are a number of them that say, well, that fellow

was caught redhanded, involved with 20 tons of marihuana, and I made sure he didn't get away before I got him tried and sentenced.

Well, unfortunately, that is not the spirit of the act. The act says that you shall, you must set a bond that a person can reach. You start with releasing them on their own recognizance. That is the first element that you must look at, and you work down through the categories. You ultimately set a bond that a person can make.

If he stays in jail, then that is proof that he cannot make it, so then you have to review your bond and reduce it. So when I gave you my little example which happened a long time ago, perhaps I wasn't complying with the spirit of the act.

I think I was because I rationalized and justified it on the basis that a man owned an airline with assets of \$40 million——

Senator NUNN. You didn't know he had a \$200,000 lawyer.

Judge KING. That is right, I didn't.

Judge FAY. If I might interrupt only to supplement what Judge King has said or to demonstrate that judges don't always agree more often than U.S. Senators. There are provisions under the same act that Judge King is referring to through which a judge can decide that a defendant must be held without bond but, of course, he has to articulate those reasons, and the statute speaks in terms of reasonably assuring his appearance.

Senator NUNN. You are speaking of noncapital cases?

Judge FAY. Yes, sir. So there are situations, and I know Judge King didn't mean to exclude those, he is just not thinking about those at this time, but as he undoubtedly did in the case he was telling you about, defendants can be held without bond if the prosecuting arm presents evidence and the judge finds and articulates why in his opinion no bond will reasonably assure that particular defendant's appearance in court, he can be retained without bond.

Senator NUNN. Is that used very often?

Judge FAY. Very seldom because it is very difficult to do if you have a defendant who has any ties with the community.

Senator CHILES. If you have a Gary Bowdach who has been a strongarm man, who has beat people with baseball bats, stuck them with an icepick, you have got him before you under charges, even for extortion or mayhem.

As long as he has some ties with the community, you must release him on bond even though either one of you would know that he is going to be out on the street that afternoon——

Senator NUNN. Killing witnesses.

Senator CHILES. Yes; going after witnesses and going after money to pay for the bond that he has made and to pay for the best criminal attorney that he can hire under the act. You still would have to give him bail, even knowing that.

Judge FAY. It is worse than that. I don't want to refer to an individual. You understand my constraints. They may not be yours. But if the individual is a repeat offender and has indeed appeared every time he has been ordered to, that merely reinforces the fact that the judge must release him.

Senator CHILES. Bowdach told us that. He said that was one thing about it. He said, I always went, I always appeared, they always knew where I was, and he said there was no way they could ever deny me.

Judge FAY. The sole test as set up under the legislation is whether or not that defendant will appear.

Senator NUNN. If you had some strong reason to believe that a particular defendant would appear, but you felt he might go out and intimidate and/or harm potential witnesses against him, would that kind of finding, even if you made it hypothetically, warrant you denying bail?

Judge FAY. Not under my interpretation of the statute as it exists today.

Senator NUNN. Should there be a broader discretion in judges, in certain specified type cases with certain findings to deny bail before trial, Judge Fay? Do you think there should be?

Judge FAY. It is very difficult to answer that question because you have so many different factors to consider as you can understand. I think No. 1 would be whether or not Congress would feel it would be appropriate. Then, of course, I would have to inject that it would be reviewed for its constitutionality.

I just don't know the answer to that question. It might very well be before our courts. So I probably shouldn't comment upon it. But those are the factors that you would have to consider.

Judge KING. I think you have a model and the model would be the various States, State statutes that have decreed that there shall be no bond in first degree murder cases.

If Congress, in its wisdom, should decide that narcotics cases profoundly destroys so many lives and profoundly affects so many people, and is inherently such an evil that it falls within the same category as murder, then Congress could vest the discretion or could say there shall be no bond.

But I would urge that Congress should vest the discretion in the unusual case, in the committee magistrate.

Senator NUNN. I have a bill in the Senate which would do that. It would also give the judge the right to show discretion, and would set forth certain areas where he could deny bail if he made certain findings, including the hypothetical situation cited—witness intimidation.

But I again agree it has to be approached very cautiously; and even as I have introduced this bill for discussion purposes and hope to pursue it, I want to pursue it with my eyes open and listen to arguments on the other side.

Judge KING. In 1966, when Congress passed the Bail Reform Act, they simply didn't have in mind, nor could they at that time, the serious narcotics case. It didn't exist then. There may have been problems with street use of marihuana, pills, or something, but we didn't have the types of cases that your committee has been investigating these last months.

Senator NUNN. On the question of bail, could I get both of your views on the distinctions now and the type of discussion we have had between pretrial bail, which we have been talking about, and post-trial bail, finding of guilt, appeal bond kind of a situation as to whether the law now is adequate in those kinds of cases to give the judge the right to deny bail in appropriate circumstances?

Judge KING, could we get your view on that?

Judge KING. As your staff knows, Senator, because we have talked about this matter when they came and discussed this with me and later with Judge Fay, I have rendered some opinions, one opinion,

the first one was *United States v. Miranda*, which is now on appeal to the fifth circuit.

But the particular decision, and the denial of bail after conviction by a jury and after finding of guilt by the court, has been affirmed.

So, yes; there is a provision in the law in my judgment that permits a trial judge upon a finding that a person is a danger to the community, a danger to society, to deny a supersedeas bond while the appeal pending. I have done so.

I have articulated my reasons as I was required to do under the law in the *Miranda* case, and I have done so in other cases.

The case stands for the proposition that conviction of an individual charged with a serious narcotics offense in and of itself, if the situation is so aggravated and the individual's involvement is so great, so as to warrant the denial of bond. I can't say a whole lot more than I did say in the case.

Senator NUNN I would like to get a copy of that and make it a part of the record. I will ask staff to get with your office and get a copy of that. We can put it in the record at this point.

[The document referred to was marked "Exhibit No. 764" for reference and follows:]

EXHIBIT No. 64

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA

Case No. 76-292-Cr-JLK

UNITED STATES OF AMERICA, PLAINTIFF,

v.

FERNANDO MIRANDA, ET AL., DEFENDANT

Order denying bond pending appeal

This cause came on for consideration upon the petition of defendant, Fernando Miranda, to be released on bond pending the appeal of his conviction by a jury on December 6, 1977. The court, having considered the record and having heard oral argument on this matter, finds and concludes that the petition should be denied.¹

I. FACTUAL BACKGROUND

On January 31, 1976, state and federal authorities uncovered a shipment of twenty-three (23) tons of marijuana at Bella Vista Point, Florida. As a result of the arrests made at that time, an indictment was returned in June of 1976 charging several defendants with various violations of federal law. Defendant, Fernando Miranda, was not indicted at that time. However, he was indicted subsequently in September of 1976. That indictment charged Miranda and others with violating five statutory provisions, one of which was dismissed by this court at trial. The four remaining counts charged Miranda with:

- (i) participation in a conspiracy to import quantities of marijuana into the United States;²
- (ii) importation of this substance;³
- (iii) possession of this substance;⁴
- (iv) unlawful possession of a firearm: to wit, three shotguns possessed during the commission of the offense of possession of marijuana with intent to distribute.⁵

The court enters this order to reflect the disposition rendered with regard to this matter during the hearing of December 7, 1977. During this hearing, which was several hours in duration and devoted exclusively to a consideration of bond pending appeal, extensive oral argument was provided by both counsel. In addition, this argument was supplemented by the testimony of defendant. Finally, this court notes that it has scrutinized, quite carefully, notes made during the trial that it presided over in arriving at a determination of this matter.

¹ 21 U.S.C. § 903.

² 21 U.S.C. § 903.

³ 21 U.S.C. § 903(a).

⁴ 21 U.S.C. § 903(a).

⁵ 21 U.S.C. § 903(a).

A jury found defendant guilty on each of these four counts. As a result of this conviction, defendant could be ordered to serve a maximum sentence of twenty-five years.⁶

On or about March 1, 1976—one month after the 23 ton shipment was uncovered and six months before defendant was indicted—a second fifteen (15) ton shipment of marijuana apparently occurred at No-Name Key. Defendant Miranda is presently under investigation for this offense. Further, the government's chief witness in the case which resulted in defendant's conviction has stated, to an agent who testified before this court, that defendant was involved in this importation.⁷

In April of 1976, the defendant Miranda fled to Spain. F.B.I. Agent John Peterson testified at the bond hearing that during a conversation with Nora Gonzales, the former wife of Carlos Hernandez-Rumbaut, Ms. Gonzales informed him that she had been in Spain in the fall of 1976. Carlos Hernandez is an indicted co-defendant in this matter and he is currently a fugitive. While in Spain, she visited the residence of her former husband in Costa del Sol. At that time, she spoke with Fernando Miranda and, on the basis of her conversation, she concluded that he had been living with Carlos Hernandez for an extended period of time. In addition, the court believes, on the basis of the trial and the subsequent hearing, that Fernando Miranda and Carlos Hernandez-Rumbaut were the principals in these importations of drugs.

Defendant Miranda remained outside the United States from April of 1976 to June of 1977. By defendant's own admission, he knew of the indictment pending against him as early as November of 1976, but waited until February 1977 before contacting his attorney to arrange a voluntary surrender in this matter.

In June of 1977, defendant Miranda surrendered to authorities in this country. During the entire period that he lived in Spain and continuing through to the present, defendant has not had a visible source of income. Testimony at trial revealed that Carlos Hernandez, discussed above, had assured all of the members of the conspiracy of unflinching financial support. In addition, he apparently stated that he would furnish those members with any documents needed to protect them in their activities or to catalyze their escape. Jose Perez, the principal witness in the case against Miranda, testified that his \$40,000 bond had been furnished by Hernandez and Miranda. Further, Perez testified that on one occasion, Carlos Hernandez literally "dumped" \$100,000 on a table, stating that such funds were to be used for the protection of "his men".

On November 29, 1977, the case against Fernando Miranda came to trial. The trial ended on December 6, 1977 with a guilty verdict on all four counts. Defendant now seeks release on bond pending his appeal.

II. DISCUSSION

This court recognizes its obligation, under Rule 9(b) of the Federal Rules of Appellate Procedure, to designate the specific statutory provision upon which it bases its decision. In addition, this rule requires the court to delineate the rationale underlying its choice of that specific provision. *See, Weaver v. United States*, 405 F. 2d 353 (D.C. Cir. 1968). However, because the court believes that its decision herein represents a major step in the development of criminal law in this circuit, if not the nation, it will attempt to set forth the concerns underlying its decision to commit the defendant into custody without bond in greater detail than might otherwise be mandated.

A. The criteria for denying bail

The Court notes, as a preliminary matter, that the criteria for granting bail pending appeal are far more stringent than the criteria applicable to a decision on bail before a trial has commenced. *See*, 18 U.S.C. § 3148. This court is guided in its bail determination by the Bail Reform Act, 18 U.S.C. § 3148. That Act designates two major factors which this court must consider in its decision-making calculus in these matters: (i) the danger to the community posed by the defendant and (ii) the risk that defendant will flee the jurisdiction if permitted to remain free on bond. *See*, also, *United States v. Stanley*. 469 F. 2d 576 (D.C. Cir. 1972).

⁶ The first three of the above-mentioned four counts carry maximum sentences of 5 years each. The fourth carries a maximum sentence of 10 years.

⁷ This information was presented in the course of the testimony of Detective Hopkins who had questioned Jose Perez, the government's chief witness, prior to trial.

These two factors embody several more specific concerns. These concerns have been enumerated by the Court of Appeals for the District of Columbia in *United States v. Stanley*, supra, as follows:

- (i) the nature and circumstances of the offense;
- (ii) weight of the evidence against the accused;
- (iii) the defendant's family ties;
- (iv) the defendant's employment status;
- (v) the defendant's financial resources;
- (vi) the defendant's character and mental condition;
- (vii) the length of defendant's residence in the community;
- (viii) any prior criminal record; and
- (ix) any flight or failures to appear in court proceedings prior to or during the time of the trial.

Because the bail determination is committed to the trial court's discretion, this court believes that it is essential that it explain, in detail, the factors which have been instrumental in its ultimate disposition of this matter.

1. Nature and circumstances of the offense

The defendant was convicted for importation of a massive amount of a controlled substance; a conspiracy to import same; and possession of this substance. In addition, defendant was convicted for the unlawful possession of firearms.

The court notes that the "street value" of the substance seized in this case is enormous. It is critical that one recognize that defendant is not an individual who merely unloads vessels utilized for the transportation of drugs nor is the defendant a street "pusher". He has been convicted of importing twenty-three tons of marijuana. Unlike the unloader or the pusher, he is the source of the drug traffic which currently plagues this nation.

The conviction for the unlawful possession of a firearm is also influential in this court's determination of the danger that this defendant represents to the community. In fact, testimony at trial and the argument of the United States Attorney at the bond hearing indicate that several other weapons may have been involved in this matter. These weapons, known as AR-15s, are comparable, according to the government, to the military's M-16s. Thus, the weapons seized in this matter may have been part of a larger arsenal available to the defendant upon release.

2. Weight of the evidence against accused

The evidence against the defendant in this case is substantial. The government presented, as their chief witness, a man who was himself indicted for the conspiracy and importation of the controlled substance involved herein. Further, this same witness has stated, in the course of his questioning by an FBI Agent, that he and the defendant were involved in a successful importation of 15 tons of marijuana only one month after the one involved herein.

Defense counsel argue that there is a strong likelihood of reversal of the court's denial of their motion for mistrial made in the course of this trial. The court notes that this motion was extensively argued during the trial and this court, after careful deliberation, found no merit in that argument at that time.

This court believes that the evidence presented against the defendant at trial, along with the evidence received at the bond hearing, is extremely unfavorable to defendant.

3. Family ties

This factor cuts both ways in this matter. Defendant does have a father, mother, brothers, children and wife residing in Miami. However, defendant is separated from his wife. Further, defendant asserts that he visits his children regularly and is providing for their support. However, defendant admitted to this court that while he was a fugitive in Spain, he did not have his first communication with his family until eight months after his departure from the United States. In terms of the support that he supposedly provides his children, the court reemphasizes that this defendant has been without visible means of income for well over a year.

Had members of the defendant's family come forward to testify on his behalf at the bond hearing, this court might have been more seriously impressed with defendant's claim of substantial family ties. But absent this occurrence, this court deems defendant's actions with regard to his family as a factor which does not militate in his favor. His theory that he is substantially committed to remaining in the Miami area is therefore without support.

4. *Employment status*

The court is troubled by the fact that defendant has admitted to being unemployed for over one year.

This lack of employment is particularly problematic here. Defendant has existed for well over one year without a source of income. This fact, in conjunction with the discussion that appears under factor "5", *infra*, compels the court to conclude that large sums of money would be accessible to the defendant should he be released at this time—money which is unconnected to any visible or lawful means of employment.

While defendant's lack of employment is not a factor of great weight in this court's balancing process, it clearly does not weigh in defendant's favor.

5. *Financial resources*

According to defendant's testimony, he owns few assets. Defendant presently owns a small lot, approximately \$25,000 in value, and he possesses equity in a duplex of approximately \$27,000. Of greater significance to this court in its determination of bond is the fact that defendant has demonstrated a willingness to depart from the Miami community—including his financial assets located there—in the past. Therefore, they do not represent an item which would contain defendant in his movement or encourage him to act in a lawful manner.

Further, as noted in connection with the discussion of item "4", *supra*, defendant had lived in Spain for over a year without income. He travelled to this country and paid his attorneys in that period—again, without income. Further proof of the financial resources accessible to the defendant was provided by the testimony of F.B.I. Agent Peterson, summarized in the factual background section of this opinion. Carlos Hernandez, himself an indicted co-conspirator, had provided lodging for the defendant and had supposedly displayed his willingness to arrange for the protection of his "men" on several occasions in the past.

Thus, if defendant has any ties based on financial resources, those ties would appear to emanate from the leader of a developed criminal organization which has been responsible, in some part, for the defendant's welfare and support in the last year and a half. This court concludes that there are substantial resources available to the defendant. They are of such a nature as would enhance the possibility that he once again would engage in the activities for which he has just been convicted.

6. *Character and mental condition*

This is not a factor which militates one way or the other in the court's determination of bond herein.

7. *Length of residence in community*

Here again is a factor which militates both in favor of and against the defendant. Prior to his seeking refuge in Spain, defendant had resided in this community for several years. However, in April of 1976, Mr. Miranda departed for Spain and did not return to this country until June of 1977—over one year later.

It is apparent that defendant has lived outside of the United States for a far greater period of time in the last two years than he has lived within its borders. Further, defendant admits that he was aware of the warrant for his arrest in November 1976 while he was still in Spain. He did not contact an attorney to arrange for his surrender until February of 1977 and he did not consummate that surrender until June of that year.

Thus, the factor of residence primarily weighs against defendant herein.

8. *Criminal Record*

Defendant has no prior criminal record. This factor can only weigh in his favor.¹

9. *Flight*

As has already been discussed, defendant Miranda was a fugitive from justice for over one year prior to his return in June of 1977. The court notes, in defendant's favor, that he voluntarily returned to this country and that he has thus far appeared on every court date scheduled.

However, the fact that defendant once fled this jurisdiction and the fact that he lived without income while abroad and through to the present, serve as important indications that he has connections with the kind of financial resources and individuals required for the importation of large quantities of drugs. See, for further discussion, items "4" and "5" *supra*.

The court wishes to make clear that the fact of prior flight is influential in this court's belief that defendant will be a danger to the community upon release—not that defendant probably will flee again. This court believes that the greatest risks of flight are in the period prior to arrest and subsequent to the affirmance of the trial court on appeal. The period between conviction and the affirmance of the appeal can often be as great as three years. During this time, a defendant who is free on bond need not be concerned with confinement since he knows his freedom continues until his appeal is finally determined.

We ignore the realities of the criminal justice system, as it is practiced in this community, if we believe the possibility of flight is high prior to the determination of the appeal. It is a well known fact that affluent criminal defendants are carefully advised by their lawyers about the nature of the judicial process. Whenever a jury returns a verdict of guilty, an appeal is routinely lodged, thereby engendering a two to three year delay independent of any consideration of merit in the appeal. With the announcement of the guilty verdict, astute criminal defense lawyers automatically move for a supercedas bond pending appeal. The government has not objected and the judiciary, up to the present has perfunctorily granted the bond counsel have agreed upon. Therefore, the appearance of a defendant at arraignment, trial and his sentencing does not constitute a gamble since his freedom virtually has been assured until the appellate process has run its course.

Therefore, this court notes that defendant's punctual appearance at the proceedings held thus far is inconsequential. In addition, the court reiterates that the defendant's prior flight is a factor more closely concerned with his danger to the community than with his potential for further flight.

B. Legal foundation of "danger to the community"

A consideration of the above nine factors convinces this court that defendant represents a sufficient danger to the community that release on bond pending appeal would be unwarranted. But there are several general concepts which first must be enumerated before this court engages in a discussion of the particular danger posed by this defendant to the community.

First, it is beyond dispute that the criterion of "danger to the community," which is an explicit component of the Bail Reform Act, is not limited to the potential for doing physical harm. See, *United States v. Louie*, 289 F. Supp. 850 (D.C. Cal. 1968). In the present case, the danger entailed by defendant's release is far greater than physical or pecuniary harm. Drug trafficking represents a serious threat to the general welfare of this community. Drug importation and its eventual sale is directly involved in the furtherance of drug dependence and is conducive to the proliferation of crimes related thereto. National statistics on armed robbery, assault and murder have increased tremendously as narcotic addicts have sought ways to obtain funds to feed their habits.

Second, the burden of demonstrating that one is not a danger to the community is on the defendant under the Bail Reform Act. See, *United States v. Quicksey*, 371 F. Supp. 561 (D.C. W. Va. 1974). Rule 9(c) of the Federal Rules of Appellate Procedure states that "the burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant." Finally, the court notes that the standards guiding its determination of bail after conviction and pending appeal are more stringent than the standards applicable to the determination of bail before the trial when the defendant is presumed innocent. 18 U.S.C. § 31.48.

Third, the danger to the community must be of such dimensions that the only reasonable manner by which it can be averted is incarceration. If the court can tailor the conditions of the defendant's bond in such a manner that the danger can be checked, the court must do so and not order that the defendant be confined without bail. See *Sellers v. United States*, 89 S.Ct. 36 (1968).

In sum, bail pending appeal is hardly a certainty. As Justice Douglas noted in *Carbo v. United States*, 82 S. Ct. 662, 666 (1962), a case in which bail was denied pending appeal:

It would seem that while bail normally should be granted pending review where the appeal is not "frivolous" nor "taken for delay" there still is discretion to deny it. . . . If, for example *the safety of the community would be jeopardized, it would be irresponsible judicial action to grant bail.* (emphasis added).

With these general concepts as background, this court next addresses the most critical issue in this bond determination, namely: whether drug trafficking is

itself a sufficient danger to the community to justify denying bond pending appeal to a defendant found guilty of being a dealer in drugs. The court believes that the question must be answered in the affirmative.

This is a question of first impression in this Circuit. While other courts have threatened this question before, none has established that this one element—drug trafficking—can serve as an independent foundation for a denial of bail.

Any discussion of this issue must begin with the landmark cases of *United States v. Erwing*, 268 F. Supp. 877 (D.C. Cal. 1967) (hereafter "*Erwing I*") and *United States v. Erwing*, 280 F. Supp. 814 (D.C. Cal. 1968) (hereafter "*Erwing II*"). In *Erwing I*, defendant had been indicted for smuggling and concealing heroin and cocaine. While on bail pending his appeal from a conviction for the sale of heroin, defendant was charged with concealing more heroin. In addition, he had been involved in a drug-related incident, for which charges were eventually dropped, while on pre-conviction bail. The government moved to set aside the bail under which defendant had remained at liberty pending his appeal.

The court ordered that the bail previously established be revoked, stating that "the fact that there is reasonable cause to believe that the defendant is still engaged in his nefarious business" cannot be ignored. *Erwing I*, at 879. The court was convinced that there was every reason to believe that if bail were not revoked, defendant would resume his drug violations, including the sale and distribution of such substances. The *Erwing I* court characterized the danger posed by such a resumption as follows:

The community must be protected from violations of the law which prey on the weakness of mankind. A wholesale drug peddler, such as the defendant, exploits this weakness and, in doing so, certainly poses a danger to the welfare of the community. *Erwing I*, at 879 (emphasis added).

Almost one year later, in *Erwing II*, the court was confronted with a motion for reconsideration of the order it had previously entered revoking bail. In the period subsequent to the court's initial consideration of this matter in *Erwing I* defendant had been indicted for other narcotics violations sustained while free on his original bail (eventually revoked in *Erwing II*). The court emphatically concluded that defendant was a "non-addicted unlawful trafficker in narcotics . . . [who] would be a danger to the community." *Erwing II*, at 817. Of greatest significance is the justification provided by the court for its decision to maintain the bail revocation rather than to release defendant upon conditional bond:

[t]he very make-up of the narcotics traffic, its secrecy and its clandestine nature tend to militate against the plan of conditional or supervised release. *Erwing II*, at 818 (emphasis added).

The *Erwing* court clearly was impressed by the danger posed to the community by trafficking in drugs. This case thus established an important foundation for the concept of "drug trafficking" as a danger independently sufficient to support the denial of bond pending appeal. However, the strength of this concept for present purposes is somewhat diminished by the fact that the defendant in *Erwing* had repeated his activity of drug trafficking while on bail—a factor not present in the case *sub judice*.

A few years later, Chief Judge Atkins of the Southern District of Florida wrote an opinion which more nearly established the concept of "drug trafficking" as a sufficient danger to support bond denial. *United States v. Nelson*, 346 F. Supp. 926 (S.D. Fla. 1972), *aff'd* 462 F. 2d 944. *Nelson* presented a factual situation somewhat similar to that before the *Erwing* court. Defendant was convicted in 1966 for the purchase of heroin. Six years later, he was indicted for possession of cocaine and subsequently was convicted on that charge. One month after the cocaine indictment, he was indicted for illegal distribution of heroin and subsequently convicted thereon. Later that same year, defendant was found in his house with cocaine, narcotics-cutting equipment, and unexplained sums of money. Along with these activities, defendant had repeatedly violated the conditions of his prior bond by leaving the Miami area. Thus, unlike the case *sub judice*, defendant had provided vivid proof of his inability to be released without reverting to his prior unlawful behavior. Finally, the *Nelson* court found that defendant's appeal was frivolous.

Thus, there were several factors present in *Nelson*, each of which could have provided independent support for the court's decision to deny bond pending appeal. Risk of flight, frivolity of appeal, and repeated drug violations separate from the violation for which he was convicted, were factors present in *Nelson* that are not truly present in the case before this court. Because of the presence of these factors, the *Nelson* court's decision to deny bond is not truly helpful in deciding this case. However, the dictum contained within that opinion is especially noteworthy.

The *Nelson* court preliminarily noted that the question of whether continued narcotics trafficking constitutes a danger to the community is one "of first impression in the Fifth Circuit."⁸ *Nelson*, supra, at 927. The court responded by stating that such a question must be answered in the affirmative. The crucial dictum is contained in its explanation of this conclusion:

[a]lmost daily the misery occasioned by such traffic in heroin and cocaine is vividly illustrated in our courts by the plight of both narcotics users and victims of criminal acts committed to obtain the exorbitant funds necessary to satisfy the addiction. *Nelson*, supra, at 927.

The foundation was thereby further cemented for the establishment of the concept of drug trafficking as a danger to the community.⁹

This court recognizes that the case before it is not of the same cast as the one before the court in *Nelson*. However, it should not be forgotten that defendant Miranda has been linked substantially to a fifteen ton shipment of marijuana currently being investigated by the government, in addition to the twenty-three ton shipment and weapons offense for which defendant was just convicted.

Miranda's involvement with these drug shipments, in combination with his ability to flee and survive for well over one year without a source of income, suggests that defendant is involved in an unlawful network operating at a level of low visibility. This inference is further supported by the fact that defendant resided, during his year abroad, on the grounds of the alleged "kingpin" of these operations—Carlos Hernandez-Rumbaut.

These operations are sufficiently well hidden from this court's view that it would be impossible to restrain defendant from reengaging in them. To borrow from the *Erwing* court, supra, the "secrecy" and the "clandestine nature" of drug trafficking militates against conditional release here.

More recent support for this position can be found in *United States v. Twomey*, 484 F.2d 874 (7th Cir. 1973). In that case, bail was denied pending appeal on the basis of two factors: defendant's appeal did not present arguable questions and defendant possessed a strong potential for further drug trafficking. Either factor, alone, could have supported the denial of bond. Therefore, *Twomey*, like the other cases discussed above, did not establish that drug trafficking was a danger to the community of such magnitude that it independently could support a denial of bond.

However, because most of the court's opinion focussed on the second factor—that is, the defendant's potential for further drug trafficking—several valuable insights are provided therein. In *Twomey*, defendant had been convicted for possession of heroin and marijuana. He had been sentenced to seven to fifteen years on the heroin count alone. In addition, narcotics had been found in defendant's car when he met with the accident that eventually gave rise to his arrest. The heroin involved had an estimated street value of \$20,000 and defendant was carrying a loaded pistol in a shoulder holster at the time of his arrest.

Notwithstanding these factors, each of which is quite comparable to those before this court in the case *sub judice*, the *Twomey* court relied upon defendant's potential for further drug trafficking as the primary justification for its decision to deny bond. As the court explained,

[t]he circumstances clearly indicated that he, with his passenger, was on his way to make sales of heroin in several small towns. *Twomey*, supra, at 877.

In the case *sub judice*, this court goes one step further. This court asserts that the potential for further drug trafficking can be more than the primary justification for denying bond. It can be the sole justification for such a denial.

Simply stated, it is time for the merchants of misery, destruction and death to be put out of business. The hideous evil wrought by these criminals through their unlawful importation and distribution of narcotics and controlled substances is unforgivable. Engulfed by their greed, these individuals have shown no concern for the thousands of lives that they have ruined and the unimaginable sorrow that they have heaped upon the people of this community, this state and this nation.

⁸ The court notes that *Leary v. United States*, 431 F.2d 85 (5th Cir. 1970) does not threaten the foundation of this court's opinion herein. In *Leary*, the Fifth Circuit stated that a court could not deny bail pending appeal simply because the defendant was likely to engage in the activity of advocating the use of drugs upon his release. The Fifth Circuit clearly did not preclude the development of the concept of drug trafficking as a danger to the community with its opinion in *Leary*.

⁹ The Fifth Circuit affirmed *Nelson* without an opinion.

Yet as destructive as these criminal ventures have been to the victims, they have been equally profitable to the criminals who have promoted them. The immense wealth that these drug dealers amass from the misery of many provides these criminals with funds sufficient to satisfy the highest bonds and to acquire the services of the most experienced and expensive defense attorneys available.

This court is not alone in its opinion nor does it mean to suggest that it is a pioneer in this area. The saddest aspect of this national problem is that almost twelve years ago, Chief Justice Berger, then sitting on the District of Columbia Court of Appeals, and Senior Judge Miller confronted a similar issue in the context of a bail decision pending appeal. *Hansford v. United States*, 353 F. 2d 858 (D.C. Cir. 1965). Their opinion is significant for its subtle understanding of a problem that has grown to epidemic proportions since that day.

The defendant, in *Hansford*, had been convicted of the purchase and resale of heroin. His record of prior sales of drugs was clear. Two previous narcotics convictions and two apparent parole violations, along with the fact that he had goods to finance his habit, impelled the *Hansford*, court to hold that,

it is not reasonable for society's—and Appellant's—protection, that we assume Appellant, if released on bail, will overnight cease to be an addict or that he will confine himself to legitimate activities to finance his addiction. *If narcotics traffic is a social and health hazard, then every narcotics dealer is a danger to society*; the fact that the cause of his peddling of narcotics is related in part to his addiction is irrelevant. *Hansford*, supra, at 860. (emphasis added).

Today, this court takes the final step in the process set in motion by *Hansford*. Trafficking in drugs is a social hazard. Every dealer of substantial quantities is a danger to society. It is not incumbent upon this court to provide Fernando Miranda with an opportunity to demonstrate his propensity to engage in further drug trafficking. The size of the importation for which he was convicted and the apparent nature of the organization surrounding him provide ample justification for the denial of bond pending appeal in this action. As Justice Douglas cautioned, "it would be irresponsible judicial action to grant bail. . . [if] the safety of the community would be jeopardized." *Carbo v. United States*, 82 S. Ct. 662, 666 (1962).

Accordingly, it is

Ordered and adjudged that defendant's petition for release on bond pending appeal be and the same is hereby denied.

Done and ordered in chambers at Miami; Florida, this 14th day of December, 1977.

JAMES LAWRENCE KING,
U.S. District Judge.

Senator NUNN. Your decision is part of the open record?

Judge KING. My decision is part of the open file. If you will indulge me just for a moment, because I feel so strongly about this, Senator Nunn, this particular case, the defendant had been apprehended while involved with importing 23 tons of marihuana into Coral Gables, Fla., down here on the waterway, along with a large group of other defendants.

After his arrest, he was released on bail as we just have been discussing. One month later, he was involved, according to the testimony of DEA agents and a confidential informant, who actually testified in this case; 1 month later, he was involved with another marihuana shipment of 15 tons, which was a successful importation.

Within a 30-day period this individual was, one, convicted of importing, being involved with importing 32 tons and being involved with another 15 tons.

He then fled to Spain, where he lived for a year. Then, he voluntarily surrendered, came back, was convicted.

I stated the issue to be whether drug trafficking is itself a sufficient danger to the community to justify denying bond, pending appeal to a defendant found guilty of being a dealer in drugs and relying

on a case written by Justice Douglas years ago, and melding and blending Justice Douglas' opinion with that of Chief Justice Burger, which is sometimes a strange marriage, but they both had held the same thing in different cases in different times.

We were able to write an opinion that apparently convinced the Fifth Circuit. This then is the law as far as this time and place is concerned. It, I guess, is summed up toward the end, but this evidences my feeling at least, and I would quote from the opinion where I say, simply stated, it is time for the merchants of misery, destruction, and death to be put out of business.

The hideous evil wrought by these criminals through their unlawful importation and distribution of narcotics and controlled substances is unforgivable. Engulfed by their greed, these individuals have shown no concern for the thousands of lives they have ruined and the unimaginable sorrow upon the people of this community, this State, and this Nation.

Yet, as destructive as these criminal elements have been to the victims, they have been equally profitable after the criminals promoted them. The immense wealth these drug dealers amass from the miseries of the many provides these criminals with funds sufficient to satisfy the highest bonds and require the services of the most experienced and expensive defense lawyers available.

That was my decision, Senator. It has been and is being followed elsewhere. We have received inquiries for copies from other judges in other parts of the country.

Senator NUNN. Basically, you tied your decision legally to the statute which says that you find danger to the community?

Judge KING. Yes, sir.

Senator NUNN. You found narcotics and the potential of additional narcotic trafficking while the defendant was out pending the completion of the appellate process to be a danger to the community?

Judge KING. In and of itself, and that is the first time that our research indicated that it had been so held. All of the other opinions that dealt with the denial of bond, and there have been others, did so on the basis that the person was likely to flee.

Here, I specifically found that although this man had fled and lived in Spain for a long period of time, that that was not the predicate upon which this opinion was based, because I hoped to establish the principle that if a finding, if a person is constricted, that is after conviction, this is not while he is cloaked with any presumption of innocence, but if a man or woman is convicted, the presumption of innocence vanishes, at that point in time he is convicted and he has no presumption of innocence.

In fact, there is a presumption of guilt, there is a finding of guilt at that point in time. If he is involved with narcotics business at that point in time, in this case, there is authority and I think, I know it is based upon the statute that we referred to on the Bail Reform Act, but it was the first time apparently that it had been done at least to our knowledge in the country, and it is being followed, and has been followed.

If Judge Fay and the two Senators will indulge me for another small example, of a colleague of ours here on this court, who denied bail in a substantial case.

You have referred to this case in other hearings you have held in Atlanta and elsewhere. But this judge denied bail after the conviction of the individuals. The defense lawyer, in pleading for bail, urged the judge in all sincerity, rhetorically said, isn't there any amount of bail that would satisfy the Government?

The prosecutor, in open court of course, all these proceeding took place there, said, Well, I guess if he put up a million dollars, that would be all right.

The defense lawyer had a whispered consultation with his client, contacted the judge's office later that afternoon, arranged for a hearing 3 days later when they post bail. They did not post bail 3 days later but at the hearing it was developed that the man was awfully close to having \$1 million.

So you see, there was nothing in the record except the man's involvement in narcotics that would indicate that he had these vast resources.

I suggest to you, most respectfully, that people involved in, as I have described it, this evil business, have to have substantial resources.

A person may get equipped to rob a bank by buying a Saturday night special for whatever, \$23, whatever it may cost. But you don't go into the narcotics business without having substantial funds.

You cannot go to Colombia and buy wholesale a kilo of cocaine for \$20,000 without having the wherewithal. They are not going to take your IOU. When you bring it back here and sell it to, hopefully, an undercover agent, but someone, for \$40,000, you are generating a lot of funds and then when it goes on, sold to New York City for \$80,000; \$100,000; whatever it may end up being sold for, you are talking about a lot of money.

The point of the whole story is this: You can't get involved in the narcotics business without having substantial financial backing. So bail and bond, in the traditional sense of the fellow who robbed the bank, which is a terrible crime, but it just has no meaning.

We suggest and invite your attention to that which, of course you have already given.

Senator NUNN. I agree completely. I appreciate it.

Mr. BLOCK. Back to the situation of the person who is arrested and has bail set. In interpreting the Bail Reform Act as it presently stands, can the judge setting bail take into account the high percentage of fugitives who are involved in major narcotics cases in determining whether or not a person charged with a major narcotics transaction will appear at trial?

Judge KING. I don't think so. Judge Fay can correct me if he has a different view. But I don't think it is really appropriate to talk about statistics.

It is certainly appropriate for us to do so, but a judge or magistrate sitting there, he would not want to listen to a U.S. attorney argue that judge in this district we have had, whatever it is, 18 percent flee, or whatever it may be.

I don't suggest that is the figure because you are dealing, when you get into court with individuals, the individual's rights, and the individual says, but judge, I have three children, first offense, never been involved with anything before, and I am not going to flee.

Don't make me the victim of a statistic. I would point out, this is something that is important for you all to understand in terms of the process, that in the Federal system today the initial appearance is before a U.S. magistrate.

This person follows the Bail Reform Act, which says you have got to release them on their own recognizance, then next, the last resort is a substantial bond.

However, the U.S. Attorney's office and/or the defense counsel have the absolute right to appeal that decision to a U.S. district judge. There is an area where this is seldom done, very seldom done.

There is an area that your committee might want to take a look at. If the Government is aggrieved or unhappy with the low bond, on someone that they have reason to believe is a real serious person or likely to flee, or any of these things, all in the world they have to do is walk over to the clerk's office.

They can get an appeal that afternoon or the next morning or the next day at noon, or the next night probably, or the defense, if they are aggrieved. By the way, they do. The defense counsel go ahead and take their appeals.

Of course, the judge is not bound by the restrictions.

Senator CHILES. But you very seldom see that the U.S. attorney does that?

Judge KING. Senator, that is right. They just seldom do it. They are awfully busy; they are awfully involved. They seldom do it. By the way, in many instances where the defense counsel has taken an appeal to the U.S. district judge, complaining that the bond is too high, he finds himself in the predicament that the bond is raised.

Senator CHILES. You can raise the bond?

Judge KING. Oh, yes.

Mr. BLOCK. Do you agree with Judge King's observation, Judge Fay, that as it now stands the judge cannot and perhaps should not take into account the statistics on the number of fugitives involved in the major narcotics cases when setting bail for the individual who stands before him?

Judge FAY. In general terms, yes, I probably agree with him. I think it is like any other question that would involve an unknown. It would depend on what the statistics show. Hypothetically, if the statistics showed that 99 percent of all those accused of being involved in the narcotics dealing fled, certainly I would answer your question by saying I think that would be most relevant and most material.

So it would depend upon what the evidence is that you are going to introduce. As Judge King pointed out, the judge's ruling on an individual and under the statute the judge is determining whether or not that individual will reasonably appear, is there a reasonable assurance that he will appear when he is ordered to do so.

The statistics may have some bearing, may have no bearing.

Mr. BLOCK. Do you both feel it would be legitimate for the Congress to look at those statistics and take that into account in a review of the Bail Reform Act? Would it be appropriate to perhaps add with respect to the question of whether the defendant will appear at trial, as an additional consideration for the judge setting bail, that in fact in these cases Congress has found that there is a very real danger of a failure to appear for the proceeding?

Judge FAY. I think it would certainly be appropriate for Congress to look at it, yes. I don't have any idea what they would conclude after they looked at it because I don't know what the facts are.

Mr. BLOCK. Do judges right now have the right to look at the source of the bail money? In other words, can the judge demand that it come from a legitimate source? If he sets \$500,000 bail for a narcotics kingpin, can he demand to know where the bail money came from? Can he refuse to accept illegitimate funds? Is there any power to look into that?

Judge FAY. Not that I am aware of, no. The conditions are, of course, if it is a surety bond, the surety has been approved, on an approved list, met the statutory requirements.

If you are talking about cash, I assume that is what you are talking about, if it is lawful money of the United States. I am not aware of any authority for a judge to go behind that and start investigating where it comes from.

Judge KING. The U.S. attorney has the broad investigative discretion to find out where the money came from and I am sure his curiosity would be piqued if someone dumped, as they do occasionally, half a million dollars on the clerk's table.

The clerk, using a little side line, but the clerks down there sometimes, there is a lot of excitement in the clerk's office when they have to get three or four young ladies or men to sit there and leaf through crumpled up \$5, \$20, \$100 bills, in a \$300,000 or \$400,000 bail situation. But that happens a lot. The U.S. attorney has the discretion.

Mr. BLOCK. If the U.S. attorney uses his discretion and through his investigation concludes that the money is narcotics money, what can he do at that point? Can he go to the—

Judge KING. He could file an indictment. He could indict the man for illegal activity, but it has no bearing on bond. The condition of the bond is post \$500,000, or whatever the amount.

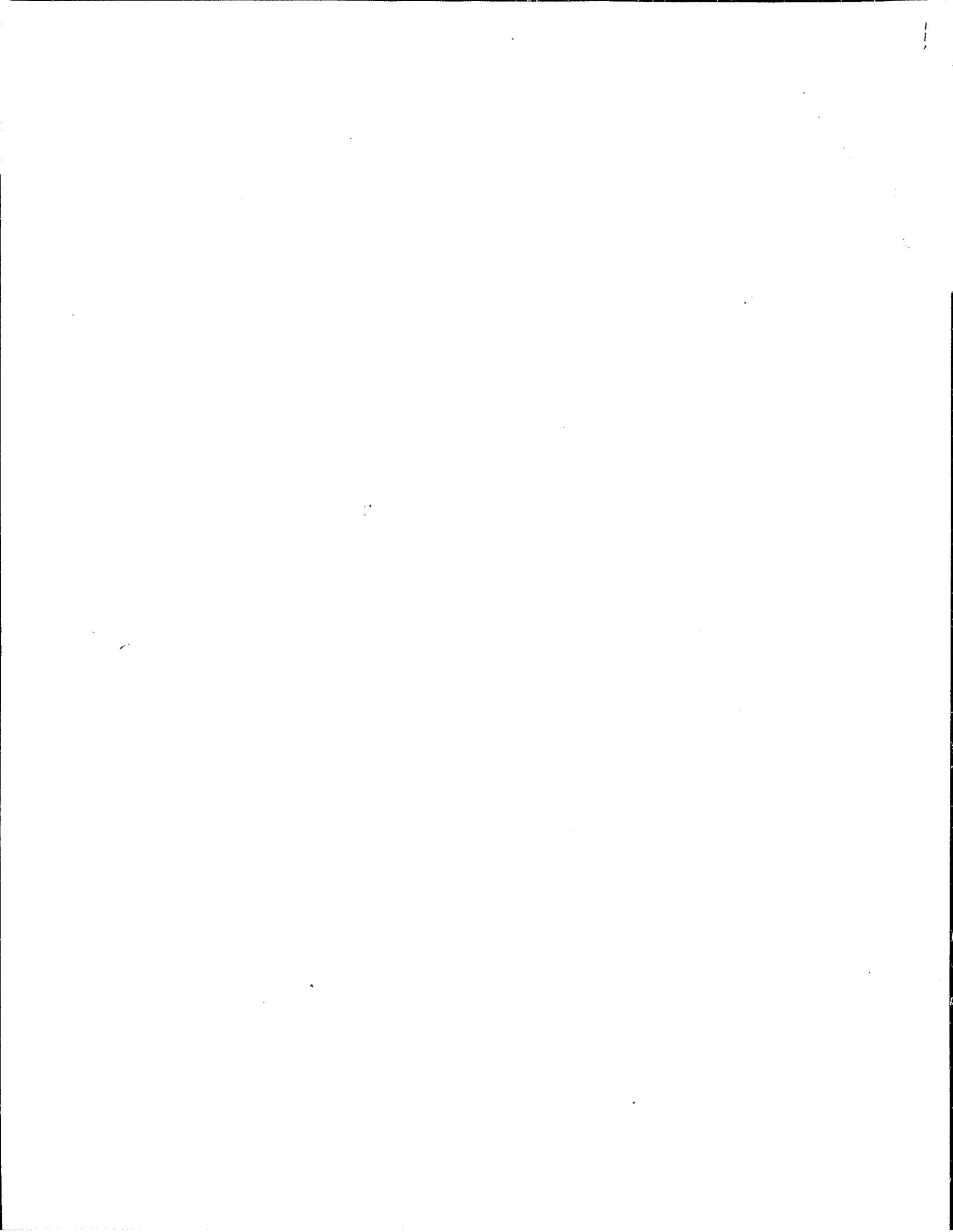
If they post it, if they walk in, post it in anything that is lawful tender, you have no right to deny it. You have very little—well, you have almost no opportunity to second-guess it. You have guessed and you have set the amount. That is it.

Mr. BLOCK. Do you think there ought to be an opportunity to allow for inquiry of some kind along those lines?

Judge KING. As to whether they have got it for the court to do it? I don't think so. I think the traditional method of the U.S. attorney who is involved always, he is always there when the bond is set; he knows if the bond is made; he certainly would know large bond, if it were paid in cash or whatever.

I think the traditional method, the U.S. attorney might want to turn that over to the FBI or DEA and say, let's investigate this, find out where John got all of that money. If they can prove where he did, and if they can prove it came from an unlawful source, they have got another case, another indictment.

Mr. BLOCK. Do you have the discretion in the southern district here to allow someone to post 10 percent of the bail that is listed? I know in some districts that is the case, that the bail figure might be \$50,000 but it is only 10-percent cash, so that a person must post only \$5,000.



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2 OF 3

Judge KING. Yes; if you require a supersedeas bond, what you are requiring is the posting of either the cash, \$50,000, if that were the amount, or a bond that would satisfy that amount if the defendant did not appear to serve the sentence after affirmance by the fifth circuit.

I say after affirmance by the fifth circuit because that happens more frequently than I think the general public is aware. In 8 or 10 years, there have been about three or four reversals, three I think, out of hundreds of cases, or maybe even thousands of defendants.

They all occurred after my friend got on the court. But in any event, it doesn't happen very much. You are not reversed very much in criminal case. So there are frivolous appeals too, and a lot of them, if I can direct your thinking that way.

Senator NUNN. I wanted to get both of your views to the extent that you feel it is appropriate to comment, and I would hope you would be able to comment on the Speedy Trial Act. What do you see coming from the District Court, Judge King, in terms of the Speedy Trial Act? Will it achieve its purpose, or could it have some very adverse effects on law enforcement?

Judge KING. As I have indicated to you, we have made a very sincere effort to comply with the Speedy Trial Act as mandated by the Congress, and we have been trying to do it even though it doesn't go officially into effect with sanctions until July 1 of next year.

Next year, this year, pardon me, July 1, 1978, if you do not try the man or woman within 100 days from the date of arrest, you must dismiss the charges.

Senator NUNN. Is that in effect now?

Judge KING. In 1979.

Judge FAY. July 1, 1979.

Judge King. But we are gearing up for it. We are trying to do it. We have not been succeeding in this district. We have made a good effort at it, but we have not succeeded. Last month, for example, we only hit at 85.3 percent.

So there were 14 percent of the cases that would have, if we were at this point next year, that would have had to be dismissed, the charges dismissed. So the intent was good. The intent was good.

It was to give people a prompt hearing so that if they are innocent they may be acquitted and go about their lives and get that behind them, if they are guilty, they will be promptly convicted, promptly sentenced, and then go on appeal.

In any event, what is happening—what is the impact—8 years ago, the average length of time, the clerk gave us these figures this morning; 8 years ago, the average length of time to try all criminal cases tried in this district, in all jury criminal trials, was 2.4 days per trial.

Last year, fiscal year 1978, the average length of time was 4 days per trial. What has happened? We have the same judges, even a little more experienced perhaps. The time is almost double to try a case.

What will happen? Let's look at what is going to happen next year. I am not going to overwhelm you with statistics, but bear with me while we run through a couple of numbers. We are talking about 100 days, the magic 100 days from arrest to trial.

That spans $3\frac{1}{2}$ calendar months. There are eight Saturdays and Sundays in each month presumably. That means that you have 26 days and $3-\frac{1}{2}$ calendar months during which trials are normally not conducted, Saturdays and Sundays. That leaves 74 actual trial days, working days, out of the 100 days.

In this district we have 15 criminal days per month, that amounts to 50 cases. I will be assigned 50 cases for trial in 74 working days. We know 40 percent plead guilty. I referred to that earlier. That leaves 30 cases to be tried, 30 cases to be tried in 74 days.

We know that last year it took us 4 days per trial average, 4 days per trial. Every time we try a case, we are losing a day and a half. We are getting a day and a half further behind. So the bottom line is that if you had a series of 4-day trials, you would still in this district fall behind.

Senator NUNN. Even with the additional judges, or is that based on the present number of judges?

Judge KING. No; Senator Nunn, you are absolutely correct. We are getting the five additional judges and that will be a tremendous help to this district. But we are concerned because with each judge comes either two or three additional U.S. attorneys, depending on the decision of your good friend, Judge Griffin Bell.

But this district will probably get three. We will get 15 new assistant U.S. attorneys. There is a formula that they have in the Justice Department and the Administrative Office of the U.S. Courts that will tell you exactly how many new cases that will crank out with adding each new U.S. attorney, each new judge, marshals, clerks, the whole paraphernalia.

They can tell you with precision how many more cases there will be. I don't know that figure to give you this morning, but we could all easily find it out, your staff could.

There will be an increase in cases because we are not, as your committee has so aptly and dramatically pointed out, we are not really doing a full job of catching all the criminals. So the cases are there.

We are bringing in the new U.S. attorneys, new judges. We are going to be cranking out more work, so these figures I respectfully suggest are not really going to be that far off with the new judges, coupled with the fact that buried in that 345 cases that I have pending, and every other judge in this district has pending, we don't know how many—2 months, 3 months, antitrust, patent infringement, serious class action case that needs to be tried.

So with the five new judges, our best estimate is that probably if we did nothing but work on the backlog, it would take us about 3 years to get current.

In the meantime, we are getting 15 new criminal cases per month, which will predictably go up to 18, 20, so on.

Senator NUNN. With the figures that you have worked through, how many cases would have to be dismissed under the present statistics if you didn't have any additional judges? How many cases would have to be dismissed under the Speedy Trial Act if you had done everything exactly like you have done it up to this point in some given period of time?

Judge KING. Senator, last month—I am reading from Speedy Trial Act, excess time report, by the members of the Speedy Trial Planning Group for this district—each court has a planning group that works on the Speedy Trial Act.

They have a full-time reporter, that is sort of like I guess a secretary or something, but this is a man who is very experienced in this field that works with them. Under our report, I am reading from it, we would have to have dismissed 14.7 percent of the cases last month, or five defendants. I don't know how many cases that would be. It might be five cases or some of those might be doubling up.

Senator NUNN. Let me add one other point to it. Suppose the defense attorneys got together. Let's assume they came to the conclusion if they cut out the guilty plead for a while that a huge number of them were going to have to be dismissed. Hypothetically, is there any way to prevent that?

Judge KING. There is no way to prevent that. I understand from discussing these matters from time to time with able defense lawyers, that that has happened in some States, where they implemented the Speedy Trial Act.

Generally, everybody figured out if you don't plead guilty and you just overburden the system, it will short-circuit.

Senator NUNN. If the defense attorney has 20 cases himself, unless something is changed rather dramatically in the capability of the courts to handle cases, that defense attorney could assure a good many of his clients that they would go free on the Speedy Trial Act just on the statistical basis if he insisted all of them go to trial.

I am not saying the defense attorneys would do that kind of thing but it seems to me you are setting up an incentive system for them to do it.

Judge KING. You are correct. That act would be turned into a sword instead of a shield. It will be used to get people out of their predicament instead of helping individuals get prompt trials, which was the spirit and intent of Congress.

We have in this district, I think, a very fine, excellent criminal defense bar. We have some of the finest criminal defense lawyers in the country. They travel all over the country. They are very experienced, very capable people. There is no doubt that the thought will occur to them, as indeed it should, in protecting their client's interest that if they demand trials, do not plead guilty that they are going to have this overburdening effect on the court.

But for every really capable lawyer, there is a reaction and inter-reaction, and judges will of course figure out ways to react so that they do not have to dismiss cases. What they will figure out to do, because we are already talking about it, is to go ahead and try these cases in the evenings, weekends, things like that; start trials within 100 days, pick a jury but continue it to other times, or even declare—this is a terrible thing to say to the Senators, but even perhaps there are some judges who have thought that perhaps the law may have some constitutional infirmities and may not survive a real constitutional test.

The question is who brings it. The defendant isn't going to bring it and the Government may not be able to. So you have a problem.

Senator NUNN. Probably under the Federal rules you have the right to join the defendants in joint trials too. Isn't that largely discretionary with the judge.

Judge KING. Do you want to answer that?

Judge FAY. It is with great limitations, Senator.

Senator NUNN. But there would probably be a tendency to have more joint trials with more defendants?

Judge FAY. There would be a tendency or force in that direction, based upon the Speedy Trial Act, but based upon appellate decisions that are coming out of both the U.S. Supreme Court and all of the court of appeals, forces in the other direction. It is harder and harder to try defendants together because of the legal requirements.

If I might supplement Judge King's remarks on the Speedy Trial Act, with just one additional thought. I have no desire to delay what you are doing, but my very brief answer to your first question would have been the Speedy Trial Act ought to be abolished.

Basically, the Speedy Trial Act provides for 30 days from arrest to indictment. It provides 10 days from indictment to arraignment. It provides 60 days for trial.

I am not going to try to expand Judge King's remarks on the practical problems of handling all of the criminal cases that are assigned to any given Federal judge within 60 days, but it can't be done.

Let me then progress one step beyond that, if I may. Under the provisions of the act, there are excludable periods of time. Illustrations of such periods could be psychiatric examinations, interlocutory appeals, delays resulting from transfers from other districts, periods of incompetency when a defendant cannot be tried, and things of that sort.

What concerns me and many other Federal judges is, as the Speedy Trial Act exists today, under section 3161, subparagraph (h) (8) (c) and I will quote the language of the statute, "No continuance shall be granted because of general congestion of the court's calendar."

If you couple the provisions of that section as the act is written with other provisions under sanctions as the act is written, if a judge cannot reach a case, he must dismiss the indictment.

Under the act it is not a ground for a continuance that he just physically and literally cannot reach the case.

Then if you follow through with that and determine whether or not the dismissal is going to be with or without prejudice and you and I, as lawyers, understand the meaning of that term, but if it is with prejudice, that means the Government can never reindict, can never bring those charges again.

If a judge in fact tried to dismiss it, without prejudice, I think under the provisions of the act as they presently exist, he is just digging a hole because if the act specifically says that you cannot continue the case because of court congestion, I doubt very seriously that you could ever bring within the terms of this act a legitimate ground which must be articulated in the record for dismissing without prejudice that same ground that the court just couldn't reach the case, because under the provisions of the act that is specifically excluded.

Senator NUNN. I can tell you it will cure the problem real fast politically when the Federal judges all over the country start dismissing criminal cases because of this act. I think you will see a public outcry.

It will be very unfortunate if we have to wait for that to occur to make the reasonable adjustments that have to be made. It is predictable. You will see Congress act in the greatest haste they have ever acted in.

Until then, I don't know whether or not they will, because somebody got it in their head that this is the way to cure all of the delays in trials. You can just pass an edict saying there will be no more delays in trial, just like you will say we ought to pass a law there will be no more inflation.

Judge FAY. That is why Federal judges have been trying to speak out about this. That is one of the reasons we are here. The judge is going to have no alternative. It is also interesting to note that within the act you will find a statement that none of the provisions of this statute are to interfere with the prompt disposal of civil cases.

As you said, that is like trying to write and file an order that requires someone to run a 3-minute mile. It just doesn't work. It is not going to happen.

Senator CHILES. It sounds like the Humphrey-Hawkins bill.

Judge FAY. I will respectfully refrain from any comment.

[Laughter.]

Judge KING. May I point this out? We bring you this message from a lot of judges we have talked to that knew we were going to appear here this morning. I would be remiss if I did not convey this to you. That is, simply this: That the judges of America are going to faithfully attempt to carry out the wishes of Congress, and if Congress wants these cases tried in 100 days, we are going to do our best, and we all personally know a number of judges who will let their health suffer or whatever to comply.

So we are not, we don't want to convey an impression that we are not going to do our dead-level best.

Senator NUNN. Unless the law is declared unconstitutional.

Judge KING. That may be a problem.

Judge FAY. That is certainly one alternative.

[Laughter.]

Mr. BLOCK. I would like to ask one further question. If a defendant posts the money for his bail through a bail bondsman, and the defendant then becomes a fugitive, in theory the court has the power actually to collect the money from the bail bondsman. Does that always happen? Does it ever happen?

Judge KING. Yes; in this district it always happens. In this district it always happens.

The bondsman may request the 30-day extension to try to bring the man back. The bondsman has broad authority under the law to go and bring a person back. They utilize the full extent of the law to the extent of being charged sometimes with kidnaping and all that, but they try to bring their man back.

Of course, that is desirable. That is what we all want is for the person to appear for trial. So we may grant a 30-day extension or 60-day extension sometimes. But then the bondsman pays, it is paid into the Register of the Court, it goes to the treasury, and I might add that ultimately, usually, that person is apprehended. It may be 4 or 5 years later, but sooner or later that person walks across the border somewhere and very efficient customs people and border

patrols with all their computers now pick them up. So they don't gain much by it.

But, yes; they do pay.

That may not be true in other districts. I don't really know. I have never talked with the judges about it.

Senator CHILES. With all deference, I think we will have to invoke the speedy hearing rule before these two judges. We don't have cloture here. I think we are never going to finish this hearing.

I want to thank both of you very much for your appearance here and for your testimony. I think it is very beneficial to our record. I think it helps us very much to realize what happens in the judicial branch and some of the laws that we passed in Congress.

We want to thank you very much for your appearance.

Senator NUNN. Neither of the judges was subpoenaed. They appeared totally voluntarily. We have set no precedent in the relationship between the judiciary and the legislative branch except a very good precedent, I think, of getting frank and candid views from people who really are on the frontline of the justice system in our country today. It has been very helpful.

Before we close, I would like to give you both the opportunity to say anything else you would like to about legislative changes that you think need to be made. I don't want to limit you to our questions. We may not have asked something that you might want to bring out.

Judge FAY, do you have anything else you would like to bring out?

Judge FAY. Yes, sir, I do. I was going to say I do, but I certainly don't want to incur the wrath of the U.S. Senate. There is one thought I would like to leave with you, if I could, for about 30 seconds. That is, you are dealing with one area that is a great problem in the Federal courts. I know from listening to the former Solicitor General of the United States that a study was once instituted in essence revisiting the jurisdiction of the Federal courts. I think the area you are dealing with merely highlights that possibly Congress should revisit the entire purpose and mission of Federal courts.

It seems to me that along with what you are doing, you might consider whether or not under these circumstances that exist in this country today we can afford to have article III judges dealing with small claims and admiralty cases.

I am taking a far-out illustration, but I think your area of concern merely highlights the need for Congress to possibly review the entire jurisdictional aspect of Federal courts. I am not indicating that the passage of statutes and acts such as the civil rights or title VII or any of the others is good or bad. I am merely suggesting to you that the Federal courts as they are presently designed today are not equipped to handle all of the business that you are pointing in our direction.

You might very legitimately want to revisit the entire mission or goal of the Federal courts and decide that maybe diversity or some areas of admiralty or some areas of other litigation could be handled just as well somewhere else, be it a social security claim or any other type of agency review. Because this is also a problem that we are having.

Senator NUNN. Thank you. Anything else, any other areas?

Judge FAY. Just thank you very much for allowing us to be here. As you have just expressed, I think it is marvelous. If we could develop

some better communication between the legislative branch and the judicial branch, and we welcome the opportunity to have some input into what may very well result in legislative changes that affect everything we do in our aspect of public services.

Senator NUNN. Thank you very much.

Judge King?

Judge KING. Thank you, Senator Nunn, Senator Chiles. It has been interesting to see our old dear friend, Senator Chiles, and to meet, become acquainted with Senator Nunn.

We appreciate this opportunity. We hope that maybe we have laid a predicate for a dialog between Senate committees and judges that will be beneficial to everyone. We think maybe we have. We hope so.

Senator NUNN. We have a situation in Congress where more and more people in Congress are appearing before Federal judges for other reasons. [Laughter.] It is good for a brief time to reverse the role.

I really do appreciate both of you appearing. It has been a great help. I think our record here will be a firm foundation for further inquiry into thoughtful examination of the laws on the books today.

Judge FAY. You were certainly gentle in your cross-examination. [Laughter.]

Senator CHILES. I want to take this opportunity to thank you, again, Mr. Chairman, for bringing the subcommittee to south Florida. You promised me about a year ago or so that we would be holding hearings here. I appreciate very much your doing that—the entire scope of the investigation that the subcommittee is taking on—and I also want to thank Senator Percy and their staff for their endeavor, too.

Senator NUNN. Thank you very much, Senator Chiles. We appreciate your inviting our attention to the serious problems here because I think they are not unique to south Florida. They maybe are more intense here, but I think they apply in varying degrees all over the country.

It gives the subcommittee an opportunity to look at the laws that are now on the books and those being proposed in a real life situation.

I think it will be very valuable to the U.S. Senate. In addition to the witnesses we heard from today, we had scheduled Mr. Atlee Wampler to testify. Mr. Wampler heads up the U.S. Strike Force.

We did not want to rush the judges' testimony. We knew that we had a deadline to meet because planes have to be caught. We did not want to cut short their testimony, nor did we want to rush Mr. Wampler's testimony.

What we have done is deferred his testimony. We will hear from Mr. Wampler and the Justice Department at a later point, either here in Florida or in Washington.

We will also want to hear from the FBI, DEA, and Customs, and many other agencies which we have not heard from. But the main purpose of this hearing was to talk to the people on the frontline here at the local level and at the State level, to find out the problems, and also to talk to our good friends and colleagues and judges here who have appeared today.

As far as any problems we might have had with the Justice Department in scheduling these witnesses, Mr. Wampler has been very, very cooperative with us. Any problems in scheduling or having witnesses

appear, have basically been with Washington, the U.S. Justice Department there.

Sometimes we agree; sometimes we see eye to eye, and sometimes we don't. We haven't agreed with them on anything in this case, but we will be pursuing that in a friendly and constructive fashion when we get back to Washington.

Thank you very much for appearing.

Again, let me express my deep appreciation to the news media for your cooperation, particularly in handling the witnesses who exercised their right under our rules, not to be photographed frontally or from a profile. We thank you for your splendid cooperation.

I might also add that I have been informed by my staff and by many others that the news media in this area know more about organized crime and some of the problems than perhaps your counterparts do in any other section of the country.

You have a reputation of being very thorough and having a great deal of expertise in this area for which I congratulate you.

Again, I want to thank the marshals and all of their assistants who have helped us get through these hearings and in carrying out the purpose of our subcommittee.

Senator Chiles, do you have anything else you want to say?

My thanks also to minority staff, Jerry Block, Stuart Statler, and Senator Percy, for splendid cooperation given us. I can't close without thanking Keith Adkinson, Larry Finks, Bill Gallinaro, David Vienna, and our capable secretaries, for the excellent job they have done in preparing these hearings.

The subcommittee is adjourned.

[Whereupon, at 2:10 p.m., the subcommittee recessed, to reconvene subject to the call of the Chair.]

[Members of the subcommittee present at time of recess: Senators Nunn and Chiles.]

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APPENDIX

EXHIBIT No. 63

IN THE SUPREME COURT OF FLORIDA

The Public Report of the Second Statewide Grand Jury on Illegal Gambling

REPORT—GENERAL

In the name of the people of the State of Florida and by authority of the statewide Grand Jury Act:

INTRODUCTION

Report of the Second Statewide Grand Jury on Illegal Gambling in the State of Florida.

On the 12th day of November, 1974, the Honorable Reubin O'D Askew, Governor of the State of Florida, petitioned the Supreme Court of Florida for an Order empanelling a Second Statewide Grand Jury. (See Exhibit "1") Pursuant to that petition the Supreme Court of Florida, having found good and sufficient reason, on the 19th day of December, 1974, ordered the empanelment of a Second Statewide Grand Jury to investigate the commission of crimes involving illegal gambling or conspiracies to commit violations of the cause involving gambling.

In the Order the Supreme Court approved the designation of the Honorable Eugene T. Whitworth, State Attorney in and for the Eighth Judicial Circuit to serve as the legal advisor to the Second Statewide Grand Jury. The Order also approved the designation of the Honorable Everett R. Richardson, Circuit Judge in and for the Fourth Judicial Circuit as the presiding Judge for the Second Statewide Grand Jury.

The Second Statewide Grand Jury was empanelled on April 2, 1975, by the Honorable Everett R. Richardson, Circuit Judge in and for the Second Statewide Grand Jury.

On March 29, 1976, by Order of the Supreme Court of Florida the term of the Second Statewide Grand Jury was extended to run from April 2, 1976, to and including October 4, 1976.

The Second Statewide Grand Jury derived its authority to inquire into and report on illegal gambling from Florida Statute 905.31—905.40 known as the "Statewide Grand Jury Act." (See Exhibit "2") The Legislature of the State of Florida enacted this law in 1973, to strengthen the Grand Jury system and enhance the ability of the State to detect and eliminate organized criminal activity by improving the evidence gathering powers on matters which transpire or have significance in more than one County.

SYNOPSIS OF ACTIVITY

During the 18 months the Grand Jury was in existence, beginning April 2, 1975, until and including October 1, 1976, Grand Jury Sessions were held in 10 different Counties throughout the State of Florida. The Grand Jury held eighteen sessions; each session began on Wednesday morning and continued until some time Friday when the Grand Jury recessed.

During the 18 sessions some 423 witnesses appeared before the Jury. (See Exhibit "3") The Grand Jury also heard testimony and received evidence from Law Enforcement Officers from throughout the State of Florida which led to the indictment of 330 individuals on 1,368 total counts; 415 of the counts were for felonies and 953 were misdemeanor counts. All but one of the individuals were persons who were involved in crimes of bookmaking or lottery.

The Law Enforcement Agencies who conducted the investigations of illegal gambling instituted over 50 court-authorized wire intercepts which along with physical surveillances resulted in the serving of over 100 search warrants.

During the service of these search warrants over \$100,000 in cash was seized and voluminous amounts of evidence used in these illegal gambling activities confiscated.

The Grand Jury, while investigating illegal gambling violations, also heard evidence of other criminal activities. Because these crimes did not fall within the scope or authority of the Grand Jury, the Grand Jury was unable to investigate these matters. The crimes are as follows: Murder, extortion, loansharking, horse race fixing, possession of stolen property, infiltrations of legitimate business, and narcotics trafficking. The existence of these crimes in connection with illegal gambling demonstrates that illegal gambling is not merely a harmless and victimless crime, a view held by a great number of people.

ORGANIZED CRIME INFLUX

The Grand Jury in conducting its investigation discovered that the State of Florida has become a haven for major organized crime figures. The influx of these undesirable people into the State is without precedent in the history of Florida. Representatives of at least 15 of the 27 identified Mafia and other organized crime families from throughout the United States and Canada are currently residing in Florida. A majority of these undesirables fled the State of New Jersey as a direct result of the New Jersey State Crime Commission's investigation. The Grand Jury is confident that these individuals are continuing their illegal activities but the Grand Jury was unable to inquire into activities other than gambling because of the limited scope of authority.

ILLEGAL GAMBLING GROSS INCOME FIGURES

The Grand Jury's investigation, indictments, and arrests cost organized crime figures millions of dollars. Making money is the primary aim of organized crime and gambling is generally recognized as the number one moneymaker for organized crime.

In Dade County alone, the law enforcement agencies monitored \$1.6 million in wagers during court-authorized wire intercepts. Based on these wagers, a conservative projection for a years' gross handle for these particular bookmakers would amount to approximately \$44 million. This applies only to the bookmakers who were subject to law enforcement investigation in Dade County. If it were possible to gather the financial data for the whole State of Florida it is certain that the amounts of monies handled by illegal gamblers would be in the hundreds of millions. These same funds are being used to finance other illegal activities such as loan sharking, narcotics, and organized crime's infiltration of legitimate business. It is through the ostensibly harmless and victimless activity of gambling that organized crime has been able to permeate our society.

DON'T BE MISLED

Expansion of organized crime is not limited to South Florida. Old organized crime organizations are re-establishing themselves while new organizations are moving into Florida. Quietly, land acquisitions and investments in legitimate business enterprises are taking place throughout the State. These acquisitions are not being made by retirement-minded or former organized crime figures for their future comfort. You do not retire from organized crime! The proceeds from organized crime's illegal activities throughout the world are being funneled into Florida. These activities touch and affect each and every citizen of this State.

INDIRECT EFFECT OF STATEWIDE GRAND JURY

Probably one of the most, if not the most important result of the Grand Jury's investigation has been the public exposure of identified organized crime figures residing in Florida. If at all possible organized crime figures avoid public exposure. They operate most effectively and efficiently when not subjected to public scrutiny. It is hoped that by exposing organized crime as it exists in Florida today, this Grand Jury has made the general public aware of the magnitude of the problem.

There are critics of the Grand Jury who will measure the success or failure of these investigations by the number of convictions on indictments returned. Most people including the Grand Jury members initially, were not aware that a Grand Jury's decision to indict or return a true bill is based on one-sided information instead of testimony from both sides as occurs in a normal courtroom adversary

proceeding. The effectiveness of the Grand Jury will be largely determined by the action the legislature takes regarding its recommendations, and through inquiry and follow-up concerning disposition of the cases throughout the state that were dismissed for procedural reasons.

All indications are, however, that organized crime was adversely affected by the existence of this Grand Jury. Reliable intelligence indicates that organized crime figures in Florida are aware of the termination date of the Grand Jury and are looking forward to resuming business on a full scale come October 4, 1976.

The following are specific findings of this Grand Jury regarding certain illegal gambling activities. They are: (1) ontrack bookmaking, (2) illegal bookmaking, (3) lottery, (4) bingo, (5) legalized gambling, and (6) recommendations.

ONTRACK BOOKMAKING

The Jury found evidence of extensive ontrack bookmaking at various race tracks in South Florida. It believes these conditions could not exist without the knowledge of management and track security.

To better understand the findings and recommendations regarding ontrack bookmaking it is necessary to take a look into the pari-mutuel system itself.

Parimutuel background

Parimutuel wagering is conducted in one form or another in 32 states which contain approximately 80 percent of the Nation's population. Most parimutuel wagering takes place at horse races, and dog racing in the second most popular parimutuel event. Such wagering on jai alai is currently allowed in only four states. The total amount of money legally wagered nationally on parimutuel racing in 1974 was approximately \$659 million.

The essence of the parimutuel system of betting is that the bettors wager against one another instead of against a bookmaker. Prior to the distribution of the betting pool to the winning players, approximately 15 to 17 percent of the total amount bet on the sporting event is deducted to cover state taxes, private costs and profits. In parimutuel wagering, the odds cannot be calculated in advance because too many entries and combinations are involved. The winning bettor does not discover his exact payoff until the conclusion of the event. If the bettor is one of only a few winners among many bettors, the payoff on his wager can be quite high.

Preliminary findings of the National Gambling Commission survey of American gambling behavior and attitudes indicate that 14 percent of the adult population (about 20 million people) bet on horse races at the track in 1974. Four percent of the adult population (5.8 million people) bet on dog racing that year. Betting at tracks tended to increase as income and educational levels increased. As was the case with all forms of gambling, most respondents attached relatively little importance to adverse moral or social consequences of betting.

Findings

The existence of illegal, ontrack bookmaking and race tampering was made known to the Jury at its first session. Jury members were cautioned however that while reliable evidence of its existence was on hand, proof sufficient for indictment by the Jury would be difficult to obtain. Not only were the bookmakers cautious in their operations, but seemingly alerted when investigative personnel came on track. However through assiduous efforts a number of operations were observed at several tracks over a period of time, and some were infiltrated, resulting in several indictments.

Investigation in the State of Florida has revealed extensive ontrack bookmaking at various race tracks in South Florida. The operations as observed by undercover investigators are relatively open, and appear to be undetected by track security forces and management. The bookmakers cater to the heavy bettor, therefore the impact of their combined operations results in a major loss of revenue to the State as well as the tracks.

The Grand Jury did not receive any information which would indicate if any on-track bookmaking was occurring at tracks in other areas of the State. This does not preclude the existence of on-track bookmaking in these areas and it is strongly recommended that the law enforcement agencies in those areas carry out the investigative work necessary to uncover illegal on-track activities.

In its 18 months of investigations, no single finding has been of more concern to the Jury. The Jury heard testimony that estimated on-track bookmaking and wagering may approach the track parimutuel handle. This diversion of monies

from legitimate channels with the attendant losses of revenue is in itself a serious matter. But much more serious in the Jury's estimation is the conspiracy that exists which allows the on-track bookmaker to flourish. While "conspiracy" is a strong term to use, the Jury finds it apt in this situation, where so many persons deny, overlook, and/or ignore a pattern of illicit operations which is readily apparent to a knowledgeable observer.

The Jury found that, on-track bookmakers generally have connections with organized crime figures. They usually operate in small groups, but occasionally they conduct their activities singly. A number of groups may operate simultaneously at a given track, having arrived at mutually agreeable divisions of customers, and territories inside the track. On-track bookmakers are also thought to be involved in horse race fixing which is prevalent at a number of Florida's tracks.

Ontrack bookmaking flourishes

The Jury found that on-track betting flourishes because:

- (1) Wagers and bookmakers carry slips, odd sheets, and other gambling forms without fear of arrest.
- (2) Wagerers bet on credit.
- (3) No chance of court authorized intercepts of telephone conversations.
- (4) Prompt awareness of changing odds.
- (5) Bets placed with an on-track bookmaker do not influence track odds (unless the bookmaker "lays-off" at the window to protect himself).
- (6) Division of Pari-mutuel wagering cannot adequately patrol or investigate the illegal activities.
- (7) Inadequate intelligence regarding bookmakers.

Responsibility

Responsibility for the existence of these illegal activities must lie with track security personnel, as they are responsible for detection, identification, and expulsion of on-track bookmaking operation(s). Track management must also share in responsibility since they can hardly be unaware of the existence of on-track betting, if not its extent. As managers, they have responsibility for supervising and maintaining adequate track security. In some cases track management failed to acknowledge the existence of any on-track bookmaking. Also the State division of Pari-mutuel wagering must accept some responsibility since they are charged with overseeing all pari-mutuel wagering. While they have an oversight responsibility we learned, they have inadequate intelligence on known bookmakers, are lacking in proper dissemination of information and are severely understaffed and underfunded.

"Why bet with a bookie?"

The reason for the bookmakers operating at a track was a recurring question to the Jury. Why would persons patronize a bookie, when with a little more effort they could walk to the windows and place their bets legitimately?

The obvious answer—taxes—proved not to be the case. The Federal Government requires winners to identify themselves and to fill out appropriate forms only when the track payoff is at odds of 300-1 or better—which usually occurs only on bets such as perfectas, trifectas, etc., which bets bookmakers will not handle. As for the regular annual income tax return, while gambling winnings in excess of losses are supposed to be declared, it is very difficult for tax authorities to audit the results of a person's day to day wagering.

The Jury then is left with the conclusion that convenience is the principal reason that the bookmakers are patronized. Bets may be placed on credit, and winnings or losses paid later. Another factor may be that bets placed with a bookmaker do not influence track odds (unless the bookmaker "lays-off" at the window to protect himself). One further factor may be that the bettor preserves a certain anonymity by betting through a bookie rather than through the window.

ILLEGAL BOOKMAKING

The majority of the cases presented to the Second Statewide Grand Jury involved illegal bookmaking.

Findings

The Jury finds there is widespread illegal gambling of a multi-county nature in Florida which handles millions of dollars a year in wagers. Many of these illegal activities are run by or closely associated with known organized crime figures, a

great preponderance of these persons being from New York and New Jersey, The Jury found gambling of an organized nature to be largely concentrated in South Florida, however, testimony in other parts of the State revealed ties between illegal activities in these areas and organized gambling figures in South Florida. Additionally, the Jury found widespread illegal gambling of a local nature, some of which crossed County lines. The Jury found localized gambling flourishing because of public apathy, low priority of law enforcement, and lifetime friendships between known gamblers and public officials.

The Jury also found that sports betting, i.e., betting on football, basketball and baseball, is rapidly replacing illegal betting on horses as the number one illegal wagering activity. This is a consequence of the prominence of sporting events in today's society, particularly through the ever increasing television coverage. As a result, sports bettors conceive themselves as expert handicappers capable of beating the odds because of their familiarity with these events as opposed to handicapping of horses which requires considerable more skill and knowledge.

Through its investigation, study, and inquiry the Jury has determined that:

Illegal wagering is the biggest source of income for organized crime on a national basis. Bookmaking is the greatest source of funds for organized crime. South Florida is one of the most favored areas for bookmaking in the United States due to the fact that South Florida is regarded as an open area for Mafia and organized crime operations.

Bookmakers may well be the best organized of various sources of illegal revenue for organized crime. They have a chain of command from "money man" to bookmaking clerk, lateral responsibility from lay-off, and at time schedule that must be met daily. Bettors are persons generally from middle class and up, and are engaged in every walk of life.

Constant enforcement curtails organized crime's profit from illegal gambling activities. Enforcement creates a constant awareness of the possibility of being exposed and/or arrested and thereby causes the customer to shy away from the bookmakers who are arrested.

Example of the money involved in bookmaking

The Dade County Public Safety Department and Florida Department of Criminal Law Enforcement conducted court authorized wire intercepts on bookmakers with said cases being presented to the Second Statewide Grand Jury. The average length of time for each intercept was 6 days. The Police Officers monitored wagers which occurred at 26 locations and recorded more than \$1.6 million in wagers during this period. This figure represents only a small portion of the bets accepted by bookmakers operating in Florida which is estimated to be several hundred million dollars.

Problem areas

The Grand Jury has determined that enforcement of gambling laws suffers from several constraints involving:

(1) Adverse influences of enforcement goals due to public apathy. The community feels that gambling enforcement is a secondary issue if an issue at all. There appears to be a lack of concern by the public as to the fact that gambling profits filtered back to organized crime supports many illegal activities such as: Importations of narcotics and loansharking.

(2) Indifference by authorities due to personal and public apathy.

(3) Inter-jurisdictional nature of gambling operations through the State. Local police agencies have been restricted by jurisdictional limitations. The Florida Department of Criminal Law Enforcement does not have the necessary manpower to conduct all of the gambling investigations of a multi-county nature throughout the State.

(4) Failure to obtain a sentence that befits the crime after conviction. Throughout the history in Florida courts, lenient sentences prevail. Traditionally, courts have treated the sentencing of a convicted bookmaker as a waste of valuable court time when the court should be hearing the more important cases.

The following is a passage from the Second Interim Report Commission on the review of the national policy toward gambling regarding sentencing:

Sentencing

"In almost every State in the Nation, convicted gambling offenders are subject to either moderate fines or sentences of probation, only in New Jersey does the convicted gambler face a serious threat of significant periods of incarceration.

The result is that, outside of New Jersey, the Police lose one of their major tools for enforcement—the threat of a substantial penalty.

The Commission is aware that there is widespread disagreement as to the seriousness of gambling violations per se. In a system where convicted muggers often receive sentences averaging no more than a few months in jail, it is difficult to exhort judges to subject indiscriminately all convicted gambling operators to lengthy sentences."

Nonetheless, it should be noted that a strong majority of the citizens surveyed by the Commission did agree that gambling violators should be jailed. In many cities, there is widespread support for the notion that organized crime poses a serious threat and that illegal gambling is an important part of this activity. Judges who decide to impose substantial sentences on major gambling violators will find strong support for their actions.

It is clear that many judges fear that imposition of heavy sentences in routine gambling cases exposes them to the risk of many protracted trials. It should be noted that in New Jersey, where judges have followed such a sentencing policy for the past decade, excessive crowding of the court calendar does not appear to be a problem. Moreover, what the Commission is recommending to police and prosecutors is likely to lead to the presentation of fewer and more serious gambling cases in court.

LOTTERY

Introduction

Over the 18 months of investigation by the Grand Jury a number of indictments regarding lottery operations was returned throughout Florida. The cases brought before the Jury represented only a small segment of the total lottery operations active in this State. The following background will provide the proper perspective to evaluate the Jury's conclusion and recommendations.

History

Lottery is a long tradition among certain elements of the community, especially the Latins and Blacks. Betting on a number which may have personal significance accounts in large part for its popularity, and the appeal to an individual's superstitions is apparent.

Lottery consists of wagering on a number, generally from 0 to 99. "Hits" are paid off at odds of 70 to 1. Occasionally bets are made on three digits ranging up to 999, with a payoff of 500 to 1, or two 2-digit parlays, paying 2,000 to 1.

The winning number is obtained in various ways. In the past, such figures as the last several digits of the total handle at one of the major horse tracks, or the daily bank clearing house figures were used to determine the winning number. Now the most common method is to use certain winning quinella payoffs at a particular dog track, the last (dollar) figure before the decimal point in the second and third races (usually) determining the winning number. Another figure often used is based on the winning number in the Puerto Rico lottery, which is selected each Wednesday morning.

Lottery operations are generally conducted along the following lines:

Bets are made with a "writer". The bettor may or may not get a receipt. Sometime before 7:30 P.M. the tickets or other listing of bets placed are turned over to a "pick up man", who may serve ten to twenty writers. The tickets are then delivered to the "counting house" where they are tabulated, and upon determination of the winning number, payouts are computed. Sometimes there is an intermediate, or a "main pick up man", between the pickup man and the counting house. The timing of the pick up is such that all tickets are delivered to the counting house prior to the running of the first race. Money usually, but not always, accompanies the betting slips to the counting house. Pick up times are changed for betting in connection with the Puerto Rico lottery to conform with its mid-morning selection of the winning number.

Payoffs are made the next day at some previously arranged convenient time.

Because of the regular times and patterns of activities, it is not too difficult for investigators to learn of the lottery operation and to identify many of the individuals involved. The many tickets which must be handled, as well as the money, all usually carried in brown paper sacks, present a ready target for law enforcement (assuming sufficient personnel are available), however the pickup men are especially wary and surveillance is not easy.

Once sufficient evidence is obtained so that a search warrant may be issued and executed on a suspected counting house operation, the usual presence of tickets, tally sheets, and adding machines all confirm the validity of the search

warrant. The operation is disrupted, although as usually proves to be the case, it is not terminated.

However, while the counting house is the last stop for the tickets and the point at which payouts are tallied, no one in law enforcement believes this is the actual termination of the operations. The counting house personnel are assumed to operate under a boss, who may or may not be the banker, supplying funds on those occasions when the operations experience a net loss. The banker may disperse funds for payoffs to various public officials to ensure something less than vigorous enforcement of the law, and when arrests are made, they provide bond and try to minimize prosecutorial and judicial action.

It is very difficult to trace the profits from lottery. Law enforcement officers are sure that much of it ends up in the coffers of organized crime. It is a highly profitable undertaking, and in contrast to narcotics trafficking, it is often viewed as a harmless activity. In other states it has been shown that lotteries are connected with organized crime. In Florida, however, proving it to the satisfaction of a court of law would be extremely difficult, unless some of the persons involved were granted immunity and compelled to testify.

Aside from the evils attendant to the use of profits realized by the backers of a lottery operation, the potential for political influence is always present. A typical lottery operation in South Florida involves approximately 20 to 50 writers, and hundreds of bettors. The lottery operator endorsing a political candidate would be able to influence the voting behavior of a large segment of the Community. This would enhance opportunities for corruption through influence-peddling and political favors in relation to law enforcement.

Findings and Observations

During its term of empanelment, the Jury returned many indictments for illegal lottery operations. Much of this activity was in South Florida, and one such example follows:

Raids conducted on nine major operations in Dade and Broward County by extrajurisdiction accounted for a total estimated annual handle of \$31 million. The gross annual take from these operations was estimated to be about \$13,300,000, with a net annual return to the backers of \$4,650,000. (See Exhibit "4" for the basis of deriving these figures.) These operations represent only a small portion of those operating in South Florida.

In addition, the Jury investigated and returned indictments against two major operations in Central Florida, and several smaller ones. It is apparent that lottery is prevalent in many counties in Florida and represents a major untaxed source of revenue. The existence of illegal lottery should be a major concern to Floridians, as will be seen in the conclusions.

BINGO

Bingo could well be described as the great American game. Bingo has been widely used by churches and charitable organizations as a means of raising funds for their works in a manner widely accepted by the general public. While it has in the past generally been illegal, that has been frequently overlooked by law enforcement in most jurisdictions.

In 1965 the legislature legalized bingo by enacting Florida Statute 849.093. This law placed numerous restrictions on bingo operations, directing that the profits must go for such purposes as funding hospitals and welfare programs. There were also limitations on the amount of the prizes that could be offered, and as to how often a particular charity could sponsor a bingo session.

Since the legalization of bingo, bingo parlors have sprung up in many areas throughout the state. Contrary to the spirit of the law, many of these are run by professionals, and the sponsoring charitable organization is changed each session.

The jury has been told that in many of these operations, the original concept of legalizing bingo has been subverted. The proceeds going to the sponsoring organizations have become quite small, with the major part of the profits apparently being retained by the operators. Of further concern is the reported financial interest various identified organized crime figures now have in these operations.

Law enforcement officials have recommended various changes in the existing law, so that bingo may be better regulated. Their full report and recommendations are included in the appendix.

The Jury thinks it is of particular interest to see how a game seemingly so innocent as bingo can be subverted. It should be noted that Florida is not alone in having this problem, New York for example having had to go to considerable efforts in regulation of its bingo operations.

In addition to any changes the legislature might make in Florida Statute 849.093, we recommend the Department of Revenue take the necessary steps required to strengthen reporting and accountability of revenue and expenses for bingo operations.

LEGALIZED GAMBLING

While not a part of the assigned scope of investigation the matter of further extension of legal gambling has been a natural outgrowth of investigations of illegal gambling.

Note that the issue is, "further extension of legalized gambling." Florida already has 36 pari-mutuel operations consisting of 17 dog tracks, 10 jai alai frontons, 5 horse tracks, 2 harness tracks and 2 quarter horse tracks. In addition, there are many legal bingo operations.

The Jury is divided on the merits of further extension of legalized gambling in Florida, as for example by a State operated lottery, or by casinos. Therefore the Jury offers pros and cons of legalizing additional gambling for consideration.

Proponents of legalized gambling offer the following arguments:

(1) Legalized gambling would reduce or eliminate many law enforcement problems. A source of police corruption would be eliminated and police officers now assigned to the enforcement of gambling statutes could be assigned elsewhere. It would relieve the criminal justice system of the generally futile and always costly task of prosecuting gambling violators.

(2) Legalization would open new sources of revenue to the various levels of government, without corresponding increases in taxes, rather than enriching the coffers of organized crime.

(3) Legalizing gambling would enhance an area's attraction for tourists.

(4) Legalized gambling would remove the hypocrisy in which state-sanctioned activities are legal, presumably moral, and to be encouraged, whereas virtually the same activities without the formality of state licensing, etc., are viewed as undesirable, illegal and immoral.

The above propositions are generally countered by opponents to legalization of additional forms of gambling as follows:

(1) Law-Enforcement does not agree that legalizing gambling would eliminate or even substantially reduce their problem. Testimony supports that the extension of gambling serves to attract an undesirable element, and that there will be a rise in other crimes as a consequence. Some of these are loansharking, robbery, skimming, prostitution, murder, and narcotics.

(2) Legalizing gambling has not resulted in reducing illegal gambling within those states where lotteries and off-track betting has been instituted.

(3) Family tourism may suffer from further legalization of gambling.

(4) The introduction of additional legal gambling would increase the loss of family income, drain money from families on welfare, and lead to crimes committed to repay gambling debts.

(5) Further legalized gambling would impose additional hardships on the already financially troubled horse tracks in South Florida. Many of the present customers would be drawn away from these tracks. This would have an adverse effect on the overall economy of the State of Florida in that the thoroughbred industry is a major source of revenue.

The above arguments for and against further extension of legalized gambling in the State of Florida represents testimony and inquiry made by or on behalf of the Grand Jury. This October the National Gambling Commission is expected to report to the U.S. Congress on its two year study. We strongly recommend this more exhaustive study to be analyzed and studied by Florida Legislators, insofar as it may bear on future state legislation.

RECOMMENDATIONS

Recognizing the problems is the first step, what is now needed is the mechanism or vehicle to combat organized crime in Florida. New and dramatic methods need to be developed to counteract organized crime's updated and technologically advanced penetration into our communities. The State Legislature recognized the problem and in 1973 enacted the Statewide Grand Jury Statute. This tool provided a meaningful beginning. However, based on this Grand Jury's eighteen months of experience, certain changes should be made in the present statutory law.

SUGGESTED CHANGES IN STATEWIDE GRAND JURY SYSTEM

The following is a list of changes in the law that this Grand Jury strongly recommends for the consideration of the people of the State of Florida and their representatives in the Legislature.

1. A permanent Statewide Grand Jury should be established. The present system being only temporary, subjects those involved in illegal activities to intense public scrutiny and investigation for only limited periods of time. Once the Statutory period of time has run, it is business as usual for those involved in these illegal activities. By enacting a change from temporary to permanent, continuous pressure could be applied to organized crime.

2. The Grand Jury's Order of Empanellment should not be limited to only one of the enumerated criminal activities but should encompass all those activities enumerated in the Grand Jury Statute so that indictments can be returned if and when such crime is found to have occurred and been related to the particular criminal activity under investigation by a Statewide Grand Jury.

3. Pornography should be included in the enumerated criminal activities which can be the subject matter of a Statewide Grand Jury investigation. Evidence has shown that organized crime, on a multi-county basis, is heavily involved in pornography and this Grand Jury uncovered evidence that gambling proceeds are being used to fund pornography activities.

4. The Statewide Grand Jury should have a permanent legal advisor and staff. Because of the temporary nature of the Grand Jury and because the assignment to head up the Grand Jury's legal staff is transferred from one State Attorney to another, the experience gained by one staff is lost upon the appointment of a new prosecutor who in turn has to staff such a new effort with his own people. In most cases the new staff would not have had the benefit of what has happened in prior Statewide Grand Juries. Furthermore, most State Attorney's Offices are already understaffed and overworked and to further increase this work load is unfair. By appointing a permanent legal advisor and staff the expertise and experience would not be lost from one Grand Jury to another.

5. The Grand Jury Legal Staff needs to have statewide subpoena power to depose witnesses prior to Grand Jury sessions. If the function of the Statewide Grand Jury is to be truly investigative the staff needs to be able to depose potential witnesses so as to (1) Eliminate from consideration those witnesses with nothing really useful to the Grand Jury, (2) Develop new information on a continuous basis and thereby speed up the Grand Jury process, (3) Develop intelligence and information which would be more readily available to law enforcement for further investigation.

6. The length of the Grand Jury term should be limited to twelve months. The amount of time and travel that each Grand Jury member has put into the Second Statewide Grand Jury's efforts have placed a great burden on each member. By limiting terms to twelve months and increasing the per diem rate beyond the \$25.00 maximum such burdens to each citizen could be reduced to a reasonable level.

7. The membership of the Grand Jury when empanelled should be increased to 21 members instead of the present 18 members. The quorum for a session should remain at 15 members necessary to be present and the affirmative vote of 12 members still required for indictment.

This Jury has had a struggle on several occasions to have a quorum present over its 18-month existence. One member moved to a foreign country; one member suffered a severe injury and was totally incapacitated; and a third member suffered a severe heart attack which caused that member to miss sessions. Therefore, the remaining members who then constituted the quorum were required to be present totally disregarding any pressing professional business or personal conflicts.

STATE COMMISSION OF INVESTIGATION

In addition the Grand Jury strongly recommends that serious consideration be given to the creation of a State Commission of Investigation. In its interim report this Grand Jury proposed such a Commission and after considering the additional evidence it has received and the testimony it has heard, the Grand Jury more so than ever, sees the need for such a Commission.

It should be noted that the State of New Jersey has a State Commission of Investigations which has been highly successful in its efforts to rid New Jersey of the organized crime influence. However, in ridding New Jersey of its problem it

has created a problem for Florida in that most if not all of the organized crime figures which have left New Jersey because of the Crime Commission have settled in Florida.

The Grand Jury makes the following recommendations for consideration in setting up a State Commission of Investigation:

1. Provide legislation to set up a Commission of Investigation to attack organized crime.

The following are suggestions which, if followed, would circumvent hazards or hurdles met by existing state commissions.

(Note: New York, New Jersey, Louisiana, Pennsylvania, and Virginia now have commissions.)

(a) The Commission's purpose should be to serve as a watchdog for the entire system of criminal justice within the State of Florida.

(b) The Commission should be designed as a "fact finding" group with three main functions: bringing facts to the public's attention, referring criminal or unethical circumstances to the proper authority for action, and making recommendations to the Legislature for changes or additions in State laws.

(c) The Commission should have the power and duty to conduct investigations in conjunction with:

(1) Execution and enforcement of the laws of the State of Florida with particular interest to organized crime and racketeering.

(2) The conduct of public officers and public employees and officers of public corporations and utilities.

(3) Any matter concerning the peace, public safety, and public justice.

(d) The Legislature by concurrent resolution may direct the Commission to conduct a specific investigation.

(e) It is recommended that the Commission be staffed by:

(1) Executive director (appointed by the Commission with legislative approval).

(2) Chairman of the Commission, a member of the Commission and selected by the remaining Commissioners.

(3) Commission membership of four or six attorneys whose backgrounds are unquestionable and who owe no favors or allegiance as a result of previous transactions.

(4) Experienced investigators, (eight to ten) who answer solely to the Commission.

(5) Experienced accountants, (four to five) to investigate cash flow, determine net worth, and assist investigators.

(6) Permanent legal staff of no less than four attorneys to advise and assist investigators and accountants, and to present evidence at public and executive hearings.

(7) Accompanying clerical staff.

(f) The Commission itself should be bipartisan and act in such a manner. Their term should not coincide with those holding political office (i.e., a three or five year term). The Commission should be comprised of attorneys who have no political aspirations. No more than 50 percent of the Commission should represent a single political party. Legislative members should appoint 50 percent of the Commission, while the Governor selects 50 percent.

(g) The Commission shall be provided with the powers to:

(1) Conduct executive (private) hearings.

(2) Conduct public hearings.

(3) Subpoena witnesses.

(4) Grant immunity, (Witness Immunity Act).

(5) Charge civilly all refusals to testify after immunity has been granted with Contempt of Court.

(6) Take testimony with the perjury statutes prevailing.

(h) The Commission's strong points would be:

(1) Ability to conduct public hearings.

(2) Force testimony or incarceration.

(3) Ability to operate freely from any influence.

(4) Little or no involvement in court proceedings as all investigations are referred to an appropriate agency, for action.

(5) Investigators may be present during executive sessions and may assist the Commission in areas of questioning.

(6) Expertise in analyzing financial records, etc., would be available statewide. This is a necessity in evaluating the complex corporate structures and transactions.

(7) Involvement of all local and state law enforcement departments as cases are referred.

A case in point is the New Jersey Commission of Investigation which has the prime responsibility, when it uncovers irregularities, improprieties, and corruption, to bring the facts to the attention of the public. It has subpoenaed numerous individuals who have fled to other states to avoid appearances before the Commission. Others have gone to jail rather than testify. If a subpoenaed subject refuses to be granted witness immunity and to testify, he can be found in civil contempt of the Commission's subpoena power and confined until he purges himself by appearing as a responsive witness.

OTHER RECOMMENDATIONS

An inquiry should be made into why indictments returned by the Statewide Grand Jury were dismissed for procedural reasons. A determination needs to be made if the dismissals resulted from flaws in the Grand Jury statutes, a lack of vigorous prosecution, judicial attitudes, or lack of substance.

To effectively assist the Grand Jury, and/or Crime Commission in any investigation, additional investigative help, with Statewide jurisdiction, will be needed. Organized crime ignores jurisdictional boundaries. To effectively and efficiently counteract this threat, the ability to conduct statewide investigations is necessary.

The Florida legislature should give top priority to significantly increase the Florida Department of Criminal Law Enforcement's manpower and budget. Florida Department of Criminal Law Enforcement is the only state agency having the necessary statewide jurisdiction and it is grossly underfunded and understaffed. The ninety-six sworn agents in the field cannot begin to investigate organized crime with any significant effect. New Jersey with approximately the same population as Florida (and a much smaller geographical area to cover), has one thousand seven hundred sworn personnel with statewide jurisdiction. Three hundred and fifty of these personnel are permanently assigned to the New Jersey Statewide Grand Jury to assist in its efforts. They also assist the New Jersey Crime Commission when needed.

RECOMMENDATIONS TO STOP ONTRACK BOOKMAKING

1. The Governor should order an immediate and sweeping investigation of all track operations by the Florida Department of Criminal Law Enforcement to develop specific recommendations for submission to the next legislative session for action. Additionally, legislative hearings should begin by appropriate committees of the House and Senate.

2. Statutory changes need to be enacted in order that the persons responsible for the enforcement at the pari-mutuel wagering plant would have the necessary authority to bar and eject anyone who has been involved in any illegal activities or who associates with individuals considered undesirable. Additionally they would not be able to own any interest in, manage, operate any pari-mutuel wagering establishment, or be permitted on the grounds of any track in the State of Florida.

3. Provide the pari-mutuel division with additional staff and funds to adequately supervise track security personnel, and to develop up-to-date intelligence regarding bookmakers and bookmaking operations.

4. Ultimately, state control by Florida Department of Criminal Law Enforcement to be conducted on a permanent basis. (As done in New Jersey by State Police.)

5. A cooperative effort between the division of pari-mutuel wagering, the track managers, track security personnel, and Florida Department of Criminal Law Enforcement aimed at excluding organized bookmaking activity on the track.

RECOMMENDATIONS TO STOP ILLEGAL BOOKMAKING

Public awareness programs should be instituted to apprise the citizenry of organized crime influence and control of illegal gambling.

Develop State training programs and exchange of information on organized crime and gambling for local agencies throughout the State on a re-occurring basis.

Caution public officials on the advisability of going on gambling junkets to Las Vegas or off-shore gambling enterprises. The Jury heard testimony indicating participation of public officials on these trips and questions their continuing independence from these operations and their associates.

Require mandatory jail sentences for convicted professional bookmakers. Sentences should be for no less than one year and a \$1,000.00 fine for anyone convicted of handling more than five thousand dollars in wagers a week in illegal bookmaking.

This thesis is supported by the Commission on the Review of the National Policy Toward Gambling:

It appears that the information available to judges in the sentencing of gambling offenders is often inadequate. Presentence reports are not routinely requested and prosecutors often fail to present information concerning a defendant's organized crime connections. If major gambling offenders are to receive serious sentences, courts must have sufficient information at the time of sentencing to determine the appropriate penalty. The Commission therefore recommends an increased use of presentence reports in gambling cases. The sentence should take into account both prior record of the offender and any evidence presented at the sentencing hearing that concerns organized crime activities. Where it can be shown that the offender is a major gambling figure or is involved in organized crime, a sentence of at least one year in prison together with a fine of \$1,000 or more should be given. For lesser offenders, a substantial fine alone is appropriate.

RECOMMENDATIONS TO STOP LOTTERY

The Jury has found that enforcement activities against lottery operations are successful to only a limited degree. The culmination of several months' surveillance and other investigative work has frequently resulted in a disruption of the organization. However, this disruption is most often only temporary. We hear that number writers are often arrested, bonded out, and back writing numbers the next night. When—and if—their cases come up for adjudication, more often than not, the sentences are so inconsequential as to be shrugged off as a normal business hazard.

If lottery is to be stopped, or even seriously impeded, it is essential that the persons supervising the overall activity and bankrolling the operation be brought to justice. It appears that this only may be accomplished by a decision on the part of the judiciary to impose stiffer penalties on the persons convicted of participating in lottery operations. The threats of large fines and substantial jail sentences may then influence them to cooperate with law enforcement in furnishing evidence leading to arrest and conviction of the higher-ups in the organization, the bankers and other "managing" interests. The increased penalties would perhaps also tend to dissuade the lower echelon from continuing their illegal activities in lottery.

One further element in combatting lottery operations is the federal tax liabilities incurred through these operations. The Internal Revenue Service is no longer auditing the accounts of arrested lottery operators or assessing federal income taxes and penalties against those involved. The Jury hopes that the Internal Revenue Service will soon be able to resume these activities.

ADOPT A RULE OF CRIMINAL PROCEDURE

The Jury recommends that the Florida Bar draft and submit to the Supreme Court for adoption a rule of criminal procedure which would provide a clear definition of false and/or evasive testimony.

The Jury in attempting to question organized crime figures it subpoenaed had to contend with repeated false or evasive answers.

The guidelines as set forth in previous Florida Court decisions make it difficult, if not impossible to prove that the answers given constitute evasive contempt. Before drafting a specific rule, it is suggested that the rule as recognized by the State of New York be carefully considered in that it provides clear guidelines which makes proof of fact more possible.

ADOPT A "USE IMMUNITY" STATUTE

In order to break the conspiracy of silence characteristic of organized crime activities, the Grand Jury may subpoena identified members of organized crime as well as less conspicuous witnesses to organized crime activities. Once the witness is brought before the Grand Jury he must testify, provided that his fifth amendment rights against self-incrimination are not violated. As a result of

Florida's automatic immunity Statute (914.04), any physical evidence or testimony that he gives cannot be used against him. Similarly, if a witness refuses to answer questions by validly asserting his fifth amendment rights, he must be granted immunity in order to be forced to testify regarding those questions. Thus, the burden of protecting the fifth amendment rights of a witness is placed on the State,

Florida's present immunity statute (914.04) provides "transactional immunity" for a witness. This means the witness is exempt from prosecution for any offense substantially connected with the transaction, matter or thing concerning which the witness testified.

The scope of transactional immunity affords the witness considerably broader protection than does the fifth amendment privilege against self incrimination. For this reason the Grand Jury recommends that the Florida legislature revise the Florida immunity statute to provide for "use immunity" rather than the broader "transactional immunity". The scope of "use immunity" has been judicially determined to be coextensive with the fifth amendment privilege against compulsory self-incrimination. Immunity from the use of compelled testimony and evidence derived directly and indirectly therefrom affords this protection. This would be identical to the protection afforded by the Federal Immunity provision, 18 U. S. Code 6002.

APPENDICES

(Exhibit 1)

IN THE SUPREME COURT OF FLORIDA

(July Term, A.D. 1974)

In Re: Statewide Grand Jury.

PETITION OF THE GOVERNOR OF FLORIDA FOR THE ORDERING AND EMPANELING OF A SECOND STATEWIDE GRAND JURY

Reubin O'D. Askew, being duly sworn according to law upon his oath, respectfully petitions the Supreme Court of the State of Florida as follows:

1. Petitioner is the Governor of the State of Florida.
2. This Court has jurisdiction with regard to the instant matter pursuant to the provisions of Florida Statutes, Chapter 905.33 (1973).
3. Petitioner has been informed by the Director of the Dade County Public Safety Department that investigations conducted by that Department, and other State, local and Federal law enforcement agencies into violations of the criminal laws of Florida, have detected an organized and widespread criminal enterprise involving violations of the laws regarding gambling.
4. Petitioner has been further informed by said Director that said crimes or wrongs are of a multi-county nature and are occurring or have occurred in two or more counties as part of a related transaction and that the offenses perpetrated by the members of said criminal enterprise are or may be connected with an organized criminal conspiracy or conspiracies affecting two or more counties.
5. Upon the basis of evidence and information acquired to date by the Dade County Public Safety Department and others, petitioner has determined that said crimes or wrongs, involving violation of the laws regarding gambling and attempts or conspiracies to commit crimes involving gambling, are of a multi-county nature, affect two or more counties, and have contacts and involve potential defendants in numerous counties and other judicial circuits of the State of Florida.
6. Petitioner has determined that there is good and sufficient reason for, and deems it to be in the public interest to, empanel a second statewide grand jury with a jurisdiction which shall extend throughout the State to investigate, return indictments, make presentments, and otherwise perform all functions of a grand jury with regard to the offenses stated herein, as authorized under Florida Statutes, Chapter 905.31 et seq. (1973), other statutory laws of Florida, and decisional laws.
7. Petitioner has been informed by said Director that for the purpose of selecting prospective jurors under the provisions of Florida Statutes, Chapter 905.37(2) the principal scope of the investigation, to be conducted by the second statewide grand jury into the commission of crimes of gambling, or attempts or conspiracies to commit violations of the gambling laws of this State, is not confined or limited to any section of the State, but rather extends, or may extend, to all sections of the State.

8. Therefore, pursuant to the provisions of Florida Statutes, Chapter 905.31 et seq (1973), the undersigned respectfully petitions this Court for an order empaneling a second statewide grand jury for a term of twelve calendar months, to investigate, return indictments, make presentments, and otherwise perform all functions of a grand jury with regard to the commission of crimes involving gambling, and other crimes related thereto as may arise during the investigation by the second statewide grand jury during its term and any extension thereof.

9. Petitioner further respectfully requests that this Court approve the designation by the undersigned of the Honorable Eugene T. Whitworth as the legal advisor to the grand jury and such other Assistants as might be designated by the legal advisor including but not limited to any of the several State Attorneys or Assistant State Attorneys from the various Judicial Circuits of the State of Florida, to attend sessions of the grand jury, and, in that capacity to examine witnesses, present evidence, draft indictments, presentments and reports pursuant to the provisions of Florida Statutes, Chapter 905.31 et seq. (1973).

10. Petitioner further respectfully requests that the Chief Justice of this Court, simultaneous with the entering of an order by this Court empaneling a second statewide grand jury pursuant to this petition, designate a judge of a circuit court to preside over the second statewide grand jury under the provisions of Florida Statutes, Chapter 905.33 (1973).

Wherefore, Petitioner prays that this Court enter an Order as requested.
 REUBIN O'D. ASKEW, Governor.

Sworn to and subscribed before me this 12th day of November, 1974.
 _____, Notary Public.

(Exhibit 2)

905.31 Short title.—Sections 905.31-905.40 shall be known and may be cited as the "Statewide Grand Jury Act."

905.32 Legislative intent.—It is the intent of the Legislature in enacting this act to strengthen the grand jury system and enhance the ability of the state to detect and eliminate organized criminal activity by improving the evidence gathering process in matters which transpire or have significance in more than one country.

905.33 Petition to Supreme Court by Governors order.—

(1) Whenever the Governor, for good and sufficient reason, deems it to be in the public interest to impanel a statewide grand jury, he may petition in writing to the Supreme Court for an order impaneling a statewide grand jury. The petition shall state the general crimes or wrongs to be inquired into and shall state that said crimes or wrongs are of multicounty nature. The Supreme Court may order the impaneling of a statewide grand jury, in accordance with the petition, for a term of 12 calendar months. Upon petition by a majority of the statewide grand jury or by the State Attorney designated to serve as the legal advisor to the statewide grand jury, the Supreme Court, by order, may extend the term of the statewide grand jury for a period of up to 6 months.

(2) The Chief Justice of the Supreme Court shall designate a Judge of a Circuit Court to preside over the statewide grand jury: such judge shall be referred to herein as the presiding judge.

905.32 Powers and duties: law applicable.—The jurisdiction of a statewide grand jury impaneled under this chapter shall extend throughout the state. The subject matter jurisdiction of the statewide grand jury shall be limited to the offenses of bribery, burglary, criminal fraud, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, and crimes involving narcotic or other dangerous drugs, or any attempt, solicitation, or conspiracy to commit any violation of the crimes specifically enumerated above, when any such offense is occurring or has occurred, in two or more counties as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more counties. The statewide grand jury may return indictments and presentments irrespective of the county or judicial circuit where the offense is committed or triable. If an indictment is returned, it shall be certified and transferred for trial to the county where the offense was committed. The powers and duties of, and law applicable to, county grand juries shall apply to a statewide grand jury except when such powers, duties, and law are inconsistent with the provisions of ss. 905.31-905.40

905.35 Appointment of foreman and deputy foreman.—The statewide grand jury shall elect, by majority vote, a foreman and deputy foreman from among its members.

905.36 Duty of State Attorney or other legal advisor; presentation of evidence.—A State Attorney designated by the Governor with the approval of the Supreme Court shall attend sessions of the grand jury and serve as its legal advisor. The State Attorney, the State Attorney and one or more of his assistant state attorneys, or one or more assistant state attorneys shall examine witnesses, present evidence, and draft indictments, presentments, and reports upon the direction of the statewide grand jury. The State Attorney may designate one or more assistant state attorneys to accompany and assist him in the performance of his duties, or he may designate one or more assistant state attorneys to attend sessions of the statewide grand jury and perform such duties.

905.37 List of prospective jurors; impanelment; composition of jury; compensation.—(1) On or before July 15, 1973, and not later than the first week in December of each year thereafter, the chief judge of each judicial circuit shall cause to be compiled a list of persons called and certified for jury duty in each of the several counties in the circuit. From the lists of persons certified for jury duty in each of the several counties in his judicial circuit, the chief judge shall select by lot and at random a list of eligible prospective grand jurors from each county. The number of prospective statewide grand jurors to be selected from each county shall be determined on the basis of three such jurors for each 3,000 residents, or fraction thereof, in each county. When such lists are compiled, the Chief Judge of each judicial circuit shall cause the lists to be submitted to the state courts administrator on or before August 15, 1973, and not later than February 15 of each year thereafter.

(2) The state courts administrator, upon receipt of the order of the Supreme Court granting petition to impanel a statewide grand jury, shall certify and submit to the presiding judge the lists submitted by the chief judge of each judicial circuit. The Supreme Court shall provide in its order impaneling the statewide grand jury whether the prospective jurors are to be drawn from the jury lists, as selected, certified, and submitted pursuant to this section, from a designated circuit or circuits or from a statewide list containing the names of all persons who are named in the certified jury lists submitted by the chief judge of each judicial circuit. If the Supreme Court determines, based upon the facts set forth in the Governor's petition, that the principal scope of the investigation to be conducted by the statewide grand jury is limited to a particular region or section of the state, or if, in the interest of convenience to the prospective grand jury witnesses, law enforcement officers, or others, the investigation could more appropriately operate within a particular region or section of the state, then, in either such event, the Supreme Court may designate the judicial circuits within said region of the state which shall be the base operating area for the statewide grand jury, from which designated circuits the prospective jurors of the statewide grand jury shall be selected. The presiding judge shall, by lot and at random, select and impanel the statewide grand jury from the jury lists of the designated circuits certified and submitted through state courts administrator, or of the composite statewide list, in accordance with the order of the Supreme Court. In selecting and impaneling; the statewide grand jury in the manner prescribed herein the presiding judge shall select no less than one statewide grand juror from each congressional district in the state. Each such prospective juror may be excused by the presiding judge upon a showing that service on the statewide grand jury will result in an unreasonable personal or financial hardship by virtue of the location or projected length of the grand jury investigation.

(3) A statewide grand jury shall be composed of 18 members, of which 15 members shall constitute a quorum. Each member of the statewide grand jury shall have been a resident of the state for not less than 1 year and otherwise qualified as a juror in the county in which he resides. In all other respects a statewide grand juror shall have the same qualifications as provided in this chapter in the case of a county grand jury.

(4) While serving on the statewide grand jury, each grand juror shall receive mileage and a per diem allowance of \$25 per day. Upon receiving a summons to report for jury duty, any employee shall, on the next day he is engaged in his employment, exhibit the summons to his immediate superior, and the employee shall thereupon be excused from his employment for the period that he is actually required to be in court attendance, plus reasonable travel time.

905.38 Summoning of jurors.—The Clerk of the Supreme Court, upon receipt of the venire for the statewide grand jury from the presiding judge, shall issue and cause to be delivered to the sheriff of the county in which a member of the statewide grand jury resides, a venire of the grand jury commanding the sheriff to summon, in accordance with the venire, the persons named in the venire who reside in the county.

905.39 Judicial supervision; returns.—Judicial supervision of the statewide grand jury shall be maintained by the presiding judge, and all indictments, presentments, and formal returns of any kind made by such grand jury shall be returned to the presiding judge.

905.40 Payment of costs and expenses.—The costs and expenses incurred by the statewide grand jury in the performance of its functions and duties shall be paid by the state out of funds appropriated to the circuit courts.

(Exhibit 3)

WITNESS LIST

Sitting in: Broward County.
Date 4-23-75—4-25-75.

Clarence Jones
Fred Frances
John Camp
Meyer Lansky
Milton Weiss
Morris Katz
Arthur Young
Walter Miller

Joseph Laplaca
James Miller
Edward Vose
David Green
David Goodhart
Joseph Galante
Myron Wisotsky
Charles Salisbury

Sitting in: Broward County.
Date: 5-14-75—5-16-75.

Hyman Lazar
David Green
Marty Lewis
Michael Tucker

Dave Marder
Milton Nadel
Meyer Lansky

Sitting in: Broward County.
Date: 6-11-75—6-13-75.

Meyer Lansky
David Green
Jerry Wexler Jr.
Alfie Mart
Richard Francioni

Marty Lewis
Deborah Placey
Frank Pelliccio
John Tronolone
Walter Philbin

Sitting in: Leon County.
Date: 7-9-75—7-11-75.

Wayne Byrd
Marvin Pittman
Wayne Graham
Bob Neyendorf
David Green
Lester Baker
Bob Allen
Fred Wooldridge
Don West

James McDonald
Burl Peacock
H. Morrison
Lloyd First
Bob DeCarlo
Raymond Hamlin
Harry Campbell
James Boyd

Sitting in: Broward County.
Date: 8-13-75—8-15-75.

David Green
Joe Clark
Marion Teems
Alan Moriarity
Nick Navarro
Jerry Peterson
Dale Strange
Lucille Hubbard
Stan Rowell
Frank Boni
Emelio Delio
Jack Mack
Joseph Ippolito Jr.
Michael Spinelli
Anthony Accetturo
Ross Lambert
Richard Purdy

Frank Troy
Len Olivieri
Heyward Spires
Eugene McCormack
Judith Greer
Walter Shaw
James Boyd
Howard Robbins
Barbara Katzen
Mario Natalizio
Michael Viscito
Joseph Covello
Joseph Paterno
Joseph Coletta
Dorothy Ross
James Longo

Sitting in: Palm Beach County.
Date: 9-10-75—9-12-75.

David Bloodworth
Jan Thornton
Marion Teems
Richard Hanna
Sam Ferris
Charles E. Kimberly
Ralph Purvis
David Green
Richard Roehm
James Boyd
Larry Campbell

Jose Perez
Len Olivieri
Sharon Holmes
Tim Hannon
George Georgopolos
William G. Bennett Jr.
Marlene Sylvestri
Nick Navarro
Frank Boni
Dale Strange

Sitting in: Collier County.
Date: 10-15-75—10-17-75.

David Green
Joe Pierce
Joe D'Alessandro
Richard Gerstein
Richard Roehm
Wayne Graham
Herald Ford
William Heitman
Joseph Paterno

Troy L. Shearer
Joseph Coletta
Aubrey Rogers
John Woodruff
Frank Wanicka
Ray Yahl
Morgan House
Dale Strange
Emelio Delio

Sitting in: Hillsborough County.
Date: 11-19-75--11-21-75.

David Green
Mike Lafrado
Bob Cummings
Mario Natalizio
Danny Johnson
Glen Darty
Richard Riley
Alfonzo L. Hall
Greg Gilliland
William Whitney
Phillip Ramer
John Barr
Emelio Delio

E. J. Salcines
Larry Campbell
Larry Claus
Frank Troy
William Straley
John Smith
Sheldon Watson
Doug Pyle
Edward Williams
Manny Funes
Ron Tucker
A. Florian
Charles O. Jackson

Sitting in: Orange County.
Date: 1-21-76—1-23-76.

Dominic Altieri
Nate Farber
Vito Devanzo
Henry Beardsly
E. F. Vickers
Russ Calamia
Fred Wooldridge
E. Haynie
J. Diamond
Lee Lockett
Roosevelt Armstrong
Doris Goggins
Pete Melwid
John Rayl
Seymour Franco
Francisco Jose Diaz
Alfonzo Scaglione
Steve Guggino

Tony Orlando
Seymour Franco
Anthony Accetturo
Leroy Kusch
A. Florian
Wiley Clark
W. Sawyer
J. Johnson
John Hart
Louise Crawford
O. B. Smith
David Green
Richard Roehm
Michael Viscito
John Demmi
Abegale Hero

Sitting in: Orange County.
Date: 2-18-76—2-20-76.

David Green
Dave Richards
Mike Reed
Philip Moscotto
Alfie Mart
John Lovell
Vernon Ashley
Robert Simon
Milton Shapiro
John Rayl
L. St. Laurent
Larry Claus
Beverly Bogus
Pat Murphy
Steve Benn
S. R. DeWitt
Nick Long
Lawrence Fitzpatrick
Dominic Altieri
John Lovell
Tony Orlando
Stanley Pred
Joseph Covello

Harlan Blackburn
Fred Wooldridge
Al LeMay
James Lapara
Sam Longobardi
Dale Lockett
Diane Dupree
Ellen Lasher
Gary LeMay
Ralph Cunningham
Santo Trafficante
Mildred Varing
Jim Wirkus
Theo York
Leigh Wilson
Moe Kirschenbaum
Dow Helton
David Nye
Steve Guggino
Henry Beardsly
Tommy Griffin
Vito Devanzo
Anthony Accetturo

Sitting in: Lee County.
Date: 3-24-76—3-26-76.

Joe D'Alessandro
X. Fernandez
Ralph Cunningham
Red King
Ray Hillmeyer
Sergio Abreu
Louis Shapiro
Mike Gleason
Linda Lowe
Ed Shulte
Calvin Addison
John Rayl
Diane DuPree
Marie Santos
William Nychyk
Donald Davis
Bruno Gerillo
James Lapara

L. St. Laurent
Frank Wanicka
Bill McGuinn
David Patterson
Mike Laffredo
George Clenn y
James Duffy
Melvin Ford
Simon Finman
John Girot
David Green
Robert Simon
Milton Shapiro
Ronald Long
Barney Baron
Ronnie Lee
Sam DeCalvacante
Jason Queen

Sitting in: Broward County.
Date: 4-21-76—4-23-76.

David Green
Louis Imburgio
Billy Owens
Charles Tourrine
Douglas Stevens
Ira Vernon
William Breen

Albert Facchiano
Vincent Terriaca
Joe Pierce
Norman Rothman
Jim Collins
John Rayl
Louis Rotundo

Sitting in: Volusia County.
Date: 5-19-76—5-21-76.

David Green
Gerald Catena
Alvin Malnik
Sam Berry
Louis Misita
Anthony Monaco
Francis P. Monaco
X. Fernandez
Anthony Salerno
Tim Elder
Salbano Mangascle
Melvin Fields
Doug Pyle
Jack Mack

John Anderson
Tom O'Brien
Bob DeCarlo
Charlie T. Johnson
Anthony Ricca
Fred Wooldridge
Bruce O'Malley
John Narducci
Steve McAlvin
Betty Johnson
L. Wolfeson
Milton Shapiro
Diane Dupree

Sitting in: Volusia County.
Date: 6-16-76—6-18-76.

David Green
Harry Thomas
John Simone
Irving Swartz
Jackson Bragg
John Crerar
Irwin Kane
Joe Scatanic
Dean Brown
Carl Krantz
Frank Holstein

Fred Wooldridge
Jack Cooper
John Tronolone
Isaac Silber
John Kaye
Ron Tutor
Michael Viscito
Louis Misita
Cesar Prado
Joseph Rodriguez
James Collins

Sitting in: Orange County.
Date: 7-14-76—7-16-76.

David Green
Harold Rosen
George Levine
Mel Coleman
James Harris
Roy L. Davis
Anthony Plate
Anthony Calangelo
Frank Diecidue
George Pape
Mathew Kensey
Matt Touchton
Joseph Carlucci
Joe Kicklighter

J. P. McCann
Sebastian Buffa
Lloyd Hough
Ron Powell
Charlie Jones
Joseph Covello
Sheldon Watson
John Guemple
Pasquale Matassini
Kathryn Quinn
Lee Munro
Bob Murphy
Gene McCloud
Jose Seda

Sitting in: Dade County.
Date: 8-18-76—8-19-76.

David Green
Dennis Goddard
W. C. Fisher
Guido Penosi
Isaac Silber
Hank Messik
Irving Cowan
Steve McAlvane
Sam Green
Yiddy Bloom
Alvin Aice
Tito Carinci
James Tortoriello
Richard Wood
Stella Trujilo
Frank Sawyer
Robert Baker
Ralph White
James Boyd

Charles DelMonico
Billy Oweus
Daniel Laratro
Frank Boni
Ron Hansen
Jack Cooper
John Simone
Augustino Amato
Curtis Brown
Mae Arnold
Frank Ippolito
John Faucett
Ed Wouton
Adele Corey
Armando Mira
Meyer Lansky
Larry Campbell
Tony Hernandez

Sitting in: Duval County.
Date: 9-15-76—9-17-76.

Dennis Wood
Morris Foster McEvoy
Wesley Bradley
James Boyd

Albert Wood
Sal Zeboni
Truby Byrd
Lee Munro

(Exhibit 4)

LOTTERY

Published dollar amounts attributed to lottery operations are sometimes greeted with skepticism, as being wild guesses made for headline grabbing purposes. In fact however, because of the detailed records a lottery operator must keep to operate, it is rather easy to arrive at a total annual handle. By further analysis it is possible to arrive at a rather close estimate of the operation's profits. The following describes how this analysis is made for the typical South Florida operation.

To assess the probable profits from a lottery operation, the first consideration is to establish whether it is predominantly a Latin or a Black operation, as the two cultures have different betting patterns.

Among the Blacks, approximately 80 percent of the bets are on two-digit numbers, 5 percent on three-digit numbers, and 15 percent on parlays. (two 2-digit numbers.) The writers are customarily paid 25 percent of the amount written.

Among the Latins, approximately 50 percent of the bets are on two-digit numbers, and 25 percent each on the other two types of bets. Writers are paid 25 percent on the two-digit bets and 30 percent on the other two types.

Payoffs are customarily made at 70 to 1 on two-digit bets, 500 to 1 on three-digit bets, and 2,000 to 1 on parlays.

In addition to the payouts for winnings and the fees to the writers the operators will have overhead expenses of about two percent.

The two charts on the following page illustrates the divisions of proceeds, based on the above figures.

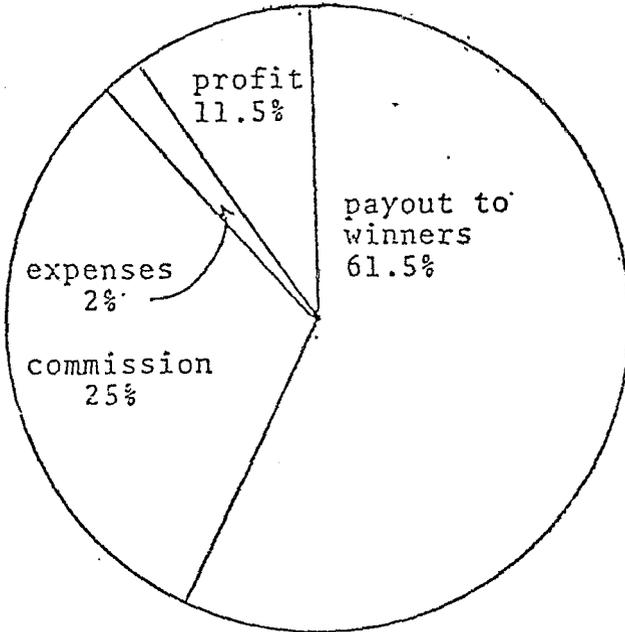
It was stated earlier in this report that during the Jury's term of empanelment, nine major lottery operations were raided in South Florida. These had an estimated annual handle of \$31 million. Using the percentages shown on the following charts, the estimated returns to the operators may be computed as follows:

43 percent of \$31 million equals \$13,300,000 (gross annual take).

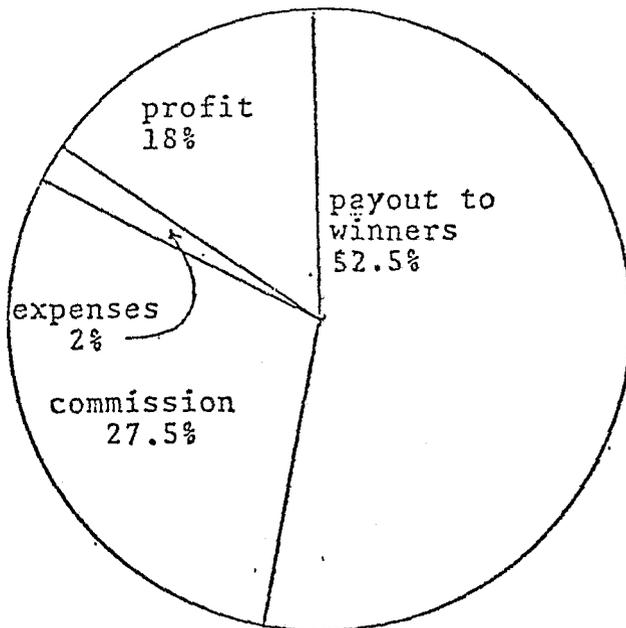
15 percent of \$31 million equals \$4,650,000 (net annual return).

(Note—as some of the operations raided were Black operated and others Latin, an average percentage figure was used above.)

Distribution of lottery proceeds based on South Florida betting pattern



TYPICAL BLACK OPERATION



TYPICAL LATIN OPERATION

(Exhibit 5)

GAMBLING IN ITS VARIED FORMS IS THE SINGLE LARGEST CONTRIBUTOR OF REVENUE TO ORGANIZED CRIME

Bingo, the great American gambling game, is one of those devices of gambling that add to the coffers of organized crime in Florida.

Bingo was first introduced into prominence in Florida in 1965 when the legislative passed the necessary legalizing legislation Florida Statute 849.093, two amendments were introduced and passed in 1973.

When bingo is legalized by a State, the annual handle usually drops to about one-third of the previous illegal handle. This is due in part to the fact that the State places so many restrictions on the games' operation that many of the former illegal promoters quit. Business also drops because the size of the jackpot prizes permitted are much smaller. This has been found to be true until the promoters of the game find a way to circumvent these restrictions. The players of course do not object and the local politicians and law enforcement agencies do not want to buck the thousands of bingo players who vote, especially when the bingo sessions are run under the auspices of religious, civic, benevolent, educational, veterans, and charitable organizations, with the profits allegedly going toward the support of hospitals, schools, and welfare programs. There can, however, be no argument that bingo has raised more money for more charitable organizations than any other form of fund raising. Many synagogues and parishes owe their very start to bingo.

Bingo is a version of the still popular Italian parlor game of lotto, which in turn was derived from the more than 444 year old Italian National Lottery. The Italian lotto is patterned after Lo Giucco del Lotto del Italia (The Italian Nation Lottery), which has been in almost constant weekly operation since it began in 1530. This was the first money lottery to be operated anywhere in the world.

The lottery uses the numbers 1 to 90—bingo uses the numbers 1 to 75. The Italian lottery heads each line of its five-numbered squares with the name of an Italian city. Bingo heads each line of its five-numbered squares with the letters B-I-N-G-O.

Bingo as it is played today is actually a form of lottery except that the cards cannot be purchased outside the Bingo premises and each player must be present to cover the drawn numbers on the bingo card with markers while the actual drawing is taking place.

Bingo cards are made either of cardboard or paper and the playing surface bears a printed design of 5 rows of 5 squares each—25 squares in all. The letters B-I-N-G-O appear above this design, each letter above one of the vertical columns. All the squares contain numbers except the center square, which is considered a free play.

The most widely used device for selecting numbers is the bingo bowl, often called the bingo cage, a spherical wire mesh cage about 9½ inches in diameter into which the bingo balls are placed. It is mounted on a base and has a crank turning ball selecting device. There are 75 bingo balls, each of which bears one of the letters, of the word, bingo and a number—1 through 75. When the operator turns the crank, the wire cage revolves and the players can see the balls being mixed. When he stops turning the crank, an opening at the bottom of the cage releases a single ball. An announcer, known as the caller, calls the letter and number of the released ball over a loudspeaker. If, for example, B5 is called, a player with the number B5 on his card places a marker on that number. This is called covering the board. The caller then places the drawn ball on a master board, which in turn is projected on closed circuit TV—so that the players may see, along with hearing the number and letter drawn. As soon as any player succeeds in covering five numbers in a straight line, vertically, horizontally, or diagonally, that player shouts "Bingo" and a floor man or woman goes to the player and reads the numbers marked on the card aloud to the caller for verification. If the numbers are confirmed, that player wins that game and prize.

There are many variations of bingo and the particular type of play for any on Bingo parlor is left strictly to the imagination of the operator.

Bingo's popularity is due primarily to two factors: The game is simple to play and every game produces one or more winners; since 30 to 65 games are played in any one session. It is obvious why so many people participate in this form of gambling.

Most State Officials welcome legalization of bingo, because it settles a very disputable controversy. When the question of bingo arises, the issue is not do we want bingo gambling—but should it be made legal.

Many public spokesmen feel that legalization of bingo keeps out the racketeer, but also admit that enforcing the law is no easy task. The reason for this is three-fold. Florida law regulating bingo is easily misconstrued and such a low prize has been affixed to each game that there is no competition other than awarding larger prizes. Further, law enforcement personnel are not particularly interested in spending the time it takes to make a case on a Bingo operator. When an operator is arrested or given a summons, he continues right on with his prior activities. The general consensus of opinion of law enforcement officers is—why spend the time when all the offender gets is a minimal fine which he can well afford.

Florida Statutes 849.903, which governs and sets out the guidelines as to when and how bingo may be legal, is a subsection of the Florida Gambling Statute. If these guidelines are not followed, then technically you are gambling and until 1973, guilty of a felony of the third degree. As of 1973 Florida legislative session, it is a misdemeanor of the first degree to knowingly and wilfully violate any of these provisions.

849.093: Charitable non-profit organizations; certain endeavors permitted—
 (1) None of the provisions of this chapter shall be construed to prohibit or prevent non-profit or veterans organizations engaged in charitable civic, community, benevolent, religious, or scholastic works and/or other similar activities, which organization has been in existence for a period of three years or more, from conducting bingo games or guest games, provided that the entire proceeds derived from the conduct of such games shall be donated by such organization to the endeavors mentioned above. In no case shall the proceeds from the conduct of such games be used for any other purpose whatsoever.

(2) If an organization is not engaged in efforts of the type set out above, its right to conduct bingo or guest games hereunder shall be conditioned upon the return of all the proceeds from such games to the players in the form of prizes. If at the conclusion of play on any day during which bingo or guest games are allowed to be played under this section, there remain proceeds which have not been paid out as prizes, the non-profit organization conducting the game shall at the next scheduled day of play conduct bingo or guest games without any charge to the players and shall continue to do so until the proceeds carried over from the previous day's play have been exhausted. This provision in no way extends the limitation on the number of prizes or jackpot games allowed in one night as provided for in subsection (4) of this section.

(3) The number of days during which such organizations are authorized hereunder to conduct bingo or guest games per week shall not exceed two.

(4) No jackpot shall exceed the value of one hundred dollars in actual money or its equivalent and there shall be no more than one jackpot in any one night.

(5) There shall be only one prize or jackpot on any one day of play of \$100. All other game prizes shall not exceed \$250.

(6) All persons involved in the conduct of any bingo or guest game must be residents of the community where the organization is located and bona fide members of the organization sponsoring such games and shall not be compensated in any way for operation of said bingo or guest game.

(7) No one under 21 years of age shall be allowed to play.

(8) Bingo or guest games shall be held only on property owned by the non-profit organization or by the charity or organization that will benefit from the proceeds, on property leased full time by such organization for a period of not less than one year, or on property owned by and leased from another non-profit organization qualified under this section.

(9) Any organization or other person who wilfully and knowingly violates any provisions of this section is guilty of a misdemeanor of the first degree, punishable as provided in Section 775.082 or 775.083. For a second or subsequent offense, the person or organization is guilty of a felony of the third degree, punishable as provided in Section 775.082, 775.083, or 775.084.

As the reader can see, it is very easy to misconstrue these guidelines. Here is an example of how the so-called professional bingo operator in Florida gets around the law. An individual will lease a building or hall large enough to accommodate several hundred persons. He will then purchase or rent the necessary tables, chairs, bingo cards, and paraphernalia needed to operate a bingo game. Next, the operator will contact a legitimate non-profit organization and advise them that he will pay them, for example \$100 a night for 2 nights or sessions of bingo play, for the

use of the charitable organization's name to sponsor the bingo play. If the charitable organization agrees, which it usually does, the operator will then have the organization sign a sublease and have at least one person from the organization present on each sponsored session of bingo. As you can see, we are now circumventing guidelines one and eight. Guideline three is taken care of by getting at least four legitimate organizations to cooperate with this format. The promoter further requests the organization to furnish himself and the persons employed by him, caller and card sellers, membership cards in the organization. Guideline six is thus taken care of. Since jackpots are limited to one one-hundred dollar jackpot per session, and all other games with prizes of not more than twenty-five dollars per game, the promoter to entice players advertises a free Keno. Anyone can play.

A player or any person who wishes may get a free Keno card. This card contains so many numbers, usually 10. The bingo caller will call 20 numbers and if the player is holding a card with 10 of the 20 numbers called, he is the winner. As long as the cards are free and there is no obligation to play, it is perfectly legal. When a bingo promoter of the type set out above is accosted as to his lack of legalities, almost always the response is, "I'm not making any money."

Bingo is generally played 7 days or nights, and sometimes both, a week; but for comparison, we will use 7 nights a week. A hall with a capacity of 400, spending an average of \$15 each, a conservative figure which we will soon see, adds up to a sizable amount of money. The promoter will sell the playing cards in packages of \$5, \$8, \$10, and \$12 denominations. These generally are enough cards to play most of the games. To continue, 400 persons at \$15 per person comes to \$6,000 per night for selling packages of cards alone. Multiply this by seven (number of nights play) and you have \$42,000 per week. The promoter counters this figure with his expenditures—prize money, maintenance, etc., and after expenses the charity gets what is left.

The promoter would like you to think he is doing this out of the kindness of his heart. If there is \$100 jackpot session and all the other game prizes are \$25, and 30 games are played per session, we have a total of \$5,000 in prize money paid in seven sessions of bingo. The difference between \$42,000 taken in from seven sessions and \$5,000 paid out for the same seven sessions is a difference of \$36,400. How much can maintenance and expenses cost? But let's not stop there. What about the night owl games and the special games or extra cards that are sold during the course of the play. It is estimated that \$4 per person is spent per night or session of bingo play on these extra games. So, \$4 x 400 persons for 7 sessions comes to an additional \$11,200. Even if we were to deduct the \$100 per session given to the charitable organization, we are still only deducting \$700 from \$42,000—and still we have \$35,000 per week for the promoter.

If these charitable organizations would only get together, they could be getting this money themselves. The way it is set up now, the organization has no output or risk, yet receives approximately \$10,000 per year for the use of its name, as compared to approximately \$1,092,000 per year for the Bingo hall. Using Broward County as an example with its eight professional Bingo halls, and assuming that each hall does approximately the same business, we have an annual income to organized crime for just one County alone of over \$8 million.



END