

ORGANIZED CRIME AND USE OF VIOLENCE

HEARINGS

BEFORE THE

PERMANENT

SUBCOMMITTEE ON INVESTIGATIONS

OF THE

COMMITTEE ON

GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

APRIL 23, 29, AND 30; MAY 1, 1960

PART 1

for the use of the Committee on Governmental Affairs



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SECOND SESSION

APRIL 28, 29, AND 30; MAY 1, 1980

PART 1

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² May be found in the files of the subcommittee.

ORGANIZED CRIME AND USE OF VIOLENCE

MONDAY, APRIL 28, 1980

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

The subcommittee met at 11:30 a.m., pursuant to call, in room 5110 Dirksen Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. Sam Nunn (chairman) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; Senator Lawton Chiles, Democrat, Florida; Senator James R. Sasser, Democrat, Tennessee; Senator Charles H. Percy, Republican, Illinois; Senator Jacob K. Javits, Republican, New York; and Senator William S. Cohen, Republican, Maine.

Also present: Senator Dennis DeConcini, Democrat, Arizona.

Members of the professional staff present: Marty Steinberg, chief counsel; LaVern Duffy, general counsel; W. P. Goodwin, Jr., staff director; Michael Levin, deputy chief counsel; Jack Key and Raymond Worsham, investigators; Myra Crase, chief clerk; Mary Donohue, assistant chief clerk; Joseph G. Block, chief counsel to the minority; Charles Berk, general counsel to the minority; Howard Marks, investigator to the minority; Lynn Lerish, executive assistant to the minority; Ira Shapiro, chief counsel, Governmental Efficiency and District of Columbia Subcommittee; Peter Levine, general counsel, Intergovernmental Relations Subcommittee; Janet Studley, counsel, Federal Spending Practices and Open Government Subcommittee; Alan Bennett, counsel to the minority, Governmental Affairs Committee; and Peter Roman, Federal Spending Practices and Open Government Subcommittee.

OPENING STATEMENT OF SENATOR NUNN

Chairman NUNN. My regrets to those who have been waiting. We anticipated opening at 10:30 this morning but we had several things to clean up at the end. We also had anticipated a cloture vote at 12 o'clock, and we felt it would not be appropriate to disrupt the hearing. The cloture vote has been postponed until late this afternoon. I think we will be uninterrupted.

Today, the Permanent Subcommittee on Investigations opens the first of a series of hearings on organized crime in America. Our immediate focus today and the rest of this week is on the use of violence by organized crime to gain control of businesses, organizations, and even geographical areas.

These hearings are being conducted under authority granted the Committee on Governmental Affairs, or any duly authorized subcommittee thereof, by Senate Resolution 361, agreed to March 5, 1980, to investigate syndicated or organized crime, criminal or other improper practices in the field of labor-management relations and all other aspects of crime and lawlessness within the United States which have an impact upon or affect our national health, welfare, and safety.

This resolution authorizes the subcommittee to investigate the identity of persons, firms, or corporations who are engaged in organized criminal activity.

Without objection, I will order that the text of Senate Resolution 361 be printed in the record.

[The text follows:]

96TH CONGRESS
2D SESSION

S. RES. 361

[Report No. 96-605]

Authorizing additional expenditures by the Committee on Governmental Affairs
for inquiries and investigations.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6 (legislative day, JANUARY 3), 1980

Mr. RIBICOFF, from the Committee on Governmental Affairs, reported the following original resolution; which was referred to the Committee on Rules and Administration

FEBRUARY 27 (legislative day, JANUARY 3), 1980

Reported by Mr. PELL, with amendments

MARCH 5 (legislative day, JANUARY 3), 1980

Considered, amended, and agreed to

RESOLUTION

Authorizing additional expenditures by the Committee on
Governmental Affairs for inquiries and investigations.

1 *Resolved*, That, in holding hearings, reporting such
2 hearings, and making investigations as authorized by para-
3 graphs 1 and 8 of rule XXVI of the Standing Rules of the
4 Senate, in accordance with its jurisdiction under rule XXV of
5 such rules, the Committee on Governmental Affairs is au-

1 thORIZED from March 1, 1980, through February 28, 1981, in
2 its discretion (1) to make expenditures from the contingent
3 fund of the Senate, (2) to employ personnel, and (3) with the
4 prior consent of the Government department or agency con-
5 cerned and the Committee on Rules and Administration, to
6 use on a reimbursable basis the services of personnel of any
7 such department or agency.

8 SEC. 2. The expenses of the committee under this reso-
9 lution shall not exceed \$4,610,800, of which amount (1) not
10 to exceed \$58,735 may be expended for the procurement of
11 the services of individual consultants, or organizations there-
12 of (as authorized by section 202(i) of the Legislative Reorga-
13 nization Act of 1946, as amended), and (2) not to exceed
14 \$500 may be expended for the training of the professional
15 staff of such committee (under procedures specified by section
16 202(j) of such Act).

17 SEC. 3. The committee, or any duly authorized subcom-
18 mittee thereof, is authorized to study or investigate—

19 (1) the efficiency and economy of operations of all
20 branches of the Government including the possible ex-
21 istence of fraud, misfeasance, malfeasance, collusion,
22 mismanagement, incompetence, corruption, or unethical
23 practices, waste, extravagance, conflicts of interest,
24 and the improper expenditure of Government funds in
25 transactions, contracts, and activities of the Govern-

1 ment or of Government officials and employees and
2 any and all such improper practices between Govern-
3 ment personnel and corporations, individuals, compa-
4 nies, or persons affiliated therewith, doing business
5 with the Government; and the compliance or noncom-
6 pliance of such corporations, companies, or individuals
7 or other entities with the rules, regulations, and laws
8 governing the various governmental agencies and its
9 relationships with the public: *Provided, That*, in carry-
10 ing out the duties herein set forth, the inquiries of this
11 committee or any subcommittee thereof shall not be
12 deemed limited to the records, functions, and oper-
13 ations of the particular branch of the Government
14 under inquiry, and may extend to the records and ac-
15 tivities of persons, corporations, or other entities deal-
16 ing with or affecting their particular branch of the
17 Government;

18 (2) the extent to which criminal or other improper
19 practices of activities are, or have been, engaged in the
20 field of labor-management relations or in groups or
21 organizations of employees or employers, to the detri-
22 ment of interests of the public, employers, or employ-
23 ees, and to determine whether any changes are re-
24 quired in the laws of the United States in order to pro-

1 tect such interests against the occurrence of such prac-
2 tices or activities;

3 (3) syndicated or organized crime which may op-
4 erate in or otherwise utilize the facilities of interstate
5 or international commerce in furtherance of any trans-
6 actions which are in violation of the law of the United
7 States or of the State in which the transactions occur,
8 and, if so, the manner and extent to which, and the
9 identity of the persons, firms, or corporations, or other
10 entities by whom such utilization is being made, what
11 facilities, devices, methods, techniques, and technicali-
12 ties are being used or employed, and whether or not
13 organized crime utilizes such interstate facilities or
14 otherwise operates in interstate commerce for the de-
15 velopment of corrupting influences in violation of the
16 law of the United States or the laws of any State, and
17 further, to study and investigate the manner in which
18 and the extent to which persons engaged in organized
19 criminal activities have infiltrated into lawful business
20 enterprise; and to study the adequacy of Federal laws
21 to prevent the operations of organized crime in inter-
22 state or international commerce; and to determine
23 whether any changes are required in the laws of the
24 United States in order to protect the public against the
25 occurrences of such practices or activities;

1 (4) all other aspects of crime and lawlessness
2 within the United States which have an impact upon
3 or affect the national health, welfare, and safety;

4 (5) riots, violent disturbances of the peace, van-
5 dalism, civil and criminal disorder, insurrection, the
6 commission of crimes in connection therewith, the im-
7 mediate and longstanding causes, the extent and effects
8 of such occurrences and crimes, and measures neces-
9 sary for their immediate and long-range prevention and
10 for the preservation of law and order and to insure do-
11 mestic tranquillity within the United States;

12 (6) the efficiency and economy of operations of all
13 branches and functions of the Government with partic-
14 ular reference to—

15 (A) the effectiveness of present national secu-
16 rity methods, staffing, and processes as tested
17 against the requirements imposed by the rapidly
18 mounting complexity of national security
19 problems;

20 (B) the capacity of present national security
21 staffing, methods, and processes to make full use
22 of the Nation's resources of knowledge, talents,
23 and

24 (C) the adequacy of present intergovernmen-
25 tal relationships between the United States and

1 international organizations principally concerned
2 with national security of which the United States
3 is a member; and

4 (D) legislative and other proposals to im-
5 prove these methods, processes, and relationships;

6 (7) the efficiency, economy, and effectiveness of
7 all agencies and departments of the Government in-
8 volved in the control and management of energy short-
9 ages including, but not limited to, their performance
10 with respect to—

11 (A) the collection and dissemination of accu-
12 rate statistics on fuel demand and supply;

13 (B) the implementation of effective energy
14 conservation measures;

15 (C) the pricing of energy in all forms;

16 (D) coordination of energy programs with
17 State and local government;

18 (E) control of exports of scarce fuels;

19 (F) the management of tax, import, pricing,
20 and other policies affecting energy supplies;

21 (G) maintenance of the independent sector of
22 the petroleum industry as a strong competitive
23 force;

24 (H) the allocation of fuels in short supply by
25 public and private entities;

1 (I) the management of energy supplies
2 owned or controlled by the Government;

3 (J) relations with other oil producing and
4 consuming countries;

5 (K) the monitoring of compliance by govern-
6 ments, corporations, or individuals with the laws
7 and regulations governing the allocation, conser-
8 vation, or pricing of energy supplies; and

9 (L) research into the discovery and develop-
10 ment of alternative energy supplies:

11 *Provided, That, in carrying out the duties herein set*
12 *forth, the inquiries of this committee or any subcom-*
13 *mittee thereof shall not be deemed limited to the rec-*
14 *ords, functions, and operations of the particular branch*
15 *of the Government under inquiry, and may extend to*
16 *the records and activities of persons, corporations, or*
17 *other entities dealing with or affecting that particular*
18 *branch of the Government.*

19 (b) Nothing contained in this section shall affect or
20 impair the exercise of any other standing committee of the
21 Senate of any power, or the discharge by such committee of
22 any duty, conferred or imposed upon it by the Standing Rules
23 of the Senate or by the Legislative Reorganization Act of
24 1946, as amended.

1 (c) For the purpose of this section the committee, or any
2 duly authorized subcommittee thereof, or its chairman, or any
3 other member of the committee or subcommittee designated
4 by the chairman, from March 1, 1980, through February 28,
5 1981, is authorized, in its, his, or their discretion (1) to re-
6 quire by subpoena or otherwise the attendance of witnesses
7 and production of correspondence, books, papers, and docu-
8 ments, (2) to holding hearings, (3) to sit and act at any time
9 or place during the sessions, recess, and adjournment periods
10 of the Senate, (4) to administer oaths, and (5) to take testi-
11 mony, either orally or by sworn statement.

12 SEC. 4. The committee shall report its findings, together
13 with such recommendations for legislation as it deems advis-
14 able, to the Senate at the earliest practicable date, but not
15 later than February 28, 1981.

16 SEC. 5. Expenses of the committee under this resolution
17 shall be paid from the contingent fund of the Senate upon
18 vouchers approved by the chairman of the committee, except
19 that vouchers shall not be required for the disbursement of
20 salaries of employees paid at an annual rate.

Chairman NUNN. The Senate first delegated this authority to the Committee on Government Operations—as our full committee was known until the Senate reorganization of February 11, 1977—by way of Senate Resolution 667, agreed on February 13, 1961.

The authority has been extended each year by way of the committee's annual funding resolutions. Senate Resolution 361 is the latest of these annual resolutions.

The Permanent Subcommittee on Investigations has exercised this authority on behalf of the full committee since it was initially granted.

In 1961, the subcommittee held hearings on gambling and organized crime. The involvement of organized crime in the entertainment industry was the focus of the subcommittee in 1962.

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

Chairman NUNN. In 1963, the subcommittee conducted the famous hearings at which a mobster named Joseph Valachi gave dramatic testimony about the inner workings and organization of a predominately Italian-American criminal group known as the Mafia or La Cosa Nostra.

The Valachi hearings were America's first look inside an organized crime apparatus. In fact, those hearings and the books and movies they spawned form the basis of what most Americans know about organized crime in the country.

When I became chairman of the subcommittee a little more than a year ago, I set about to assemble a staff of criminal investigators and former prosecutors whose job it would be to update our knowledge of organized crime.

In order for the Congress to be effective in carrying out its legislative function, both the Senate and the House of Representatives are dependent on receiving the necessary information from its various committees and subcommittees.

The function of a congressional committee is to obtain such information for the purpose of its being factored into the legislative process. The legislative process includes the important step of informing the public regarding the matter under inquiry in order that informed public opinion will be developed. This is as true of organized crime and law enforcement as it is of defense and energy matters.

Organized crime should no longer be—if it ever should have been—described as being dominated by individuals belonging to any one ethnic group. Nor is it limited to "traditional" criminal activities such as gambling, loan sharking, prostitution, pornography, and the like.

Organized crime never has known any ethnic bounds, and its activities run the gamut from the gutter to the board rooms of legitimate businesses and labor unions in this country.

It is a large part of an underground economy estimated at some \$121 billion to \$168 billion of unreported and untaxed income each year. Illegal narcotics alone brought in an estimated \$44 billion to \$63 billion in 1978.

These figures are astounding when you stop and consider that Exxon, Inc.—one of our largest domestic corporations—grossed about \$50 billion that same year. In fact, organized crime and narcotics trafficking generate more money in a year than most countries amass in their gross national products.

With this amount of money involved, organized crime has an economic impact that goes far beyond the gambling halls and smut parlors of America. Every citizen now pays a price; from labor union members whose pension funds are being ripped off to average consumers whose higher prices pay for kickbacks along our waterfronts.

This economic impact is especially acute in Florida, where illegal narcotics profits—as we heard last December—have added substantially to the cost of living.

Our goal at these hearings, and at those which follow, will be to examine various aspects of the nature, scope, and impact of organized crime, narcotics trafficking, and labor racketeering. We will attempt to inform the Congress and the public by exposing and identifying certain organized criminal activities and some of the groups that carry them out.

As we go along, we intend to recommend legislative and administrative actions aimed at organized crime, and we will monitor and evaluate the Federal Government's efforts to investigate and prosecute the persons involved. I hope that we can contribute to the development of a national strategy against organized crime.

In each of our inquiries we generally will attempt to examine a particular subject or pattern of organized criminal activity and to identify the structure and characteristics of the criminal organizations engaged in that activity. We will look at each group's methods and tools—such as violence, money, and corruption.

We also will attempt to determine the impediments faced by law enforcement in fighting this menace; the need for new laws and executive action; the effectiveness of our law enforcement efforts; the vulnerabilities of certain businesses and labor unions to infiltration by organized crime; and the conditions in our country which foster this cancer that eats at the very fabric of American life.

Obviously we will not be able to investigate every single aspect of organized crime. Our resources will be limited, and we must pick and choose our subjects very carefully in order to further our legislative purpose. We will pick cases which best illustrate the characteristics of organized criminal activity.

Experts generally agree that most criminal syndicates share certain characteristics. One of these is a strategy to establish a coercive monopoly in one or more rackets by the tandem use of violence and the corruption of public or private officials.

The rackets which traditionally are the targets of these organized crime monopolies are gambling; loan sharking; protection; securities theft and fraud; credit card fraud; arson and bankruptcy fraud; labor racketeering; pornography and prostitution; traffic in illegal or untaxed goods such as narcotics, contraband, cigarettes, alcohol, and gasoline; and traffic in other types of stolen or counterfeit properties such as automobiles, jewelry, furs, records and tapes, and currency or other Government obligations.

The subcommittee has looked at some of these rackets—especially stolen securities, arson, automobile theft, narcotics trafficking, and labor racketeering—during the past few years, and we have made legislative recommendations and suggested certain actions on the part of the executive branch.

All of these illegal activities generate huge amounts of untaxed profits. This money is the lifeblood of every organized crime syndicate, and it often provides the only shreds of evidence leading to those at the top of the organization.

Over time, these profits are "laundered" and then invested in legitimate businesses, such as liquor, transportation, entertainment, sports, hotels and motels, brokerage houses, labor unions, insurance companies, construction firms, vending machines, the food industry, trade associations, trucking, waste collection, parking lots, garment manufacturing, resorts and casinos, holding and finance companies, and real estate development. It really goes across the whole gamut of our private enterprise system.

With the "underground economy" estimated at well over \$100 billion a year, we can only speculate at this point about how much money organized crime has invested in legitimate businesses. And this investment has gone on since the days of prohibition in the 1920's.

In the future, we will turn our attention to the lifeblood of organized crime—the flow of money from the rackets into legitimate businesses. This week, however, we will examine some instances of the first part of the organized crime equation—violence and terrorism. Violence is one of two pillars on which organized crime is built. Corruption is the other.

In looking at mob violence, we primarily will examine the use of murder, assault, coercion, blackmail, arson, and bombings by organized criminals as tactics to instill fear in their competitors and victims and to enforce discipline within their own ranks.

We have chosen mob violence as a starting point for two reasons.

First, we want to remind the public that organized criminals are ruthless killers who in the course of their business operations are capable of blowing each other to bits, spraying bullets round public shopping centers and parking lots, and running innocent individuals out of business for fear of their lives.

As Al Capone reputedly said, "You can go a lot further with a kind word and a gun than you can with a kind word alone."

Second, we will try to determine if legislation is needed to provide additional tools to be used against the violent aspects of organized crime.

Among the possibilities are a Federal murder-for-hire statute; additional protection for Federal officials such as judges and prosecutors; a provision allowing trial judges to reduce the sentences of Federal prisoners who decide to cooperate with the Government; additional sentences for Federal crimes involving violence; and stiffer, uniform bail and sentencing requirements. These are all legislative items we have under current examination. These hearings will have a lot of bearing on what we do and what we recommend in this respect.

In order to set a proper foundation for our look at mob violence, we have asked FBI Director Webster, Assistant Attorney General Heymann, and DEA Administrator Bensinger to testify today about the status of organized crime and narcotics trafficking, as well as Federal efforts in those areas and legislation they think is needed.

Senator Percy, before we get started, I know that you and Senator Chiles and Senator Cohen may have opening statements. We are delighted to hear from you.

This is a completely bipartisan subcommittee and it has been run that way, and will continue to be, and that is primarily due to the excellent cooperation we have from Senator Percy and his staff, and the other Republicans on the committee.

Senator Percy.

OPENING STATEMENT OF SENATOR PERCY

Senator Percy. Thank you, Mr. Chairman.

Judge Webster, Mr. Nathan, the price you pay for being the opening witnesses is that you have to listen to our opening statements. I would like to welcome you here very much indeed. It is most appropriate for you to be here in person to open these hearings.

The question has come up in the past, that with all the problems in the world today, why spend time on organized crime? The same question arose a couple of years ago, when we began a probe in this subcommittee of professional motor vehicle theft and chop shops. Automobile theft is a multibillion-dollar business; the sophistication in professional automobile theft is such that the owner will never see his car again. It is chopped up for parts and, literally, disappears. That is a part of inflation. As a result of those hearings, the public better understands why their car insurance costs are so high. We very much appreciate the tremendous cooperation extended to us by the FBI and the Justice Department. We also appreciate your own personal effort and support of our measure, S. 1214, which would, among other things, add chop shop operations to violations included under the RICO statute. And we also appreciate your increased efforts to combat arson-for-profit, which is burning our cities down, devastating areas of cities like Chicago, St. Louis, and other areas, where once again local authorities simply were not able to cope with the magnitude of the problem as the mob moved into it.

Last December, Mr. Nathan, I believe you participated with us in a review of the Tax Reform Act where we discovered that Al Capone could never have been jailed if the rules of the game were such as we have today.

The Justice Department has its hands tied in a sense because IRS hands are tied. They simply cannot or will not cooperate effectively anymore with other law enforcement agencies. We must return IRS to the fight against organized crime; we are hoping to do that with the legislation, S. 2402, that we introduced last month.

So these hearings, I think, are extraordinarily valuable.

Mr. Chairman, I ask that at the conclusion of my comments an article from yesterday's Washington Post by Jack Anderson be included. That article, which is syndicated in probably 700 newspapers across the country, announces in their judgment, the importance of these hearings and the impact on American life that mob violence has had.

It starts out:

In the best American bootstrap tradition, the Mafia in recent years has been trying to rise from the seedy past and achieve an image of respectability. It is infiltrating legitimate business, settling in swanky suburbs, sending the kids to the best schools, but behind the facade of social gentility, the mob still depends on the strong arm tactics that have characterized its operations since the days of Al Capone.

Mr. Chairman, these hearings today really open a long-term investigation into the activities of organized crime to update the Nation as to recent trends that make criminal operations even more insidious today than in the past. Violence and the fear of violence are necessary ingredients for organized crime.

The Jack Anderson column mentions that in recent weeks gangland murders, of the most violent kind, have occurred. As we study the breadth of influence that organized crime enjoys, as we learn of its infiltration of legitimate businesses, as we seek to unravel its complex financial scheming, we must not lose sight of the fact that the threat of death is still the bottom line on organized crime's balance sheet.

I want to state unequivocally at the outset that, certainly today, there is no one criminal group synonymous with organized crime in America. Today organized crime might be looked upon as a more equal opportunity employer than it was in the past. New groups from Latin America and Asia have joined traditional organized crime groups in grabbing a share of a multibillion-dollar business in narcotics trafficking. Criminally oriented motorcycle gangs are being hired on a contract basis by the other criminal groups to intimidate legitimate businessmen. Former gangs of convicts who assaulted and murdered fellow inmates while in prison, particularly in California, now terrorize law-abiding citizens in the outside world with the same tactics they used behind prison walls. It is grossly unfair to single out any one ethnic group as responsible for organized crime. Too many people have suffered discrimination because they share an ethnic and cultural background with criminals whose only creed is personal profit and the use of violence to attain it. Quite rightly, these hard-working people who contribute so much to building America feel a sense of indignation and outrage when just one group is singled out.

These hearings will demonstrate how many groups have now moved into this field. The proliferation of organized criminal groups has meant an increase in violence. New criminal groups and younger elements of the already entrenched mob no longer play by the old ground rules. At one time traditional organized crime elements sought to avoid endangering innocent bystanders. Representatives of the criminal justice system, although hated, were respected and left alone, except for occasional battlefield scrimmages. Today no one is immune from violence. Recent victims include police, prosecutors, and grand jurors. A Federal judge in San Antonio, Tex., was recently murdered. Not too long ago a newspaper reporter was slain in Phoenix, Ariz. Organized criminals have developed new arsenals of weapons that increase the likelihood of indiscriminate violence and that makes those criminals much more dangerous and difficult to contain. We will view some of these weapons on Friday.

Shakedowns and threats remain the standard mob business tool, with bombings, arson and murder the necessary backup. To insure its success, the mob bankrolls political corruption so that eyes are averted and backs are conveniently turned, leaving the victims helpless and utterly alone.

Some ask what good it will do for the Senate to investigate organized crime. Organized crime will thrive no matter what, the reasoning goes, because it provides illegitimate services to a willing popula-

tion. I reject that line of thinking. It assumes a relatively benign description of organized crime which is not and never has been valid. We are talking about an operation that drains our economy of billions of dollars of untaxed profits every year, and weakens the integrity of our economic system through corruption and violence. It adds to the inflation by jacking up the prices of goods and services wherever the mob gains control. These are ruthless psychopaths and sociopaths, who believe they have the right to do away with anyone or any institution that stands in their way.

Mr. Chairman, I want to express deep appreciation to you for your responsible leadership in returning this subcommittee to its historic mandate to investigate organized crime in America and to propose appropriate legislative action.

You have gathered together a truly impressive staff of counsel and criminal investigators, headed by Marty Steinberg as chief counsel. They bring to the Senate years of experience in successfully investigating and prosecuting members of organized crime.

I would like to put in the record, Mr. Chairman, members of the majority staff who have worked under your able direction along with Marty Steinberg on these hearings, Mike Levin, LaVern Duffy who has been with the subcommittee for many, many years, Bill Goodwin, Jack Key, Bill Colombell, Don Zell, Ray Maria, and Ray Worsham. As you have indicated, the minority staff worked with the majority staff on a nonpartisan basis, chief minority counsel Jerry Block, general counsel Chuck Berk, investigator Howard Marks, Lynn Lerish, Adele Linkenhoker, and Sarah Presgrave have worked with the majority staff to bring these hearings about. We think they will be a tremendous public service, and we are grateful for the interest of everyone in this room.

I also want to thank Senator DeConcini who has a deep abiding interest in this problem, particularly in the area of narcotics, for being here. We have invited him to participate with us to the extent he possibly can.

Thank you.

Chairman NUNN. Thank you very much, Senator Percy.

Senator Chiles has been an extremely valuable member of our subcommittee for a long time and has played a vital role in these hearings.

Senator Chiles.

Senator CHILES. Mr. Chairman, I will withhold any opening statement. I am delighted you are holding these hearings. You mentioned the State of Florida in your statement. Florida has been the battleground because of the infusion of narcotics and the illegal moneys which it generates. We have seen tremendous violence there.

I am delighted that you are starting these hearings and that you have been able to assemble the qualified staff to go forward with these hearings.

We are hopeful that this will help us develop some kind of a national plan so that we can get some relief from the tremendous problems that we are having.

Chairman NUNN. Thank you very much, Senator Chiles.

Senator Cohen also has been a valuable member of our subcommittee, and is vitally interested in this matter, and formerly was on the

Judiciary Committee on the House side, and has had experience from that end, too.

Senator COHEN.

Senator PERCY. I particularly would like to say how pleased I am Senator Cohen has chosen to be on this subcommittee. We fought to get him on it because he distinguished himself in hearings in the Judiciary Committee in the House. He brings very valuable counsel to the subcommittee.

Chairman NUNN. I agree.

Senator COHEN. I had an eloquently worded and incisive statement, Mr. Chairman, which has been rendered completely redundant by Senator Percy and the chairman.

Chairman NUNN. We haven't heard one of that description this morning. Maybe you had better go ahead.

[Laughter.]

Senator COHEN. I yield back my time.

Chairman NUNN. Judge Webster, we are delighted to have you here, and I understand Mr. Heymann could not be here and Mr. Nathan is representing him.

Mr. NATHAN. That is correct, Senator.

Chairman NUNN. We are delighted to have both of you here this morning.

We swear in all of our witnesses before this subcommittee without exception. So if both of you would stand and raise 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. WEBSTER. I do.

Mr. NATHAN. I do.

TESTIMONY OF WILLIAM H. WEBSTER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, ACCOMPANIED BY IRVING B. NATHAN, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Chairman NUNN. Thank you. I believe both of you have an opening statement. Not being thoroughly familiar with protocol, I will leave it up to the Justice Department to determine the order of the witnesses.

Mr. NATHAN. I will defer to Judge Webster.

Chairman NUNN. Judge Webster, we are delighted to have you here and we appreciate what you are doing, and I might add from the outset it was my impression that the FBI, under your charge, is more vitally involved in this important mission now than ever before. We congratulate you on that and we are delighted to have you.

Mr. WEBSTER. Thank you, Mr. Chairman.

I do appreciate this opportunity to appear before the subcommittee and discuss with you the various aspects of the organized crime problem.

The FBI defines organized crime groups as criminal organizations having some manner of formalized structure and whose primary objective is to obtain money through illegal activities. Such groups maintain their position through the use of violence or threat of violence, corrupt public officials, graft of extortion, and generally have a

significant impact on the people in their locale, or region, or the country as a whole.

Focusing attention on the violence, and threat of violence that are the stock and trade of organized crime is an important step toward achieving success in our investigations against this type of crime.

Congressional investigating committees, like this one, are a powerful means of drawing the public's attention to such serious national problems. Without an informed and concerned citizenry, we can't make any meaningful headway in combating organized crime.

There is little doubt that these hearings, by emphasizing the violence of organized crime, will do much to remind us all that real-life organized crime is not the romantic illustration too often shown in the popular entertainment forums. It will be shown for what it is—various groups engaged in an enormous, structured and deadly serious illegal business that rely on violence to maintain themselves.

The human and economic costs of organized crime are difficult to assess. Organized crime groups, however, are attracted to those crimes that involve the transfer of significant sums of money. For instance, the following types of crime are identified with organized crime: Loan-sharking, illegal gambling, arson-for-profit, narcotics, pornography, automobile chop shops, labor racketeering, extortion, cigarette smuggling, and the corruption of public officials.

Organized crime is draining millions of dollars—tax-free dollars—from our Nation's economy. Its impact is felt throughout our society: Graft and corruption help undermine our civic, judicial, and legislative functions.

Labor racketeering siphons money from union pension and welfare funds and deprives the members of fair representation.

Major theft operations drive up the cost of consumer products and increase insurance premiums.

Activities such as cigarette smuggling cost Americans millions of dollars a year in lost tax revenues, thus impacting on the ability of the government to provide badly needed government services for the public.

And through the investment of illicit funds in legitimate enterprises, organized crime groups gain an unfair competitive edge, and I emphasize that competitive edge—over honest businessmen not enjoying the same advantage.

An example of this type of organized crime activity could involve two competing businesses, one infiltrated and operated by organized crime, the other a legitimate enterprise. The legitimate business, in order to exist, must make a profit but it is constrained in its setting of prices by overhead associated with that particular business.

The competitor, infiltrated by organized crime, can rely upon an infusion of laundered funds derived from illegal operations as a means by which prices may be lowered below that margin normally required to maintain a profit. Thus, by undercutting the legitimate businessman, combined with labor racketeering, organized crime can attain a monopolizing effect on a particular sector of the economy.

Organized crime is not monolithic. Instead, there are many varieties and combinations of criminal groups that are properly included under the rubric of organized crime. There does exist, however, one organized

criminal organization that is national in scope. It consists of a confederation of 27 traditional organized crime "families" operating under similar organizational structure and methods. There is substantial evidence of a "commission" which resolves "interfamily" jurisdictional grievances, decides major policy issues and ratifies new "bosses." Though each member is affiliated with a particular "family," all members recognize that they are part of this nationwide criminal organization. While most heavily concentrated in the Northeast, it has members and elements in the majority of States. In the aggregate, it has over 2,000 hard-core members who are engaged in illegal activities ranging from loansharking, narcotics traffic and illegal gambling, to control over large segments of ostensibly legal businesses such as vending and waste collection. These families have also worked their way into the ownership of a wide variety of retail businesses, restaurants, bars, hotels and trucking, food and manufacturing companies.

To achieve a more accurate view of the scope of this group, the initiated membership of 2,000 should be multiplied by 10 to take into account the additional persons who aid and assist these members in carrying out their illegal acts. These are our estimates, and they are, if anything, conservative.

There are significant organized crime activities being carried on by other organized groups of various geographical, ethnic, and racial backgrounds. Other identified organized crime groups range from motorcycle gangs operating on the west coast, particularly California, and Southwest regions of the United States, to highly organized and sophisticated narcotics cartels which are centered in the Southeast, West, and Southwest sections of the United States. Also noteworthy are several ethnically and racially oriented organized criminal groups. They operate primarily in heavily populated metropolitan areas and are engaged in a number of organized criminal activities such as extortion, gambling, and narcotics. The motorcycle groups are among the most ruthless of these groups, and we know that in some regions they have joined with the traditional families and are acting as "enforcers" for their activities.

The most important strategy against organized crime is active investigation and prosecution augmented by accurate, up-to-date intelligence on the scope of the problem. We have to apply pressure by apprehending and successfully prosecuting individual members of organized crime enterprises.

As a result of our investigative efforts over 600 convictions were obtained last fiscal year, and more than 700 prosecutions were pending at the end of the fiscal year.

We are at this time expending about 1,300 special agent workyears on organized crime.

Chairman NUNN. Excuse me, Judge. On that point, the 600 convictions, is that what you would call organized crime?

Mr. WEBSTER. Yes, it is.

Chairman NUNN. Thank you.

Mr. WEBSTER. The 1,000 special agent workyears—I should explain. The various agents who would be working on organized crime and other assignments in the aggregate amounts to 1,300 special agent workyears on organized crime alone. The efforts in our organized

crime program are one of the FBI's top priority programs—the other two being white-collar crime and foreign counterintelligence. The program is managed on a national basis in five categories. These are labor racketeering, illegal infiltration of legitimate business, public corruption, extortionate credit transactions and gambling, and major impact cases such as arson for profit, pornography, and cigarette smuggling.

A weapon we and Federal prosecutors have used with great success against organized crime groups is the racketeer influenced and corrupt organizations statute (RICO)—in many respects the most powerful Federal statute available to us. It carries substantial penalties in terms of jail sentences, as well as the potential forfeiture of the assets of the enterprise in the commission of the crime for which the subject is convicted.

It has been used successfully in arson for profit investigations—another area where large criminal conspiracies have developed in recent years. Whenever we find organized criminal activity participating in arson for profit and there is Federal jurisdiction, we are there to assist local law enforcement and fire services.

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

Mr. WEBSTER. In one case prosecuted in Florida, where we used the RICO statute, 19 subjects were convicted, following extensive investigation of allegations that about 400 fires had been set by this one group. In addition to the usual penalties of imprisonment and fines, \$350,000 in cash and two entire businesses were forfeited under the RICO statute.

The FBI is also refining and increasing its use of a number of techniques to investigate organized criminal activity under the RICO statute. These include undercover special agents and informants, targeted to penetrate the upper echelons of the organized underworld; court-approved electronic surveillances; and special agent accountants, assigned to review and analyze the records of financial institutions, labor unions, and businesses where we have reason to believe a crime has been committed.

For instance, our Unirac undercover investigation, standing for union racketeering, was aimed at corruption in and organized crime's infiltration of the Longshoremen's Union in several Atlantic and Gulf coast ports. The principal violations included racketeering and extortion with payoffs by shippers and warehousemen to union officials. It was a mutual arrangement and one that had been in existence for some time. Direct investigation of the suspects probably would have resulted in an attempt to cover up existing evidence. However, with the help of a source and undercover agents in Miami, we were able to get hard evidence—tape recorded conversations of actual illegal transactions. Ultimately, this case led to 121 indictments and 88 convictions to date, including many union officials and business executives—and among these a prominent ILA official. Many others await trial.

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

Mr. WEBSTER. Further, as disclosed by court records, the FBI, in part through court-authorized electronic surveillance, has been able, in another investigation, to establish direct financial links between the Nevada gaming industry and organized crime families in various cities.

Sharing information about organized crime and conducting joint investigations is now commonplace among the Bureau and local, State and other Federal agencies.

Last year, undercover agents of the FBI and Bureau of Alcohol, Tobacco and Firearms, acting together, were able to penetrate a group in the Tacoma, Wash., area alleged to be engaged in a substantial pattern of racketeering activity, including contract arsons, fire bombings, extortion, contract murders and bribery. This joint investigation resulted in the convictions of 13 defendants and the forfeiture under the RICO statute of a tavern valued at \$450,000.

The subjects were responsible for numerous arsons against extortion victims, competing taverns, and their own taverns for insurance purposes, a pattern which had extended for several years. Evidence at trial showed that they intended to destroy one competing tavern and a large warehouse building in the future. The losses prevented were conservatively estimated at \$1 million.

We are progressing in making our investigations more efficient. The use of computer technology to track volumes of information collected during investigation of complicated cases is now being done through an automated data retrieval system—the major case information system (MCIS).

We also have in operation our organized crime information system (OCIS) designed to provide selected field divisions with "on line" direct access to a central data base maintained at FBI headquarters.

Strong laws specifically directed at organized crime have shown their effectiveness. Since the enactment of the first three major organized crime statutes in 1961, more than 10,000 hoodlum, gambling, and vice subjects have been convicted in FBI cases. The RICO statute, as I mentioned, is presently our most effective Federal statute for prosecuting organized criminals.

[At this point Senator Percy left the hearing room.]

Mr. WEBSTER. This subcommittee has expressed its interest in the impact of privacy legislation on our work in organized crime. One such law, the Freedom of Information Act, imposes upon the FBI the duty to furnish records to any person who asks for them. Members of organized crime families, for instance, despite having been convicted of felonies, are free to request FBI documents. Such requests are not merely speculation. We have received requests from organized crime figures and are aware of concerted efforts by such figures to identify informants.

There is also a current practice by convicts of making requests for the purpose of identifying those who were responsible for their conviction.

It can be assumed many of these organized crime figures and felons do not require a proof beyond a reasonable doubt in identifying a particular person as a source of information. I have, at the request of several of our oversight committees of Congress, submitted draft legislation which would permit us to deny felons the ability to demand, as a matter of right, access to our documents and take other steps to protect the identity of our confidential sources and investigations in this area. That draft legislation is not to be considered an administration proposal.

There are, of course, many other aspects of organized crime that must be explored by this subcommittee. On our part, we will continue to give you and your staff our full cooperation, and Special Agent Sean McWeeney, section chief of the FBI's organized crime program, and Special Agent James Nelson, unit chief in the section, are scheduled to provide additional testimony. However, it must be remembered that the FBI's ongoing investigations are conducted for criminal prosecutive purposes, and FBI representatives must necessarily restrict the nature and scope of their testimony to matters which are in the public domain and which would not jeopardize potential future prosecutions or privacy interests of the subjects of FBI investigations.

Thank you, Mr. Chairman. That concludes my statement.

Chairman NUNN. Thank you very much, Judge Webster. I know you have other engagements in a few minutes. What I would like to do, with the permission of Mr. Nathan, is to go ahead with your questions and then we will take Mr. Nathan's testimony right after that.

I just have a few questions, Judge Webster. We will be getting into the details of a lot of the organization and structure of organized crime in the country with some of your organized crime experts, beginning tomorrow. So I won't go into all of those details today, but rather ask you a few broad questions.

As you know, we are embarking on a study of organized crime. As part of that study, we hope to investigate the vulnerabilities of various businesses, unions, and other entities to determine what makes them susceptible to organized criminal influence. In your opinion, are these characteristics of vulnerability important in the overall understanding in dealing with organized crime?

Mr. WEBSTER. I think they are very important, Mr. Chairman. We have been able to identify and will report to the committee as we have analyzed the situation. The cash-intensive industries—for instance, some of which I mentioned in the statement that I gave to you earlier—are those that are particularly vulnerable to organized crime activity.

Chairman NUNN. What about the money flow and the profit angle? I know your FBI people are getting more and more into that, DEA is getting more into it, and I think we are trying to get IRS more involved in it. How far is the money flow aspect of organized crime activity in terms of understanding and dealing with it from an administrative and legislative standpoint?

Mr. WEBSTER. I think it is absolutely vital to it. We are able to make street busts, for instance, in the narcotics area, but unless you can trace the funds as they flow from large organized crime units through the banks and methods of purchasing the large shipments of narcotics from Colombia, as we have been able to do in joint work with the DEA, you are not going to find your work reaching into the upper echelons of the organized crime units. Where the money is is where you will find the organized crime effort and the ability to identify it and follow it into legitimate business gives us a handle for invoking the RICO statute for prosecuting purposes.

Chairman NUNN. We have heard through the years that the organized criminal activities have become increasingly sophisticated with

offshore banks, real estate investment, stock fraud, embezzlement of union trust funds moneys, and other similar ventures. Is violence, as a tool in criminal organizations and organized criminal activity, becoming outmoded?

Mr. WEBSTER. Not at all. The flow of money into these various enterprises provides an outlet for the profits reaped primarily through the use of violence, and there is a tendency for violence, at least the threat of violence, to follow into the legitimate businesses that are taken over by organized crime, to provide that additional competitive edge that is so necessary to organized crime units.

Chairman NUNN. So violence is just as much a part of organized crime today as it was in the past?

Mr. WEBSTER. Absolutely.

Chairman NUNN. Judge, you have had a considerable amount of experience, looking at it from a judicial point of view. Now you are in the executive branch in one of our most important positions in law enforcement in the country. Have you changed your views of organized crime since you moved away from the judiciary into the executive branch, or have you confirmed previous opinions, or how would you describe the contrast from different perspectives?

Mr. WEBSTER. I don't know that I have changed my views. I have been educated to the pervasiveness of some of these activities. As I may have mentioned to you, sometime ago when I was U.S. Attorney in 1960, the official position of the Government was there was no organized crime. We have come a long way since that date. I think the more recent legislation which permits us to get a handle on criminal enterprises as such represents a significant contribution to the effort to clean house of those who are operating outside our laws with the strength of the organized crime units, the organized crime enterprises, and to get at the vast amount of money that is available for those purposes and the corrupting influence that goes along with large sums of money. All this has been brought home to me as I made the shift.

Chairman NUNN. You mentioned the Freedom of Information request and draft legislation which is not the official administration views but at least represents, I think, your personal view and FBI's view, is that right?

Mr. WEBSTER. That is right. It doesn't mean to say that it is inconsistent with the official position.

Chairman NUNN. Is it a frequent occurrence for organized criminals to try to use Freedom of Information Act requests to identify informants?

Mr. WEBSTER. Those that we have been able to identify indicate that it is being done in sufficient amounts. We have anywhere from 11 to 16 percent of our requests coming from convicted felons in prison, some of whom are and some of whom are not connected with organized crime units. We are aware of organized crime figures who have asked either directly or indirectly for their files. We are also aware of at least two prominent criminal defense attorneys who have engaged former convicts to assist them in freedom of information file review process.

Chairman NUNN. Is this any kind of constitutional right of convicted felons? Do you see any constitutional prohibition to distinguish-

ing between people who have been convicted of felonies and Freedom of Information Act information and those people on the outside who have not? Do you know any constitutional problem here?

Mr. WEBSTER. I suppose one can be constructed because it is not very difficult to cast things in a constitutional light, but a felon does not enjoy that privilege.

Chairman NUNN. Do you think that distinction could be made if Congress saw fit without a constitutional impediment?

Mr. WEBSTER. I do. I haven't asked that it be mandatory, but it would give us the right, in a given situation, to withhold information.

Chairman NUNN. I have just one final question, and I will defer to my colleagues. We have been informed that organized criminal groups have attempted to legitimize themselves by investing moneys obtained through illegal activities into legitimate front businesses. Is that generally correct?

Mr. WEBSTER. Could I ask you to repeat that question?

Chairman NUNN. The investment of illegal funds into legitimate businesses, is that going on in the country today, and hasn't that gone on for a long time?

Mr. WEBSTER. For some time.

Chairman NUNN. Into so-called front organizations?

Mr. WEBSTER. That is correct.

Chairman NUNN. Federal legislation currently being considered is commonly referred to as the Stanford Daily legislation that would require Federal law enforcement agencies seeking documentary evidence from so-called innocent third parties exclusive of legitimate news media entities to initially seek the evidence through service of a subpoena, rather than employing a search warrant. In your opinion, what effect would such legislation have on organized crime investigations involving infiltration by organized criminal groups of legitimate businesses?

Mr. WEBSTER. I believe the obvious effect would be to establish areas of safe harbors where funds and records could be reasonably free from our efforts to retrieve them. If we had to go the subpoena route to confront organizations in getting records, I doubt seriously if we would ever see those records.

Chairman NUNN. You think this would have a substantial negative effect on your ability to deal with organized crime with the penetration of legitimate businesses?

Mr. WEBSTER. Yes, Mr. Chairman. As I understand the purpose of the Stanford Daily legislation, though so broadly cast, it would have a very serious adverse impact on our ability to gather information and gather it in such a way that the organized crime units are not on notice of what it is we want and in a position to take steps to frustrate our efforts.

Chairman NUNN. Does the administration have a position on this?

Mr. WEBSTER. I will let Mr. Nathan answer that.

Mr. NATHAN. We have testified with respect to the Stanford Daily legislation seeking to limit it to certain categories of documents, particularly that which led to the Supreme Court decision involving newspapers and not to give it the full breadth which is proposed in some quarters.

Chairman NUNN. Senator Percy, just one statement. I know everyone here is concerned about putting this organized criminal activity in its proper perspective and particularly sensitive to ethnic involvement in organized crime and so forth. I would suggest and this is up to each individual Senator, but I would suggest we defer questions, detailed questions on ethnic involvement until we have the organized crime experts here from the FBI tomorrow. Anyone, of course, who wants to go ahead and ask questions on that today will be up to each individual Senator. But I think we could put it in proper perspective with a series of questions at that stage and it can be done in a very careful and sensitive way, rather than get into that on a piecemeal basis today.

Senator PERCY. I think that is wise and I fully support that. Mr. Chairman, while I was necessarily out of the room, we have been joined by other members. Have they had an opportunity to make opening statements, if they like? I know Senator Javits has arrived. I would yield to other members.

Chairman NUNN. I would like to go ahead, in courtesy to Director Webster, he has made another engagement which he has made known to me for quite a while. I would like to defer any additional statements until we get through this testimony and then we will take any additional opening statements we have.

Senator PERCY. Thank you. On the *Stanford Daily* case, Justice John Paul Stevens of Illinois made the strongest dissent. He argued that the police should first seek the information through subpoena unless they have a reasonable belief the information would be destroyed, removed or altered. I have joined with Senator Mathias in cosponsoring a bill along those lines. I would be very anxious to have any judgments or opinions either of you could offer to me.

Judge Webster, in prior years, organized crime violence for the most part has been directed against its own members, as I understand it. It now appears organized crime groups are more willing to target police, prosecutors, grand jurors, news reporters and even judges for violent retribution. What has caused this disturbing development? What can be done to reverse the trend?

Mr. WEBSTER. I suppose if I were to look for a simplistic answer, I would say it would be the power through aggregation of large amounts of money upping the ante, greater things at stake, the ability to coerce through fear the cooperation of many people, including public officials.

The ability also with large sums available to it, particularly in narcotics trafficking, permits organized crime units to call on others not actually initiated members, to assist them—these are other types of organized enterprises, such as the motorcycle gangs—to do the dirty work for them.

Senator PERCY. You have stated that organized crime has successfully infiltrated legitimate businesses, gaining competitive advantage over honest businessmen, and ultimately control over particular sectors of the economy. I wonder if you could tell us what types of businesses have been infiltrated and which geographical areas of the country have been most affected by this development.

Mr. WEBSTER. I don't know that I can give you a clear geographical answer. They tend to be in dense population areas in businesses

which focus heavily on cash, that are cash-intense—restaurants, walk-in establishments where services or goods are paid for in cash, bars, vending machine operations. These provide a vehicle for getting cash that is easily laundered and can be used as fronts for other organizations.

In addition, we found some businesses that have been set up, automobile agencies, for instance, purely for the purpose of laundering money derived from the narcotics traffic.

Senator PERCY. I would be interested in Chicago. I understand we have had infiltration into hat-check services, and parking lots, instances where cash transactions are the norm. I can understand why they like that.

Let's just say a businessman, attempting to carry on an honest business, receives threats and intimidation from an organized crime group. What can a businessman do to protect himself against such threats? What role does the FBI play in this, if any?

Mr. WEBSTER. Of course, the FBI would welcome any opportunity to hear from citizens who believe that they are being intimidated in this fashion. We work closely with other law enforcement groups. If it is not our case, we will see that it is delivered to the right quarters. If it is our case, we can work it effectively, provide the proper kind of protection, if necessary, and begin to develop the kind of information that can wipe out the activity.

There are too many industries or businesses that have come to accept extortion and payoff as the price of doing business. We are learning, particularly in the *Unirac* case, that that is not necessarily so and when businessmen are willing to stand up and resist with the help of their Government and their government's law enforcement agency, they can succeed.

Senator PERCY. I was born in Florida and spent virtually all my life in Chicago. As I travel around the world, I am really literally shocked to still see, although Chicago has become a tremendous financial center, a great center of industry, the largest exporting State in the Nation of agricultural products, still people think, "Oh, you are from Chicago; that is where the gangsters are from." They associate gangsters and Chicago.

Is organized crime in Chicago still very powerful? What activities does it control, in your judgment, and has it moved into any new moneymaking activities during the past decade?

Mr. WEBSTER. Chicago is still one of those cities that has a very visible organized crime presence. Some of our experts will be providing more specific information as the hearings continue. Chicago has a lot of other company, good or bad, in this area. The mobility today and movement of interests of organized crime goes beyond specific turfs. Las Vegas has a number of organized crime families from other cities with an active interest in that area. Florida, of course, has been victimized by the heavy narcotics traffic and laundering of funds in that area. Almost everywhere I go, Senator, and I travel a good part of the United States each year—Newark, New York City, Phoenix—any city of size today has—New Orleans—has some form of activity functioning that meets our definition for organized crime.

Senator PERCY. One last question. This may fall into the category that you mentioned. I am not sure. You have stated that traditional organized crime consisted of about 2,000 members. How many individuals would you estimate are involved with emerging and nontraditional organized crime groups and has this number grown appreciably in the last decade?

Mr. WEBSTER. I mentioned that in the one 2,000-member confederation, we estimate there are an additional 10 persons for each 1 of the 2,000 who are employed by the members of these confederated organizations. So we have a sizable group there, but we have other emerging groups, some bicycle gangs are now numbered in the thousands, to illustrate an entirely different kind of organization that is engaged in organized crime.

Senator PERCY. Thank you very much.

Chairman NUNN. Senator Chiles.

Senator CHILES. Mr. Director, in your opinion, has the Tax Reform Act of 1976 had a negative impact on organized crime investigations based on the inability of IRS to cooperate in the exchange of intelligence information?

Mr. WEBSTER. Yes, I do believe it has, Senator Chiles. We seem to be cut off from what was once the primary source of information about organized crime, the ability to develop financial information, not income tax returns, but financial information about criminal activities we once enjoyed by a close relationship with IRS.

Senator CHILES. Do you think it is imperative to be able to develop this financial information dealing with today's sophisticated criminal organization?

Mr. WEBSTER. I do, sir.

Senator CHILES. That is all.

Chairman NUNN. Senator Javits.

Senator JAVITS. Thank you. Mr. Director, glad to see you. I have one question on the Freedom of Information Act, which you say creates some new problems for you, and I assume you would give New York at least the equal rank then with Chicago, wouldn't you? Well, would you or wouldn't you?

Mr. WEBSTER. Yes, I would.

Senator JAVITS. Would you give it a higher ranking, unfortunately for us?

Mr. WEBSTER. Unfortunately, New York is a larger city. There are more identifiable organized crime units in the New York area than in Chicago.

Senator JAVITS. Has there been a shift in emphasis from any other part of the country to New York or vice versa?

Mr. WEBSTER. I don't know that I am qualified to give that kind of a statement. The most prominent groups are still the same most prominent groups that we had several years ago.

Senator JAVITS. In other words, there is a tendency to grandfather these outfits in, is that right?

Mr. WEBSTER. That is correct. Their ability to wipe out competition seems to insure this continuity. The ability to survive losing little fingers, or finger members is one of the hallmarks of a successful organized crime unit.

Senator JAVITS. Is there any particular one of these crimes, the classic syndrome of loan-sharking, prostitution, gambling, narcotics, that concentrates in particular areas, like New York? Do you have any particular concentration in one of the major activities of organized crime?

Mr. WEBSTER. I believe we can identify those that are particularly active and vigorous in New York. For many years we used to focus primarily on gambling because of large number of gambling groups there, and some of our organized crime statistics, frankly, were based on some of these smaller bucket shop units that met minimal threshold criteria for organized crime. We are now limiting our interests in smaller gambling units in order to push our resources into the higher-ups. It is still a factor in the New York area.

Senator JAVITS. On the Freedom of Information Act, which, as I say, is a new thing that is creating some problems, there are exemptions from disclosures for law enforcement investigations and respecting the names of informants. Given these exemptions, what else about the law—the purpose of this hearing is also to decide on changes in the law—what else is giving you problems?

Mr. WEBSTER. We have found that the exemptions are not sufficiently clear to permit us to excise on a word-by-word basis with sufficient certainty so that we can satisfy the perception in the minds of the public, including informants, that we are, in fact, protecting confidential information.

The law provides that we can withhold or exempt information which will identify an informant. If the statement in the report or document refers to a green sedan, our people working in our Freedom of Information section cannot know with certainty that it would affect or would identify the informant. The green sedan may well stay in or not be excised in the report.

One suggestion I made was a very simple one and that was simply modify the language of Exemption 7. If the standard was whether it would tend to identify the informant, that would give us a little more discretion in the first instance. Once it goes out, there is no way of recapturing it, but the same appeal procedures, the same administrative appeals, the same court procedures to see if we are overreaching the exercise of our discretion would still be there.

In the most sensitive areas, such as terrorism, organized crime, and foreign counterintelligence, we have asked for an alternative, an absolute ability to withhold those documents in order that we might be sure and those who supply information to us might have confidence that we can protect them.

Senator JAVITS. And that is your recommendation for change?

Mr. WEBSTER. Yes, it is.

Senator JAVITS. Any other?

Mr. WEBSTER. Well, we have about seven, but those impact most heavily upon the organized crime area. Others have to do with permitting us to respond to the large wholesale requests for thousands of documents on a separate track than those who simply want their own file.

Senator JAVITS. Have these been submitted?

Mr. WEBSTER. Yes, they have.

Senator JAVITS. To whom?

Mr. WEBSTER. They have been submitted to the chairmen of the various oversight committees and individuals who asked for them in the past.

Senator JAVITS. Including this committee?

Chairman NUNN. We have had testimony on this on many occasions. I am not sure it has been submitted formally. If it is not, I would like to get it for the record.

Mr. WEBSTER. I would be happy to supply it.

[The information furnished appears in the appendix beginning at page 235.]

Senator JAVITS. The other thing I would like to ask you, there is sort of a tradition in the United States about these organized crime groups. The word "Mafia" is used so loosely. Has anything else surfaced, some new groups, some more modern connotation as to where this field extends?

Chairman NUNN. Senator Javits, that is a subject we are going to go into in a good bit of detail tomorrow. I would like to be able to put it in its proper context with a series of questions. If you could defer on that?

Senator JAVITS. Sure.

Chairman NUNN. I think it is an extremely important question and ought to be put in perspective.

Senator JAVITS. No further questions.

Chairman NUNN. Thank you very much, Senator Sasser?

Senator SASSER. Thank you, Mr. Chairman, Mr. Director, in your opening statement, you mentioned that some 1300 special agent-years are being devoted to fight organized crime. My question to you is what percentage of the FBI's work capacity does this figure represent?

Mr. WEBSTER. It represents about 22 percent of our total field resources.

Senator SASSER. Do you give as much priority toward organized crime as you do—I think you mentioned three priorities the FBI is presently concentrating on. One is organized crime, the other is white-collar crime, lastly, counterintelligence. Do you give any more priority to organized crime than you do white-collar crime?

Mr. WEBSTER. The counterintelligence figures are classified, but we presently have about 23 percent of our field resources in white-collar crime.

Senator SASSER. You also mentioned in your opening statement that organized crime has an adverse impact on the national economy, that the activities of organized crime itself can be and are, I think, in some instances highly inflationary. Can you give us some estimate of the magnitude of organized crime on the national economy? What is the fiscal impact of organized crime on the economy? Does it affect the economy?

Mr. WEBSTER. Well, there have been many, many estimates. I do not know that we have one that we have any particular confidence in. It is in the billions annually. I will attempt to supplement this with whatever records are available. I don't have a great deal of confidence except that I do know it is large and I do know that it is in the billions. If you, in the aggregate, measure the kinds of extortion it practices,

the result in inflated prices, if we measure the loss to the economy of tax-free activities, cigarette smuggling, for instance, all the monies that are coming into this country without benefit of any type of regulation and in crime, the cost of crime that is generated by those who are addicted to narcotics and are engaging in street crimes to further their interests, all those factors would produce a staggering figure of total impact on our national economy.

Senator SASSER. Mr. Director, you indicated that there was in the Southeastern United States a highly organized and sophisticated narcotics cartel. I have not heretofore thought that organized crime operates to any great extent in the Southeastern United States. Can you localize the areas in which organized crime is operating with these sophisticated narcotics cartels and why are they operating in that particular area?

Mr. WEBSTER. I can. I would prefer to defer to some of our experts who will be testifying in more specific detail, but I can give you two or three principal reasons. One, which is a lesser reason, is that there are more and more organized crime figures who are spending more and more time in the Southeast. The other reason, which is probably the main reason, is that this has become the landing point of entry for major narcotics sources, particularly coming in from Colombia. Banks are being used in the Southeast to launder the money that is flowing from other parts of the country to pay for these narcotics.

Senator SASSER. Thank you.

Chairman NUNN. We will be getting into that question in considerable detail tomorrow and in subsequent hearings.

Senator SASSER. I would like to pursue that subject in some detail, Mr. Chairman. With that prospect, I will foreclose further questioning of the Director.

Chairman NUNN. Senator Cohen.

Senator COHEN. Thank you, Mr. Chairman.

Mr. Director, the chairman asked you if you thought it would be valuable if we were to investigate the types of vulnerabilities that either businesses or unions have that make them prey to organized crime. The question that I would have is do you have any evidence that lead you to believe that certain unions have organized local law enforcement officials of departments or police departments so that there is, in fact, a direct or indirect degree of control, by organized crime through the various unions, over law enforcement.

Mr. WEBSTER. I am not sure of the route you are taking me, Senator, but I think we are in agreement.

Senator COHEN. Let me go back. You indicated that organized crime may, in fact, have infiltrated certain labor unions.

The next question I have is, have certain labor unions infiltrated local law enforcement officials of departments or local police departments to the extent certain unions might, in fact, be said to exercise either direct or indirect control over law enforcement policy or conduct? Is such conduct, in fact, being controlled by the organized crime? That is a matter which is of some concern in my own State.

Mr. WEBSTER. I am trying not to generalize about a very complex condition. I think it would be more fair for me to say with confidence that we do have evidence both of union infiltration and infiltration

of law enforcement or corruption of law enforcement officials by the same organized crime units.

So that in effect, the combination of corrupting control of law enforcement and corrupting influence within unions gives that additional leverage. The reason I am qualifying it is I am not prepared to say the unions themselves have control over local law enforcement, unless you want to say that indirectly through the influence of affiliations and allowances of organized crime makes that exist.

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

Senator COHEN. What do you do about that?

Mr. WEBSTER. We investigate and prosecute.

Senator COHEN. How many prosecutions have there been in this field in the last 2 years?

Mr. WEBSTER. Well, the numbers that I gave you in organized crime generally is 600 to 700 convictions. Many of these investigations are now being operated undercover where we were before not trained or in a position to do that as a matter of policy or practice.

We are making very significant progress, and I can think of at least two important investigations currently underway where this is exactly what we are going to be doing.

Senator COHEN. Could you supply for the record then a list of investigations that have been conducted in the past leading to convictions in those areas we just talked about—infiltration by organized crime into unions that in turn control or have an impact upon local law enforcements?

Mr. WEBSTER. I will be glad to undertake that.

[The information supplied by the FBI appears in the appendix on page 388.]

Senator COHEN. Second, with respect to your statement about 600 convictions, I would be happy if you could provide the committee with a list of types of sentences handed out. During our chop shop hearings, we found very few law enforcement personnel devoted to this particular field of crime because the public was treating it as sort of a social problem or disease where the insurance company would pay for the stolen cars. There was very little effort made.

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

Senator COHEN. Also, we found there was a very remote chance of being caught, and even a more remote chance of being convicted. Once one was convicted, a very light sentence was imposed. The rewards were quite great, the money realized and the punishment was minimal in comparison, so the risk was far outweighed.

When you say you obtained 600 convictions this past year, exactly what were the convictions and what were the sentences?

Mr. WEBSTER. I will be glad to supply that for you. I believe with the advent of the more effective use of the RICO statute and reinforcing the use of that statute in the courts, we are seeing more severe penalties being imposed whenever we make use of that statute to go after organized crime.

[Additional material furnished was marked "Exhibit A" for reference and may be found in the files of the subcommittee.]

Senator COHEN. That is all I have.

Chairman NUNN. Senator DeConcini, we are delighted to have you with us today. We will be pleased for you to participate.

Senator DeCONCINI. Mr. Chairman, I thank you for the time. Realizing I am not a member of the committee, I will be as brief as I can. I thank you, Mr. Chairman and Senator Percy, for the invitation.

I have a couple of general questions for the judge. In your estimate, how successful has the effort been on the Federal level of reducing organized crime influence in the United States?

Mr. WEBSTER. I think that this has been one of the most difficult areas and probably one in which successes have not been spectacular in the sense that our real objective in organized crime is to reach the top.

That has been difficult because of buffering and insulation that protects the top figures. Early on, there was a problem of actually identifying the top figures. So that if you were to ask me over the last decade how successful we have been, I would say not as successful as the FBI would have liked to have been.

You are asking where do we think we are going at the present time, I think the curve is going up because we have been more successful in identifying our targets, and we are using techniques that were not used successfully or at all in the past. We have demonstrated the validity, the effectiveness of undercover work, for instance.

We now have enhanced our ability to analyze, which was not really present in the past, through the use of computer technology, the organized crime information system, which is a program we have had on various major investigations which went on line April 15 in Detroit and in a very short while will be in all of the major cities where organized crime is present.

The commitment of resources is there. We moved more of our troops into this field than we have in the past. So the promise is considerably brighter.

Senator DeCONCINI. Over the last decade, would you say, generally, the Federal effort had not been very successful?

Mr. WEBSTER. Well, it is a question of relative to what? Organized crime continues, the same family units are still in existence. We have some new ones now.

Senator DeCONCINI. Relative to the growth in organized crime and what you think it is, would you say the effort has not been very successful?

Mr. WEBSTER. The effort on the resources that were available and the know-how probably has not been as productive as all of us would have liked to have seen it, but as I mentioned earlier, we have marshaled our resources now in this direction and we are beginning to see some very real returns coming through. We will see some this year.

Senator DeCONCINI. Judge Webster, as part of the marshaling of the resources and giving more direction effort toward organized crime, what is the Bureau doing to increase cooperation among Federal law enforcement agencies, and if they are, among local law enforcement agencies?

Mr. WEBSTER. I mentioned earlier that joint cooperation of Alcohol, Tobacco, and Firearms, which was very productive. We have been

working with DEA in the past 2 years to develop the kind of relationship which will permit Federal agencies in a cooperative way to successfully deal with the narcotics menace.

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

Mr. WEBSTER. Some of our efforts have not been particularly productive; others have been strikingly so. The work in Florida, the bank investigations have proved extremely useful. Our people have been meeting regularly with Administrator Peter Bensinger's people in the key cities around the country.

We did not do as well in New York or Chicago as we would have liked. In Florida and Los Angeles, we developed quite a bit of cooperative effort. Both Peter Bensinger and I are committed to increasing that cooperative effort.

Senator DeCONCINI. What about the local law enforcement area of organized crime and FBI involvement?

Mr. WEBSTER. Local law enforcement generally has been most cooperative in working with us. In some areas where there is a question of involvement of local law enforcement with political groups that have underworld tie-ins, we have not attempted to be forthcoming with the investigations that we were conducting, but wherever it has been possible to do so, we have worked closely with local law enforcement.

Senator DeCONCINI. Judge Webster, the GAO did a study regarding Federal law enforcement successes over the last 10 years on narcotics. As part of that study they point out that in their estimation, there is about 15,000 local law enforcement officials that are "credible" and could be used by Federal efforts and are not, for the most part.

Would you say that is probably true on the FBI's effort in organized crime also?

Mr. WEBSTER. Well, I think that the vast majority of law enforcement agencies are—it is only the occasional one, and not the organization itself—

Senator DeCONCINI. Does the FBI get involved in coordinated efforts with local law enforcement agencies on organized crime?

Mr. WEBSTER. In some cities that is so; yes.

Senator DeCONCINI. Is that prevalent? Is it an expanding effort?

Mr. WEBSTER. Yes; I believe it is commonplace.

Senator DeCONCINI. Can you give us any examples of local law enforcement that your agency is involved in on organized crime without giving a specific case?

Mr. WEBSTER. In New England, we conducted a fencing operation directed against some highly organized hijacking operations of trucks and cargo. We were losing the trucks as well as cargo. The trucks were disappearing into the chop shops at the rate of about two a week. Working closely with local New England law enforcement agencies, we set up an undercover operation which, when we concluded it, not only had restored the money and stolen cargo, but for 7 months there was not a recurrence of that hijacking operation in the New England area.

Senator DeCONCINI. Is that a pretty common type of cooperative effort?

Mr. WEBSTER. It is a good example of the deterrent effect in working together. There are others that could be given utilizing the same basic

principles in other sting operations that were essentially conducted by local law enforcement people with our assistance.

Senator DeCONCINI. Can you tell the committee how many ongoing local organized crime cooperative efforts the agency has?

Mr. WEBSTER. I can attempt to do that for the record. Some will be undercover operations; others will be a matter of supplying information.

Senator DeCONCINI. I am talking about active cooperative efforts where your agents are involved with local undercover agents. Is it a dozen—

Mr. WEBSTER. More than that. I will try and supply it for the record. [The information to be furnished follows:]

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., July 2, 1980.

Hon. SAM NUNN,

Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On April 28, 1980, I had the privilege of testifying before your Subcommittee on the subject of organized crime. At that time, Senator DeConcini requested that I furnish, for the record, the number of organized crime investigations the FBI is actively conducting in cooperation with local law enforcement. The answer is as follows:

A survey of all FBI field divisions determined that for the period January 1, 1979, through April 30, 1980, the FBI conducted 245 joint organized crime investigations with state, county, and/or municipal law enforcement agencies.

A review of this statistical data reflects that FBI divisions in all regions of the country, without exception, are engaged in cooperative investigative efforts with other law enforcement agencies in organized crime matters.

The specific organized criminal activities targeted by these joint operations are as follows:

Labor racketeering	4
Corruption	38
Gambling	46
Extortion	16
Major Impact (arson for profit, prostitution, pornography, cigarette smuggling)	33
Racketeer influenced and corrupt organization (RICO) (including RICO—narcotics)	78
Miscellaneous (interstate transportation of stolen property; theft from interstate shipment; fencing)	30
Total	245

Thank you for your patience in this matter.
Sincerely yours,

LEE COLWELL,
Acting Director.

Senator DeCONCINI. Do you have the capacity within your agency to do sophisticated financial investigations, tracing deposits and that sort of thing?

Mr. WEBSTER. I think we probably have better capacity than any other Federal agencies. Not only that, we are not satisfied with the status quo. We have been conducting on a regular basis inservice training, and new agent training directed at the various types of activities in which organized crime participates. That is an understanding of how to deal with loan sharking, with gambling, with arson, and so on. We doubled the number of CPA's, increasing the number of those with accounting background, as well as lawyers with financial experience.

Senator DeCONCINI. Are you actively involved in any investigations relating to large cash deposits in regional branches of the Federal Reserve over the last several years, and tracing where those deposits come from.

Mr. WEBSTER. If I understand the question, we have a white collar crime commitment that involves any type of unusual activities with respect to financial institutions. If you are asking about the obligation to let us know about large sums of money that impact following up on this, yes, we do have an interest.

Senator DeCONCINI. I have been advised that the El Paso Federal Reserve Office, and also the Florida Federal Reserve Office, has had a huge increase of cash deposits made in the last 12 months. Does that interest your agency to do an investigation, and do you have the capacity to do such an investigation to attempt to find out why and where those deposits have come from?

Mr. WEBSTER. We do within privacy laws. We are supposed to be informed as to certain types of cash transactions in excess of certain levels received. That information sometimes is uneven in terms of coming to us. But we do have—

Senator DeCONCINI. Do you have active investigations going on regarding the amounts of deposits in the Federal Reserve district offices or regional offices?

Mr. WEBSTER. It has to be tied to some other information that we have.

Senator DeCONCINI. I understand.

Mr. WEBSTER. I believe the answer is yes.

Senator DeCONCINI. And how many agents do you have going in those offices regarding financial tracing of large deposits, generally?

Mr. WEBSTER. I would have to supply that for the record because many of these are white collar crime problems.

Senator DeCONCINI. Is it difficult to distinguish organized crime from white collar crime?

Mr. WEBSTER. Sometimes.

On the organized crime side, we have extortion, fear, threats, injury, that type of activity, whereas in white collar crime, the additional badge is usually concealment, fraud, deceit.

Senator DeCONCINI. Thank you, Judge Webster.

Mr. WEBSTER. Thank you, Senator.

Chairman NUNN. Judge Webster, I know you are already running late. Unless another question is forthcoming, we would be willing to excuse you and thank you very much for your testimony.

Mr. WEBSTER. Thank you very much, Mr. Chairman.

Chairman NUNN. We look forward to continuing cooperation with you and your people and we will be hearing from organized crime experts later in the week.

Our next witness is Irving Nathau, Deputy Assistant Attorney General, Criminal Division, Department of Justice.

Mr. Philip Heymann, Assistant Attorney General of the Criminal Division was scheduled to appear. I understand Mr. Heymann is sick this morning.

Mr. NATHAN. Mr. Heymann is sick today and asked me late last night if I would substitute for him today.

He did very much want to be here because organized crime is a high priority within the Criminal Division in the Department of Justice. What I would like to do this afternoon, with your permission, is to introduce in the record the full statement, a scholarly, thoughtful statement that Mr. Heymann had prepared and hoped to deliver. I would briefly summarize this statement and then open myself to questions.

Chairman NUNN. Thank you very much, Mr. Nathan.

Could you pull that mike up just as close as comfortable and talk right into it?

Without objection, his full statement will be a part of the record. I have read it and it is very helpful and very complete.

[The statement follows:]

STATEMENT OF PHILIP B. HEYMAN, ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. Chairman and members of the subcommittee, I am pleased to be here today on behalf of the Department of Justice and, along with Mr. Webster and Mr. Bensinger, to help initiate the Subcommittee's long-range series of hearings into the nature of modern organized crime.

The Subcommittee's notable tradition, dating back to Senator John McClellan and Chief Counsel Robert Kennedy, has established the value of Congressional investigation in this area. The Department of Justice, charged with the responsibility for enforcing federal criminal law, of necessity focuses in large part on investigating specific crimes and prosecuting individual defendants. We appreciate the important role that can be played by a body such as this Subcommittee. Your inquiry can add to our knowledge of the broader causes, effects and long-term solutions of organized crime. We will do our best to assist in your work.

From the law enforcement perspective, the problem of organized crime is one of knowledge and response: what do we know about the phenomenon and how can we shape a program to contend with its peculiar characteristics? For two decades now within the Justice Department we have worked to increase our knowledge of organized crime and to design and implement a program effectively responding to it.

The single largest activity of the Criminal Division is the organized crime program. Supervised by the Organized Crime and Racketeering Section here in Washington, that program consists of 140 of our most skilled trial attorneys assigned to 26 Strike Forces and field offices covering every American city that has a major criminal organization. They receive full investigative support from virtually every federal law enforcement agency, most of which assign specialized investigators to the Strike Forces and pool information on identified targets. Many state and local agencies also participate. These prosecutors and investigators have at their disposal our most innovative and sophisticated law enforcement tools and the time and institutional support to put them to use. Let me describe how the activities and priorities of these Strike Forces relate to what we know about organized crime.

It seems to me that the answers to three central questions about organized crime should directly determine the shape and focus of our program: (1) What assets make organized crime strong and, conversely, where is it vulnerable? (2) What are its principal activities and sources of revenue? And, (3) what are organized crime's most harmful effects on society? My testimony will address each of these in turn.

I

An analysis of the institutional assets of organized crime must account both for its ability to endure in the face of continual law enforcement assault and for its power and apparent vitality. The mob's resistance to prosecution seems to depend heavily upon organizational cohesion. Vows of secrecy and loyalty, as well as strict discipline, are enforced through violence. In the major organizations these bonds are strengthened by ethnic and family ties. Organized crime invariably attempts to murder informants; consequently, its implied and actual threats

against witnesses are credible. The leadership, kept well insulated from high-risk activities, is especially immune to prosecution. Finally, organized crime is wealthy enough to pay for protection from law enforcement and other public officials, retain highly qualified legal representation, and use bribery to obstruct justice.

These organizational characteristics make it very difficult to obtain against organized crime figures the kind of voluntary testimony that produces most criminal convictions. A number of our most innovative law enforcement tools have been developed specifically to penetrate this curtain of silence. Foremost among these is court-authorized electronic surveillance approved by Title III of the Omnibus Crime Control Act of 1968. We know the identity of most important organized crime figures. This fact and their need to conduct far-flung operations by telephone makes them vulnerable to various forms of electronic surveillance based on probable cause. If successful, such surveillance reduces our reliance on witnesses and often enables us to develop additional witnesses. So-called "consensuals," i.e., recordings made by undercover agents or informants, are also important. Such recordings of payoff discussions were played with devastating impact in last November's labor racketeering trial of Anthony Scotti, New York labor leader and influential political figure. The relatively small number—150—of Title III's approved in fiscal year 1979 far from adequately indicates their importance.

Of course, documentary proof, especially of financial transactions, also reduces the need for live testimony. This is one reason that prosecution for tax offenses has traditionally been an important tactic against organized crime.

The Strike Forces also employ a number of tools designed to obtain witness testimony against organized crime figures. Penetration of groups by informants and undercover agents, sometimes requiring years of careful preparation, has been instrumental in many major cases. For example, in the investigation preceding the conviction of Buffalo gangster Sam Pieri two years ago, an undercover agent actually worked his way into the position of becoming Pieri's chauffeur. The immunity statute—especially when combined with the special grand jury, whose extended term increases the potential sanction for refusal to testify—has proven an effective means of compelling testimony and was used by the Criminal Division in over 800 cases of all kinds last year. Finally, the Witness Security Program is designed to respond directly to the problem of witness intimidation. About 360 witnesses and their families are now relocated and given new identities and employment each year. In a recently concluded case in Rochester, New York, these included two witnesses relocated just hours before hit men from opposing underworld factions arrived at their former homes. I understand Mr. Gerald Shur, the Criminal Division coordinator of the Witness Security Program, will be here later to discuss the program in more detail. Suffice it to say for now that virtually every major organized crime conviction in the last 10 years has depended on the testimony of protected government witnesses. The security of the program has been excellent.

Along with its ability to resist law enforcement efforts, the outstanding attribute of organized crime is its power and vitality. Single organizations have for decades been able to monopolize entire segments of the illicit economy—and portions of the illicit one as well—and at times threaten to supplant the normal rule of law itself. These may, in fact, be the defining characteristics of organized crime. The well-known formal, almost militaristic structure of the most successful groups is an essential factor in acquiring and retaining this power. Control is centralized within each organization. Subordinates carry out the leader's orders in disciplined fashion. Such a structure makes it possible to marshal forces against potential competitors, avoid many disruptive internal disputes, and administer extensive underworld empires.

Throughout their history, the Strike Forces have paid special attention to this organizational structure. A major assumption of the program has been that convicting as many actual members of the principal groups as possible is the best way to reduce their power and impact. This has been considered especially true of the heads of these hierarchies. Depriving organized crime of stable, and presumably its most competent, leadership is a goal that we have pursued with some degree of success. In the near future, for example, we believe that our Strike Forces will be able to convict the top leadership of four of the most important criminal organizations in this country. In fact, of 75 changes in the leadership of these groups in the past five years, 28 resulted from prosecution.

Though we are past the point of believing we will ever eliminate organized crime simply by convicting members or even leaders, I see merit in this organizational focus. It is the best means we now have of keeping these organizations under pressure, of making their activities difficult and risky. I believe, however, that we must seek points of organizational vulnerability other than simply the leadership. In the area of narcotics enforcement, for example, there are indications that the most assailable target may be the laundering of huge illicit money flows through offshore banks. In fact, in the organized crime field in general we are coming to view the flow of money as a vulnerable target. Money is the one aspect of criminal activity from which no organized crime figure can remain insulated. Accordingly, we are making efforts to increase our financial expertise in constructing the "paper trails" of illicit money flows that can lead us to the ultimate recipients.

The Racketeer Influenced and Corrupt organization statute has been a valuable weapon in our attack on the organized crime hierarchy. RICO's concept of a racketeering "enterprise," to which heavy penalties are attached, begins to address the central problem of organized crime—that an "enterprise" gives the continuity needed to conduct and maintain the activities on which organized crime depends. The 250 RICO enterprises that have now been subject to prosecution range from unions to hotels and include an entire organized crime leadership group. In the narcotics area, the Continuing Criminal Enterprise statute also focuses on the special danger posed by an ongoing organization.

Characteristics besides its hierarchical structure also contribute to the power of organized crime. There were well over 200 gangland slayings last year, enough to make any potentially resistant businessman or recalcitrant union member reconsider. In the *Meli* case, the defendants, who controlled a steel hauling firm in Detroit, were convicted last August for intimidating the drivers into actually paying the company's share of their own health and welfare and pension payments to the union. As another example, Tino Fiumara was convicted in Newark last June for extorting a restaurant owner. When the owner had enlisted Fiumara's aid in settling a dispute with an employee, Fiumara set his fee at 25 percent of the business—and throughout the trial the restaurant owner refused to admit he was a victim of extortion.

Although most mob violence is directed internally, it is occasionally used against non-members as well. More often, however, notoriety alone allows the mob to bring people into line. In the *Winter* case, for example, the defendants operated a horserace-fixing operation in five states. They made millions of dollars, most of it by placing bets with independent bookmakers. These victims feared Winter so much they paid off even if they discovered a race had been fixed.

Developing an effective law enforcement response is a knotty problem, especially since many threats are simply implied or never reported. We do have some suggestions for legislation that we believe would be helpful. I will discuss these later.

The vitality of organized crime is often explained by the fact that it offers services in demand by the public. This may well be so, although it is equally possible that this factor is really another form of the mob's ability to intimidate—in this case to organize, extort and "protect" the individual purveyors of illegal services themselves. Congress has given us important legislation to deal with illicit industries, particularly gambling, though our attempts to employ it have often produced only light sentences. This probably merely reflects society's general ambivalence toward vice, which makes an effective law enforcement response always difficult to achieve.

Finally, there is a self-perpetuating quality to organized crime's power. The major groups have existed long enough to have developed a network of business, labor and political connections and to have generated an image of inevitability, if not acceptability, among the segments of the community with which they interact. More specifically, as these groups have become powerful, they have become wealthy. This has made possible another characteristic mob tool, bribery. Bribery has its most important and detrimental application in the corruption of public officials, either to purchase protection or to obtain favors and assistance. Payoffs to public officials are absolutely essential for the preservation of most ventures conducted by organized crime. Large amounts of available cash also provide investment capital for expansion into new areas, such as legislative businesses or narcotics.

We have begun to place increased emphasis on depriving organized criminals of their profits from illegal ventures. A number of our most useful statutes—RICO, the Continuing Criminal Enterprise Statute, the Controlled Substances Act, as well as certain of the Customs and Bank Secrecy statutes—have forfeiture provisions. Though there have been forfeitures in recent cases, including a total of about \$1½ million under RICO and even larger totals in the narcotics area, we have, frankly, not yet made optimum use of these statutes. It is often difficult to prove that a defendant's assets are the fruits of a particular crime—an obstacle that would be removed by Section 2004 of the Senate's version of the proposed criminal code. However, we can make more effective use of existing law, and Strike Force prosecutors continue to receive instruction in the use of RICO's forfeiture provision.

To this discussion of our response to the characteristics of organized crime that make it strong and resistant to law enforcement should be added one final hallmark of Strike Force work. Penetrating organized crime's curtain of silence, employing the sophisticated tools I have discussed, unraveling the complex manipulations of the mob's financial experts, probing large-scale criminal activity often involving many individuals operating over a wide area—these efforts have necessitated major, long-term investigations involving many agents and prosecutors. The Strike Forces ordinarily conduct our most complex and time-consuming prosecutions, at times in conjunction with local United States Attorneys. Investigations in important cases have lasted up to two years and more. Strike Force prosecutors are intimately involved in the evidence-gathering process at a very early stage—providing coordination and supervision, giving legal advice to agents, obtaining warrants, identifying additional evidentiary needs, and often supplementing the field investigation with grand jury investigations. Special grand juries, now used by every one of our Strike Forces, are an important tool in this process. As I alluded to earlier, they can be extended beyond the normal 18 month term, which provides the continuity needed in these complex cases.

What I've described so far indicates that the institutional assets of organized crime have dictated the use of particular law enforcement tactics. In what areas should those tactics be employed? Achieving the appropriate focus for our efforts depends on the answers to the other two of my central questions, namely, what are the sources of revenue and what are the harmful effects of organized crime?

II

Though lacking specific data, we have a reasonably clear picture of the principal revenue-producing activities of organized crime. Organized crime is still involved in the traditional rackets—gambling, loansharking, prostitution, and pornography. There has undoubtedly been a loss of income from these sources since Senator Kefauver found vast fortunes amassed from slot machines and the race wire, but gambling is still a principal mob activity in certain areas, primarily New England. As the Subcommittee is well aware from its work last fall, changing economic and urban conditions have added arson-for-profit to the mob's list of illegal services. More significant than all those, however, is narcotics, which is now trafficked by most of the traditional criminal organizations as well as many of the emerging ones. Finally, in many urban areas we see the mob engaged in a variety of other important illicit industries, such as car theft/insurance fraud in Buffalo, cigarette smuggling in Philadelphia, illegal firearms in Miami—all subjects of recent prosecutions.

There seem to be a number of reasons for organized crime's continued emphasis on such activities. The illegality of these highly-demanded services produces extraordinary profit potential. The victimless nature of the crime minimizes the probability of detection. And third, these industries are inherently susceptible to being organized and monopolized. Individual entrepreneurs who are themselves criminals can be forced to pay protection money because they are unlikely to seek official assistance and are unable to conceal their marketing activities.

Labor-management racketeering, another traditional activity, is another major source of organized crime income. There are indications that several hundred union locals are now under some degree of mob control. The sources of revenue are obvious: the union membership can be sold out to corrupting managers who would rather pay bribes than full contract wages, union power can be used

to extort no-show jobs and other benefits, and union treasuries or pension funds can be looted.

The particularly vulnerable unions seem to be those which are made up of unskilled or semi-skilled workers on dispersed job sites, which exercise complete control over who works and who doesn't, and which serve industries unable to tolerate a strike of any duration due to heavy competition, a perishable product, or seasonal business. Construction and transportation unions are two which clearly fit this description. The best example is last fall's conviction of George Boylan, Business Manager for the Boilermakers Union local in New York. Boylan not only decided which workers were assigned to a particular job, but headed the committee which negotiated contracts with construction companies. The services of the boilermakers are essential for the construction of the boiler for any power plant in the New York area. One word from Boylan could tie up utility projects so huge that payoffs for his cooperation—which eventually totaled over \$1 million—were a relatively minor cost of doing business.

A third source of mob income has been of increasing importance in recent years. We estimate that organized crime has now infiltrated well over 700 legitimate businesses in this country, ranging from bars to banks. There are several varieties of infiltration. Criminals need some place to invest or launder their illegitimate income, and they often choose business establishments. Loansharks may accept or demand a portion of a firm in payment of an overdue loan. Extortionists may make similar demands, as in the *Fiumara* case mentioned earlier. In a similar case, Vito Giacalone was convicted of extortion in Detroit in 1978 for agreeing to have an associate stop bothering Titan Laboratories in return for 10 percent of the company's stock and a \$2,500 per month payment. At times a legitimate business may be created or acquired simply as a front for illicit activity. Some types of businesses may be chosen because they offer possibilities for "skimming"—raking off a share of the profits before taxes—or "bust-out" fraud—driving a business into bankruptcy or abandoning it after purchasing large quantities of readily-salable merchandise on credit. More serious than these examples, however, may be organized crime's attempts to monopolize sectors of legitimate business through the same methods that allow it to control the illegal rackets—extortion, intimidation, and corruption. This has occurred in different cities in the vending, cartage, waterfront and restaurant industries, among others.

Organized crime infiltration of businesses is becoming more sophisticated. A year ago, for example, the Aladdin Hotel and Casino in Las Vegas was featured in a major case which disclosed that individuals in Detroit possessed illegal hidden management interests in the Casino. At the sentencing the defendants presented over 150 laudatory letters, many from lawyers and judges in Detroit and from nationally known entertainers.

As with unions, certain characteristics seem to make a business especially vulnerable or attractive to organized crime. Businesses with a heavy cash flow are attractive prospects for skimming or money-laundering, particularly if record keeping is lax. Businesses dependent on corrupt unions can be intimidated. Businesses that are undercapitalized or have other financial problems are vulnerable to loansharks. Finally, some kind of technical expertise or common interest may account for an organized crime presence in certain industries—such as the infiltration by motorcycle gangs of repair shops and service stations.

In most localities other activities supplement the income from these three principal sources (illegal services, labor racketeering, and infiltration of legitimate business). For example, until the conclusion last fall of "Operation Lobster," hijacking trailer loads of merchandise had been prevalent in the Boston-New York corridor.

Our effort to interdict these sources of mob income has been fairly direct. In the most general sense, we have gone where the gangsters are. The Strike Force concept permits us to concentrate extraordinary law enforcement capability in those cities with significant criminal organizations; as I stated earlier, all 26 such cities are currently covered.

More specifically, our activities have tended to shift as sources of income have undergone change. Our gambling and other prosecutions of the traditional rackets have declined as the overall significance of these activities has diminished; as organized crime has moved into legitimate business we have attempted to increase our law enforcement expertise and presence there. For example, last

summer 15 individuals associated with Charles Tashjian were convicted for a series of "bust-out" frauds in the Boston area involving as many as 40 stores and \$2-3 million in merchandise. In the famous *Hamilton* case two years ago, the slot manager of the Argent Corporation casinos in Las Vegas was convicted of tax offenses for running a "skim" operation. We have also prosecuted mob-linked bank officers in Michigan, Massachusetts, Ohio and New Jersey. In spite of successes like these, we are seeking to place greater emphasis on the infiltration of legitimate business by organized crime.

Our focus on labor-management racketeering, always a major organized crime arena, has remained intense. There have been especially significant convictions in the last year of officials of the Teamsters and Longshoremen's Unions, in the *Provenzano* and *Barone* cases, respectively.

Finally, the growing involvement of organized crime in narcotics and the severity of the national drug problem have generated a response from the entire federal law enforcement establishment. Twenty-five percent of the entire federal criminal caseload now consists of narcotics prosecutions. As we find organized crime moving into arson-for-profit, the Strike Forces have replied with major convictions such as the *Carter* case in Tampa and the *Cina* case in Buffalo.

By saying we respond to the principal revenue-producing activities of organized crime, I do not mean to imply that we are implementing a comprehensive strategy to choke off all the mob's income sources. As much as we'd like to do that, we lack the resources and sufficiently precise information on their financial operations to achieve such a goal. Though we certainly will prosecute any activity we can prove is a major income source, we have to be selective in allocating our resources. How this allocation is determined is largely influenced by the answer to the last of my central questions: what are the most harmful effects of organized crime?

III

Of the three questions I have asked, this last one is the most difficult to answer with any degree of precision. Yet, it is probably the most important. In order to carry out a sensible program against organized crime, we must specify as clearly as possible the nature of the harm that concerns us.

Economic harm comes readily to mind. It can take such forms as tax revenues lost through smuggling or skimming; loss of wages to workers through sweetheart contracts, or loss of their dues or benefits through the looting of union treasuries or pension funds; and increased prices to consumers through mob-created monopoly and its general constriction of free market operation.

The effect of the mob on the free market is best illustrated by our most significant prosecutions in the last year—those resulting from the FBI's massive "UNIRAC" investigation. Years of undercover work by FBI agents revealed in several East Coast ports a pervasive system of payoffs to International Longshoremen's Union officials to secure labor cooperation, the buying and selling of labor contracts, and numerous instances of embezzlement of union funds. The growing number of convictions of the 121 individuals indicted so far is expected to have a major impact on eliminating the 50-year-old stranglehold of organized crime on the shipping industry.

Another interesting example is the *Boylan* case mentioned earlier. Boylan's activity probably had a detrimental impact on society far in excess of the \$1 million he received from construction companies in payoffs. Labor racketeering of this variety closes markets to potential competitors either unwilling or lacking the proper connections to make the necessary payoffs. If only a few companies are available to build power plants in New York, construction costs will be artificially high. And since electric rates are based on capital investment, electricity consumers in New York will probably pay for Boylan's crimes for years to come.

Though the economic effects of organized crime activity are extremely difficult to trace or quantify, they are very disturbing. However, Mr. Chairman, I think we all know they are not the public's greatest concern about the mob. The most evident harm caused by organized crime is fear. And in the areas where fear is generated by the mob, individuals become insecure and institutions lose their sense of legitimacy and integrity. That is why we are here today; that is why the Federal government has made a special commitment to control organized crime.

The fear engendered by organized crime is of a distinct and insidious nature. There is a substantial amount of crime in this country. We all understand that

there is a chance we may encounter random violence on most of our city streets after dark and under many other circumstances. This makes us afraid, but our fear of organized crime is different. We know there are police protecting the streets, and if, in spite of their presence, we are mugged, we can report the mugger and do what we can to see that he is punished. Our fear of organized crime derives from the fact that in the face of its threat of violence we seem totally helpless. The police may simply be unable to provide protection from professional killers or enforcers. Or the authorities themselves may be paid off. And if we do report the mob's threat or assault and there is an arrest, we know the assailant's associates may threaten witnesses or seek revenge.

Helplessness is a basic component of fear; we are fearful of organized crime because when we are confronted with its capability for intimidation and extortion there seems to be no recourse. In this respect, organized crime is almost like a government, in that in certain sectors its coercive power makes it nearly a final authority. In many parts of the world people are fearful of government, too, for this reason. In this country elaborate and carefully constructed constitutional and legal safeguards have eliminated most of that fear. We know that even if we have, in the end, no recourse from the power of government, before reaching that point every reasonable effort will have been made to treat us fairly. We also know that, at least in our democracy, the purposes of government are legitimate and are, in effect, our own. There are none of these assurances about the coercive power of organized crime—a citizen may be simply robbed, or told to leave his work or business, or forced to cooperate with criminals.

Perhaps in part because of the activities of the Federal government, organized crime, of course, is not a real rival to the legitimate Federal and state governments in this country. The problem is found in particular localities and in specific unions, activities or industries. In limited spheres organized crime does exert a threatening, government-like sense of power.

Organized crime generates not only a sense of direct fear, but also concern that the powerful institutions in people's lives—the ones they rely on for help and protection and economic well-being—are being corrupted and diverted from their intended purposes. The big institutions in our lives provide us security. We depend on government, unions, and our economic units to serve our interests. From them we expect fairness and regularity. The insecurity caused by the existence of groups of criminals apparently able to shatter these expectations is as harmful to society as direct fear of unfettered violence itself.

The words "fear" and "insecurity" do not quite encompass the entire detrimental impact of the mob. Even people not really in a position where they fear mob violence or those not directly threatened by corruption of a particular institution are harmed by organized crime. When institutions lose their sense of integrity and legitimacy, the resulting public skepticism hurts us all. Public confidence in the integrity of our political and other institutions is important to a free society. When this confidence is shaken in particular localities and economic sectors, we all suffer.

This is how those of us implementing the Federal government's organized crime program view our role. Our job is to give the American people the security of knowing that the criminal organizations which can affect their lives and their institutions deliberately, unfairly, and without recourse will not exist unchallenged in any sector. We have devoted our best prosecutive resources to this undertaking. There remain trouble spots, and these must be our future targets. Regardless of the progress we are able to make against particular organizations in any areas or industries, there will always be a need to provide security against uncontained power.

A sensible organized crime program must pay special attention to the areas in which the harm I have described is most severe. The Attorney General has established four Strike Force priorities designed to channel most of our efforts in that direction: labor-management racketeering, infiltration of legitimate business, public official corruption, and narcotics trafficking.

The first three priorities focus on the spheres in which organized crime is most threatening—unions, business establishments, the political system. It's true, of course, that if criminals gain a foothold in a government unit or labor union or business and are able to use the assets and position of those institutions for their own purposes, they could extend their power over other sectors of society. That's a danger we should work hard to avoid. But it is the fear, insecur-

rity, and skepticism felt by the citizen, the worker, the consumer, or the businessman who rely on these institutions that primarily account for these three priorities.

Narcotics is a somewhat different case. Along with its obvious social consequences, narcotics trafficking by organized crime is a Strike Force priority because of its profitability. The revenue available to organizations trafficking in drugs is immense. In the recently concluded "Black Tuna" marijuana smuggling case in Miami, the evidence showed the defendants were active in deals involving \$250 million worth of drugs. Profits of this magnitude promote the formation of new criminal organizations and allow them to corrupt public and union officials, purchase legitimate businesses, and finance other illegal activities. Traffickers often do not hesitate to kill for such sums. In short, narcotics trafficking eventually generates the kind of harm I have mentioned. The revenue available from narcotics, along with the sheer prevalence of the problem, has necessitated adding narcotics to our priority list.

We believe our priority structure is an effective way to marshal our efforts against what we perceive to be the most harmful impact on society. We expect our priorities to change as the variety of harm changes and as we understand it more clearly. This latter adjustment is particularly important. Our priority categories are now very broad, and this limits their effectiveness as focusing devices. Rather than emphasizing legitimate business infiltration or labor racketeering, for example, we would be more effective concentrating on the particular kinds and locations of these crimes that are most responsible for generating the fear that concerns us, as well as the greatest economic harm. Our future efforts will be to develop this kind of knowledge.

Mr. Chairman, in the course of your hearing you will be exploring more deeply the answers to each of the central questions I have posed. I believe the focal point you have chosen—violence—is an appropriate one for such an inquiry. Violence, fear, and intimidation are central to the operation of successful criminal organizations. Moreover, as I have suggested, they are also our central concern about organized crime. They make it unique and threatening.

Specifically, how is violence used by the mob? Most violence is internally directed and used to establish and maintain "turf" and organizational control. This is particularly true of younger organizations or when a new source of revenue is being developed, as illustrated by the epidemic of violence now occurring in the narcotics trade. Silencing witnesses and informants is the next most prevalent use of violence and one of great concern to us. Loansharking is a locus of common intimidation and occasional violence. Few citizens, of course, have any contact with violence in these contexts. Intimidation employed to take over businesses or unions exposes greater numbers of people to the threat of mob violence. The possibility of unchallenged coercive power is so threatening that the fear created by such take-over attempts may be somewhat disproportionate to the actual amount of mob violence directed at non-members.

The Department gives violence extraordinary attention as it appears in these different contexts. We treat witness or informant intimidation and assault very seriously, as a current important case in Los Angeles attests. The National Organized Crime Planning Council has made such cases one of our priorities, along with the four others I have mentioned. Intimidation of businessmen and union members is a major reason for establishing business infiltration and labor-management racketeering as Strike Force priorities. Of course, with limited resources we must choose the most significant targets, and we are simply unable to prosecute the bulk of business and union intimidation. We also rely on local police and prosecutors to handle most gang warfare, unless we work with them in very significant cases like the Rochester case. Local authorities perform this function quite effectively.

Overall, we believe the most effective way to reduce organized crime violence is through our general strategy—to bring major cases against organized crime leaders in specified priority areas, thereby weakening the organization and containing its power in particular economic sectors.

IV

Having explored in some detail our knowledge of organized crime and the current state of the federal enforcement program, let me make suggestions for the future. These recommendations are not fully-developed proposals, but are intended to convey our general concerns.

Additional legislation in several areas could improve our ability to deal with violence and intimidation, particularly of witnesses. For example, there is considerable uncertainty about the coverage currently afforded witnesses by the federal obstruction of justice statute. It may be necessary to amend the statute to ensure that the act of threatening or harming a potential witness is also a punishable offense. A 1976 study showed that fear of reprisal is the principal reason for failure of witnesses to cooperate, and an American Bar Association Committee has concluded the criminal justice system is presently unable to deal adequately with this problem. I cannot overemphasize the importance of creative legislation in this area.

One step in the wrong direction would be to permit defense counsel to participate in grand jury proceedings. A principal function of the grand jury is to stand between the prosecutor and the accused. But, as I have explained, the grand jury has an equally important investigative function. Particularly in the organized crime area, this function would be severely damaged by granting defense counsel access to the grand jury room. Few witnesses would testify as freely in the presence of a mob figure's lawyer, who would later be able to report on their revelations.

Another possible legislative issue concerns the difficulty of obtaining testimony in organized crime cases. At present we have very few incentives to offer a potential witness or informant who has been incarcerated more than 120 days. Beyond that point, a court may not reduce a sentence, no matter how anxious the individual might be to provide evidence we need. Studies have suggested that the impact of being incarcerated increases after a person has spent a period of time in jail. Someone who might have initially been unwilling to testify, therefore, might well reconsider his position if the government could make a motion to reduce his sentence in exchange for testimony. This would be a very useful tool for us. We would want any legislation to specify, though, that such reductions could be made only on government motion.

There are other ways to improve our effectiveness against mob violence. The Federal government should play a more direct role in cases of murder-for-hire. I want to make very clear that we do not seek to supplant the efforts of state and local law enforcement agencies, which, as I said, generally handle murder cases very effectively. Nor are we interested in prosecuting every case in which a person offers to reward someone for killing his or her spouse, or in having states forward all their unsolved murder cases to the FBI. What we do need, however, is to be able to apply our full federal investigative and prosecutive resources to murders commissioned by the mob. Professional mob killings—contract murders—are very, very difficult to solve. The conspirators are frequently located in more than one state or local jurisdiction, and the killers are often halfway across the country before their victims are even discovered. It makes sense to me, therefore, to bring the Federal government—with its broad jurisdiction, substantial resources, and organized crime expertise—into a case involving a professional, mob-related killing as early as possible.

A closely related legislative concern is the need to provide sufficient sentences for federal crimes involving violence. As the legislative efforts now underway to reduce both the disparity and the length of sentences progress, we must retain longer sentences for crimes carried out through the use of violence.

Finally, the federal assault statute should be amended to include all federal officials involved in the investigation or prosecution of a federal crime, as well as their families. A number of threats have been made against Strike Force attorneys, including the chief counsel of this Subcommittee when he was a prosecutor for us in Miami. In that case, the FBI verified the existence of a mob contract on both Mr. Steinberg and his co-counsel. Last year the FBI was informed of an assassination attempt planned against four government attorneys, including two Strike Force members, in a narcotics case in Florida. Protective measures, including the wearing of bullet-proof vests, had to be taken. Threats have also been made against prosecutors' family members, and it is appropriate that they be included in the statute as well.

In addition to these suggestions for new legislation, I want to express our frustration with two existing statutes that have seriously impeded us in the difficult task of developing incriminating evidence on organized crime figures. My deputy, Irvin Nathan, at your December hearing explained in detail the impediments created by the disclosure provisions of the Tax Reform Act of 1976. The Subcommittee responded by proposing effective remedial legislation,

which the Administration is studying with great care. I want to emphasize that, while the December hearing focused on narcotics trafficking, in the organized crime context the Tax Reform Act is an even greater handicap, because our entire Strike Force program is based on the pooling of information.

Finally, the Right to Financial Privacy Act has hindered some of the efforts of our Strike Forces. Banks and other institutions which previously cooperated in providing information now resist our inquiries for fear of being sued. Ironically, banks have even at times been unwilling to provide evidence in cases in which they themselves are the victims. Because there continues to be confusion and misunderstanding about the Act by various financial institutions, we have been forced to rely more on grand jury subpoena authority to get the information we need. As a result, most of our investigations requiring financial data have been delayed, and the added paperwork increases costs. Certain investigations have even been prematurely exposed when financial institutions notified the subjects of federal law enforcement inquiries. In some cases the situation has become absurd. One bank required a customer authorization for the FBI to obtain a forged withdrawal slip which the customer denied writing in the first place. Another bank would not report a known teller embezzlement to the FBI, and after the Federal Deposit Insurance Corporation reported it, the bank would not supply the pertinent records. I think that this Act is sound in its purpose, but it clearly poses some practical problems which need to be remedied.

For the future we need not only new legislation but also more knowledge. Our organized crime programs can be only as good as the perceptions on which it is based. I have already alluded to several areas in which our current knowledge is weak. We know a fair amount about the strengths of organized crime; now we've got to pinpoint some of its vulnerabilities. We know generally what revenue-producing activities organized crime is engaged in; now we've got to know why and the size of the various revenue flows. We know what businesses or unions are particularly susceptible to organized crime control; now we've got to know how to protect them and, even better, how they can protect themselves. Finally, and most important, we must develop analytical techniques and sufficient data to give us a clearer picture of the harmful effects of organized crime on our society. We need to know exactly where it occurs and how serious it is—only then can we effectively respond. I believe the Attorney General is committed to developing this information, and we are presently working with the FBI to initiate that effort.

This concludes my prepared statement. We look forward to following the progress of your hearings and welcome any suggestions and information you develop. At this time I would be pleased to respond to questions.

Mr. NATHAN. The statement is an attempt to set forth the causes and effects of organized crime and to describe the efforts which the Federal Government has made in this area, and our use of the resources the Congress has given us in combating organized crime and to suggest some additional resources which we think would be helpful in our continuing effort against organized crime.

First, the statement recognizes the fundamental efforts that this committee has made in the area of identifying organized crime and identifying legislative solutions to organized crime, and it recognizes the different roles that we have.

[At this point, Senator DeConcini left the hearing room.]

Mr. NATHAN. We, as the prosecution, have to investigate and prosecute individual cases, and this committee and the Congress have to examine the broad implications of those cases which we have brought and to see the lessons which can be drawn and to see what socioeconomic changes might be effective in addition to the prosecution's effort.

Focusing first on the prosecution effort, let me say the Organized Crime Section of the Criminal Division is the largest unit within the Criminal Division. It has almost one-third of our lawyers, who devote themselves exclusively to organized crime cases. They are divided

into strike force units in 26 major cities around the country. In these cities, they have the cooperation not only of the FBI, who testified here this morning, but also a number of other Federal investigative agencies, not limited to those within the Department of Justice, such as DEA, but also several units within the Treasury Department, Customs, Secret Service, A.T. & F., and we also have the assistance and cooperation of the Labor Department and Postal Service, and we sometimes have the cooperation of the Internal Revenue Service.

We also have the cooperation of State and local police authorities, and we are very eager to continue that cooperation and to coordinate that effort in order to maintain the full commitment of this administration to combat organized crime wherever we find it.

Notwithstanding a significant effort over the last 10 or 15 years in the area of organized crime, we have found it to be very persistent and resistant to fully successful prosecution.

One of the reasons, of course, is the highly structured nature of organized crime, the secrecy that it demands, the loyalty and discipline that are enforced in large part through violence and the threat of violence.

So this committee's focus on violence is extremely well taken.

It is violence which maintains discipline and keeps the silence. It also forces private citizens to cooperate with organized crime. It is sometimes said that organized crime violence is directed only internally at the members. It is true that there is a tremendous amount of violence that is internally directed. But it is important to note the kind of internal violence. It is internal violence of high visibility. The recent murders of Carmine Gallenti and Angelo Bruno demonstrate this. It is also from time to time done in public places. You mentioned shopping centers. There have been instances of bombings involving the attempted murder of high-level organized crime figures that have occurred near passing school buses.

I think it is no accident that these things do occur in public and are given high visibility. It is part of organized crime's effort to maximize its power and its threat against the legitimate businessmen they attempt to extort and against other individuals that they seek to take over.

Another very important weapon of organized crime is bribery. There are, of course, tremendous amounts of money involved in these activities, tremendous profits to be had. Money, therefore, is available to organized crime to seek to corrupt public officials, enforcement officials, and others, who have benefits that they can provide, either actively or passively by looking the other way. That is a very significant problem that we face in combating organized crime. It is, of course, also true that organized crime depends in some substantial measure on the cooperation of the public. The public, which patronizes certain activities thinking that they are not detrimental, is not focusing on the fact that these activities are illegal and the moneys are going to organizations that can perpetuate these strong-arm tactics and form almost their own subgovernment.

In places, for example, where gambling is illegal and people gamble, they think it is fairly harmless. I think they have to reflect and realize where this money is going and what power is given to those who conduct these illegal activities.

Of course, finally, with respect to the persistence of organized crime we have very structured, long-term organizations, organizations that are in for the long haul and have existed in this country for virtually this entire century and were strengthened during the period of prohibition. It is very hard to root that out entirely.

I think our efforts have been directed to trying to contain and to disrupt the activities and to eliminate some of the leadership of the organizations.

The statement of Mr. Heymann also focuses on those principal activities that we believe organized crime is presently engaged in, with an eye toward trying to ascertain what are the characteristics that lead organized crime to these various activities.

The Director has identified some of them, including loan-sharking, extortion, business scams and frauds, bustout schemes. Of course, the common denominator is that these are illegal, highly profitable, and hard to detect.

In addition to those traditional forms of organized crime, we have found that there is a movement into certain areas that are very disturbing because they reflect adversely on a number of our important institutions. One of them is labor racketeering. Labor unions have increasingly become the focus for organized crime activity. I think it is fairly apparent why that occurs in certain locals and even in certain international unions. These are unions which are sometimes controlled by few people themselves and those people are easily controlled by others.

Unions have tremendous bargaining leverage with corrupting management, which may find it cheaper to finance the mobsters who control the union than to pay fully negotiated wages. Unions accumulate large pension funds, and those pension funds, certainly before ERISA, were not closely monitored. They form a lucrative pool for organized crime to move into, to take off the top and to put into financing other activities. Labor racketeering is a very serious problem and is one of the areas which we have emphasized as we have continued our investigation and prosecution of organized crime.

Another area is the infiltration of legitimate businesses. I think Judge Webster has accurately described that trend, which is a very disturbing one and is another priority item for the Department of Justice. These businesses that are infiltrated are not only those that generate large amounts of cash, but also are sometimes those which are labor-intensive and easily extorted. They are also businesses which have slim capitalization, and often need financing and cannot find any financing from legitimate sources and, therefore, have to borrow from loan sharks, and these loan sharks end up taking over part of the business, if not the entire business. Once they take over the business, they do not compete fairly with other legitimate businesses.

The last area that is one of our priorities is, as I mentioned, public corruption. This is extremely important because the dangers of organized crime are not only economic, although economic injury is severe. Organized crime also shakes the confidence of the public in their institutions and in their governmental institutions. This includes the judiciary, it includes the executive branch and it includes legislative branches. And if the citizens have a sense that or-

ganized crime is in control of these institutions and there is no place to go, then we have reached a very sad point in our system of government. Therefore, as one of its priority items, the Department of Justice is focusing on rooting out this corruption, exposing it where it exists, and prosecuting both the corrupters, the organized crime figures, and the public officials who succumb to the temptations.

These, then, explain our priorities, which are labor racketeering, infiltration of legitimate businesses, official corruption, and we also give as a priority item violence, which is one of the devices, one of the principal sources of the power of organized crime.

We have also increasingly come to see narcotics as a priority item, not only because of the social consequences of the drugs themselves, but also because of the tremendous amount of money flow that is related to it.

What we have tried to do in our general strategy against organized crime is to attack it in its vulnerable areas. One thing we try to do is attack the leadership of organized crime and attack the leadership on substantive crimes, major crimes they are committing.

This shows the public the kinds of crimes that major figures are involved in. We are not simply dealing with petty crimes. It also helps in terms of sentences given.

Senator Cohen made a good point in terms of sentences on minor crimes. Of course, they are not substantial. But there have been very substantial penalties recently for major racketeering crimes.

One of the effects of attacking the leaders is that there have been a number of changes in the leadership in the organized crime families around the country. We have calculated that of 75 changes in leadership in the last 5 years, 28 resulted directly from prosecutive efforts. The remainder, of course, are internally generated differences. In addition—

Chairman NUNN. How many of those? You have 75 changes in leadership in organized crime in the United States in the last how many years?

Mr. NATHAN. In the last 5 years. We are talking about the upper echelon.

Chairman NUNN. I was trying to get the base number. What is the base number you will be operating out of?

Mr. NATHAN. Judge Webster's figure is 2,000. Of those I would guess, maybe 200, 300 are members of the hierarchy.

Chairman NUNN. You have had maybe 25 to 30 percent turnover of the hierarchy of organized crime in the last 5 years?

Mr. NATHAN. That is my understanding. The members of the FBI can describe that in more detail tomorrow.

Chairman NUNN. Of that 75, you had approximately 28 that were prosecuted successfully?

Mr. NATHAN. Yes; their prosecutions and imprisonments have resulted in others coming into leadership positions. We also, of course, face the problem that sometimes people are able to direct these highly military-type structures from prison cells.

Chairman NUNN. What about the remaining number, 75 minus 28, how many of those would have been removed by murder? Do you have any figure on that?

Mr. NATHAN. The estimates are that there are approximately somewhere between 100 to 150 gangland slayings a year. Of those, of course, not all of them are the top leadership.

Chairman NUNN. You don't have anything?

Mr. NATHAN. I don't have any figures on the leadership, although I think it could be obtained.

In addition to attacking the leadership, we are also looking for other points of vulnerability. The latest effort is to trace the money flow and to try to attack the assets, to forfeit the assets and to take the profit out of organized crime. We have in the last decade obtained a number of tools from the Congress which assist tremendously in attacking this part of the problem. The leading ones are the RICO statute, which in addition to stiff sentences and heavy fines also permits the criminal forfeiture of certain assets, although as I will describe later, I think the statute should be modified to make it clear that profits are subject to forfeiture. In addition, in the narcotics area, there is the continuing Criminal Enterprise Statute, which provides for heavy sentences and criminal forfeiture. There is also now civil forfeiture available in narcotics, a concern and priority of Drug Enforcement Administration.

We have received a number of other tools over the last few years. This includes title III authority to seek wire tap orders from judges. This is extremely important because one of the main thrusts of violence of organized crime is to silence witnesses and potential informants. When we have to rely exclusively on live testimony, we are in substantial jeopardy when we go to court. When we have through court order placed telephone intercepts and obtained the voices of the defendants themselves engaged in the commission of a crime, there is no more powerful evidence and also there is no way to eliminate that evidence.

We also have authority to use a recording device placed on the body of an individual who comes in contact with other individuals. That kind of testimony, that kind of evidence is also extremely important to us and we could not afford to lose it.

In the last 10 years the special grand jury has been established. This gives us additional powers. The grand jury stays in effect for a longer time and, therefore, gives us more power against those who would defy immunity orders and are held in contempt if they refuse to testify. This has also been very helpful to us. The last element that has been extremely useful in prosecuting organized crime cases is the witness protection program. I can't overstate the importance of the witness protection program. Virtually all of our leading cases have been the result of testimony from an individual who needed protection and his family needed the protection of the Federal Government. We have provided that protection, given new identities to these individuals, given them new jobs in new communities. Their testimony has been extremely instrumental, coupled with other kinds of evidence, documentary evidence as well as the electronic evidence which I have described.

This brings me to the final portion of Mr. Heymann's statement, which makes some suggestions for the future on how we might improve legislation for our prosecutions. I should point out before getting to

those that Mr. Heymann has suggested throughout that the committee should make an examination of the overall causes and effects of organized crime and consider longer range approaches other than simply prosecution.

We are focusing on prosecution.

One of the most important changes that could be considered is an amendment to the obstruction of justice statute. Presently that statute only protects those individuals who have been identified as witnesses against threats or inducements.

It is necessary, we believe, to amend the statute to cover the act of threatening or harming any potential witness and possibly even informants when they are threatened or intimidated or harmed because they are informants. This should be a Federal crime that we can prosecute and, therefore, obtain more information and more evidence that is usable in court.

A second item relates to the protection of those people who are involved in the investigation and prosecution of Federal crimes. The present Federal assault statute lists certain people who are covered but curiously omits others who are actively involved in the investigation.

I mentioned the 140 skilled trial attorneys who are in the strike forces around the country. They, for some reason, are not included among these people who are protected by the Federal assault statutes. There are also other Federal investigators who should be covered as well as U.S. attorneys and judges, and others.

Another area that we suggest needs some possible change is with respect to possible reduction of sentences of those in prison at the request of the Government. Presently, the way the law reads, after an individual has served 120 days of his sentence the Government can no longer seek to reduce that sentence.

The jurisdiction lies with the parole boards. It often happens that after an individual has been in jail for more than 120 days he is interested in cooperating with the Federal Government. There is very little we can do for him at that point.

If the statute were amended to permit the Government to seek a reduction of sentence in return for cooperation, then I think it would be helpful to us.

One other proposed legislative change would be to consider a murder-for-hire statute. We have indicated that there are somewhere between 100 to 200 gangland slayings a year. These are slayings that are put out by contract by high leaders of organized crime.

Often professional killers come from different jurisdictions to carry out the contract.

We think the statute would have to be carefully drawn. We don't want to have the Federal Government investigating every murder or involved in domestic contract murders, but only those that involve professional mob killings in which the FBI could give its expertise and our prosecutors could prosecute those individuals.

Closely related to this is a concern that in sentence reduction by legislation, we not eliminate the possibility of significantly enhanced sentences when the Federal crimes are carried out through violence.

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

Mr. NATLAX. Finally, I have testified before about statutes which

tend to impede our investigative and prosecutive abilities. The leading one is the Tax Reform Act. We very much welcome the legislation which Senators Nunn, Chiles, Percy, and others sponsored as a step in the right direction.

As you know, we are working with the Internal Revenue Service to come up with an administration position. From our perspective, it is imperative we have amendments which permit us to have access to the information and expertise of the service.

Of all the things that Judge Webster said this morning, I generally concur, but I think he may have overstated the case when he said there was no other Federal agency that can make financial investigations as well as the Bureau. From our perspective, I think the Bureau on this one will have to take a back seat to the Internal Revenue Service, which has many financial experts. We simply have not had access to those experts, nor to the information that they have available to them.

The other statute that is mentioned in the testimony is the Right to Financial Privacy Act, which has had some effect on our access to information. It has delayed information by forcing us to use other means.

We also share the Director's concern about the Freedom of Information Act and the effect it has had both on diverting resources from investigations and also in potentially exposing investigations and informants.

That completes my summary of Mr. Heymann's testimony. I will be happy to answer any questions.

Chairman NUNN. Thank you very much.

I think this testimony you have given today and pages 25 through page 30 of Mr. Heymann's statement details in a very comprehensive form, the changes in legislative statutes that you propose.

I will assure you I will be giving very careful attention to those. I think basically this is the heart of the hearings and what we will be doing both now and in the future is to look at these legislative options and alternatives.

On some of this, I have already introduced legislation, together with Senators Chiles and Percy, which you alluded to.

Thank you very much, Mr. Nathan. I am going to ask a few questions. You covered a good many of mine in your thorough testimony.

If you had a shopping list without budget constraints—and I will ask your personal view on this because I know the administration's budget is what everybody adheres to, and we have to at this stage, but your personal view—if you had a shopping list without budget constraints, what additional resources would you ask for for the Department of Justice to combat organized crime?

Mr. NATHAN. Recognizing this is a totally hypothetical question and we are not here asking for additional resources, I will take a stab at an answer to your question. I would think, of course, that what first and foremost comes to mind in connection with organized crime is additional manpower.

The Bureau has added, as I suggested, additional investigators to handle organized crime cases, but we haven't had a commensurate increase in strike force attorneys. In light of the kinds of cases that we are developing, cases that are complex, that require a lot of attorney

manpower over a long period of time, in the grand jury system and then in the extensive litigation following indictment, I think there is a need for additional attorney manpower.

In addition, of course, we have other budgetary constraints. We have a travel budget limitation which is very significant throughout the Government. I think if we had no budget constraints, that in addition to manpower and sufficient funds for travel, it would be very important to have some talent apart from the prosecutors to examine the long-term effects of organized crime, to examine its vulnerabilities, to examine where in the past we have had impacts and try to replicate that in cases in the future and to know how to focus the precious little resources that we do have.

So there could be additional manpower in economists, scientists, and others to focus on that end of the problem to see what it is in existing legislation that helps create the conditions that perpetuate organized crime.

I think we would also need some additional computer help to computerize the information that we have from a variety of sources around the country, all kinds of documentary evidence that we have that often presently gets located by hand. We need to put together that information both from an intelligence point of view and also to make it more usable in the courtroom.

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

Mr. NATHAN. Those are some of the items that would be helpful if we had no budgetary constraints.

Chairman NUNN. Do you believe the Justice Department today has enough information concerning organized crime to effectively attack these groups?

Mr. NATHAN. Well, I think we have enough to attack the groups effectively, but I think we do need very much improved intelligence in the organized crime area. I think the Bureau, as well as other agencies, has worked very hard to develop sources of information, but I think we are a long way from having a total picture.

I think, for example, the inability of the Director, myself, or anyone else in the Department to estimate the total amount of income or profits in organized crime is one basic deficiency that we have. I don't think we can tell exactly what industries are most adversely affected by it and where the resources we have could most effectively be put.

So I think we do have a need for additional intelligence information which needs to come from a variety of sources.

Chairman NUNN. There has been a good bit of conversation about allowing defense attorneys in grand juries with witnesses. What are your views on this?

Mr. NATHAN. I think it would have a very detrimental effect to our ability to investigate and prosecute organized crime figures in particular. In general, having a defense attorney in a grand jury will turn it into an advocate's contest. There will be a lot of litigation right in the grand jury, a lot of delays in going to judges to resolve matters, a lot of semantics.

But even more important in the area of organized crime, if you had an attorney who had multiple representation, who represented maybe not only the witness but also targets of the grand jury or those

associated with the targets, clearly a witness, even with immunity, even with contempt citations, is not going to testify as freely in front of that counsel because there is a very good chance his life would be jeopardized.

This is one of the reasons for grand jury secrecy, one of the reasons why we need to preserve it.

Chairman NUNN. Is wiretap evidence necessary in effectively prosecuting organized crime?

Mr. NATHAN. I think, as I mentioned in Mr. Heymann's prepared statement, authorized court orders have traditionally produced very significant and fundamental evidence for us in our cases. In some cases, we clearly could not have made the convictions without that evidence.

I should say I think the statute, which requires the Assistant Attorney General to authorize all Federal prosecutors to go to court, is very carefully watched by the Department. In the last year we have had relatively few applications to the courts for wiretaps. I think the number is 150.

So we have not abused it, but in those instances where we have used it, it has been extremely important.

Chairman NUNN. Do you feel that the RICO statute would be a more useful tool in removing convicted defendants' ill-gotten gains if the statute were amended to clearly state Congress intention that negotiable instruments and securities acquired directly or indirectly from prohibited activities were subject to forfeiture, as we recently did in the amendment of the Controlled Substances Act?

Mr. NATHAN. Absolutely. I think it is an important amendment. It is an amendment that reflects the congressional intent of the existing statute. Unfortunately, the language in the statute simply says forfeiture of an interest in the enterprise. And some courts, including those out in California, have interpreted that to mean almost only an equity interest in an enterprise and not the assets and income that were derived from the illegal ventures.

Some courts have allowed people to retain these. I think with some very modest language changes, the true intent of the Congress in enacting RICO can be achieved.

Senator CHILES. Do you think that is achieved in the Senate version of the amended Criminal Code?

Mr. NATHAN. Yes.

Senator CHILES. To satisfy—

Mr. NATHAN. Yes; the Senate version is satisfactory.

Chairman NUNN. In your statement, you mentioned the Justice Department uses the RICO statute to prosecute an entire organized crime group. I understand the Sixth Circuit Court of Appeals recently overturned a RICO conviction because the members of the criminal enterprise were engaged in solely illegal activity. It would be ironic indeed to have persons convicted of RICO violations who misused a legitimate enterprise such as a labor union or a corporation but find the Government deterred from prosecuting members of a criminal organization whose sole purpose is criminal activity.

Do you agree with the Sixth Circuit Court of Appeals decision?

Mr. NATHAN. Absolutely not. Let me say that decision, which is a 2-to-1 decision, is in a tremendous minority. Almost every other cir-

cuit throughout the country has interpreted RICO to cover any kind of illegal enterprise. The sixth circuit has vacated that decision. The matter has been argued before the full court. It will be argued by the U.S. attorney in Cincinnati. We are hopeful that the full court will reverse the panel decision, and we will have consistent results throughout the country.

Chairman NUNN. Senator Percy.

Senator PERCY. Thank you, Mr. Chairman.

Mr. Nathan, on page 11 you indicated that gambling is still a principal mob activity. Mayor Jane Byrne in Chicago has suggested in the recent past that Chicago ought to have legalized gambling.

Would you tell me what the Justice Department position is on this? Does legalized gambling discourage mob activity in the community or does it actually encourage, increase mob activity in connection with gambling and other illegal activities?

Mr. NATHAN. I don't know that there is an official position of the Department of Justice with respect to legalized gambling. I don't think the Department of Justice views it as its responsibility to suggest to local legislatures. State legislatures what kind of social laws to pass, and also—

Senator PERCY. Why not? There must be some pattern we can detect on a national basis that would be helpful to local legislatures.

Mr. NATHAN. I wanted to finish, Senator.

Senator PERCY. Excuse me.

Mr. NATHAN. While I don't endorse specific positions, I think it is possible for us to alert communities to the dangers that are posed. It seems to me there are a whole realm of interests which a legislature has to consider in this area.

I think with respect to legalized gambling, the record is clear that those communities which have legalized it have suffered from infiltration of organized crime. Some of the recent unfortunate leaks in Abscam suggest that in New Jersey, which has legalized gambling, there is some infiltration of organized crime.

It is clear if gambling is legalized, you don't root out organized crime. It has tentacles that reach into the legalized gambling areas.

Senator PERCY. On page 13, you mentioned that organized crime has infiltrated 700 legitimate businesses ranging from—and you don't go from A to Z, you go from B to B—from bars to banks. Do you know of any banks in the State of Illinois that have been infiltrated by organized crime?

Mr. NATHAN. I don't know of any banks in Illinois. I do know of a bank in the neighboring State of Michigan which has recently been prosecuted and convicted, as well as the president of that bank. It was not a small bank. I don't have the details, but I think perhaps that is something the FBI agents can address when they testify later.

Senator PERCY. I would appreciate being advised of that under whatever classification you feel would be necessary.

The Federal strike force program appears to be the Justice Department's main program against organized crime. Are all of the Government agencies required to participate in this program and do they commit their representatives on a full-time basis?

Mr. NATHAN. They are not required to commit their energies and resources to the organized crime effort. We operate, really, in a state of grace from those agencies. A number of them have given us tremendous cooperation. The Labor Department, ATF, others, are very vigorous components of our organized crime effort. Others fade in and fade out of the program, depending upon the individual administrators of those agencies. We would welcome more concentrated, consistent efforts from all the agencies.

Senator PERCY. Do you think that increasing use of civil suits and injunctions are important tools in combating organized crime labor racketeering.

Mr. NATHAN. I do think they have an important role to play. I don't think that we have utilized the tools that we presently have. You have to recognize there are only certain areas in which civil injunctive relief can be effective, but in those places we are making an effort to improve our use of the statute. I think we have statutory tools. I don't think we have the familiarity with it and the experience with it that we should have.

Senator PERCY. The whole grand jury system has been subject to a great deal of inquiry. Could you tell me what the Justice Department position is, or your own personal position, on allowing defense attorneys in grand juries with witnesses?

Mr. NATHAN. I answered that question—

Senator PERCY. I am sorry. I didn't hear the answer.

Mr. NATHAN. The Department's position is we are very much against allowing defense counsel in the grand jury, particularly in organized crime cases.

Senator PERCY. You take the traditional position of prosecutors—

Mr. NATHAN. That is true.

Senator PERCY. Last week we discussed the evolution of organized crime since the subcommittee held its organized crime hearings in the early 1960's. Has there been, in your judgment, many changes in how organized crime operates? If you have any particular knowledge of how it is operating in Chicago, I would be most interested.

Mr. NATHAN. With respect to how it is operating in Chicago, that is a question I leave to the FBI agents who will testify with more particulars later in the hearings. In terms of trends, I think there is clearly a trend to move from street crime to more sophisticated crimes. I think they continually keep their hand in street crimes. They continue to extort and control those who are engaged in those crimes, but they have moved up to more sophisticated forms of union racketeering, extortion and have sought ways to manipulate very substantial sums of money that have come to them over the years.

Senator PERCY. Two additional short questions. Two years ago this subcommittee did investigate the inadequate participation of the Department of Labor in the strike forces. Following our hearings, the Secretary of Labor was to devote 90 people full time to the strike force, more than a 300-percent increase in the personnel used before.

In your judgment, has this taken place, and has it resulted in more prosecutions?

Mr. NATHAN. Yes; it has taken place. We do have the total commitment of the Inspector General's Office in the Labor Department. We

have something in excess of 80 investigators working full time with strike forces.

We have made more union racketeering cases, although I must say a number have been from investigations by the Bureau. I must say the Labor investigators will be an integral part of the program in years to come.

Senator PERCY. A final question. We have heard and learned of great abuses of the Freedom of Information Act. Can you comment on how we do strike a reasonable balance between our legitimate concern for protecting confidential sources of information and Government investigators and the public's right to be adequately informed?

Mr. NATHAN. It is a very difficult balance to draw. The Bureau is the agency which is affected by these requests. We get some of them. More so, they go to the FBI and investigate agencies.

It seems to me where there is a perceptible pattern of abuse, where it is clear that individuals alone or in concert are attempting from these Freedom of Information Act requests to obtain information to which they are not entitled and which they will put to improper purposes, that the agency should have some discretion at that point to not disclose the information that individual is seeking. I know the Director has a suggestion about convicted felons not having access to information.

I don't think that would fully solve the problem because individuals could simply have others who haven't been convicted seek the information and pass it along to them. I think it is a question of looking at the purposes, the need for the information and the possible abuse of the information and letting the agencies exercise some discretion in that regard.

Senator PERCY. Thank you, Mr. Nathan, very much. I am sorry Mr. Heymann, because of illness, could not be with us today. We always appreciate your contribution.

Mr. NATHAN. Thank you, sir.

Chairman NUNN. Senator Chiles.

Senator CHILES. Mr. Nathan, in your prepared statement I do not see any indication that one of the problems we are having is getting information regarding this offshore money. Is this not one of the prime problems that we have?

Mr. NATHAN. I think it is a misstatement.

Senator CHILES. Do you consider it to be beyond the Justice Department?

Mr. NATHAN. No; I think it is a very significant part of the problem. I think in that area we are simply going to have to have cooperation from foreign nations in the form of mutual assistance treaties that give us access to information and whereby a nation recognizes that bank secrecy is not really in the overall interest of the international economic community.

Senator CHILES. I note from recent events in the Bahamas that they are going in the other direction. They are talking about making it a very serious crime to disclose any information, for a bank to disclose any information about a potential depositor.

Mr. NATHAN. It is a very serious problem in the Bahamas, the Cayman Islands and—

Senator CHILES. Is it not true that millions of dollars are being laundered in those offshore installations, and coming right back into this country?

Mr. NATHAN. We are informed that it is being laundered. We have no reason to doubt that is what is happening. It is very important for us to make these paper trails to get to one of the vulnerable points of organized crime and narcotics trafficking.

Senator CHILES. What force are we bringing in to play from Justice or from the Government side to try to see that that happens?

Mr. NATHAN. Within Justice we have been pushing very hard with the State Department to identify those countries which we think are the priority countries with which we should have mutual assistance treaties, to open negotiations and to try and talk with leaders and representatives of those countries to show how detrimental this is to us and to the international community.

Senator CHILES. What kind of results are we getting from the State Department? This is something we have known has existed for a number of years and, if anything, the transactions are increasing and the problems growing.

Mr. NATHAN. The committee always seems to set me up against other executive agencies.

Senator CHILES. You do it so well.

Mr. NATHAN. I think there is an honest commitment from the State Department. This is a very difficult area to work in. There have been delays and we have been urging them to proceed. The international situation being what it is, it is very difficult to focus on this.

It was only yesterday the Ambassador to Colombia was released from captivity. The Mutual Assistance Treaty we negotiated with Colombia was obviously held in abeyance for that length of time. It is that kind of problem we face.

Chairman NUNN. Senator Sasser.

Senator SASSER. Thank you, Mr. Chairman.

Mr. Nathan, I would like just a brief followup on a remark made by Director Webster. Recently there have been a number of instances where Federal prosecutors themselves and judges, both State and Federal judges have been the targets of violence.

Are these isolated instances, or are we witnessing a new form of criminal activity in an effort on the part, perhaps, of organized crime to intimidate its most feared adversary, prosecutors and judges?

Mr. NATHAN. I don't think there is a larger conspiracy. I think those are isolated incidents, but there are some fundamental causes leading to this latest outbreak of violence against Federal investigators, prosecutors, and judges.

First of all, the financial stakes are now extremely high. Of course, many of these assaults, if not most, have been, so far as we know, related to drug trafficking organizations which not only have a tremendous amount of financial interest in it, but they also have tremendous exposure in terms of sentences and fines and forfeitures.

The stakes are very high. These are very desperate people and they are people of very low standards. So it is an increasing concern to us.

Senator SASSER. One other question. What are we doing to retain

skilled trial attorneys in the Justice Department and, specifically, the Criminal Division, strike forces, and is there a turnover there which is a problem?

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

Mr. NATHAN. There is a problem of turnover. I think we ought to consider a law that no congressional committee can hire any of our skilled litigators. We have actually in the Criminal Division had a fair degree of success in obtaining some of our most experienced prosecutors. Our prosecutors have an average life with us of somewhere over 6 years, I believe, which is higher than most U.S. attorneys offices or most Government agencies.

We do have a career growth pattern within the Criminal Division to try and retain the top litigators, those who have been with us and demonstrate success. They can move on and become the deputy head of the strike force, the head of the strike force, and then come to Washington to become a supervisor and ultimately the Chief of the Organized Crime Section.

David Margolis, who is here, is someone who has followed that career path. It has helped us retain a number of our best people in supervisory positions.

Beyond that, we seek to hire very dedicated individuals. We have been successful in that. I am extremely pleased by the time that the prosecutors have spent with us and continue to spend with us, and the devotion and energy they put into these cases which, in my opinion, far exceeds that of most other Federal attorneys.

Senator SASSER. You say you have an average tenure of trial attorneys of 6 years with the Criminal Division.

Mr. NATHAN. That is my understanding.

[At this point Senators Nunn and Chiles withdrew from the hearing room.]

[The letter of authority follows:]

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

Pursuant to Rule 5 of the Rules of Procedure of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, permission is hereby granted for the Chairman, or any Member of the Subcommittee designated by the Chairman, to conduct open and/or executive hearings without a quorum of two members for the administration of oaths and taking of testimony in connection with hearings on Organized Crime and the Use of Violence on Monday, April 28, Tuesday, April 29, Wednesday, April 30, Thursday, May 1, Friday, May 2, and Monday, May 5, 1980.

SAM NUNN,

Chairman.

CHARLES H. PERCY,

Ranking Minority Member.

Senator SASSER. I have tried a number of lawsuits in my time in the private sector. My experience was that you are just hitting your stride after 4, 5, or 6 years, and you are losing people after 6 years.

Mr. NATHAN. Yes. Again, we get into salary constraints. Obviously, if we could pay these extremely talented lawyers more, they wouldn't leave.

Senator SASSER [presiding]. Thank you, Mr. Nathan. We appreciate your appearing this morning, testifying and doing such a good job.

Our next witness is Mr. Bensinger, Administrator of the Drug Enforcement Administration, Department of Justice.

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

Chairman NUNN. Mr. Bensinger, could you take the oath before we get started here?

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

Mr. BENSINGER. I do.

**TESTIMONY OF HON. PETER B. BENSINGER, ADMINISTRATOR,
DRUG ENFORCEMENT ADMINISTRATION, DEPARTMENT OF
JUSTICE**

Chairman NUNN. I know you have been patiently waiting this morning. We appreciate that. We look forward to hearing from you as always before this subcommittee.

Mr. BENSINGER. Thank you, Mr. Chairman. I will try to summarize my statement.

Chairman NUNN. I have read your complete statement. It will be made a part of the record without objection.

[The statement follows:]

**STATEMENT OF PETER B. BENSINGER, ADMINISTRATOR, DRUG ENFORCEMENT
ADMINISTRATION, U.S. DEPARTMENT OF JUSTICE**

Senator Nunn, Senators, I am delighted to be here today and to participate in the Permanent Subcommittee on Investigations' hearing on organized crime-related violence. Historically, this Subcommittee has broken new ground with its organized crime hearings; and, I fully expect that today's examination of the violence associated with organized crime will likewise contribute to our understanding of this crime phenomenon. It is most appropriate that you have called upon the Drug Enforcement Administration to testify here along with representatives of the Department of Justice and the Federal Bureau of Investigation. Violence is an integral aspect of organized drug trafficking. It is something that our special agents are always aware of and something to which they are always very sensitive.

DEA is all about organized crime—albeit a very specialized part of it—and so, as DEA's Administrator, I am honored to represent our agents here today and discuss our perspective of this pervasive problem.

Organized Crime. It means something different to each one of us here. The definition of organized crime has varied over time and varied among professionals in the same time and generation. There still is no consensus: the criminology textbooks ascribe one meaning, working professionals another.

DEA has taken the definition of organized crime and used it as a springboard for quantifying our own in-house definition. The Geo-Drug Enforcement Program (G-DEP) enables us to monitor the level of violators being investigated. The very specific criteria established for making such classifications are also used in classifying enterprises as organized crime. (A copy of these criteria are appended to my statement.) For the purposes of our programs, we have issued these guidelines.

The following two groups will be considered organized crime:

1. Traditional organized crime groups throughout the United States.
2. Those non-traditional types of narcotics criminal organizations which meet the following (G-DEP) criteria:

Class I investigations with criteria "C" and all Class II investigations with the other classification criteria checked may be considered organized crime. (Headquarters concurrence required.)

Rather than belabor the point, I think that I can best summarize our perspective thus: DEA's mission is to immobilize upper echelon narcotic traffick-

ers and to bring them to justice. Inherent in this primary objective is the consideration that the upper-echelons are part of organized criminal networks. Our working definition of organized crime is by no means restricted to traditional notions. To do so would fly in the face of evidence that drug trafficking networks are highly-organized, structured, corporate-like enterprises. As I will discuss in a few moments, no one ethnic group is dominant among drug trafficking enterprises. To be sure, ethnicity does play a large role in this phenomenon; it is, however, by no means an essential characteristic of an organization. Depending on the world environment, various types of organized groups have dominated the drug trafficking scene.

The 1957 Apalachin Conference is always cited on U.S. organized crime time lines. Drug trafficking was on that agenda. At that time, the French underworld controlled by Corsican gangsters had a virtual monopoly on the illicit heroin manufactured in Europe. These French gangs wanted to ship and distribute their heroin to the United States independently, but they would not do it because racketeers in Italy controlled distribution in the United States. The U.S. groups represented at Apalachin negotiated with the French sources in Paris and Marseilles for the shipments of narcotics to the American continent; and by the end of 1957, the sale and smuggling of almost all French and Turkish heroin to the United States was controlled by the organizations represented at Apalachin.

Shortly thereafter, the dramatic shifts in world events and politics began to alter the dynamics of international drug trafficking. The Vietnam War opened new underground trade routes to Thailand, Laos and Cambodia which were exploited by Black, U.S. servicemen, Black violators, who previously relied on and conspired with traditional organization crime sources for narcotics, now had a new, independent, source of supply. From these beginnings, these Black organized crime groups grew, and prospered and became more independent. Well-developed organizations such as those of Ike Atkinson soon had smuggling links between major U.S. cities.

The resolution of the Vietnam conflict had a twofold impact on narcotics trafficking. The ending of American involvement damaged the aforementioned connections and also disrupted the Southeast Asia-French Corsican/Marseilles Connection. The French had relied on this opium source for many years. Additionally, in the early 1970's, there were several major heroin seizures—hundreds of pounds—and seven heroin processing labs were discovered and seized in France. This has been known as the break up of the French Connection.

Simultaneously, law enforcement officials began detecting new drug trafficking trends. After the fall of the Batista regime, thousands of Cubans fled to the United States. By the early 1960's, Cuban communities, particularly in the urban parts of Florida, were the base of the continuation of the organized crime, gambling and narcotics networks established in Cuba.

Another trend was taking shape in New York. Seizures of brown Mexican heroin increased dramatically. Soon, drug related organized crime groups from Mexico filled the void left by the crush of the European and Asian connections. This organization began about 25 years ago under the veil of a family business. One of the most infamous families is the Herreras, who are based in Durango, Mexico. The Herreras financed small farmers to grow the opium poppies and they also financed their own conversion laboratories. At first, before branching out to other cities, the Herreras shipped their product only to Chicago, where family members were already established. By 1977, the Herrera Family was regarded as the chief distributor of heroin from Mexico to the United States. It is estimated that during that year alone, this one family was responsible for bringing about 3,000 pounds of heroin into the United States, which was more than one-fourth of the estimated total amount of heroin available.

DEA estimates that the Herrera organization sent about \$100 million back to Mexico and generated several times that in profit from street sales in the United States. Although the success of the Government of Mexico's opium pony eradication program has cut into the Herrera Family's operations, they are still involved in heroin trafficking.

Throughout the 1970's, shifts in the drug market continued to shape the organized nature of drug trafficking. With the emergence of Colombia as a primary source for marijuana and cocaine, traffickers began to develop networks for using air and sea lanes between Colombia and the United States. Individual entrepreneurs, mostly white, college-educated, young men began to

shuttle loads of marijuana to the United States from Mexico and soon expanded their operations to include Colombia. So-called respectable professionals—doctors, lawyers, businessmen and the like—are now the financiers for many of these organizations. It has taken a decade, but this individualized activity has now become very sophisticated and organized. The BANCO Operation, the investigation of the Black Tuna gang, which I've described to you before in considerable detail, is a prime example of the scope and capabilities of such an organization.

Furthermore, the Colombian connection has been exploited by many Colombian national organized family groups. Through the 1960's and early 1970's, the Colombians expanded their roles from producers and couriers for other distribution networks to actual trafficking and distributing themselves. The large Hispanic communities primarily in New York and Florida provided a ready conduit. As the demand for cocaine and marijuana has accelerated, so too has the prosperity and sophistication of the Colombian Connection.

Over the last generation, we have also chronicled the rise of another organized criminal group—the outlaw motorcycle gang. There are several gangs in the United States, the most infamous being the "Hells Angels" on the West Coast, the "Bandidos" in the Southwest, the "Outlaws" in the East and Canada and the "Pagans" in the Mid-Atlantic states. Today, these gangs display all the characteristics of the more traditional organized crime groups. They also have a formal, recognized rank structure that delineates authority and privilege. Outlaw motorcycle gangs are involved in criminal activities such as drug trafficking, welfare frauds, auto and motorcycle theft, and murder.

There is much we can learn from our prior experiences with all of these groups. Some trafficking trends, routes and even principal figures, which have been dormant are now starting to resurface. Interestingly, there are new patterns emerging wherein traditional groups which trafficked only one substance are now involved in the procurement and distribution of several controlled substances. The prominence of any particular organized trafficking network is also influenced by variables beyond its control including a drug's popularity, drug availability from specific source countries, world politics and enforcement actions.

We are seeing trends wherein organized groups are switching to trafficking controlled substances not traditionally associated with organized crime. For example, it has come to DEA's attention that there have been kidnappings of individuals associated with the large-scale marijuana trade. We have reason to believe that traditional organized crime groups were holding these individuals for exorbitant ransoms. Knowing full well that the marijuana organizations could afford to pay. Subsequently, the traditional groups enter the marijuana trade reasoning that if there was that much money to be made and the risks were that minimal, then marijuana trafficking was a lucrative enough enterprise for them to consider.

There is no one specific ethnic stereotype that is synonymous with "organized crime." The composition of organized crime syndicates varies from place to place, from year to year, and from drug to drug. We have seen successions of different ethnic groups dominate the organized crime in any particular city. However, as different as the many groups are, they are also that similar. In short, they are all sophisticated organized criminal syndicates with a corporate-like structure and motivated by power and profit. Organized crime seeks to control all drugs in which large profits can be made.

This corporate structure and patterns of racketeering supercede ethnicity as the predominant characteristic of organized crime. In fact, it is this pattern of organization, that is developed solely for the maximization of profit, that distinguishes organized crime from the general run of the mill crime. Drug trafficking is a continuing criminal enterprise in which a series of criminal laws are violated for financial gain. Drug trafficking is multi-dimensional. It deals with the black market for drugs, but is also involved in a gray market for precursors, equipment and services. Drug trafficking obviously requires the collaboration of a large number of people; the complex structure and methods of operations makes it, by definition, organized.

As in any business-like structure, drug-related organized crime has financiers, bankers and banks, lawyers, logistics experts, exporters, importers, wholesalers and retailers. Other members in the organization tend to have compartmentalized functions such as: recruiters, financial advisors, contact men (who recruit pilots,

seamen, people to locate official sites, truck drivers, etc.) and purchasers who buy and lease aircraft and ships. Paradoxically, the drug abuser is the least significant figure in the entire process.

Of course, there are different management and logistics problems inherent in the trafficking of different controlled substances. For example, clandestine manufacturing of dangerous drugs requires chemists, the utilization of lab sites and the purchase of precursors. The considerations in the movement of multi-ton quantities of marijuana are, obviously, quite different.

In addition to promoting efficiency, compartmentalization serves to insulate the organization because few, if any, of a particular function are aware of the others involved. Thus, because of the organizational structure, the loss of any one member does not threaten the stability of the group. At the uppermost levels, the heads of the organized crime enterprise are the most insulated. The degree of sophistication of an organization varies according to the type of drug involved and the level of trafficking. Needless to say, there is a higher degree of sophistication at the higher levels of traffic.

Investigations of drug trafficking organizations are difficult because of these layers of insulation. Undercover and follow-through investigations often lead to dead ends. Although the organizations are, in essence, operating a business (and are faced with all the day-to-day complications of any enterprise), they must do so covertly; any overt acts are very subtle. Organized drug trafficking groups use fronts, change residences, assume new identities, use codes, disguise business records, launder their proceeds and so on. In short, they utilize all the techniques known to preclude detection. Traditional enforcement tools—the development of an informant, the use of an undercover agent, and the use of technical means to monitor conversations—are all difficult to use. Investigative action is further hampered because all the participants in narcotics transactions are willing and do not feel victimized.

For all of the above reasons, a major drug trafficking organization cannot be immobilized merely by proving that a series of substantive violations took place. To reach the upper-echelons of the trafficking networks, where the principals are far-removed from actual transactions, utilization of conspiracy statutes is virtually requisite. DEA has initiated several investigative programs to reach the level of violator we have been discussing thus far today.

The Central Tactical Unit Program (CENTAC) is an agency-wide priority enforcement program designed to immobilize those drug trafficking organizations that will have a maximum impact in reducing the availability of illegal drugs in this country. The establishment of each CENTAC Unit is predicated on three basic considerations:

1. The targeting of violators and organizations at the highest levels of the criminal hierarchy;
2. whose illegal activities are multi-jurisdictional in nature; and
3. who can be immobilized and successfully prosecuted through the development of complex conspiracy-oriented investigations.

The CENTAC Program, which is managed and directed from Headquarters, is designed to set in motion an organizational element capable of achieving the highest priorities. Since the program began in 1973, each newly-initiated CENTAC has undertaken increasingly more ambitious objectives and each is targeted at higher levels than predecessor CENTAC's.

The Mobile Task Force (MTF) is another successful enforcement technique directed at organized drug trafficking groups and, in many ways, it is similar to the CENTAC program. MTF's are special enforcement projects or operations which are supported by Headquarters but directed by a field office. These are short-term, high-impact operations, not necessarily conspiracy oriented, directed at specific objectives. Several MTF's have been expanded into CENTAC's. To further address organized crime drug trafficking networks, DEA also actively participates in the Department of Justice Organized Crime Strike Force program. There is a DEA special agent assigned as the primary liaison point for each of the Strike Forces.

Each of these investigatory mechanisms is directed at two primary goals: long term incarceration of the upper most echelons of the criminal network and forfeiture and seizure of assets connected with drug trafficking.

There are several statutes which are directed toward these objectives. The Continuing Criminal Enterprise (CCE) Statute (21 USC 848) is the only provision in the Controlled Substances Act which has a mandatory minimum sen-

ence. Conviction of a first offense carries 10 years to life with provisions for fines up to \$100,000. The penalties for second offenses double. CCE also has forfeiture provisions. Simplistically, the elements of the offense include: 1) commission of Controlled Substances Act felony charges; 2) commission of a felony offense that is a part of a continuing series of violations; 3) offenses that have been committed in concert with five or more persons; 4) the individual was the organizer, the "boss" of those five persons; 5) the individual received substantial income or resources as a result of the offenses.

"Mr. Unfouchable"—Nicky Barnes—is locked up for life because of this statute. Ten members of his syndicate were also convicted. Five received maximum sentences of 30 years; five others received sentences from 6 to 20 years. The Continuing Criminal Enterprise is a powerful statute.

The Organized Crime Control Act was enacted in October 1970. Title IX of the Act created the Racketeering Influenced and Corrupt Organizations (RICO) Statute, (18 USC 1961-1968). The purpose of this statute is to deter the infiltration and illegal acquisition of legitimate economic enterprise and the use of legal and illegal enterprises in furtherance of criminal activity. Section 1963(a) provides for the imposition of a maximum term of imprisonment of 20 years and a fine of \$25,000 for each substantive or conspiracy violation under section 1962 of the Act. RICO also provides for the forfeiture of interests in business enterprises or properties acquired as a result of criminal activity such as drug trafficking.

These penalties are in addition to the penal provisions available after the adjudication of substantive or conspiracy violations under the CSA. Thus, the impact of a successful RICO prosecution can have several important results: a) providing for additional terms of incarceration for a convicted violator; b) divesting the violator of illegally derived financial gain; c) severely hampering the ability to remain in or return to narcotic trafficking; and d) the forfeiting of businesses or properties which will tend to eliminate the potential for a trafficker to hide behind a facade of legitimacy or respectability by assuming the appearance of a legitimate businessman.

Organized crime is involved in drug trafficking because of the profits involved. Simplistically, law enforcement's best tactic is to eliminate the profit. The hearings you chaired this past December dramatically established that point beyond all doubt.

DEA's statutory authority to pursue drug-related financial investigations is relatively new. With the signing of P.L. 96-633, the Psychotropics Substances Act of 1978, the CSA was amended to allow DEA to seize assets, bank accounts, real estate, stocks, bonds and other property derived from traceable to, or intended to be used for narcotics trafficking. 21 USC 881(a)(8) is a powerful tool; it removes the life-blood—money—from organized crime. We intend to use this provision, as well as the forfeiture provisions attendant to RICO and CCE violations to the fullest extent.

In CY 1979, DEA seized over \$13.2 million of traffickers assets in cash and real property. This excludes the value of vehicles, vessels and aircraft that were seized. During the first quarter of 1980, over \$6.8 million in cash has been seized through DEA's efforts to exploit the financial aspects of drug investigations. Cash and monetary instruments are currently being seized from drug traffickers at a rate four times that of 1979.

Organized crime figures have made a mockery of the present bail system. The system as it exists is not a deterrent. Bail is merely a business expense for these individuals who have the necessary cash ready on hand. We recently apprehended a DEA Class I fugitive, Jimmy CHAGRA. At the time he fled the jurisdiction of the court in Texas, he had been convicted of conducting a continuing criminal enterprise and numerous other drug trafficking violations. He thought little of a \$400,000 bond. In fact, at the time of his re-arrest in Las Vegas, Nevada, he was in possession of \$186,000.

As long as this situation persists, I will continue to recommend the implementation of a procedure whereby a judge or magistrate would preside over a hearing in which the government would be afforded the opportunity to represent that the defendant was a threat to the community, or was likely to jeopardize a witness or evidence, or was likely to flee the jurisdiction of the court. It is a mockery of the criminal justice system that DEA carries more fugitives on the books than it does agents on the roster.

The vast majority of illicit drug money comes from marijuana and cocaine. Yet at present, the average sentence is three years and the maximum penalty

is only five. Over half of the convicted marihuana traffickers never serve time at all. My own personal opinion is that these sentences are inadequate.

Senator Nunn, realistically we cannot expect to rid this country of organized crime. Over a decade ago, the President's Commission on Law Enforcement and the Administration of Justice made the following observation about the nature of organized crime:

"Organized crime is a society that seeks to operate outside control of the American people and their governments. It involves thousands of criminals, working in structures as complex as those of any large corporation, subject to laws more rigidly enforced than those of legitimate governments. Its actions are not impulsive but rather the result of intricate conspiracies, carried on over many years and aimed at gaining control over whole fields of activity in order to amass huge profits."

Immobilizing organized crime groups is an awesome task. It is our mandate. We have had some success. We are mindful of new trafficking trends that could minimize all our accomplishments to date. We will continue to pursue the upper-echelon trafficker with the objective of immobilizing his organization and its assets. Chairman Nunn, the continuing interest and support of the Permanent Subcommittee on Investigations is most welcome.

Thank you.

STANDARDS AND CRITERIA

CLASSIFICATION STANDARDS

Class 1—Two class 1 criteria are required except for the key conspirator, non-drug (see 6263.21E). One criterion must be quantitative (criterion a) and one must be qualitative (criteria b, c, d, e, or f).

Class 2—Except for the key conspirator, non-drug (see 6263.21E), two class 2 criteria or one criterion each in class 1 and class 2 are required. One criterion must be quantitative and one must be qualitative (i.e., either criteria a and h, or criterion g and one criterion from b, c, d, e, or f).

Class 3—One class 3 criterion is required (criterion i). Violators meeting the quantitative criteria for class 1 or class 2 (criteria a and g) will be designated class 3 in the absence of an appropriate qualitative criterion.

Class 4—All others.

QUANTITATIVE CRITERIA

Sale, seizure, or other evidence sufficiently corroborated to show that the individual has been manufacturing, smuggling into the United States or distributing within the United States one of the following minimum quantities of drugs within a one-month time frame:

Number to be entered in item 40 of DEA-202	Drug involved	Criterion a (class 1)	Criterion g (class 2)	Criterion i (class 3)
1	Heroin (100 percent pure or equivalent)	2 k.	500 g.	125 g.
2	Cocaine (100 percent pure or equivalent)	4 k.	1 k.	250 g.
3	Morphine base	2 k.	500 g.	125 g.
4	Opium	20 k.	5 k.	1 k.
5 ¹	Any combination of schedule I, II, III, IV, dangerous drugs.	200,000 d. u.	50,000 d. u.	10,000 d. u.
7	Marihuana	2,000 k.	1,000 k.	500 k.
8	Hashish	100 k.	50 k.	25 k.
9	Hashish oil	2 l.	1 l.	$\frac{1}{2}$ l.

¹ Revision.

QUALITATIVE CRITERIA

Class 1

Criterion b—Laboratory operator

Criterion c—Head of criminal organization

Criterion d—Financier

Criterion e—Registrant

Criterion f—Documented source of supply for another class 1 violator under the same drug class

Class 2

Criterion h—Head of structured illicit drug distribution organization

Class 1 and 2

Criterion i—Key conspirator, non-drug.

BIOGRAPHY OF PETER B. BENSINGER, ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION, U.S. DEPARTMENT OF JUSTICE

Peter B. Bensinger, 43, has served as DEA Administrator since January, 1976.

For seven years prior to his appointment, he held important public posts in Illinois involving virtually all elements of that state's criminal justice system. He left the position of chief of the Crime Victims Division of the Illinois Attorney General's office to accept the DEA assignment.

Mr. Bensinger is a member of the Executive Committee of the International Association of Chiefs of Police and serves on the Board of Directors of the National Council on Crime and Delinquency.

As executive director of the Chicago Crime Commission during 1973, Mr. Bensinger had the responsibility of evaluating public officials in the criminal justice system, investigating organized crime, and measuring the effectiveness of law enforcement in the greater metropolitan Chicago area.

For 1970 to 1973, he served as the first director of the 5,000-member Illinois Department of Corrections, with direct responsibility for all state penitentiaries, reformatories, training schools, parole supervision, and jail inspection.

The Illinois Corrections Department was formed in 1970 through the reorganization of the Illinois Youth Commission, of which Mr. Bensinger was chairman in 1969, and the Illinois Department of Public Safety, where he had previously served as administrative assistant to the director. During his tenure, the Department of Public Safety was responsible for law enforcement in Illinois, including state police, narcotics investigation, and the state fire marshal and adult prison operations.

He received the Executive Directors Award of the Illinois Juvenile Police Officers Association and the John Howard Award for excellence in corrections. In 1972, he was elected president of the Association of State Correctional Administrators, representing the directors of state prisons, major metropolitan jails, the Federal Bureau of Prisons, and the Canadian penitentiary system.

Before entering public service, Mr. Bensinger worked for 10 years, in this country and abroad, in various marketing positions with the Brunswick Corporation.

A native of Chicago, Mr. Bensinger is a graduate of Yale University and is married to the former Judith Schneebeck, a physician. The couple has four children and the family lives in Bethesda, Maryland.

Mr. BENSINGER. I want to commend the subcommittee in opening these extensive hearings on organized crime and narcotic trafficking and relationships between those two activities, as well as other activities undoubtedly the subcommittee will look at. Violence, without question, is an integral part of the narcotic trafficking activity.

We will be providing testimony from Tom Clifford specifically concerning the Colombian organizations that have emerged in cocaine and marijuana trafficking. Reference has been made by this committee to "Cocaine Cowboys." I won't go into great detail, but I will, during the course of my testimony and your questions, underscore the fact that violence, narcotics and organized crime are inseparable.

Chairman NUNN. We will be going into considerable detail on cocaine, organized crime and violence later in this week.

Mr. BENSINGER. Our efforts have been to stop narcotics sources and to encourage foreign governments to take the initial effort to reduce total overall supply. This has worked in a number of areas; most particularly over the last few years with heroin as a result of the very specific, dedicated and successful efforts of the Government of Mexico.

Within the United States, DEA has directed its investigative efforts to the major class 1, class 2 violators in the upper echelons of narcotics traffic.

We do not look upon organized crime in a restricted traditional definition. There is no one ethnic group that we would consider to be the sole dominant factor in drug trafficking. They vary by drug type; they vary by geography; they vary by ethnic type, but there have been groups over the years that have emerged particularly in the heroin trafficking to control networks.

Going back to the 1957 Apalachin conference where the Turkish, French, and United States networks for heroin trafficking was discussed. At the time of the Vietnam war, we saw U.S. servicemen and former servicemen exploit the heroin routes from Thailand, Laos, and Vietnam.

We have seen what we consider organized criminal activity and organizations continue to direct major trafficking of heroin into the United States while principals were in the Federal penitentiary. In fact, Ike Atkinson received a 19-year sentence most recently while he was serving a term in the penitentiary.

Cuban involvement in trafficking in the early 1970's and late 1960's, particularly in New York and south Florida, is noted. The Mexican organizations, principally the Herreras in Chicago, accounted for a large percentage of heroin brought into the United States.

Individual entrepreneurs became increasingly attracted to the drug business. The BANCO operation resulted in a 108-page 40-count indictment in the Black Tuna investigation. I am happy to report the judge sentenced the principal of this investigation to 54 years in the Federal penitentiary.

This case, which was worked jointly with the FBI, indicates the extensiveness of narcotics trafficking, particularly marijuana trafficking, into Florida and in and out of the United States. The ability of organized conspirators to set up false front businesses, in this case a used car auction, to utilize real estate and couriers extensively, to set up protection and, in fact, use enforcement rings is clear. Subsequently, during the course of this investigation, there were indictments brought under fraud, under marijuana trafficking, under cocaine trafficking, under kidnaping, under obstruction of justice, racketeering influenced and corrupt organizations, use of communication facilities to facilitate a felony, continuing criminal enterprises, aid of racketeering, conspiracy to commit kidnaping with special aircraft, aiding and abetting. We will look increasingly to using these charges to impact on these large criminal organizations.

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

Mr. BENSINGER. One particular problem with the increase in the drug traffic in Colombia and the amount of money which has flowed from that area is the side effect this can have on individuals who are not already in the organized narcotic trafficking activity.

In August of last year, our Office of Internal Security initiated an investigation into allegations that at least one DEA employee had knowledge of an airplane flight to Colombia by an individual which resulted in that individual's arrest. Subsequently, a month later, our Office of Internal Security initiated an investigation into another

allegation that the same employee had knowledge of an October flight to Colombia by Mr. Mel Anderson, 1 month after the first flight, which resulted in the crash of a Super Constellation aircraft and the apparent death of the copilot Mr. Anderson.

We just completed the internal security investigations last week after extensive field interviews in Colombia and the United States and an administrative review is underway to determine if any DEA employee violated agency rules or regulations.

Initial review indicates that official approval was not given for either flight and if our subsequent review indicates an employee violated our rules and regulations which prohibits sending individuals or informants to a foreign country without first receiving permission to do so from headquarters and that country, then we will take the appropriate disciplinary action.

The regional director in charge has placed one agent in a limited duty status, pending completion of his analysis of the case and his decision with respect to administrative action as well as coordination with the Department of Justice regarding criminal prosecutions.

Our policy on informants to foreign countries is that they will not travel to a foreign country without prior authority from headquarters. That if authority is granted, the individual must work with the host country officials who at all times must be fully advised of that act and approve participation by an individual from the United States within that host country.

The fact that an individual was willing to leave his regular activity, take a flight to a foreign country to search and obtain drugs, indicates the tremendous profits as well as the tremendous problems in this field. It is estimated that there is at least \$7 billion of drug money in Florida and perhaps \$50 billion to \$60 billion in the United States.

There has been a specific relationship, Mr. Chairman, with violence. Within the last year, there have been reports with respect to violence that include individuals such as Carmine Gallenti, a preselected class I violator, who was murdered in July of last year.

Indications were Mr. Gallenti was steering his organization or those associates with whom he dealt with in the 1960's back into smuggling of hard drugs by reopening one of the connection routes between Europe, Canada, and the United States.

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

Mr. BENSINGER. In March of this year, a long-time head of a Philadelphia area organization was violently murdered by a shotgun blast. The consequences surrounding that killing were suspected to relate to a reorganization attempt on the part of this individual, Angelo Bruno, to develop a major reentry into trafficking of narcotics. In Florida, since January of 1978—

Chairman NUNN. What has Bruno been convicted of?

Mr. BENSINGER. He was killed.

Chairman NUNN. I know. What was he convicted of? Has he been convicted of anything?

Mr. BENSINGER. I do not have his historical background in front of me. We can provide that for the record. He has been, I am sure, subject to investigations that have resulted in incarceration in the Federal penitentiary.

Chairman NUNN. Would you furnish that for the record?
 Mr. BENSINGER. We would, as well as indicate whether there were controlled substances violations involved.
 [The information to be furnished follows:]

ARREST RECORD OF THE LATE ANGELO BRUNO

Arrested	Location	Charge	Disposition
Apr. 19, 1935	Philadelphia, Pa.	Violation of liquor laws	\$2,500 fine; 15 mo suspended sentence; 3 yr probation.
May 24, 1944	do.	Firearms violation	Dismissed.
Mar. 18, 1953	do.	Sale and manufacture of illegal lottery tickets.	2 yr probation.
May 26, 1956	do.	Gambling	Dismissed.
Feb. 13, 1961	do.	Violation of the dangerous drug act.	Dismissed Feb, 14, 1961.
Dec. 13, 1963	Boston, Mass.	Interstate transportation in aid of racketeering.	Acquitted.
Apr. 13, 1966	Philadelphia, Pa.	Gambling	Dismissed.
Sept. 24, 1968	do.	do.	Do.
Jan. 21, 1970	do.	Conspiracy to defraud the U.S. Government.	Do.
Apr. 28, 1970	New York, N.Y.	Perjury	
Oct. 21, 1970	Trenton, N.J.	Contempt of court	

Mr. BENSINGER. I have a list, Mr. Chairman, I can give you for the record that reflects the connection between Colombia and Florida and reflects the connection between drugs and violence.

One incident I will read occurred last July 2—

Chairman NUNN. One thing—I would like to just interrupt you here—Ambassador Diego Asencio has just been released. Of course, he has been our Ambassador to Colombia. I think his testimony before this subcommittee last year was very enlightening. I know he has worked very closely with DEA and express officially this subcommittee is extremely relieved the Ambassador is safe and sound and grateful for the tremendous work he has done in Colombia in trying to get that Government to cooperate fully in the battle against drugs and he has made considerable success.

If you see him or talk to him, I would hope you would express our profound relief that he is safe and sound.

Mr. BENSINGER. I certainly will, Mr. Chairman. I certainly appreciate the comments that are offered by you and I know Senator Percy concurs. He has been an unbelievable leader in this fight. I talked with his wife during the course of his detention in the Dominican Republic Embassy. We were very pleased to be notified by the State Department yesterday shortly around noon of his arrival, safe arrival, at Homestead Air Force Base.

But, the Government of Colombia is committed to reducing the availability of drugs coming from that country. It is going to be difficult for them to achieve this objective. They are faced with increasingly well organized, sophisticated groups and the violence, that is clearly documented within them.

One incident in Miami involved a total of 11 weapons, 73 bullet projectiles were recovered in a liquor store; 85 rounds were expended. There was information that indicated the victim was a member of a large Colombian ring who simply was targeted because of money and turf.

Tom Clifford can describe what happens in terms of the friction in metropolitan communities when you have competing organizations

dealing with highly profitable products that have the type of money implications that narcotics have. You have seen the outlaw motorcycle gangs very definitely get involved in drug trafficking.

The Hell's Angels case on the west coast, the Pagan organization here, Philadelphia, New Jersey area, gang violence has been associated with them. We have seen with the advent of the Southwest Asian heroin availability, a former French connection trafficker whose laboratory was seized in the Milan area recently by Milan police with some 59 kilos of morphine base and two nephews of Carlo Gambino recently arrested in New Jersey, an organizational connection that is of considerable concern to us.

We are seeing some of the former dormant elements beginning to surface. We have seen the kidnaping involved with elements of the traditional organized crime rings, as well as new organizations who are moving into the turf traditionally controlled by so-called syndicate organizations.

When I say the turf, it is not just trying to take over distribution of narcotics, it is a type of payoff for the right to import within a geographical area. Perhaps in executive session we could describe a very interesting situation which has developed in the New England Boston area that I would like to be able to respond to in nonpublic testimony.

Drug trafficking is a continuing criminal enterprise in which a series of criminal laws are violated for financial gaining. We have 57 major cases—

Chairman NUNN. What would be the reason for executive testimony, to protect existing cases?

Mr. BENSINGER. Protect existing cases, witnesses and potential evidence. We have 57 major cases, at the present time, involving either RICO or the continuing criminal enterprise statute. We have trained in the financial area investigations many of our field supervisors, and our managers have had a special financial investigative overview.

We have had, as of now, over 300 special agents, supervisors, group leaders and agents and analysts exposed to utilizing the continuing criminal enterprise, RICO, 881 forfeiture and financial investigative interface and we expect another 750 to 800 agents will be given specialized training in this field this year.

Over 1,850 agents have undergone thorough training in the conspiracy and complex controlled substances investigative practices. I share Irv Nathan's view in that I do not think we would be right in just attempting to retrain DEA agents, although we will provide inservice training to our agents in financial investigations particularly in view of the limited resources available.

I think what we need to do is take advantage of the expertise that currently exists within the Internal Revenue Service to maximize the impact on organized crime and major money flow narcotics investigations.

Drug trafficking is multidimensional, it deals with black market for drugs, deals with a collaboration of a large number of people, has a large complex structure, it is a business venture, has logistical experts, exporters, importers, wholesalers and retailers, and it is compartmentalized.

Many of the major traffickers will insulate themselves from the more obvious aspects of their operations. Undercover and follow-through investigations can be very successful, but conspiracy and continuing criminal enterprise case level review in the field, grand jury testimony and very lengthy complex investigations are required to make the biggest impact.

Traditional enforcement tools have to be looked at as only one method of investigations because business fronts, changing of residences, new ideas, business records and laundering of proceeds all take place. DEA's efforts in CENTAC has been reflective of the results where 57 percent of the individuals impacted are at the class I or class II level.

We have seen major organizations impacted by our investigations. Both Nicky Barnes, who is a major figure in New York, and subsequently Lt. Robert Stepney, have been convicted. I might add, Stepney became a fugitive and was not able to be apprehended during the time following his investigation. He was later found in Los Angeles as a fugitive of justice. DEA has over 2,700 such fugitives.

Chairman NUNN. Was he arrested and indicted?

Mr. BENSINGER. He was indicted, and later arrested. Originally, he skipped the jurisdiction and was tracked down by a team of DEA agents both on the west coast and in New York.

Chairman NUNN. He was tracked down?

Mr. BENSINGER. He was tracked down. He is presently in Federal custody. The bail system, though, has made a mockery—

Chairman NUNN. But he never did give bail, is that right?

Mr. BENSINGER. No, he was a fugitive from the date of his indictment and then was subsequently located in Los Angeles. We have seen 71 percent of our most serious defendants released on \$10,000 bail or less.

More than one-third of the major violators were freed on bond from 7 months to 1 year. The *Jimmy Chagra* case was one in which an individual was convicted, posted \$400,000 bail, skipped bail, did not appear for his sentencing and then was apprehended in Las Vegas with \$185,000 in his car.

One other problem I would call to the attention of the committee is sentencing of marihuana traffickers. Over half of the marihuana traffickers never served any time in jail and of those who were sentenced to the Federal penitentiary, the average sentence was 3 years, as compared to 12 years for heroin offenders.

There are several bills before Congress that recommend substantial increase in the penalty for large-scale marihuana traffickers, which I would personally support. I also would comment that I think the Senate's version of the Criminal Code revision, and I know the House is currently reviewing that, has a variety of provisions which I hope will be continued. The provisions include the abrogation of the Pinkerton document, the lack of facilitation coverage, the failure to include endangerment offenses, the destruction of evidence limitation, low cocaine, no murder-for-hire or arson-for-profit provisions.

The areas which the Deputy Assistant Attorney General discussed I certainly second. Mr. Nathan's suggestion of sentence reduction within 120 days I agree with. I think we would get better cooperation if

after a person was sentenced he could come forward, provide information to the Government and then seek a reduction in sentence based on his cooperation.

The Senate bill recognizes the disparity. The Department of Justice and I feel some of the sentences that we are having presented in Federal court need to be appealed. There have been a series of incidents in Boston in which one of the most significant methamphetamine labs that has ever been brought to seizure, there was an operating lab with 440 grams of amphetamine, 16 handguns, two shotguns, rifles, a large amount of ammunition, at least 5 kilos of finished meth, and yet, despite the conviction of the jury on the manufacture of amphetamine, the individual, who happens to be Daniel I. Drake, was sentenced to a 3-year suspended sentence.

Chairman NUNN. Could you give us the name of the judge?

Mr. BENSINGER. Yes; Joseph Taurlo.

Chairman NUNN. Justice Powell?

Mr. BENSINGER. No, not Justice Powell; Judge Taurlo, T-a-u-r-l-o.

Chairman NUNN. How long has he been a judge?

Mr. BENSINGER. I do not know. I am probably subject to considerable review by some of my colleagues in the Department by identifying individual judges.

Chairman NUNN. It is a matter of public record?

Mr. BENSINGER. It is a matter of public record and it is a matter of personal and public concern. I am not here to select judges. I am here to tell you we need sentencing guidelines and we need much stronger sentences. We have individuals who have participated in lengthy investigations, both the investigators and the prosecutors brought those people before the Federal bench and had convictions returned.

Chairman NUNN. How many people were convicted in that case? You named one person who got a 3-year suspended sentence?

Mr. BENSINGER. He was the principal and major defendant. I am not sure how many other individuals were involved in this particular case, but our Boston office was most outraged at this particular sentence. They had another one—

Chairman NUNN. What was he convicted of specifically?

Mr. BENSINGER. Manufacturing methamphetamine.

Chairman NUNN. What was the evidence you had against him that you raised a minute ago?

Mr. BENSINGER. Operating a methamphetamine laboratory. DEA seized approximately 440 grams of methamphetamine, 16 handguns, two shotguns, a rifle, large amounts of ammunition. It was estimated, by our chemist that Drake was capable of producing 5 kilos of methamphetamine per week.

Chairman NUNN. He never served a day in jail because of that?

Mr. BENSINGER. He was placed on probation and the condition of his probation was that he enter a psychiatric program and donate 60 hours a month to public service.

Chairman NUNN. Did the agents who made the arrest after a lot of hours need psychiatric help themselves?

Mr. BENSINGER. I know they probably felt like it. I know the defendants are out on the street before the print is dry.

Chairman NUNN. Is that a pattern in the district of Massachusetts? Is there any kind of pattern here or is this an exception?

Mr. BENSINGER. No, I think that area has had a pattern of less than forceful sentencing. The average sentence for Massachusetts is 26 months which is considerably less than what the average sentence is for cocaine nationally. For hallucinogens in Boston, the average is 18 months; the average nationally is 40 months. For cannabis, the national average is about 3 years. The average in Boston is 1 year and 3 months.

Chairman NUNN. That means Massachusetts is running half the national average in sentencing?

Mr. BENSINGER. It would appear that way. Our special agent in charge reviewed this with the U.S. attorney there. They discussed it and did not indicate a degree of confidence that this pattern will change.

I raise this as a problem nationally because the trafficking organizations are creating sufficient funds that organizations in New England have been able to keep their couriers on the payroll while in the Federal penitentiary.

Chairman NUNN. I had heard this from some defense lawyers.

Mr. BENSINGER. So that going to prison with the kind of money that is being made, if it is not a significant sentence, the traffickers can do time standing on their head.

Chairman NUNN. How much are they being paid in the Federal penitentiary?

Mr. BENSINGER. My understanding is it is in the range of several thousands of dollars a month to the families in separate funding.

Chairman NUNN. I heard \$3,400 to \$3,500 a month for people convicted and put in the Federal penitentiary. Is that consistent with what you heard?

Mr. BENSINGER. That is consistent. It would be consistent with the logic of the situation. If you are going to have individuals who are participating in a major conspiracy, if there is no incentive for reduction of time to cooperate, if the sentences are not severe to begin with and if you have got more fugitives than you have agents, you are going to have very little deterrent effect in our overall fight against narcotics.

That is what we have. I like the sentence provision that is in the Criminal Code that would provide for incentive for cooperation after sentencing. I think that is important. I also think the sentencing provisions are important. I think the provisions for murder for hire, destruction of evidence as well as for counsel in a grand jury room, that worries me considerably. That provision in the House bill would seem to me to open up the type of intimidation Irv Nathan discussed in earlier testimony.

I think the Criminal Code revision is an opportunity for this country to set right some of the inequities presently imposed upon law enforcement personnel.

Judge Webster and Irv Nathan testified on a number of occasions on some of them, and I won't repeat their testimony. I would hope the Congress and this committee would use its best efforts to see that the law enforcement personnel in the United States and at the Federal level do have the tools that are necessary to do the job.

Chairman NUNN. I am going to defer to Senator Percy, who has a 2:30 engagement.

Senator PERCY. Mr. Bensinger, you are always welcome before this subcommittee—even though last time you came with several million dollars and today you came empty-handed. You are most welcome.

I also would like to state once again for the record how pleased I am that Senator Nunn and I joined together to urge the administration to retain your services.

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

Senator PERCY. You are probably the only carryover in the entire Federal Government from the previous Ford administration. I think the continuity you provided and the leadership you provided to a relatively new agency, the cohesiveness you developed there, the esprit de corps and sense of pride your agents rightfully have, is a great credit to you and to them.

A few years ago, through appropriate legislation, we removed from civil service 40 to 45 top slots in DEA so that you could have complete flexibility in the assignments you made. There was some concern inside the agency as to whether or not those top slots should be excluded. Could you report briefly how that has worked out? Has that strengthened the agency or not?

Mr. BENSINGER. I think it has, Senator Percy. And I think the organization is in a better position to be managed and to respond with the provisions of the amendments which you introduced. I think they have worked out; they have been used in an arbitrary, noncapricious manner with judgment so that the individuals I felt were best in a position to handle areas of major responsibility could be appointed and occupy those positions. I think it was a significant help to DEA; I think it continues.

Senator PERCY. Is traditional organized crime in Chicago involved in the distribution of heroin and other controlled substances?

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

Mr. BENSINGER. I would say organized crime is unquestionably involved in the distribution of narcotics in the greater Chicago metropolitan area. In the traditional definition, I would defer a categorical endorsement because the principal elements distributing narcotics in Chicago will vary by drug. For heroin, some of the organizations may be traditional. The organizations trafficking in PCP and operating methamphetamine labs are not traditional organized crime.

Senator PERCY. They would be controlled by the emerging and nontraditional organized crime groups?

Mr. BENSINGER. Yes. We are seeing some new organizations in the cocaine trafficking that really are white-collar-type criminals. The investigation involving the Chicago Board of Options Exchanges is an example. Not to discredit that organization which I am sure has an abhorrence to the presence of any individual members or couriers or traders being active in that, but we have seen lawyers; we have seen individual market makers, analysts, businessmen, pilots, attorneys, a variety of individuals becoming targets and principals of cocaine trafficking; in particular, we have seen corporations that have not been involved in the past, 10 years ago.

Senator PERCY. Do organized crime groups in Chicago traffic in the various mind-altering psychoactive drugs, such as angel dust?

Mr. BENSINGER. I would not be surprised if they weren't. I have no specific organized group in mind as I respond. We could for the record with an estimated number of such groups.

Senator PERCY. In your testimony, you had mentioned the influx of heroin from the Herrera Family in Mexico. Is that the right pronunciation?

Mr. BENSINGER. Yes, sir.

Senator PERCY. What are the sources of illicit narcotics for the Chicago area other than those that you have mentioned?

Mr. BENSINGER. The sources for Chicago for heroin still would be predominantly, although this is subject to change, heroin imported from Mexico. The heroin is smuggled by car, and at times by courier through a commercial aircraft. There is and has recently been a shift to Southwest Asian heroin. At O'Hare Airport within the last several weeks, an Iranian with a student visa was apprehended with 21 cans of caviar, 20 cans of which contained 10 pounds of pure, 90 percent plus pure Southwest Asian heroin.

The individual who was arrested arrived directly on a Swiss Air flight from Tehran, stopping in Switzerland, and deplaning at O'Hare Airport. Customs officials did an excellent job at looking and detecting the smuggling operation. We are now seeing Southwest Asian heroin coming to Chicago, so I would say Mexican heroin would no longer be a key source.

We have a number of investigations underway in Chicago at the present time exploiting some leads. For cocaine, the principal source would continue to be Colombia through Florida and, in some cases, California. For amphetamine and methamphetamine, there are laboratories in the State of Illinois, as there are for PCP.

For the marijuana bulk shipments, we would see that also as basically a Colombian source, although major criminal activity involving two CENTAC investigations which you and Senator Nunn, Senator Chiles, are familiar with at the present time, embraces perhaps 20 different States.

Senator PERCY. We have heard numerous reports of a pending tidal wave of heroin from Iran, Afghanistan, and Pakistan, about the flow into the country through reestablished French connections. Is this starting to happen in light of our poor relations with those countries? What is DEA doing to try to stop it?

Mr. BENSINGER. I think it is happening. I think the threat is real and here. The estimated opium production in Afghanistan, Iran and Pakistan will approximate 1,600 tons of opium. The available amount for reshipment to the United States after servicing the needs in Europe and Southwest Asia, and they are considerable in both of those areas of the world, would approximate 40 tons or perhaps 8 to 10 times the present consumption.

So far we have seen an increase in the heroin purity from 3.5 percent to 3.8 percent over the last 6 months. There is not yet an increase in national injuries or overdose deaths, but we expect that there will be with increased purity available from Southwest Asian heroin and increase in both of those categories.

What we have done, and there are a number of things that have started with a briefing by President Carter and Attorney General

Civiletti of 120 State and local law enforcement officials and State attorney generals, an additional funding and special action office in DEA, meetings with the Prime Minister of Italy, Minister of Finance of Germany, and dialogue with top level French, Canadian, French policy officials to increase the likelihood of interdiction of this heroin when it is moving from Southwest Asia through the Middle East into Europe and subsequently into the United States.

We have increased the number of agents and analysts in Germany, proposed an increase in ceiling in Italy, and are looking to work more closely with the Turkish Police. Turkey has done a good job in controlling their own opium production within that country, but they are also being subject to exploitation by criminal groups that utilize Turkish nationals as couriers into Germany and also for the fabrication of some heroin in the eastern part of that country.

The Attorney General further has directed closer liaison with the Department of Treasury, Department of State, the other elements within the Justice Department to focus on the Southwest Asian trafficking organizations that we have assigned very high priority to this particular initiative within our own agency.

We have directed in six target cities that 50 percent of the manpower assigned focus on Southwest Asian heroin. We have provided additional purchase of evidence and information funds. We have developed special funded intelligence programs to improve informants both in the United States and overseas.

We have identified several dozen special agents who speak a variety of foreign languages that are most helpful. We have worked to brief the other Federal agencies such as Customs, FBI, and the Defense Department on this problem.

We will be meeting shortly with the heads of police agencies in France and Canada with the Ambassador from that country next week, and we hope through tracking some of our information to impact on that heroin production in Europe before it arrives in the United States.

There have been a number of fast breaking investigations. I mentioned the Gambino investigation in New York. That particular case is related to a case involving some 40 kilos of Southwest Asian heroin that was destined for shipment from Milan, Italy, to the United States. Through good investigative efforts with the Italian Police, the heroin was seized in Italy and the shippers and intended recipients were arrested and indicted.

Senator PERCY. The Ambassador from Japan is waiting for me in my office. I will have to excuse myself. I would like to ask for the record whether you could update us on the U.S. position on United Nations Resolution 471, regarding licit production of poppy derivatives.

You are very familiar with the fact that I disagree strongly with that resolution as not being in our national interest, particularly taking into account the country most adversely affected by this resolution: Australia. Since the time of our last discussion, Australia has again stepped up to the line and proven its absolute devotion to a common foreign policy that is in the interest of the Free World.

They have gone so far in backing and supporting our Government that I feel we have an obligation to review U.S. policy to see if it is

in our national interest to go along with the U.N. resolution with which I and others disagree.

I have a few other questions to submit for the record. I also very much appreciate your being here with us.

Mr. BENSINGER. Thank you very much.

On Resolution 471, we do have a published policy up for comment. Final decision has not been subscribed to by this agency. We will certainly provide your office and this committee with a full report.

Senator PERCY. I do hope we will take into account how Australia has supported our foreign policy.

I can assure you that they do feel very strongly about it. Again, I say let's take a look at our national interest, and take into account a good friend and ally.

Thank you, Mr. Chairman.

Chairman NUNN. Thank you, Senator Percy.

[Additional material submitted by Mr. Bensinger follows:]

U.S. DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION,
Washington, D.C., June 23, 1980.

HON. CHARLES H. PERCY,
Permanent Subcommittee on Investigations,
U.S. Senate, Washington, D.C.

DEAR SENATOR PERCY: The following information is provided in response to your request for further information for the record following the Permanent Subcommittee's hearing on organized crime and its relationship to drug trafficking.

Your first question concerned the techniques employed by large-scale drug trafficking organizations to hide their profits and how DEA addresses this problem. Drug traffickers, like licit businessmen, have the need to move funds to pay for their merchandise—drugs—and also have the need to safeguard the profits derived from their enterprise. Several options are available to them.

1. *Cash*.—This is often the preferred method of those who wish to avoid leaving a paper trail. The consequence of such a method is nowhere more evident than in South Florida, an area all too well known as the financial center of drug trafficking. Because of the influx of cash, Miami banks have spent surpluses of \$3.9 billion to the Federal Reserve at a time when other areas are reporting currency shortages.

2. *Cash Instruments*.—Some traffickers convert their profits into negotiable monetary instruments such as cashiers checks, telegraphic money orders, or travellers checks. One of the more notable examples involves Teodoro Ariza-Ibarra, a Colombian national, who was arrested by DEA. At the time of his arrest in Puerto Rico, the agents searched his personal effects and discovered ten cashiers checks in his right shoe. Each of the checks was in the amount of \$500,000—a total of \$5 million.

3. *Transfers*.—This involves the utilization of commercial transfers by wire between correspondent banks. This method circumvents the requirements to file currency transaction reports. For example, if an individual were to open an account in the Bahamas, he could have his assets transferred directly by wire. Often the money is then cleaned through a foreign corporation before it is invested in legitimate businesses back in the United States.

4. *Banking and Investment*.—There are cases on record of traffickers moving funds internationally among many of their own accounts and to the accounts of other traffickers. U.S. dollars, Swiss francs, German marks and Dutch guilders have all been involved, as have been savings, investment and precious metal accounts. Other ventures such as short-term certificates of deposits also have been utilized.

5. *Commodities*.—Traffickers also cover the movement of their profits by converting their cash into commodities of equal value. Stocks, gold and deluxe automobiles have all been used in schemes of this nature.

The objective of all major investigations is the immobilization of the trafficking organization. This requires the long-term incarceration of the principal violators,

the seizure of their contraband and the removal of their assets—that which allows the organization to continue its enterprises. A program designed to reach these assets requires the full cooperation of the enforcement community in conjunction with the full commitment of prosecutors. These interagency ventures are the cornerstone of all programs.

Specifically, a DEA financial investigation is the process of identifying through a drug investigation financial information/evidence which will result in the prosecution of drug violators, as well as the identification and seizure of illicit profits and/or assets.

The following provisions afford DEA the opportunity to identify assets which are liable to forfeiture, both civil and criminal:

21 USC 848(a) 2(A)(B)—Continuing Criminal Enterprise Forfeiture Provisions

18 USC 1961-1964—Racketeer Influenced and Corrupt Organizations (RICO) Statutes, forfeiture provisions

21 USC 881(a)(6)—Civil Forfeiture of Proceeds of Illegal Drug Transactions, monies, negotiable instruments and securities used or intended to be used to facilitate any CSA violation

31 USC 1051 *et seq.*—Bank Secrecy Act and 31 CFR Section 103.11 *et seq.* implementing Treasury regulations

12 USC 3401 *et seq.*—Right to Financial Privacy Act of 1978.

Internal Revenue Statutes

Within DEA, the Financial Investigative Section in the Office of Enforcement was formed in March 1979. This unit's mission is severalfold. Primarily, it serves in coordinating and guiding capacities for the field elements. As the agency is in the early stages of developing the financial aspects of drug cases, this section has taken an active role in the training program being presented to investigative personnel. In order to sensitize them to the importance of financial evidence and the variety of forms it can take, this effort is being directed at senior management as well as "street-level" agents.

The second issue you requested more information on concerns the changes in the volume of Mexican heroin into this country, particularly as it relates to U.S.-supported efforts of the Mexican Government. Mexico's share of the U.S. heroin market has decreased from 87 percent in 1975 to 45 percent in 1978. In terms of volume, an estimated 6.5 metric tons of Mexican heroin entered the United States in 1975 as compared with between 1.7 and 2.0 metric tons in 1978.¹

The principal reason for this dramatic reduction in the availability and quality of this Mexican heroin has been the joint United States/Mexican anti-narcotics effort. Of particular note has been the successful use of herbicide and spray helicopters which were introduced in 1975. Although the Government of Mexico established opium and marihuana eradication campaigns in the 1940's, the modern phase of Mexico's permanent eradication effort did not begin until 1970. It was at that time that the United States began to provide continuing technical aid. United States support assistance has increased yearly through 1978.

The Mexican Attorney General is responsible for eradication campaigns. The Mexican military services are also involved in the anti-narcotic effort. At present, the Mexican Attorney General commands a sizeable air force for reconnaissance and herbicide spraying of illicit fields. In support of this eradication effort, the Government of Mexico has constructed permanent forward bases in the poppy-growing areas. The eradication campaign remains fully under Mexican Government control although the United States has contributed administrative and logistical support.

Please contact me if you require additional information.

Sincerely,

PETER B. BENSINGER,
Administrator.

Chairman NUNN. Senator CHILES, why don't you go ahead with questioning. I am going to have to leave here in about 10 minutes. I would defer to you for questioning and you continue until you get through.

Senator CHILES. Fine. Mr. Bensinger, recently there was a story in, I think, the New York Times that was picked up by some of the

¹ 1979 level would be more like 1 ton and 20-25 percent of heroin market.

Florida television radio stations, I know, alleging that the Colombian Government was backing off of any further enforcement toward drug traffickers and that the \$16 million we had appropriated was being wasted or was going to be of no purpose.

You and DEA work closely in Colombia. What is your view of the situation in Colombia and the commitment of the Colombian Government and is it true the Colombian Government backed off? Was it because they were pulling the army out?

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

Mr. BENSINGER. I am familiar with the story and I am pleased to have an opportunity to respond. It is not my opinion or that of our agents that the Colombian Government is backing off narcotics enforcement. The fact is that the military forces, the Defense Department of Colombia, will be phased out of the Guajira campaign and replaced by elements of the Colombian National Police Force. The army will phase down their presence and the Colombian National Police Force will increase and, in fact, take the place of the army in the Guajira.

This has implications in two respects. One, it is not a program that is new or unexplained to the United States. The State Department, Ambassador Asencio, prior to his being taken hostage, as well as I, were alerted by no less than a Minister of Justice as well as the Director of the Colombian Army, when he was here most recently, that they would be phasing their army's presence out and replacing it with the National Police Force, which would have an investigative opportunity to pursue leads.

While the presence of the army, I think, has been tremendously helpful, I think the involvement of police investigators who can pursue leads as well as man roadblocks and make seizures, may well lead us to some of the larger traffickers rather than just seizures of drug stashes.

I have no indication from our officers in Colombia of a slowdown in the seizure of labs or, in fact, major drug stashes in that country. I think the report, in essence, reflected a statement that the Army was moving back, but it did not take into account the replacement of the Army by the Colombian National Police.

With respect to the \$16 million, which was appropriated to be disbursed by the Department of State, the INM mission, it is my understanding that those dollars have been allocated for equipment, services, and supplies that will be fully utilized by the Government of Colombia.

Senator CHILES. Part of that money of course has not been released or can't be released because that bill has never actually passed the Congress. I understand, however, some of the funds through a continuing resolution have been made available.

Mr. BENSINGER. That is certainly a serious problem. I hope the Congress can address it because putting the State Department's international narcotics money budget into a continuing resolution phase at about \$34 million instead of \$48 to \$54 million that was actually approved by the Congress has effectively reduced the disbursement of funds and the authorization of training, as well as other programs overseas.

Senator CHILES. What can you tell me about the national police force? Is this a new force being built up under the Attorney General? I knew they were building up a—

Mr. BENSINGER. The new police enforcement group in Colombia will draw from elements of several services that seems to me has some benefits. Much as when DEA was formed we took elements from U.S. Customs Service, narcotics intelligence, as well as the Bureau of Narcotics and Dangerous Drugs.

The new unit that will be employed in the Guajira will have presence from several investigative agencies within Colombia, the national police, the F-2, the drug investigative unit, Attorney General's investigative unit, and prosecutors.

That seems to me is something the Colombians feel will work to insure better cooperation. It is too early to tell. The results will have to speak for themselves.

Senator CHILES. A recent GAO report evaluating the Drug Enforcement Administration CENTAC program, concluded that an effective approach to investigating major traffickers needs to be expanded.

On page 21, it was recommended that DEA make greater use of the statutory forfeiture provisions and expand their program for use of financial analysis and information of narcotics investigations.

Mr. BENSINGER. I think that was a fair assessment. I think the overall utilization of the Federal Government across the board of the RICO and forfeiture provisions in its fight against crime has not been as fully exploited as it could be and should be.

Our response has been that we have with a number of CENTAC's, one of which GAO did not review, CENTAC 12 where some \$25 million of assets have been frozen in Panama as well as some \$3 million in the United States in associated locations. But we have embarked upon a major training in depth on financial forfeiture investigations that go across the board.

All of our top people, their supervisors, the special agents in charge in the field, the team leaders, the group supervisors, the agents, we will have reached over a thousand of our 1,500 domestic field personnel within the next 6 months. That alone is not going to guarantee success or forfeiture. We need experience of available prosecutors, grand juries, good cooperation on a national basis from the Internal Revenue Service; we will need an opportunity to develop these cases and to exchange the kind of information with other Federal agencies.

I think on the financial forfeiture area, you should be aware we have 57 RICO major cases moving at the present time. Over 138 separate cases have been presented to the attorneys. We have had a dramatic increase in the utilization of these statutes within the last 6 to 8 months and I think the results will be significant.

We are looking at an average cash seizure: \$40 million to \$60 million in cash we are expected to pick up on an annual basis. The actual real estate assets, banks, the businesses, planes, yachts will have to follow because they have to go through civil and criminal action in our court system. That won't follow as expeditiously.

Senator CHILES. It seems as though this is something you really need to give a major amount of attention to. We recognize you cannot completely get all of the criminals, however we have to try to

get all those at the top that we can. More than that, we have to try to cripple their apparatus by taking their assets.

If there are additional laws that need to be passed, we definitely need to know if there is a weakness there. If it is a question of obtaining additional resources that are necessary to train and provide the skills, we need to know that. If there are other hangups and we know of one, we talked about it, the offshore bank situation on which you can't get any information, we need to know that.

What other problems are there in making this kind of concentrated attack on getting the assets of the enterprise, the illegal enterprise?

Mr. BENSINGER. Senator Chiles, we are committed to that effort and have initiated a number of major cases that will reflect just that statement. We have initiated some specialized training across the board. That will put our agents and agencies in the best position under the law.

We have committed that effort and advised the Attorney General that the State Department needs to put mutual assistance, particularly the treaties with the Bahamian Government, Cayman Islands, Bermuda, Nassau financial locations, at the top of the State Department's agenda in terms of bilateral relationship.

We are committed to that effort by encouraging you and your committee to properly question the impediments within the Tax Reform Act and the Right to Financial Privacy Act. We have committed that effort by discussing with the Director of FBI, head of Customs Service, as well as prosecutors nationally on how best we can coordinate our effort.

There are legislation amendments we think are needed. Irv Nathan spoke to those far more eloquently than I do.

Chairman NUNN. Mr. Bensinger, I am going to have to depart. Senator Chiles can complete—

Senator CHILES. That is all I have.

Chairman NUNN. I appreciate very much your being here. We will hear from your people later on in the week.

The subcommittee will meet tomorrow morning at 10 o'clock. We will have a preliminary meeting of the subcommittee itself for approximately 15 minutes. It is my anticipation that meeting will be closed because we will be discussing sensitive matters.

We will have an open meeting and then close it. Then we will have continuation of those hearings at approximately 10:15 tomorrow morning.

Thank you, Mr. Bensinger.

[Whereupon, at 2:50 p.m., the subcommittee recessed, to reconvene at 10 a.m., Tuesday, April 29, 1980.]

ORGANIZED CRIME AND USE OF VIOLENCE

TUESDAY, APRIL 29, 1980

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

The subcommittee met at 9:55 a.m., pursuant to call, in room 5110, Dirksen Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. Sam Nunn (chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, of Georgia; Senator Lawton Chiles, Democrat, of Florida; Senator James R. Sasser, Democrat, of Tennessee; Senator Charles H. Percy, Republican, of Illinois; Senator Jacob K. Javits, Republican, of New York; and Senator William S. Cohen, Republican, of Maine.

Members of the professional staff present: Marty Steinberg, chief counsel; La Vern Duffy, general counsel; W. P. Goodwin, Jr., staff director; Michael Levin, deputy chief counsel; Jack Key and William Colombell, investigators; Myra Crase, chief clerk; Mary Donohue, assistant chief clerk; Joseph G. Block, chief counsel to the minority; Howard Marks and Richard Shapiro, investigators to the minority; Lynn Lerish, executive assistant to the minority; Ira Shapiro, chief counsel, Governmental Efficiency and District of Columbia Subcommittee; Peter Levine, general counsel, Intergovernmental Relations Subcommittee; Janet Studley, counsel, Federal Spending Practices and Open Government Subcommittee; Alan Bennett, counsel to the minority, Governmental Affairs Committee; Peter Roman, investigator, Federal Spending Practice and Open Government Subcommittee; and Jack Pridgen, Office of Senator Chiles.

Chairman NUNN. Members of the subcommittee, we have a preliminary meeting here this morning to discuss two items: One is the question of immunity, which Senator Javits brought up at the last meeting and which we passed a resolution on. The other is the question of executive session and how we will try to handle those. Before we begin this meeting, I think we are officially in open meeting now until we close.

Senator PERCY. I so move we go into executive session.

Chairman NUNN. We have to discuss sensitive information that we discussed with the Justice Department. You make the motion pursuant to paragraph 7(b) of rule 25. Is there a second?

Senator JAVITS. Second.

Chairman NUNN. All those in favor signify by saying aye.

[A chorus of ayes.]

Chairman NUNN. The meeting is officially closed. Do we have everybody here representing only staff? Could chief counsel and minority counsel verify everybody in the room is authorized to be here?

[Whereupon, at 9:56 a.m., the subcommittee proceeded into executive session, after which the open session was resumed at 10:20 a.m.]

Senator CHILES [presiding]. We begin this morning's testimony, this being the second in our hearings on organized crime. We have as a panel of witnesses this morning members of the FBI who are in charge of the Organized Crime Section. During this testimony today, we will be dealing with various organized crime groups. Some of them have predominant ethnic backgrounds. Obviously, no one would or could imply that the vast majority of members of these ethnic groups have any connection with or share the characteristics of any organized crime group. We now know that organized crime does not confine itself to one ethnic group. We have and we see more and more organized crime groups every day that break themselves up by ethnic groups.

And so as our testimony goes forward today, we wanted to make that caveat initially. Mr. Percy, do you have any opening statement?

Senator PERCY. No; I made mine yesterday, Mr. Chairman.

Senator CHILES. Part of our testimony today will be taken in closed session, pursuant to a motion made by the subcommittee. We will start off and go for a period of time in open session.

Gentlemen, will you stand and take the oath. Do you swear the testimony you are about to give before the subcommittee will be the truth, the whole truth, nothing but the truth, so help you God?

Mr. REVELL. I do.

Mr. NELSON. I do.

Mr. McWEENEY. I do.

TESTIMONY OF SEAN M. McWEENEY, SPECIAL AGENT, SECTION CHIEF, FBI HEADQUARTERS, WASHINGTON, D.C.; JAMES W. NELSON, SPECIAL AGENT, UNIT CHIEF, FBI HEADQUARTERS, WASHINGTON, D.C.; AND OLIVER B. REVELL, INSPECTOR, DEPUTY ASSISTANT DIRECTOR, IN CHARGE OF ORGANIZED CRIME AND WHITE COLLAR CRIME, CRIMINAL INVESTIGATION DIVISION

Senator CHILES. Mr. Steinberg will begin the questioning.

Mr. STEINBERG. Would you please state your full names and give a brief background and history with the FBI?

Mr. REVELL. My name is Oliver B. Revell, Deputy Assistant Director, FBI. I am in charge of the organized crime, white-collar crime and undercover operations for the Bureau. I have served 16 years in the FBI, in Kansas City, Philadelphia, Washington headquarters, Tampa, Chicago, and in Oklahoma City as agent in charge. I have been associated with the investigation of organized crime since 1965.

Mr. McWEENEY. I am Sean McWeeney, Section Chief of Organized Crime. I have been in the FBI since 1965. I have worked in New Orleans, La., Oklahoma City, Boston division, Providence, R.I., New York, FBI headquarters, I was assistant special agent in charge in

Portland, Oreg. I have been assigned as head of the Organized Crime Section, FBI, since July 1979.

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

Mr. NELSON. Jim Nelson, I have been with the FBI 11 years, a year in Houston, 6 years in New York, and 4 years in Washington. I have direct responsibilities for organized crime investigations into labor racketeering, infiltration of business, and corruption involving police, judiciary, and prosecutive elements.

Mr. STEINBERG. Mr. McWeeney, does the FBI presently have a definition for organized crime?

Mr. McWEENEY. Mr. Steinberg, we have a working definition of what we define as an organized crime group. If I may read it:

Any group having some manner of formalized structure whose primary objective is to obtain money through use of violence, corrupt public officials, graft and extortion and has a significant adverse impact on people in its locale or region or the country as a whole.

Mr. STEINBERG. Will you describe the FBI's programs aimed at combating organized crime?

Mr. McWEENEY. In the organized crime priority, which is coequal to white-collar crime and foreign counterintelligence, we have identified five programs: Labor racketeering, illegal infiltration of business, corruption, loan sharking and gambling combined, and what we call the "major impact" area—pornography, particularly child pornography, arson for profit, cigarette smuggling, and prostitution. We have other major responsibilities concerning gangland slayings, witness protection and maintenance, and the informant program for the FBI.

Mr. STEINBERG. Do all the FBI field offices participate in the organized crime program?

Mr. McWEENEY. All of our 59 FBI field offices have a mandate to have viable organized crime programs within their territories. However, we do have approximately 25 field offices, particularly those covering large cities in the Northeast, South, the Midwest, and California on the west coast that have serious organized crime problems and we monitor their activities accordingly.

Mr. STEINBERG. What investigative tools are used by the FBI to investigate organized crime?

Mr. McWEENEY. First and foremost I would say the selection and targeting of informants against the top echelon levels of organized crime; use of undercover agents and undercover businesses against serious organized crime problems; use of electronic surveillance, tap III and consensual monitoring, the latter, body recorders, are particularly useful against loan sharking and corruption. We also utilize special agent accountants to analyze union and union records. We have developed and implemented the organized crime information system, or OCIS, that has gone on line in Detroit, Mich., as Director Webster mentioned yesterday on April 21. We hope to have the Philadelphia and New York offices on line before the end of the fiscal year, September 30, 1980, and in 9 other large field offices in fiscal year 1981, and an additional 11 field offices in fiscal year 1982.

Mr. STEINBERG. Mr. Revell, in December of 1979, the Permanent Subcommittee on Investigations held hearings, a portion of which

were devoted to the Tax Reform Act. Has the Tax Reform Act affected the flow of information from the IRS to the FBI in organized crime cases?

Mr. REVELL. Yes, it has. At the time that the Tax Reform Act passed in 1976, I was serving as the assistant agent in charge in Chicago. At that time, we had many ongoing joint investigations with IRS, particularly into organized crime and official corruption connected with organized crime. Almost immediately, those joint activities ceased, and subsequent to that, in my personal experience and the experience of others in official positions in the Bureau we have seen an almost total void in the ability to cooperate jointly in key investigations in the organized crime area because of the Tax Reform Act.

Mr. STEINBERG. Has it affected prosecutions such as RICO prosecutions?

Mr. REVELL. Yes, it has. It is not impossible, but virtually so to obtain approval for a joint grand jury. It takes many months, in most instances effectively denying us the quick response necessary to go after the targets of opportunity that are present when we come across intelligence information.

So, in essence, only in those cases where we have a long-term investigative goal and where the records and activities are not perishable, do we have the luxury of attempting to obtain the assistance of IRS plus a joint grand jury.

[At this point, Senator Percy left the hearing room.]

Mr. STEINBERG. Also, Mr. Revell, with respect to the Freedom of Information Act, have there been attempts by organized crime figures to discover names of FBI informants?

Mr. REVELL. Absolutely. Director Webster testified to that yesterday. We have many documented instances where there have been massive freedom of information requests to piece together in a mosaic fashion all the data available and then to analyze it to obtain significant indicators. The Director stated yesterday they do not need proof beyond a reasonable doubt. All they need is a significant indicator which would be sufficient for their purposes.

This they do on frequent occasions.

Mr. STEINBERG. Mr. McWeeney, what major characteristics account for the success and self-perpetuating nature of organized crime groups?

Mr. McWEENEY. We have identified over the years in investigating organized crime several major characteristics: No. 1 and foremost, they are highly structured, they have definite leadership roles established. They operate across State lines and international boundaries. Members of one group of organized crime in one State will generally know the members in another State. They use violence, intimidation and corruption to accomplish their aims. Its members are not likely to be susceptible to the rehabilitative process. They are, in fact, career criminals. The organization is quick to discipline its members, to maintain order and loyalty, a very high level of internal discipline, profit or economic gain is its main goal.

Their members are usually in for life and they abide by set patterns, rules, and procedures. Their illegal activities such as gambling, loan sharking, and narcotics are supplemented by so-called legal activities in land investment and infiltration of legal businesses.

[At this point, Senator Chiles left the hearing room.]

Mr. STEINBERG. One characteristic you mentioned is use of violence. In your opinion, what is violence used for by organized crime groups?

Mr. McWEENEY. First and foremost, to eliminate any competition; and as I mentioned in the major characteristics, to maintain internal discipline is very important to their successful operation; to extort payments; to intimidate and coerce witnesses and victims; and, foremost, to set an example in the community.

Mr. STEINBERG. Can organized crime, in your opinion, continue to exist without use of violence?

Mr. McWEENEY. No, sir.

Mr. STEINBERG. Did the Permanent Subcommittee on Investigations request your organized crime section to prepare an overview of organized crime as it exists in America today?

Mr. McWEENEY. Yes, we did, Mr. Steinberg. At this time, Jim Nelson will make such a presentation.

Mr. STEINBERG. Mr. Nelson, in preparing for your testimony for the Permanent Subcommittee and the request of Chairman Nunn, did you use a number of cross-checks and certain source materials to document your testimony?

Mr. NELSON. Yes, we have, Mr. Steinberg. We have used informants, top-echelon informants, informants who are members of the groups we will talk about. We have used what we have overhead in microphone interceptions and wiretaps. We have used information gathered in undercover operations, information gathered in using consensual monitoring devices, and information in some cases from other investigative agencies.

Mr. STEINBERG. Have you personally had experience with organized crime members?

Mr. NELSON. Yes; I have.

Mr. STEINBERG. What type of experience?

Mr. NELSON. I have personally dealt with six members of the biggest organized crime group.

Mr. STEINBERG. In what type situations, without going into specifics, obviously.

Mr. NELSON. They were either informants or, in one case, a member of the group who currently is testifying for the Government.

Mr. STEINBERG. Therefore, your testimony, in your opinion, is amply supported by a number of proven information-gathering techniques and independent FBI corroboration and verification?

Mr. NELSON. Yes, I believe it is.

Mr. STEINBERG. Mr. Nelson, can you give us a general overview of the different organized crime groups presently operating in the United States? In this respect, I request the exact names of each group and a brief description of that group.

Mr. NELSON. Senator Chiles stated in his opening statement, his concern about drawing inaccurate inferences from the names of these groups, we share that concern. However, we will describe these groups and their internal rules in terms used by the groups themselves. We believe it would be misleading to do otherwise in view of the many misconceptions about organized crime. There are a number of groups in this country. I will start out with the bikers or the motorcycle groups. First having prominence out in California is a group known

as the Hell's Angels. Currently there are over 10 chapters of the Hell's Angels in California. The bikers are not limited to the Hell's Angels. They include the Banditos in the South and Southwest, the Pagans and other groups. They have a leadership structure and throughout the country they are alined but it is a looser alinement than in some of the other organized crime groups.

We believe the bikers, at least some of them, are the most dangerous psychopathic group when it comes to their violence, and there are many documented examples of them using this violence with means that are frightening to anybody.

A group in California, in Los Angeles, known as the Israeli Mafia is a small group, mostly Israeli citizens, 40 to 50 members. They first started preying on Israeli immigrants and expanded into other categories of crimes, including murder, extortion, bankruptcy, fraud, and others.

Also out in California, there are two Latino groups who got their beginning in the California prison system. They are known as La Nuestra Familia and the Mexican Mafia. Nuestra Familia began in 1965 in California as a rival group to the Mexican Mafia.

La Nuestra Familia means "our family," also known to the members as NF. There are approximately 200 members of the NF. Half of them are in the prison system, both Federal and State.

In the years since the NF has been in existence, law enforcement groups have documented 150 murders attributed to them. In one 14-month period in the city and surrounding areas of Fresno, Calif., 26 murders were committed by NF people. They have a boss who is known as the nuestra general. Below that there are captains, lieutenants, and soldiers. One member of that group is responsible for 45 bank robberies in California. The group extends into Arizona and New Mexico.

A rival group out in California of the same size is the Mexican Mafia or the "eme," which is the letter "m" in Spanish. It is a less structured organization. It got its start in California in the prison system, again, at San Quentin, and in some instances the Federal prisons, in 1958. The street commander of the eme is known as the general or the godfather. The lower-echelon ranks are the captains and lieutenants. Half of the members are in prison. They have alined themselves with a group called the Aryan Brotherhood. The Nuestra Familia similarly has alined itself with another group known as the Black Guerrilla Family. In the Chinese communities of this country, San Francisco, Boston, Chicago, New York, there are the Tongs or the Triads. The Triads had their beginning in China several centuries ago. The groups call themselves Tongs in this country and although some of the members are certainly aware of members in other Tongs, we see no close confederation.

In Hawaii, the organized crime group is known as the Yakuza. It consists of approximately 12 to 15 members in Hawaii. Very wealthy members, their activities again run the gamut from narcotics to murder, extortion, and taking over businesses. They have 12 to 15 members in Los Angeles. The membership is approximately 40-percent Korean, 60-percent Japanese.

There are black groups in Detroit and other major cities who are closely tied into narcotics trafficking. They know other members, other

associates in big cities and their information lines are open back and forth.

In the Southeastern part of the United States, Miami and other Florida cities, there are various Latino groups who are responsible for a major part of the narcotics importing. There are Syrian groups in St. Louis and other cities who have worked closely, hand-in-hand with other organized crime groups. There are international swindlers who are loosely confederated coming from every ethnic background and sometimes work hand-in-hand with other organized crime groups.

Criminal activity, organized and otherwise, is not the exclusive domain of any one group. It includes all segments of our society.

Mr. STEINBERG. In your opinion, is there any particular organized crime group that has historically been more powerful, more sophisticated than other organized crime groups?

Mr. NELSON. Without a doubt, in our estimation, the group known as La Cosa Nostra is the most powerful organized crime group in this country. It is first in an organized criminal ranking, that has no second or third. No one else is close.

Mr. STEINBERG. Can you give us a brief historical background concerning the Mafia?

Mr. NELSON. Yes; I can. I have some charts here that maybe we can put up on an easel here.

Senator COHEN. Would you yield for a second? Are you associating the two terms together, Cosa Nostra and Mafia?

Mr. STEINBERG. Do you associate the two terms, Cosa Nostra and Mafia together?

Mr. NELSON. We use them interchangeably. Most people in the organization refer to it as La Cosa Nostra.

In talking about La Cosa Nostra, we need a starting point and our information again is gleaned from informants, electronic interceptions, undercover operations and gives us a pretty good perspective of what went on in this country to cause the organization that we know today as La Cosa Nostra. I think the best starting point is January 1920, when the Volstead Act went into being. It gave us prohibition. During the 14 years of prohibition, if we were not part of what was going on and not part of one of the groups, it would have looked like continual and unceasing gang warfare. What we know happened were three distinct gang wars. The first was among the ethnic groups. The Italian groups won. The second was a war between the Italian groups. What we had at that time was a group that called itself the Mafia on the one hand. At that time, to be in the Mafia you had to be Sicilian.

As a result of that, the mainland Italians, the Neopolitans and Calabrese had their own group, the Camorra. The second war that went on for a period of years resulted in the merger of the two groups. For purposes of this discussion, we will call it La Cosa Nostra because no longer did you have to be Sicilian to be in the group. You had to be Italian at least on your father's side. That gave you an Italian name. Those rules continue to this day. Nobody has ever been in La Cosa Nostra who has not been Italian at least on their father's side. As a result of that there is no more Camorra in this country. We do have a La Cosa Nostra.

New York families use the term La Cosa Nostra and so do Los Angeles families and some of the others. In Chicago, they are known

as the "Outfit." In other cities they call it the Outfit or the Arm, the Black Hand, something like that. Since half of the membership of La Cosa Nostra is in New York, we will go along with their designation for purposes of this discussion. I seldom hear the term "Mafia" when talking with these people. There is considerable dispute as to what the derivation of the term Mafia is.

In 1931, a significant development happened in organized crime. Lucky Luciano, who most of us have heard of, ordered the execution of the reigning boss of all the bosses in the Mafia. His name was Salvatore Maranzano. Luciano then took over as the preeminent individual in the organization. He eliminated that position of capo di tutti capi, or "boss of all the bosses" in 1931 and created the ruling Mafia Commission.

At that time, there were seven members on the Mafia Commission, the La Cosa Nostra Commission. In 1957, at the time of the Apalachin meeting, there were 12 members on the commission. Currently there are nine. It is made up of the five bosses of the New York families, the boss in Philadelphia, the boss in Buffalo, the boss in Detroit, and the boss in Chicago. There has not been a capo di tutti since 1931.

This map designates those cities that have a La Cosa Nostra family. There are 25 active families in this country today.

Mr. STEINBERG. Would you read the names of the cities into the record, please.

Mr. NELSON. Boston, Providence, Elizabeth-Newark, five families in New York, a family in Philadelphia, Pittston-Cranston-Wilkes-Barre, Pa., has a family, Buffalo, N.Y.; Detroit, Mich.; Cleveland, Ohio; Pittsburgh, Milwaukee and Madison, Wis.; Rockford and Chicago, Ill.; St. Louis, Kansas City, Denver, New Orleans, Tampa, San Francisco, San Jose, and Los Angeles have separate and distinct La Cosa Nostra families. Two families in recent years have been inactive, generally attributed to the death of most of the members. Miami and Las Vegas are considered open cities for the mob. Not one family has territorial control of those areas.

For the record, if I missed it, Tampa and New Orleans also have separate La Cosa Nostra families.

Senator COHEN. Would you indicate for the record when you say "mob," are you associating that with La Cosa Nostra? What do you mean?

Mr. NELSON. Organized crime is not limited to that. I talked about some of the other groups. Some of the time we use these terms because we are reluctant to just throw out the names of the groups in general discussion. We have agreed to give the exact names to this committee in the hopes there will be a better understanding.

Senator COHEN. I was wondering what you meant when you said Miami is an open city as far as the mob is concerned.

Mr. NELSON. I am talking about the La Cosa Nostra.

Mr. STEINBERG. What do the red stars on the map indicate?

Mr. NELSON. They indicate the cities whose boss is a member of the national ruling council of La Cosa Nostra.

Mr. STEINBERG. Would you read the names of those cities into the record.

Mr. NELSON. Five families in New York, Philadelphia, Buffalo, Detroit, and Chicago.

Mr. STEINBERG. Can you describe to us a typical family organization?

Mr. NELSON. The other chart I have up there describes the hierarchy of a La Cosa Nostra family and some of the illegal activities and businesses that they are into. Each boss of 25 existing families is called a capo. Under the capo is second in command, also known as the sotto capo or under boss and a number of captains, depending on the number of soldiers in the family. Below the capiregime are the soldiers or soldato. We have many other names. They are also known as "wise-guys," referred to as having been "straightened out" or having been "made," referred to as "buttons," and there is one other position in the hierarchy, the consigliere. The consigliere acts as counselor to the capo or the boss and also is available to the soldiers who feel they have been wronged in intrafamily squabbles.

Mr. STEINBERG. Is that person necessarily a lawyer?

Mr. NELSON. Not at all. He is usually an older, more respected member of the family, sometimes a former boss who has moved into semi-retirement.

Mr. STEINBERG. What general types of activity does the LCN involve itself in.

Mr. NELSON. I don't believe they have ever limited themselves in any activities—murder, arson, gambling, loansharking, extortion, blackmail, securities fraud, robbery, and narcotics.

Mr. STEINBERG. Is there an initiation procedure required for a person to become a member of the LCN?

Mr. NELSON. Yes, there is.

Mr. STEINBERG. And what is that?

Mr. NELSON. Over the years, there have been occasions when we have talked with members of La Cosa Nostra. Every family in the La Cosa Nostra does not follow this exact procedure but most of them are very similar. I will read a description of a typical La Cosa Nostra initiation.

The members of La Cosa Nostra who were already initiated were sitting around a table, they joined hands and the proposed member was brought individually to the table and the following transpired:

One: A discussion regarding the "goodness," that's in quotes, of La Cosa Nostra.

Second: A discussion of the rules that must be obeyed, such as respecting other members' wives and daughters and obeying the code of silence or "Omerta."

Three: A discussion of the murders in which the proposed member had previously participated. At one time it was mandatory that a member of La Cosa Nostra participate in a murder. Today it is generally true that they require participation in a murder. However, we know of examples where people have been brought in, for whatever reason, who have not yet participated in a murder.

Four: The proposed member's finger was pricked and blood was smeared on a mass type card depicting a picture of a saint holding a child.

Five: This card was set on fire and the initiate transferred the burning card from hand to hand while reciting an oath of allegiance to La Cosa Nostra and that he hoped to burn like this card if he violated the oath.

The members, both old and new, kissed each other and proposed toasts to their own health and the continued success of La Cosa Nostra.

Mr. STEINBERG. Mr. Nelson, you mentioned that generally the members have to participate in a murder. Are organized crime families making it easier for some members to participate in murder in any way?

Mr. NELSON. They give you credit for participating in a murder if you assist in it. If you act as the lookout or drive the get-away car or in some way set up the intended victim, they give you credit for that.

I know of examples where after a murder has been committed, they will make sure a proposed member is present and after the murder has been committed and the victim is lying on the floor, they will pass the gun around so the proposed member can pump another bullet into the already dead victim and in that way solidify his loyalty to the organization.

Mr. STEINBERG. What, in your opinion, is the reason for this requirement of joining in a murder?

Mr. NELSON. Two things: To show, in their terms, the willingness to do the dirtiest of deeds and, second, to enjoin them in a conspiratorial activity of a murder and hopefully, according to them, insure that he abides by the rules of the Mafia or La Cosa Nostra.

Mr. STEINBERG. You mentioned that certain families had different traditions. Is there a different tradition in the family in Chicago?

Mr. NELSON. Yes, there is. They don't use the ceremony that we know of along these lines. In Chicago, their typical initiation procedure is a feast or a get-together where the proposed member is brought to the group and then announced as a member of the organization or outfit. But, Chicago, again, generally requires that the proposed initiate participate in a murder.

Mr. BLOCK. May I ask, why is Chicago different in that regard?

Mr. NELSON. I think the records of our investigations bear this out. Chicago, when it first merged, and I talked about the merger before, the boss in the Chicago area was taken not from the Mafia, but from the Mainland Italian Group, and that was Al Capone. They had a little bit different ceremony and tradition and that continued in Chicago up until the present time. One of the current bosses in Chicago was closely alined with Al Capone in the twenties and he is one of the bosses there today.

Senator COHEN. May I also ask for a clarification for the record that, when you say "families," that does not necessarily intimate they are blood relations, although there may be blood relations within the "family"——

Mr. NELSON. That is correct, there may be blood relationships, but "family" comes from the Italian "famiglia" and it does not necessarily mean that they are blood related. In most cases, of course, they are not.

Mr. STEINBERG. Mr. Nelson, how many members of the La Cosa Nostra exist today?

Mr. NELSON. There are approximately 2,000 members. However, I must say that is probably the most misleading figure I could throw out because these are the initiated members, the people who are considered by other people as part of the organization.

Our most conservative estimate is that for every initiated member, there are approximately at least 10 people alined with them and asso-

ciated with them on a daily basis whose day-to-day activities are criminal and associated with La Cosa Nostra.

So the conservative figure of the number of people in this country who are doing La Cosa Nostra's work is 20,000, and that is conservative.

Mr. REVELL. It is in these associates, many of whom have tremendous power and influence, that many, ethnic groups are represented. An associate of La Cosa Nostra is not necessarily, and in many instances is not at all a member of a particular defined ethnic group.

Mr. STEINBERG. Even though they may be a "big moneymaker" for the Mafia, they are not actually a member.

Mr. REVELL. Many of their associates, in fact, are more powerful than some of these soldiers of the family.

Mr. STEINBERG. Which families are the most powerful in terms of membership and influence in the United States?

Mr. NELSON. I don't think it is coincidental that the nine families represented by commission members are also the nine largest families in the country.

The New York families and the Chicago families are the largest in numbers and the biggest of all is the Gambino family in New York and second is the Genovese and the Chicago family.

Mr. STEINBERG. How does the FBI make a determination on whether or not an individual is a member? In other words, what criteria or guidelines do you use to determine if a person is a member?

Mr. NELSON. We require that before we carry or identify a person internally as a member of La Cosa Nostra, that person be identified by an informant who is part of the organization. We will accept the identity from two top echelon informants, and we try to check that out through our other records to see if it is consistent with what the top echelon informants told us. We will also accept, again, after we compare it to other data, information from a wiretap or microphone wherein people in the organization have revealed to us that somebody else is part of the organization. Also, we have picked up information on consensual body recording situations that has increased our knowledge of the organization.

Mr. STEINBERG. Does the FBI attempt to independently corroborate this information?

Mr. NELSON. In every instance, even from a member source, we will go through our records and attempt to corroborate it.

Mr. STEINBERG. The subcommittee has requested the Organized Crime Section of the FBI to describe the present leadership of the major LCN families in the United States. Are you prepared to do this in executive session?

Mr. NELSON. Yes, I am.

Mr. STEINBERG. In addition to updating the structure of organized crime, our hearing deals with the use of violence by organized criminal groups. Have you ever been in a situation where you have learned that there is a contract out on a mob member's life? What do you do?

Mr. NELSON. I have been in that situation a few times, and the FBI is in that situation on a much too frequent basis. Back in 1975, we learned that a person by the name of Jerry Basciano who is part

of La Cosa Nostra in New York was going to be killed. It is part of our policy and responsibility to notify that person that there is a contract on him and to notify the local police agency in the area.

The day we learned that Jerry Basciano was going to be killed, I went to see Jerry Basciano and told him I had information that he was going to be killed.

I will read from a report that I wrote at that time:

Basciano, who is 51 years old, acknowledged that he was completely aware that there was a contract on his life. He discussed the situation in a convincing manner. He said he had chosen this life many years ago and was aware for many years that it is a horrible existence and the people involved are incredibly treacherous. He said that "honor in this life" is something that only exists in the movies. However, he steadfastly declined offers of protection through relocation.

Basciano flatly stated, and I saw him on November 25, 1975.

Basciano flatly stated that he expects to be killed between today and Christmas, and he named the people he thought were going to kill him. He said his only hope is that he can "take some of them with me." He said he will attend any meeting to which he is summoned by La Cosa Nostra and will not go into hiding or alter his routine.

We made several other attempts to convince Mr. Basciano we would provide him protection, relocate him in return for testimony, and time and again he said, "Thank you, but I just hope to be able to take some of them with me." He said, "If you start tailing me, they are just going to delay it." He was killed gangland fashion a few months later when he was in a coffeeshop. Two men with a ski mask walked in and killed him.

Mr. STEINBERG. Is the use of violence essential to the operation of these organized groups?

Mr. NELSON. It is not only essential, it is required. If they do not use violence, "we are going to get more informants", and they state that. If they don't use murders, the witnesses are not going to be reluctant to testify. If they don't use murder, the younger people in the organization will try to take over their positions. If they don't use murder, other organizations will move into their territory.

They remain, by far, the strongest group. The Chicago Crime Commission has kept statistics on gangland killings in Chicago since 1919. The total is almost 1,100 people killed in Chicago gangland fashion since 1919.

Senator SASSER [presiding]. How many did you say? What was the figure you used there?

Mr. NELSON. 1,068, to be exact.

Senator COHEN. You say "gangland fashion." Would you describe it, as opposed to another kind of slaying, for the record?

Mr. NELSON. It is more than that. They use certain criteria, not only gangland fashion, but murders of people associated with crime in Chicago. They have an even larger group of people. They list 1,068 as definitely gang-connected murders. They have a large group of probable gang-connected murders and then a group of possible gang-connected murders; 1,068 is the definite.

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

Senator COHEN. What I am asking is how do you distinguish between gangland slayings and other murders? What tells you it is a gangland slaying?

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Mr. NELSON. There are two ways, and I think they use both. There are ways La Cosa Nostra and other organized crime groups carry out their killings and their circumstances. Some of the people use machine-guns, but when you look into their background, go through the police files, FBI files, you can see in every case these people are identified as being associated with organized crime groups.

Senator COHEN. So it is not only the way in which they are killed, but also their background that determines if it is a gangland—

Mr. NELSON. That is important, the background.

Senator COHEN. How would you distinguish the bike gangs, which you say are even more violent than the Mafia?

Mr. NELSON. The bikers are not reluctant to kill anybody. It has been our experience the La Cosa Nostra gives very, very heavy consideration and is reluctant to use violence against law enforcement officers, judges, prosecutors, et cetera. It is our experience that the motorcycle groups have no concern or fear in this regard. They will kill anybody.

Mr. STEINBERG. Historically through motion pictures and books, the La Cosa Nostra has been portrayed as staying out of the narcotics business and, in fact, objecting to narcotics trafficking. In your opinion, is this an accurate supposition?

Mr. NELSON. It is totally inaccurate. La Cosa Nostra has been involved in narcotics going back to the twenties and thirties and continues to be heavily involved in narcotics to this day.

Mr. STEINBERG. Has narcotics trafficking caused the emergence of new organized crime groups?

Mr. NELSON. Yes; it has. As I mentioned before, down in Florida, Latinos of Colombia, Cuba, and other Central and South American countries have formed narcotics cartels and are involved in a major part of the narcotics importing into the south Florida area.

Mr. STEINBERG. Is there any documented cooperation between the La Cosa Nostra family and other organized crime groups?

Mr. NELSON. Yes; we have documented information that La Cosa Nostra has used bikers on occasion to collect loan-shark payments and that they have used the Latino group and their narcotics-importing activities.

Mr. STEINBERG. In your opinion, have organized crime groups become more sophisticated in terms of finances and investments in legitimate businesses?

Mr. NELSON. I am not convinced they have become more sophisticated but I think the information shows they are getting into legitimate business on a greater scale. However, the means used in doing this are very similar to the means used 20 or 30 years ago—extortion, blackmail, intimidation, murder, arson.

Mr. STEINBERG. When you say you are not convinced they are more sophisticated, do you feel the Government is just now learning about their sophistication?

Mr. NELSON. I am not saying they are not sophisticated, I am saying in my belief their financing has not been more sophisticated. Once they get into legitimate business, they use any method available to any businessman—computers, excellent legal advice, financial advisers. In that sense, they do use everything available, but their methods have not changed significantly in getting into these.

Senator COHEN. Mr. Nelson, could I ask you one question? To go back where counsel asked you about the division of labor, the cooperation between various groups, there is an item that appeared in the Chicago Tribune dated April 7 of this year. The caption is "Nation's Crime Bosses Plan Summit."

America's top crime bosses are planning a summit meeting this summer to put the final stamp of approval on a scheme that will alter traditional boundaries of mob families and allocate illegal operations across the country, the Tribune has learned.

Are you familiar with that particular summit meeting?

Mr. NELSON. I have seen the article.

Senator COHEN. Is that the kind of division of labor or sharing of territorial lines or the allocation of territorial lines between the various groups, or is that within just one, the La Cosa Nostra?

Mr. NELSON. I am not prepared to endorse that article as being accurate.

Senator COHEN. Are you prepared to repudiate it?

Mr. NELSON. I think we can maybe discuss it a bit in private session.

Mr. STEINBERG. What techniques are used to involve an honest businessman in organized crime?

Mr. NELSON. A classic technique of taking over a bar, starting a protection racket would be for a member of organized crime to create a fracas or a fight inside a bar or restaurant. Obviously legitimate customers are not going to want to be patrons of a bar wherein there is violence. The organized crime member will create that fight in there and then, of course, he won't be doing it himself. He will have other people come in and start the problem. Then he will go to the owner and say, for so much I can insure this will not happen in the future. The owner starts paying protection and the organized crime members slowly, or quickly sometimes, move into control.

There are times when organized crime control over a labor union can almost guarantee influence in the management of a business. If the business is seasonal or heavily dependent upon getting along with the union, and the union is LCN- or other organized crime-dominated, organized crime will guarantee there will be no labor problems in return for a kickback. There are other times when businessmen get into debt through gambling or other means and legitimate sources of credit are not available and that business goes to organized crime. They lend the money at extreme rates of interest and slowly move in to take over the business. These are just a few of many, many ways that organized crime can get into business.

Senator COHEN. Can I ask you one other question about penetration of labor organizations? Yesterday when Director Webster was testifying, I asked the question as to whether or not organized crime had infiltrated or taken control of certain labor organizations. The next question would be, have those labor organizations gained control over law enforcement. Have you had that experience?

Mr. NELSON. We are aware that some police departments are organized by unions that have organized crime influence. We have not seen that that organized crime influence has translated into an attempt at controlling the police departments. We are certainly aware of the possibility and right now we just cannot say that we have information that would show that.

Senator COHEN. So based upon your own personal knowledge, you would not conclude, from past experience, that there has been any influence by organized crime, through unions, into law enforcement departments or local police departments. Is that a fair conclusion?

Let me just give you this caveat. The Director did indicate yesterday that several matters were under investigation and that those who had been found so involved in the past had been prosecuted. I would like to see the records of those who have been prosecuted and follow the investigations currently underway. Now you can answer the question.

Mr. NELSON. I am just not—we are aware of police departments that are organized by unions that are influenced or controlled by organized crime. I do not have information available right now that that influence or control has translated into the improper domination or control of that police agency.

Senator COHEN. Is the FBI monitoring that situation closely?

Mr. NELSON. We are very closely and in a couple of instances very, very closely.

Senator PERCY. Just to be bipartisan on this, we talked about labor unions, could you give us some examples of how honest businessmen become involved in the techniques of organized crime? For instance, loan sharking, how does a loan-sharking scheme work? We have high interest rates all over today, but what is a typical loan-sharking interest rate?

Mr. NELSON. Senator Percy, in some places it is known as the six-for-five racket. If you borrow \$500 this week, you owe \$600 next week. In other places, especially in New York, money is loaned from the loan shark on a point basis, a point meaning a percentage of interest per week, and generally from organized crime to the businessman, a person who needs the loan, the rates are from 5 to 7 percent per week and you never pay off the loan until you pay off the entire principal that is borrowed at one time. I will try to give you an example from an actual case.

In the early seventies, two businessmen came to our office in New York. They had borrowed \$75,000 from a loan shark. In 1½ years they paid back \$225,000 and still owed the \$75,000 principal.

What caused them to come to our office was readily observable. They had their most recent meeting with the loan shark collector in the back of a restaurant in New York. They told them they could not meet that weekly payment, at which time the collector took a fork from the table and stuck it in the hand of one of the persons who made the loan and he reached up and grabbed the other person's hand and literally took a bite out of it. When they walked into our office, the marks were readily visible. We offered them relocation.

They agreed to wire themselves up with a body recorder and go to the next meeting. Of course, we were there and made the arrests. Three members of the La Cosa Nostra were convicted in that case. One is still a fugitive and has been for 7 or 8 years.

Senator PERCY. What sort of a business could they be in that they would be able to repay in 9 months as much money as they did?

Mr. NELSON. They had been very successful businessmen at one time. Where they got the money, I am not totally clear on, but they were involved in a very high volume business and they had previously

been making substantial amounts of money. Their legitimate sources of credit were stretched so that they could not obtain credit in the normal fashion.

Senator PERCY. While we are on this subject, could you tell us a little bit about how organized crime hides illegal profits and how they launder funds?

Senator COHEN. Would you yield for just one question?

Senator SASSER. Gentlemen, if I may interrupt just a moment, why don't we try to get through the prepared questions here that we agreed in executive session the staff would ask and then get into our individual questions? That might expedite the process. We are almost at the end of it.

Senator PERCY. I would concur. I thought you had finished.

Mr. STEINBERG. What characteristics make some businesses and labor unions vulnerable to organized crime?

Mr. NELSON. Organized crime likes to get into businesses that allow them either one or a series of benefits to them. As Director Webster mentioned yesterday, cash-intensive businesses are particularly desired by organized crime because they can do a couple of things. They can wash money and by washing money, I mean inject their illegally obtained money into a business and not allow it to be traced very easily. Organized crime, if they run a vending business, they might throw in a vending machine into a number of places and not care at all whether or not the coins are tossed into the machine. That way, since nobody is keeping track of the number of coins put in, they can run up on their books the number of coins going through and therefore in a sense legitimize their illegal money. Certainly other businesses they have been into traditionally, such as in some of the major cities, bars and restaurants, which are particularly interesting for them for washing purposes, and unions that can and have the ability to shut down a business or industry are particularly interesting for them.

Mr. STEINBERG. The general public opinion is that mob violence is inner-directed; that is, it involves only one mobster killing another.

In your opinion, does mob violence affect innocent people, victims, businesses, labor unions, and even geographical areas?

Mr. NELSON. Yes. It does. I gave the example of two businessmen and what happened to them. Just the mere fact of organized crime people killing each other has an intimidating influence on people who read about it and see it. In 1972, part of the gang war ongoing in New York was between the Gallos and Colombos, four businessmen were standing at a bar in New York, called the Neopolitan Noodle, it has a restaurant in the back. Four members of organized crime had been frequenting that bar. The members of organized crime were standing at the bar, and a spy or a lookout for the competing mob saw they were there, and alerted the "hit" people. We believe strongly that they were aware that the organized crime people were planning on attending the bar that night anyway. By the time the hit crew was assembled, they sent in a person for one quick last look, he said, "Yes, the four organized crime people are still there," and he described where they were standing at the bar. He then went out and told the people in the hit car. They came in and killed two people and injured two, but in the few minutes it took for them to get in from the car, the organized

crime people moved to the back of the bar and took a seat at the table, and were replaced by the four businessmen, again two who were killed and two who were wounded.

Mr. STEINBERG. Besides the actual violence itself, is there an intimidation factor that affects society?

Mr. NELSON. Absolutely. Those type of situations scare people. When a mobster kills another mobster, it make us all aware that they are not reluctant to use force and people who have dealt with these people many times have been the brunt of their violence. They certainly do not limit their violence to the people in the organization.

Mr. STEINBERG. Are there individuals whom the FBI has identified as mob enforcers?

Mr. NELSON. There are groups of people in every organized crime group who are particularly effective and some of them, maybe in a psychopathic fashion, carry out murder, torture, that sort of thing.

Mr. STEINBERG. Can you give a hypothetical example of a typical contract killing?

Mr. NELSON. In the La Cosa Nostra if it is decided that somebody is going to be killed, a contract is given to another member or close associate to perform the murder. That person then many times will survive the intended victim or in most cases if the intended victim is part of the organized crime group, that victim will be called to a meeting, of course not knowing at that time that he is the intended victim. When he arrives, he is killed immediately and his body disposed of.

In some cases the body is left on the street; in some cases the body is never found again.

Mr. STEINBERG. So you are saying they use friends and associates to commit the murders?

Mr. NELSON. It is typical that they will assign a contract to a close friend or associate because as in every group, sometimes it is difficult to keep a secret, and usually, as I recited in the Basciano situation, not only did they intend to kill him, but he became aware of it.

Mr. STEINBERG. Are organized crime cases generally harder to obtain convictions in than other classes of cases the FBI handles?

Mr. NELSON. For a lot of reasons. It is difficult to get informants in organized crime groups. It is difficult to convince witnesses or victims to testify. We do use, and have to use rather complicated investigative techniques and statutes. Wiretapping, the RICO Statute is not a simple statute, extremely effective, and when you get to court, you are going to be facing the best attorneys that money can provide for these people.

Mr. STEINBERG. Do organized crime figures continue to operate once they are in prison?

Mr. NELSON. If you are a member of La Cosa Nostra, you are a member for life. They continue the criminal activities in prison. And if they are slowed down while they are in prison, they continue the day they step out. There is only one way out of an organization like La Cosa Nostra, and that is to die. The same for a group like Nuestra Familia. You cannot leave the group. If anybody attempts to leave, they are murdered. The majority of those murders I talked about out in California were committed on people who had attempted to leave the organization.

Mr. STEINBERG. Various organized crime groups have been mentioned today, some of which have certain predominantly ethnic backgrounds. Obviously no one would, or could, imply that the vast majority of the members of any of these ethnic groups have any connection with or share the characteristics of the organized crime group. In your experience, do these organized criminal groups you have mentioned also prey on persons of their own ethnic background?

Mr. NELSON. Many of them started that way. Certainly the La Cosa Nostra, as it was known back in the 19th century, the Black Hand, initially preyed on their own people. The Israeli Mafia out in California got started in that fashion.

Mr. STEINBERG. What type of economic benefit is involved in becoming a member of La Cosa Nostra?

Mr. NELSON. Contrary to popular belief, money in La Cosa Nostra flows upward. People are brought into the organization for their ability to earn. There is one purpose of La Cosa Nostra, and that is money. These other activities are to ensure the continued flow of money. But a soldier is brought in for the purpose of making money and if he makes \$10,000, a percentage of that goes to his caporegime and then passed along to the boss or the underboss.

Mr. STEINBERG. Do the individual members of La Cosa Nostra actually have salary of sorts?

Mr. NELSON. In some families, there is that procedure. It is a limited salary to keep them going, but they are expected to go out and earn.

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

Mr. NELSON. The normal procedure is that there are no salaries.

Mr. STEINBERG. Are certain nonmember associates who are key moneymakers for the La Cosa Nostra powerful in their own rights?

Mr. NELSON. Certainly.

The largest numbers bookmaker in New York City for a number of years was not a La Cosa Nostra member. He had the status of a captain. He could sit down with any boss in the country, but for a few reasons in the fifties he declined membership in the organization. We convicted him in 1975 and after he got out of jail, he then accepted full membership in La Cosa Nostra.

Mr. STEINBERG. Thank you.

Senator PERCY. I wonder if you could tell us, Mr. Nelson, if there are economic failures in La Cosa Nostra like any other business? Do they succeed as well as fail?

Mr. NELSON. Absolutely. I have seen La Cosa Nostra members on very rare occasions doing things like selling shoes out of the trunk of their car. They make mistakes, but generally a person moves up in the organization by his ability to earn, but they certainly do make mistakes. They have business failures, but the difference in the normal way that a citizen handles the business failure and the way the Mafia or the La Cosa Nostra handles it is pretty vivid. They don't like to take a loss.

Senator PERCY. You have indicated, however, that as the years have passed, they have become far more sophisticated in terms of finance and investment in legitimate businesses. Could you then come back to the question I started before? How have they gone about hiding their illegal profits and laundering funds?

Mr. NELSON. They don't like to keep large amounts of cash sitting around idle, no more than any businessman and they look for opportunities to invest it. They also like to invest other people's money.

We know that is the case in several union pension funds, substantial funds that they have taken over and in a sense dominated where that money is going to be invested. They will put money into a business that did not have substantial assets before they got into it, to bolster the business and keep it going.

As I mentioned before, they can wash money very easily through the vending business and other cash-intensive businesses because it is very difficult for anybody to sit there and clock the amount of money coming across the counter or going into the machines. They can push that up or down in whatever fashion they choose, to benefit themselves.

Senator PERCY. Because you have so much contact with organized crime, I would like to get a picture of some of the more human elements. I remember a story years ago which depicted a landed Philadelphia family, and the gap between generations, as new generations matured. It has been reported that the younger hoodlums are getting more restive, they want more of their share of the spoils, especially in light of the many defections of family members in recent years. Is this an accurate statement? Is there now a generation clash within these families and is it true that there have been defections from the old established families, and if so, what were the causes of those defections?

Mr. NELSON. I don't believe there have been defections at all. It is a rare occasion that we can get a member of that group to cooperate with law enforcement, extremely rare and probably for many of the reasons that I brought out before, their propensity toward violence. As far as any possible conflict between a younger member and the older members, I don't really see that. They are bringing in younger members in the organization again since 1974 and 1975 on a wholesale basis.

Certainly some families are going to coordinate this increase in membership more effectively and that, again, depends, like any other organization, on the effectiveness of their leadership. If the leadership is found wanting, they will have problems and have had problems, but where the leader exerts a firm hand on the organization, is respected by the members, they do it rather smoothly.

Senator PERCY. What kind of an image do you have of organized crime now. Do they fit the businessman image?

Mr. NELSON. Many of them are poorly educated. There are exceptions. Certainly some of the—I think the bosses in Chicago typify the businessman image more than some of the bosses in other cities, but, of course, they have been around for a long, long time. And some of them are very rough-talking people who deal in few words and sometimes bask in the limelight of being a La Cosa Nostra boss. I don't think we can generalize in that group, any more than we can in any other group.

Senator PERCY. But they do tend to be better educated now, send their children to good private schools, tend to live in the suburbs, as well as continue to live in certain sections of the West Side of Chicago?

Mr. NELSON. Sometimes their sons have gone to law school and graduated and been brought into La Cosa Nostra as members themselves. Sometimes their children have been rather disassociated with the

workings of the group. A very common misconception is that the family is not aware that the father is involved in organized crime. I don't think anything could be further from the truth. The wives are very much aware that their husband is part of this secret group. Their children are taught in many instances from the day they are 5 or 6 years old how to handle a stranger appearing at the door with a suit and tie and asking questions about the father's whereabouts. That is the way that they engrain upon their children and the family how to handle law enforcement inquiries or other situations from the time they are very, very young.

Senator PERCY. I just have one or two more questions.

One of the most important aspects of traditional organized crime of interest to this subcommittee is its involvement in narcotics trafficking. To what extent is Chicago traditional organized crime involved in the distribution of heroin and other controlled substances?

Mr. REVELL. Senator, let me handle that one.

I was assigned in Chicago as assistant agent in charge back in 1975-76. I dealt extensively with the problem there with DEA. La Cosa Nostra was not heavily involved in hard narcotics in Chicago for several years. The Chicago heroin was primarily what they called Mexican brown heroin brought up from Mexico. The Chicago organization has gotten back into the most sophisticated drug distribution operations, primarily cocaine and other barbiturates. They did so because they saw the vast sums of money that were being made and the difficulty in obtaining convictions in this area. Originally they were making money in many other areas, and did not see the need to continue in a high-risk occupation, and lapsed their activities in narcotics to some degree, although not totally for an extended period of time.

They were replaced by primarily black and Latino organizations. From some of these organizations, as they moved into areas that La Cosa Nostra controlled, they extracted tribute. So they have never totally withdrawn, although they did get out of the direct street-dealing, and probably still are in most instances in Chicago.

Senator PERCY. In addition to heroin, do the organized crime groups in Chicago deal in other mind-altering drugs, such as angel dust?

Mr. REVELL. I am not aware.

Mr. Bensinger and his staff would be better prepared to answer that—I am not aware of them dealing in some of the hallucinogens. Some of the individual members get involved in a lot of operations. It is very possible that they have, but as an organization, I am not aware of that.

Senator PERCY. If you could be objective about it, could you confirm or deny that traditional organized crime will try to stay away from any violent clash with Federal authorities? That has been traditionally true, I think, in the past. Is that still true today?

Mr. REVELL. That is very true. Being from Chicago, you are familiar with one rather famous mob leader there who had several clashes with Federal law enforcement and he discussed on occasion, the possibility of taking violent retribution. I am talking, of course, of Sam Giancana.

Chairman NUNN. Talking about what?

Mr. REVELL. Sam Giancana, who was head of the organization there for some time. He was counseled by cooler heads and never took any

retribution against Federal authorities. There are occasions when certain members of La Cosa Nostra feel that they must act against a prosecutor or an agent. These are extremely rare as compared to other organized crime groups which tend to be more volatile and more reactive. La Cosa Nostra has learned rather well that any violence directed toward a Federal prosecutive or investigative official will result in massive intensive investigation and scrutiny and they simply cannot stand the heat.

Senator PERCY. Have any of you had any personal experience where you feel that there seems to be no way to convict a member of organized crime unless you can get the cooperation of Internal Revenue Service? Have you felt that their hands were somewhat tied by existing legislation now? Do you have any recommendations as to how Congress should deal with that particular problem? Do you feel they should be freed up somehow so that they could be more available to help prosecute?

Mr. REVELL. Senator, I answered that question before you got here.

Senator PERCY. I am sorry.

Mr. REVELL. You are absolutely correct.

Senator PERCY. Can you give me a summary?

Mr. REVELL. Yes.

I testified before this committee earlier that the Tax Reform Act has had an extremely adverse effect upon our ability to have joint investigative efforts with IRS. It certainly has impacted upon our being able to reach the upper echelons of both organized and white collar crime. The procedures that are available to us are essentially a catch-22 situation. We have to have information as to what IRS has in certain specific detail in order to request it. And yet we are prohibited from obtaining that information from them, even though we are going through a judicial officer, and a grand jury process. When we can make a case for a joint investigation, the time delays are extremely excessive and in essence IRS has been taken out of law enforcement as far as we are concerned, and they were a very valuable asset to our team approach to investigating organized crime. We hope that the Congress will reconsider the very strict rules that are now in place and give us some degree of latitude with court oversight.

Senator PERCY. A final question, just to confirm what was evident last fall when we held hearings on chop shop operations in Chicago, so far as professional car theft is concerned, it appears that organized crime in Chicago controls it. Is that an opinion that you would share?

Mr. REVELL. That is correct. Again it is another area where there is a vast sum of money to be made, where there are illicit activities going on, and the heavy muscle, the heavy discipline moves in and takes over, probably more gangland murders in Chicago in the last 3 or 4 years have been involved in the chop shops than any other activity.

Senator PERCY. Thank you.

Chairman NUNN. Thank you, Senator Percy.

I regret I was late. I want to thank each of our witnesses. I had to testify before Senator Proxmire's committee on draft registration and I could not avoid it.

They set the meeting at exactly the same time, which happens frequently here.

I do not know who has had an opportunity to ask questions. Senator CHILES, have you asked questions?

Senator CHILES. Not yet.

Senator SASSER was chairing the hearing at length.

Chairman NUNN. Senator Sasser?

Senator SASSER. Thank you, Mr. Chairman.

We have heard much about mob efforts to influence and control public officials. This is a very sensitive area, particularly sensitive at this time. Could you describe for us some of the FBI's efforts in this area, particularly on the local level?

Mr. NELSON. We have had a number of cases over the years where the mob whether it be La Cosa Nostra or otherwise has been involved extensively with the corrupt officials. As part of our top three priorities in the organized crime program this type of corruption gets equal treatment with the other two labor racketeering and illegal infiltration of business.

Senator SASSER. Let me ask you this question: Suppose a legitimate businessman comes to you and wants to resist the efforts of organized crime to either take over his business or impede his normal business activities in some way. Can the Government give such assurance of protection to the legitimate businessman, or also the legitimate business union?

Can you give him sufficient assurances of protection and follow through with those assurances?

Mr. NELSON. Two things: Sometimes the mob will make an effort to infiltrate a business and they choose that target just because the target is there. We have seen many instances where the individual businessman has come to us and reported it and got us involved, and the mob, once realizing that we were involved, has backed off and said, "I don't need this, I will take somebody else."

In those situations, where a businessman reports the organized crime involvement and agrees to testify, maybe wires himself up with a body recorder, it sometimes is necessary for us to relocate that individual for his or her own safety. And I think, even though there have been problems in that program, we are using it more and more, and I think it is becoming more and more effective.

In general yes we do have the mechanisms available.

Senator SASSER. When you say you relocate them is this the program whereby you give them a new identity as well as a new location?

Mr. NELSON. It is handled by the Marshal Service as part of the Department of Justice. It is not handled by the FBI. It is called the witness protection maintenance program.

Senator SASSER. Earlier you indicated that there was some cooperation between La Cosa Nostra and the other criminal organizations which are less well-organized and less powerful, and less sufficient. Are these in the nature of formal alliances between formal organizational structures or just sort of catch-as-catch-can day-to-day deals that one soldier might make with another, a biker, for example?

Mr. NELSON. That is the case in some instances. We don't know of formal agreements among the organized crime groups. It is a rare instance where a group like La Cosa Nostra will use other people in their illegal activities, but it does happen. If we go back to the narcotics

trade to the fifties and sixties, we know that La Cosa Nostra had the so-called French Connection. They needed to use people in other countries to get the heroin through Marseille into this country. Now they are using the Latino Connection. Whether there is a formal agreement I doubt it, but they need the Latinos because the coke is down in South America.

Senator SASSER. Gentlemen, let me just ask you this question. I think it is important. In your judgment what is the single biggest impediment to effectively dealing with organized crime?

Mr. NELSON. From my own opinion, we have convicted many, many of these people over the years. Carmine Galente, who was boss of the Bonanno family in New York was killed in July 1979. He was 65 or 66 years old. He had done over 30 years in various prisons in this country: He was convicted of something and he got out and he was convicted of something again.

These people are habitual criminals. They never stop. In another situation, La Cosa Nostra boss received a 50-year sentence. He did less than 8 years. Time and time again we see this and this is something I think the Government is going to have to address. There was a pervasive—not pervasive. There was a feeling at one time that imprisoning people was not the proper thing to do and the people could be rehabilitated. These people cannot be rehabilitated. It is part of their society to continue criminal activities.

Certainly there are things that would be important for us in the investigative arena. Since 1970, I am not aware of any piece of legislation that has been passed that would assist us in the performance of our investigative functions or prosecutive functions. There are numerous proposals pending that would certainly inhibit us.

Chairman NUNN. Would you name those proposals briefly that you say would inhibit your fight against organized crime?

Mr. NELSON. In my estimation we testified, Assistant Deputy Revell testified on the proposed Stanford Daily legislation.

Senator SASSER. On which legislation?

Mr. NELSON. The Stanford Daily legislation. It is a three-part proposed legislation. One of it, the first part, has to do with the press. We have no objection to that at all, but it is the second and third part, it proposes to give a general exclusion to third parties in the conduct of searches. We could not issue a search warrant against a third party and that is somebody who is not accused of the crime, without first going the subpoena route. This would create a sanctuary for the highest level of organized crime in secreting their documentary evidence.

They have to keep a second set of books and records when they are in these legitimate businesses that they are running. They have to keep books and records in their loan-sharking businesses and what they will do is set up a no-questions-asked relationship with a family member or friend and store all of their records in that place and we could not, if an informant told us it was there, we could not seize those records as we could other evidence.

Chairman NUNN. Do you have any other inhibiting pieces of legislation on the books that are being considered?

Mr. REVELL. This is a difficult dilemma. Senator, they all hinge around the privacy issue while we are very concerned about legitimate

privacy interests, such things as the Freedom of Information Act which Director Webster testified about yesterday also have an adverse impact because organized crime will use every loophole, every caveat of the law to its advantage and there needs to be a balancing on the part of the society through the Congress as to what interests should be served and to what degree.

Examples, of course, are the amendments to the Freedom of Information Act, the Tax Reform Act, the Financial Privacy Act, the proposed Stanford Daily or Third-Party Privacy Act, and so forth. What we must get across is that these laws have an adverse impact as well as a salutary effect. And that adverse impact is primarily in the area of facilitation the extension of organized crime deeper and deeper into our business, economic and personal lives because they utilize these laws for their purposes.

There is no court control over their activities. There is no oversight on the part of the Congress, there is no oversight on the part of the Executive.

These particular activities are utilized by them to their advantage. They have the best law firms in the country representing their interests and in essence they are beating us in many of these areas where there has been no demonstrable offensive Federal conduct and yet because of privacy issues that are raised, primarily through the media, we have a difficult time in addressing and attacking organized crime. It certainly has affected our ability to develop informants, to maintain informants, to even have people who are potential witnesses talk with us. So I think in essence we have to look at the cost as well as the benefit in some of these areas.

Chairman NUNN. Senator Sasser, I interrupted you. Go right ahead.

Senator SASSER. I have two more questions, Mr. Chairman, and then I will conclude.

Mr. Nelson, you suggest that inadequate prison sentences or the fact that members of organized crime do not serve their entire prison sentence, being eligible for parole, getting out on some sort of program, may be one of the major impediments to controlling organized crime. Are there any other significant impediments other than the legislative problems that you mentioned to us?

[At this point, Senator Percy left the hearing room.]

Mr. NELSON. The RICO statute, title XVIII, section 1962, has been of tremendous benefit to us. With that statute we have been able to get into the businesses controlled by organized crime, seize them and in some cases put these people in prison for a long period of time.

That has been of tremendous benefit. I think we have to take a good hard look at the Federal parole system and our sentencing procedures.

Senator SASSER. Can local and State police forces be effective against organized crime groups, particularly something as systematically organized as La Cosa Nostra? As you outlined it here on the diagram, that looks almost like a military table of organization.

Mr. NELSON. Yes. They have been in many cases very effective. In some of the other organizations that I mentioned, the Nuestra Familia, Mexican Mafia, the local groups are working hand in hand with Federal groups including the FBI and I think we are going to see very significant results in the near future. The only nationwide criminal

group is La Cosa Nostra. Many local groups are not equipped to investigate them successfully. Some are and some have done a very effective job, either in conjunction with the FBI or other law enforcement agencies and in many cases on their own. Corruption remains a problem, corrupt police officers in a very, very small minority, but if you have one corrupt employee in an organized crime case, it can damage the possibilities of successful investigations for a long period of time.

Senator SASSER. One final question, Mr. Chairman.

During your testimony you indicated that one of the requirements for La Cosa Nostra was the participation or participating in at least one murder. There is also some testimony that many times the corpus delicti of these murders vanishes and are not found. This is one of the grizzly things, but how are these bodies disposed of, and have you found any evidence that there is illegal use of crematoriums for example, legitimate crematoriums to dispose of the corpus delicti?

Mr. NELSON. I have not personally had experience with that type of disposal. I have had personal experience in recovering mob bodies from graves in the basement of a social club, in the basement of a business. In most cases we have never found these people. It is the mob's tradition that when they have decided to eliminate a member of their own group, they will kill that person, dispose of the body, the body is not left on the street which rarely happens in New York. They will then go to the family of that person and say "do not expect them to come home." They know that he will not.

There are many, many people, many, many families in this world, in this country that are missing somebody and that person has been killed and disposed of either through burying, or in some cases even very grotesque ways of dismembering a body.

Senator SASSER. Let me just tell you the reason I bring that up. I have a constituent, a mortician, who is concerned about crematoriums being used for criminal activities and he made the suggestion to me recently, a few months ago, that perhaps crematoriums in the Northeastern part of the United States were being used by criminal elements to dispose of bodies.

Mr. NELSON. I have seen in the past and it has been not in the recent times at all, but I have read examples of that type of thing. I do not have any personal experience with crematoriums or funeral parlors being used by the mob.

Mr. REVELL. I have never heard of that. In fact, I know of them using the crushing machines and also burying bodies in foundations of buildings, superhighways that are being poured. There are allegedly bodies somewhere within the New Jersey Turnpike. They use various techniques. Certainly if a crematorium was available to them and it was under secure conditions they would not hesitate to use it. But I am not aware that we have any such information.

Mr. McWEENEY. No.

Senator SASSER. Thank you, Mr. Chairman.

Chairman NUNN. Senator Cohen, and then Senator Chiles.

Senator CORREN. Just a couple of questions, Mr. Chairman.

We know about our overreliance upon Mideastern oil but there have been a lot of reports lately that very large amounts of heroin are being funneled into this country from Iran, Afghanistan, Paki-

stan and the question I would have is do you have evidence to believe that the Mafia is now trying to establish a new French Connection or Riyadh Connection, perhaps even going by way of Sicily?

Mr. NELSON. In my limited discussions with people at DEA, I have had indications along the lines that you just described. I would much prefer that somebody who is very familiar with that topic discuss it.

Senator COHEN. The only other question I have is that when Senator Percy asked you a question, Senator Sasser, I think you responded by saying that the Mafia doesn't go after Federal officials, employees, FBI agents, judges, anyone involved in law enforcement because of the fear that the investigation will be so massive and intensive that they couldn't stand the heat. The question comes to my mind why isn't the investigation so massive and intensive when the ordinary citizen is involved?

In other words, if he can take out a businessman or a local operator and there is not too much outrage being expressed at that time, but if they hit an FBI officer or judge, then suddenly you marshal our efforts and resources to clamp down. It raises the question to me at least there are certain levels of violence that are tolerated by us. For example, if one of the mob members takes out another mob member, there is no real sense of social outrage about that. I doubt very much whether an intensive investigation is underway to seek the prosecution of that individual because the rationale is, after all, they did it to themselves. That is one level of tolerance that applies. We get to, I know you are going to bang that gavel, Mr. Chairman—

Chairman NUNN. No, no. I am not going to bang it. You go right ahead. I am just playing with it. [Laughter.]

Senator COHEN. I will try to be brief.

We then get the ordinary citizen or businessman who may have been under the thumb of the organized crime, doesn't want to pay the \$225,000, they stick a fork in his hand or kill him. The response is, "Well, that will require some investigation, but again not that intensive unless they actually take out a Federal official." The question I have is: Is there not a more subtle relationship or more subtle understanding between organized crime, the Mafia in this particular case, and the operations of Government whereby those who are at the head understand that as long as they only engage in small-time matters of violence, the likelihood of their being pressed significantly is very small, that as they raise the rank of the individuals involved they can expect to get more and more heat?

It raises a question in terms of the relationship of organized crime to Government itself. Several years ago there were hearings, when my staff counsel here was involved in the hearings in the House side concerning a lot of assassination attempts on Castro, and there was some evidence taken at that time that some members of organized crime were in fact contacted by the Government to carry out a particular level of violence. That raises questions in my own mind. There is also evidence that it would never be carried out but it might be used as blackmail against the defendant in the event they tried to go after heads of organized crime. It simply raises a question in my mind in terms of this relationship, this very subtle relationship, between Government and organized crime. We don't press quite that hard as long as they are only engaged in certain levels of activity, but the higher up they go the more likely we might marshal our resources.

I was just wondering if you perhaps could comment why we don't go after them a little more intensively when the ordinary person is involved, why we don't try the massive, intensive type of campaign to really crack down or whether we have reconciled ourselves to the fact that we are accommodating a certain level of criminal activity without going after it? I know you have got limited resources, but to the extent you have the ability to come in and request appropriations for increased resources, why do you feel hesitant to do that?

Mr. REVELL. Senator, there were several different questions and concerns expressed.

Senator COHEN. It is a statement; yes.

Mr. REVELL. First, there is no Federal murder statute per se. However, in those areas even where they kill themselves, the recent killing of Galente, the recent killing of Angelo Bruno, there was an intensive Federal investigative effort that continues today to obtain information that will assist local authorities and update us on the activities of the organization itself. In those areas where the private citizen, the businessman, the inadvertent witness, and so forth, are involved in the potential violence committed by organized crime, we take a very definite and specific interest. It is in our best interests to insure that witnesses or potential witnesses are confident that we can protect their interests and bring them to testify.

Senator COHEN. In terms of that chart how many of the bosses have been prosecuted over the past 20 years?

Mr. REVELL. The majority of bosses have been prosecuted. All of them are under investigation today; many more are going to be charged in the near future.

Senator COHEN. How many have been convicted?

Mr. REVELL. We can give you an exact count.

Senator COHEN. I think it would be interesting to compare the indictments of so-called soldiers, ones engaged in the acts of violence and the ones at the top.

Mr. REVELL. You must also realize the boss is the toughest to get and you have to climb the ranks many times in order to get to him. We have reached the top in many instances. That doesn't mean the family is eradicated. It means the formal hierarchy is moved up. There is a reordering of priorities. Many times the boss will continue direction from prison. You can remove the individual from the position but you do not necessarily remove him from the power. So there have been successes. There will be many more, but it requires a sustained, consistent effort to interdict and eradicate their activities.

Senator COHEN. Just one final point. I was going to interrupt Senator Percy when he was questioning about that incident with the stabbing of the hand with the fork by the extortionist with some \$225,000 in interest payments. What was the sentence handed out to that individual?

Mr. NELSON. The three members of the La Cosa Nostra received 10-year sentences. The collector who did the immediate violence that they talked about received a 3-year sentence.

Senator COHEN. With time off with good behavior, does that work out to about 6 years?

Mr. NELSON. The person who was the collector did less than a year in jail, the members of the La Costa Nostra did less than 4 years in jail. They are all on the street today.

Senator COHEN. It is the point we have been talking about here. If you look at the rewards, whether it is chop shops, organized crime, heroin, and you then look at the risk of being caught, prosecuted and convicted and then the question about the sentence imposed itself, there is a rather minimal risk compared to the amount of the reward involved. That is part of our problem with organized crime. Mr. Chairman.

Chairman NUNN. I agree. I have asked the FBI to give us the convictions and the sentences of what I would call top-echelon organized crime figures in this country for the last 20 years and I would also add to that I think I did at the beginning, but if not I would add to it—with the sentences I would like the names of the judges under whom those sentences were set forth. We are not trying to go after any individual judge. I believe that it is within the scope of our legislative authority to determine in a nationwide pattern what organized crime people have been convicted, what their sentences have been, and who in the judiciary is imposing those sentences.

We heard an incredible tale yesterday about a high-level massive narcotics dealer in Boston, Mass., receiving a very, very light sentence commensurate with the proven crime. And I think that is a subject of our inquiry and we will certainly put it in the right context, but it will be my intention to make this information public and I would like for it to be known publicly that it is the request of the subcommittee, not something the FBI has volunteered or initiated. Could you get us that information?

Mr. REVELL. Yes. It will take time to assemble all of it. We can get parts of it to you very quickly. There is one other aspect. Many judges are dealing out more responsible sentences, but we have another problem that has arisen quite frequently. Part of the sentencing legislation allows a judge to give a maximum sentence and then leaves it up to a parole commission or to the parole commission to determine when the individual should be released. We find that there is a substantial problem with the recognition of the parole commission of the organized criminal figure and the fact that they are a separate class of offender and in many instances when judges have seen fit to give substantial sentences, in fact multiple penalties, multiple sentences we have seen very little time served by very high-level and powerful organized crime figures.

Chairman NUNN. I think we should have a record of when these individuals were paroled.

I believe this would be very helpful information.

One of the legislative purposes of our hearings is to determine whether a murder for hire statute should be passed in the Congress. Are you saying in cases like the *Bruno* case and similar cases, what you did was investigate of your own volition, after being requested by local authorities. Is that right?

Mr. REVELL. No, sir. We are in with local authorities. They want our help in every instance that I am aware of. But the very fact that the *La Cosa Nostra* and organized crime is one of our top investigative priorities we are going to be investigating it in conjunction with the police as soon as we learn of it, which is generally immediately.

Chairman NUNN. But you don't have Federal jurisdiction?

Mr. REVELL. We don't have Federal jurisdiction but there are other areas that might involve Federal jurisdiction. So we will investigate to determine if there is a basis for Federal jurisdiction, including under the RICO statute one of the predicate violations is murder. If we see a pattern of criminal activity including murder, under the RICO statute we can build a Federal case.

[At this point, Senator Cohen left the hearing room.]

Chairman NUNN. Do you believe a murder for hire statute would assist us in combating organized crime?

Mr. REVELL. I think it would be very effective. It would be difficult to perhaps precisely define a murder-for-hire statute because there is a great deal of criminal activity in this country and the Federal Government can't address it all. That includes murder. I presume that there could be guidelines from the Attorney General that would define within manageable terms those cases that we would investigate.

Chairman NUNN. Also, isn't one of your problems that a lot of the mob murders and organized crime murders are not really for money, but rather for power?

Mr. REVELL. Position, power, influence.

Chairman NUNN. Continued influence.

Mr. NELSON. It is very rare that we find an actual murder for hire. It is part of the member of the La Cosa Nostra's responsibility as being a member of the organization to carry out these activities. They do not get paid for them normally. They may receive recognition within the organization or get expanded territory. Very seldom do they get paid for these.

Mr. REVELL. When they bring in these other groups there is generally a compensation involved. It also may not be money. It may be a franchise or other recognition, but it doesn't always have to be money.

Chairman NUNN. We have to very carefully word the statute in that respect. I think it is going to be a very difficult legislative job to do that and still not get you so broadly involved that the State and local governments don't have primary responsibility for murder.

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

Chairman NUNN. You do now investigate what appears to be organized crime murders on the grounds of possible RICO violations?

Mr. REVELL. Yes, Sir.

Chairman NUNN. Senator Chiles.

Senator CHILES. You testified earlier today about Miami being an open city. My understanding is that Miami became an open city originally because it was a resting place and it was sort of a safe city in which, generally speaking, the mob determined that they would not assign that territory to anyone. About how long did that continue and when did they really begin illegal activities there which eliminated it from being a vacation spot?

Mr. NELSON. My own experience is that Miami in the last 10 or 15 years has been a real hotbed of organized crime activity. Many of these people are moving down there on a permanent basis as opposed to a vacationing situation in years gone by. Any Mafia family, Cosa Nostra family, can conduct illegal activities in Miami as long as they do not intrude upon the activities of an already established operation by the La Cosa Nostra group.

Senator CHILES. What that means now in effect is that we have a number of families operating there and rather than having one where there is, you might almost say better order and discipline, there are in Miami how many, at least five?

Mr. REVELL. It is more than that. You have representatives from the New York families, from Chicago, from St. Louis, Detroit, Cleveland, various other places and you also have—

Senator CHILES. How many do you think are operating there?

Mr. McWEENEY. We just took a survey in March and the Miami office advised us as of January 1, La Cosa Nostra in south Florida, which would cover Miami, comprised of 81 known permanent resident members, 28 semipermanent resident members, they represent 16 La Cosa Nostra—

Senator CHILES. Sixteen?

Mr. McWEENEY. Sixteen separate La Cosa Nostra families, numerous nonmember La Cosa Nostra associates, either permanent or semipermanent residents.

Senator CHILES. Does that not include the Colombian Mafia?

Mr. REVELL. Colombians, Cubans.

Senator CHILES. Nor the Dixie. How would you define the Dixie Mafia?

Mr. REVELL. That is a term that has been pretty much—

Senator CHILES. You talk about ethnic slurs. That is one that we really get concerned about in the South. [Laughter.]

We know that is a misnomer. But I want you to see, Mr. Chairman, how far we go in this committee to slur people. [Laughter.]

Chairman NUNN. How much of Florida do you consider to be Dixie, Senator? [Laughter.]

Mr. REVELL. The so-called Dixie Mafia is a loose confederation—

Senator CHILES. Everything south of Perry, Ga.—[Laughter.]

Mr. REVELL [continuing]. Of primarily burglars, bank robbers, and other property criminals who have associated together, who have assisted each other, who will on occasion have interacted with other organized crime groups.

They do not have the formal structure, per se, and they do not have the continuing membership. It is a loose ad hoc affiliation of people who assist each other to conduct criminal activities across the South, sometimes the Southwest, even up as far as Chicago. They certainly are a gang, a group, an entity that we are aware of primarily in our bank robbery and associated crimes program.

Senator CHILES. Fairly violent?

Mr. REVELL. Yes. They are fairly violent. Many of them grew out of the old bootlegging gangs and they have also gotten involved in narcotics distribution.

Senator CHILES. In addition to that we have a Black Mafia in effect operating.

Mr. REVELL. There are certain major cities where black organized crime groups are called the Black Mafia. They generally operate in their own territory but many times with the sanction and assistance of the traditional organized crime groups.

Senator CHILES. We have an organization like that, at least one, in Miami, do we not, that is involved in narcotics as well as in protection and other violence in many instances against black people?

Mr. REVELL. Correct.

Senator CHILES. What kind of groups are there besides the one called the Colombia Mafia?

What kind of other Central or Latin American groups are operating?

Mr. NELSON. We have not done a detailed study of the narcotics groups. We are assisting and in a couple of cases carrying the brunt of the attack on some organized crime groups in Florida and especially the Latino groups. I would not be surprised if every country was represented in this narcotics trafficking, every Latin country. Some more than others, but my information is that—

Senator CHILES. Are they organized into country groups, country organizations?

Mr. NELSON. There are the Colombian groups, most prominent, and the Cubans, but they interact and they are not exclusively represented by specific countries.

Senator CHILES. Do you have any numbers—you were telling me the numbers, 81. Was that the number of members of the La Cosa Nostra?

Mr. McWEENEY. Yes.

Senator CHILES. Do you have any numbers on any of these other groups that we are talking about?

Mr. McWEENEY. Just looking through that survey we took which is a semiannual survey, I don't see it here, Senator. We can get it for you. There is no problem. We can certainly get an estimate for you.

Senator CHILES. I would like to have an estimate for the record.

[The information furnished by the FBI follows:]

ENFORCEMENT ACTIVITY—ALIENS ARRESTED WITHIN THE UNITED STATES FOR A DRUG OFFENSE

	Calendar year—			
	1976	1977	1978	1979
Albania.....	0	0	0	2
Algeria.....	1	0	2	0
Antigua.....	0	0	0	1
Argentina.....	3	6	8	8
Australia.....	2	7	1	4
Austria.....	1	1	1	0
Bahamas.....	2	0	0	1
Bangladesh.....	0	0	3	0
Barbados.....	0	2	2	0
Belgium.....	0	1	5	0
Belize.....	0	1	1	2
Bolivia.....	8	1	10	7
Brazil.....	7	9	5	2
British Virgin Islands.....	0	0	1	0
British West Indies.....	0	0	0	4
Canada.....	64	63	54	54
Chile.....	5	7	5	9
China.....	0	1	1	1
Colombia.....	183	239	445	432
Costa Rica.....	5	3	2	4
Cuba.....	68	105	139	177
Cyprus.....	0	0	0	3
Czechoslovakia.....	1	0	0	1
Dahomey.....	1	0	0	0
Denmark.....	0	1	0	0
Dominican Republic.....	28	22	24	40
Ecuador.....	10	12	22	21
Egypt.....	0	0	3	0
El Salvador.....	2	5	5	1
France.....	5	7	5	2
Germany (West).....	5	6	6	13
Ghana.....	6	0	4	0
Grand Cayman.....	0	1	7	0
Great Britain.....	12	18	7	18
Greece.....	2	0	5	8
Grenada.....	0	0	1	0

ENFORCEMENT ACTIVITY—ALIENS ARRESTED WITHIN THE UNITED STATES FOR A DRUG OFFENSE—Continued

	Calendar year—			
	1976	1977	1978	1979
Guatemala.....	0	4	2	2
Guyana.....	0	1	1	2
Haiti.....	10	2	6	5
Honduras.....	1	5	2	15
Hong Kong.....	0	3	4	2
Hungary.....	1	1	1	0
India.....	1	3	3	1
Iran.....	4	0	8	20
Iraq.....	1	0	0	0
Ireland.....	2	2	0	0
Israel.....	1	4	1	6
Italy.....	5	6	8	12
Jamaica.....	9	13	11	38
Japan.....	2	1	2	3
Kenya.....	0	0	1	1
Korea.....	1	0	0	3
Laos.....	0	0	2	0
Lebanon.....	0	2	3	1
Luxembourg.....	0	0	1	0
Malaysia.....	0	0	2	0
Mexico.....	1,238	774	507	411
Morocco.....	0	0	1	2
Netherlands.....	1	4	10	1
New Zealand.....	0	1	3	0
Nicaragua.....	1	0	5	6
Nigeria.....	0	1	4	8
Norway.....	1	0	1	0
Pakistan.....	1	1	3	1
Panama.....	11	4	5	3
Peru.....	25	20	21	28
Philippines.....	0	3	2	7
Poland.....	2	2	0	1
Portugal.....	1	0	0	2
Santo Domingo.....	0	0	4	0
Singapore.....	0	3	1	0
Soviet Union.....	0	1	0	1
Spain.....	4	4	3	5
Surinam.....	0	1	1	0
Sweden.....	0	2	0	0
Switzerland.....	2	0	1	0
Syria.....	1	0	0	2
Thailand.....	36	9	27	24
Trinidad.....	2	3	2	4
Turkey.....	4	1	1	6
Uruguay.....	1	0	3	5
Venezuela.....	5	20	12	7
Vietnam.....	0	0	1	0
Yemen.....	0	0	1	0
Yugoslavia.....	2	0	0	0
Total.....	1,796	1,419	1,435	1,450

Chairman NUNN. We have gone into more detail today on the La Cosa Nostra because it has been testified to as the only nationwide group. We are and have already notified the Justice Department and received their word they will cooperate. We are going to try to not only identify the members of this group in executive session, but we are also going to do that with the other groups also as we go along. It would be my intention to have an executive session sometime today to go into the detail. I understand you agreed to go into executive session and provide the names. Is that correct?

Mr. REVELL. That is correct.

Chairman NUNN. We will also do that for the other groups at some point in time.

Senator CHILES. That is all the questions I have.

Chairman NUNN. I understand that you talked about the commission as sort of the board of directors of the La Cosa Nostra. Is that right?

Mr. NELSON. Yes, sir. We described it as a group of nine La Cosa Nostra bosses. They represent the nine largest families, five in New York, Philadelphia, Buffalo, Detroit, Chicago.

Chairman NUNN. Did you name those families?

Mr. NELSON. The families in New York are the Colombo family, Genovese family, Gambino family, Bonanno family, and Lucchese family. That is what they are known as by the members themselves.

Chairman NUNN. How about the other families?

Mr. NELSON. We have not named them and we will be prepared to name the bosses. They are more often known by the city that they function from, for instance the Philadelphia family or the Buffalo family as opposed to the leader, but some of them still describe it as the name of, for instance, in Buffalo, the Maggadino family.

Chairman NUNN. So you have five of the nine located in New York?

Mr. NELSON. That is right.

Chairman NUNN. New York City?

Mr. NELSON. In New York City. Yes.

Chairman NUNN. Could you give us the city of each of the other families?

Mr. NELSON. On the commission?

Chairman NUNN. Yes; on the commission.

Mr. NELSON. They are represented by the stars on the chart, Chicago, Detroit, Buffalo, Philadelphia, five in New York, for a total of nine.

Chairman NUNN. You don't have Atlanta on that chart at all, do you?

Mr. REVELL. We are thinking about it, Senator. [Laughter.]

Chairman NUNN. What is the reason for not having Atlanta up there, or any other cities? How do you draw the line? Are you saying there is no family, no official La Cosa Nostra family in Atlanta?

Mr. McWEENEY. Yes, no official LCN operation.

Chairman NUNN. That means they do not operate there at all, or they don't have home headquarters there?

Mr. McWEENEY. They do not operate in that location.

Mr. REVELL. There are instances where they operate in almost every major city. They are not in permanent residence, or they do not have a family that is domiciled in that location.

Chairman NUNN. They may do business there? It would be like corporate headquarters. That is not their prime location?

Mr. REVELL. That is correct.

Chairman NUNN. But that does not mean they do not do business there, they could be engaged in narcotics traffic or other kinds of businesses. Is that right?

Mr. REVELL. They go where the money goes and any place you have a major financial center, you are going to find that during any given period of time, there will be La Cosa Nostra, or La Cosa Nostra associates that will be involved in certain dealings in that territory.

Chairman NUNN. Tell us more about the commission. How often does the commission meet?

Mr. NELSON. They met in the past on a regular basis. The police in New York intercepted a commission meeting back in the late sixties. They are very circumspect in meeting and many of their activities and decisions are carried by couriers and messengers. They do not have to meet to come to a decision.

I think it was testified to before the purpose of the commission within the group is to resolve interfamily disputes, to set general overall policy and to ratify new leaders for the La Cosa Nostra.

Chairman NUNN. Do they actually act more or less as a board of directors and make a decision about who has what territory, that kind of thing?

Mr. NELSON. Only broad general decisions along those lines. The territory was staked out a long time ago. When we had a place like Atlantic City, which was a decaying area at one time, and then the State of New Jersey legalized casino gambling, the La Cosa Nostra very quickly moved to resolve how that territory would be split up.

Mr. REVELL. Senator, the important thing here is that the commission is very susceptible to the various techniques available to law enforcement; to electronic surveillance, to physical surveillance, to penetration, and so forth. So they have taken means to minimize the possibility of the Government putting them into a conspiracy case.

They carry on their dealings on a very limited basis and generally by intermediaries or couriers, but also all of the negotiations do not involve the commission. Most family business does not. There are dealings between families and groups within families that do not require commission sanction. This is not a board of directors, as you would think of a corporation getting into the everyday dealings of every element of the organization. It is a loose confederation with this as a problem-resolving forum. It does act in that capacity to try to hold down violence between family groups and families.

Chairman NUNN. How many families are there all together in the La Cosa Nostra?

Mr. REVELL. Twenty-five active.

Chairman NUNN. You have only nine represented on the commission. Is that right?

Mr. NELSON. That is right.

Chairman NUNN. Do these positions rotate between families or do these families have permanent positions?

Mr. REVELL. Members of the commission speak for other families not represented.

Chairman NUNN. But these nine families are sort of locked in their position on the commission, their successors take their position, or does it rotate between the families?

Mr. REVELL. As Mr. Nelson testified earlier, the number has varied. At one time there were 12, now it is 9. It varied from time to time, but all the families have the ability to have representation before the commission.

Generally, a member of the commission will represent other families in business before the commission.

Mr. NELSON. All families west of the Mississippi contact the Chicago representative on the commission for access to the commission. Families east of the Mississippi contact the New York representatives to achieve access to the commission. Back in 1931 Cleveland was represented on the national Mafia commission. They were eliminated from the commission at one time or another and now are nine, and this number has been consistent for about the last 25 years.

Chairman NUNN. Senator Chiles, do you have any other questions?

Senator CHILES. No, sir.

Chairman NUNN. It is my understanding that you have indicated a willingness to go into executive session for more details and names. Is that right?

Mr. NELSON. Yes, sir.

Chairman NUNN. Are you prepared to do that today?

Mr. McWEENEY. Yes, sir.

Chairman NUNN. The subcommittee is complying with a request of the Justice Department to handle the names in executive session.

The subcommittee will have an executive session where we will get this testimony. Then we plan to have our staff on the subcommittee, in addition to corroborating it as thoroughly as we can with the Justice Department and the FBI, get independent corroboration. Then the subcommittee itself will decide as to the possible publication of the material, or whether or not it will be published, and certainly we will consider in that determination pending cases of the Justice Department and the FBI.

We will be consulting with them. We will not publish the material until such time as we have had corroboration and until such time, certainly, as the FBI and the Justice Department have given their testimony and our staff has had an opportunity to check that out.

Senator Chiles, I understand we have a vote at 12:30. Is that right?

Senator CHILES. That is right.

Mr. REVELL. Senator, we have a document that has the agreed-upon testimony. We could submit that to you if you have procedures where you could receive that in executive session rather than the testimony, if you prefer that.

Chairman NUNN. I think we would prefer testimony.

Mr. REVELL. All right, sir.

Chairman NUNN. We will have a good many questions, and so forth. I am trying to check on Senator Percy's schedule and try to find a convenient time. I know you will need a break. We will take at least a break.

I would anticipate we would come back at 1:30. Does that give you enough time?

Without objection, the charts and other written information that has been examined here today will be admitted into the record.

[The documents referred to were marked "Exhibit Nos. 1A and 1B" for reference and follow:]

EXHIBIT No. 1A

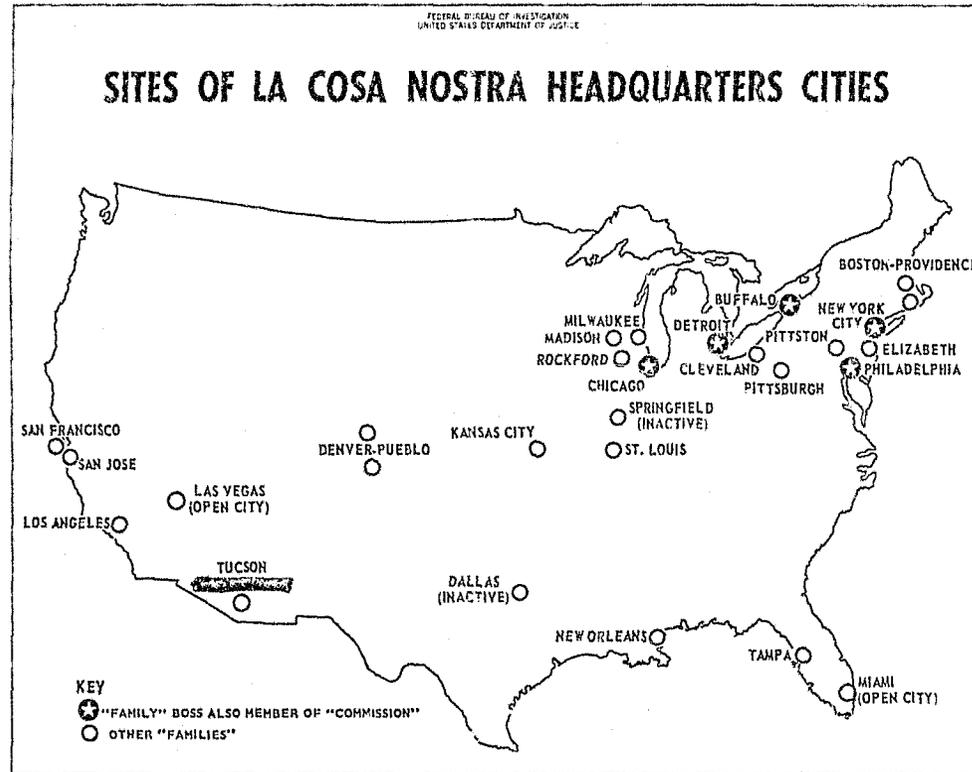
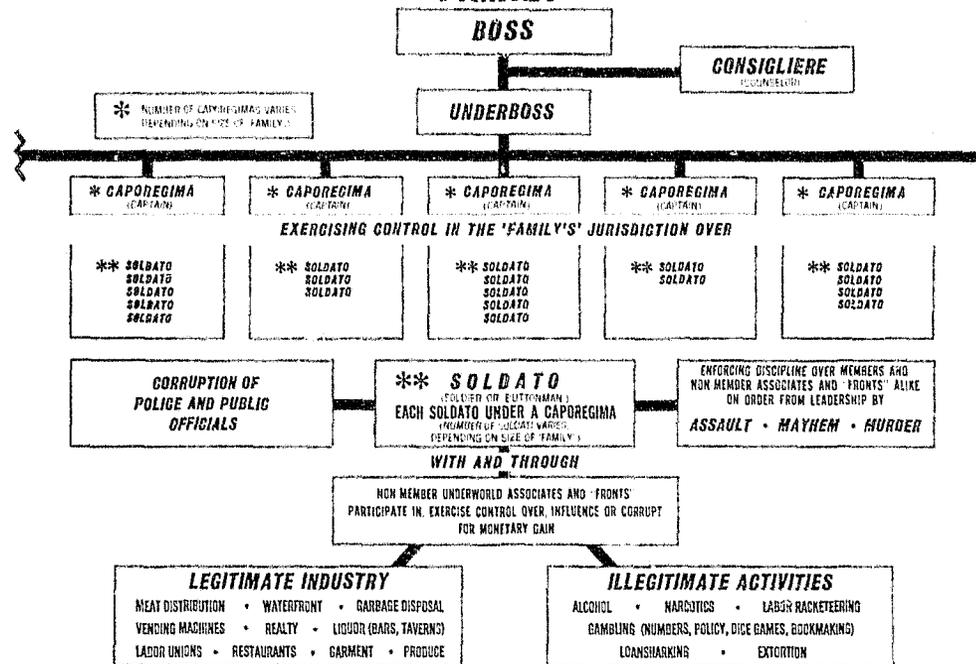


EXHIBIT No. 1B

TABLE OF ORGANIZATION OF
AN INDIVIDUAL LA COSA NOSTRA
'FAMILY'



Chairman NUNN. Tomorrow morning we will begin hearings on the Kansas City violence problems and that hearing will probably take 2 days. We will be meeting in room 357 of the Russell Building at 10 a.m. tomorrow morning. If the witnesses could remain just a moment, while we are checking on Senator Percy's schedule.

The hearing this afternoon will be in executive session and the time remains unknown.

[Whereupon, at 12:30 p.m., the subcommittee was recessed to reconvene at 10 a.m., Wednesday, April 30, 1980.]

ORGANIZED CRIME AND USE OF VIOLENCE

WEDNESDAY, APRIL 30, 1980

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

The subcommittee met at 11:30 a.m., pursuant to recess, in room 357, Russell Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. Sam Nunn (chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; Senator Thomas Eagleton, Democrat, Missouri; and Senator Charles H. Percy, Republican, Illinois.

Also present: Senator John C. Danforth, Republican, Missouri.

Members of the professional staff present:

Marty Steinberg, chief counsel; LaVern Duffy, general counsel; W. P. Goodwin, Jr., staff director; Michael Levin, deputy chief counsel; Peter Sullivan, assistant counsel; Jack Key and Donald Zell, investigators; Myra Crase, chief clerk; Mary Donohue, assistant chief clerk; Joseph G. Block, chief counsel to the minority; Charles Berk, general counsel to the minority; Howard Marks, investigator to the minority; Lynn Lerish, executive assistant to the minority; Ira Shapiro, chief counsel, Governmental Efficiency and District of Columbia Subcommittee; Peter Levine, general counsel, Intergovernmental Relations Subcommittee; Janet Studley, counsel, Federal Spending Practices and Open Government Subcommittee; Alan Bennett, counsel to the minority, Governmental Affairs Committee; Peter Roman, investigator, Federal Spending Practices and Open Government Subcommittee.

Chairman NUNN. The subcommittee will come to order.

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

Chairman NUNN. Before we begin, it is the custom of the Permanent Subcommittee on Investigations to swear in all of our witnesses. Would each of you who is going to testify or answer questions this morning please stand and raise 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. DeFEO. I do.

Mr. CARON. I do.

Mr. OUSELEY. I do.

Mr. McWENEY. I do.

TESTIMONY OF MICHAEL DeFEO, ATTORNEY IN CHARGE, KANSAS CITY STRIKE FORCE, KANSAS CITY, MO.; CHIEF NORMAN A. CARON, CHIEF OF POLICE, KANSAS CITY POLICE DEPARTMENT, KANSAS CITY, MO.; WILLIAM OUSELEY, SPECIAL AGENT, FEDERAL BUREAU OF INVESTIGATION, KANSAS CITY FIELD OFFICE, KANSAS CITY, MO.; AND SEAN McWEENEY, SPECIAL AGENT—SECTION CHIEF, FBI HEADQUARTERS

Chairman NUNN. Senator Eagleton, we are delighted to have you here with us this morning and I understand you have an opening statement that you would like to make and we will be delighted to receive that.

OPENING STATEMENT OF SENATOR EAGLETON

Senator EAGLETON. Thank you very much, Mr. Chairman.

As the subcommittee begins its investigation this morning of the River Quay situation in Kansas City, I would like to make a few comments as a "homestate" Senator. Unfortunately, the role of organized crime in the River Quay area is well known, having been exhaustively reported in the newspapers. The subcommittee has chosen a valuable case study for consideration.

River Quay offered the city of Kansas City the charm, ambience, tourist attraction, and downtown revival potential that Boston has seen in its popular Quincy Market and that San Francisco provided in Ghiradelli Square. Once a thriving riverfront area, River Quay, like so many other American waterfronts, had deteriorated over the years. Structures were abandoned; streets, lights, sidewalks, and sewers were left unrepaired; street crime pervaded the area.

Nonetheless, the original charm of the historic streets and structures remained, and in the midsixties, this charm was discovered by small artisans, restaurateurs, and counterculture businessmen, who, with no major financial backing, moved into River Quay, renovated buildings, and revived the area.

By the early 1970's, the revival of River Quay was well underway. The city government began promoting the area as a tourist attraction and furnishing free shuttle bus service to attract shoppers and patrons from the nearby downtown area. By late 1974, the area included 68 rental establishments representing a popular mix of art galleries, restaurants, informal theatres, antique stores, boutiques, and specialty stores.

Also in 1974, indicative of the area's commercial potential, a New Orleans developer, Joseph C. Canizaro, later to develop Canal Place in New Orleans, announced plans to invest \$30 million in River Quay. City participation in redevelopment was promised, with city funds to be committed for street, light, and sewer repairs.

At the same time, however, organized crime recognized that the area was going to make money, so it decided to grab some of the action—specifically, take over some restaurants so it could introduce

go-go girls and prostitutes in the area. Employing its standard operating procedures—pressure on public officials, muggings, murder, bombings, arson—the mob moved in. The legitimate businesses—the restaurants, speciality shops, art galleries, and boutiques—soon were on the way out.

According to developer Canizaro:

After we started our attempts to restore the area, we ran straight into the face of girlie joints and bars and those kinds of things that began becoming prevalent in the area. The criminal element was moving in and we had indicated long before that that would result in the death of the Quay.

It did. Canizaro pulled out; the city let its plan die. Today River Quay is an area of vacant, bombed, burned-out buildings. A promising development which would have added to the lives of thousands of Kansas City residents and visitors extinguished.

I commend Senators Nunn and Percy for bringing this subcommittee forcefully back into investigating organized crime. They have recruited a highly dedicated and qualified staff for the subcommittee, and the searching nature of these hearings attests to the professionalism of the staff and the commitment of the chairman and the ranking minority member.

Like so many problems facing us today, organized crime submits it no simple solution. It derives great strength from a solid foothold built over decades; through strong loyalties of participants; iron internal discipline; the calculated and cold-blooded use of violence to intimidate; the utility of enormous profits to both reward mobsters and corrupt others.

But unlike the early 1960's, when this subcommittee first focused attention on the nature and extent of organized crime, the Federal Government is facing up to the challenge.

Where J. Edgar Hoover refused for years to acknowledge the existence of organized crime, the FBI, under Judge Webster, has committed 22 percent of its investigative resources to this area.

The largest single activity of the Justice Department's Criminal Division is the fight against organized crime. The Department's witness security program has achieved some success in responding directly to the terrible problem of witness intimidation. By passing the "Racketeer-Influenced and Corrupt Organization" statute, Congress gave the Department a valuable weapon in attacking organized crime.

Through these hearings, the subcommittee will produce a picture of the present nature of organized crime in this country and our current efforts to deal with it. Like other subcommittee members, I strongly support the Federal Government's effort against organized crime and want to respond legislatively where steps can be taken to strengthen the effort or to remove roadblocks to effective law enforcement.

I think that Phil Heymann's testimony for the Justice Department explained eloquently the need for the Federal Government to fight organized crime.

The most evident harm caused by organized crime is fear. And in the areas where fear is generated by the mob, individuals become insecure and institutions lose their sense of legitimacy and integrity.

Heymann went on:

We are fearful of organized crime because when we are confronted with its capability for intimidation and extortion, there seems to be no recourse. In this respect, organized crime is almost like a government in that in certain sectors its coercive power makes it nearly a final authority.

In this country, what Heymann calls the coercive power of government is exercised only according to law and due process. That is the great advantage of our form of government. To permit others to wield coercive power outside the law does violence to our system of government and negates the value of living in a democratic society. We should not underestimate the difficulty of combatting organized crime, but we cannot underestimate the importance of doing so.

I thank you.

Chairman NUNN. Thank you very much. I want to thank you on behalf of the subcommittee for being a stalwart backer of our investigation from the very beginning.

We have been involved to some extent in the organized crime investigation in the past, not to the extent we are now, but with your considerable experience in law enforcement when you came to the Senate and your continuing interest in that has been of immeasurable help to this subcommittee and we thank you for it and of course we welcome your participation.

I also know that Senator Danforth is probably going to be participating in this hearing and Senator Danforth has also been cooperative with this subcommittee and a valuable member of the full committee. So we welcome his participation also.

Before we begin this morning, Chief Counsel Steinberg would like to insert exhibits for the record. We will be referring to them later and I ask him to make that presentation.

Mr. STEINBERG. Mr. Chairman, some of the witnesses will refer to the following exhibits: Exhibit F-1 is a Kansas City Crime Commission, Spotlight One, Organized Crime in Kansas City; Exhibit F-2 is a letter from the Kansas City Crime Commission transmitting a sealed crime commission report, Spotlight Two, on Organized Crime in Kansas City to the subcommittee. The letter also describes William Cammisanos position in the Kansas City outfit. F-2 also contains the Kansas City Crime Commission's report, Spotlight Two on Organized Crime. Exhibit F-3 is a Kansas City Crime Commission report of the U.S. Strike Force Prosecutions from 1971 to 1979. Exhibit F-4 is the Justice Department's detailed briefing booklet with pictures of the River Quay investigation, not previously released.

Exhibit F-5 is the Kansas City Police Department report on 16 mob-related violent incidents in the Kansas City area. Exhibit F-6 are 49 pictures prepared by the Kansas City Police Department relating to the Kansas City River Quay investigation and recent mob murders. Exhibit F-7 are FBI affidavits filed in the Federal court to intercept conversations of Kansas City mob members.

Chairman NUNN. Without objection, they will be entered in the record.

[The documents referred to were marked "Exhibit Nos. 2 through 9," respectively, for reference. Exhibits 3, 5, 7, 8, and 9 may be found in the files of the subcommittee; exhibit 4B is sealed; exhibits 4A, 6 and excerpts from exhibit 8 follow:]

EXHIBIT No. 4A

KANSAS CITY CRIME COMMISSION,
Kansas City, Mo., April 1, 1980.

Re William Cammisano, Sr.

Mr. MARTY STEINBERG,

Chief Counsel, U.S. Senate, Permanent Subcommittee On Investigation, Washington, D.C.

DEAR MR. STEINBERG: This correspondence is in reference to your letter of March 25, 1980 regarding a recent characterization of William Cammisano, Sr.

Currently, William Cammisano, Sr. is serving a Federal prison sentence for extortion in the River Quay area of Kansas City.

Organized crime involvement in the River Quay area was the end result of a considerable amount of violence which included bombings and at least eight homicides which were listed as suspected gangland slayings committed between July 22, 1976 and May 16, 1978. Two other victims were shot during one of the murders in this period of time. None of these crimes to date have been cleared through arrest or prosecution.

During the latter part of 1979 I observed and listened to the testimony, presented in the U.S. District Court of Western, Missouri, during the trial of William Cammisano's brother who was charged in the same River Quay extortion case. During this trial one witness testified as to William Cammisano's reputation of violence. This witness testified that he believed his father had been a member of the Mafia or an organized crime figure. The witness testified that when he was younger he overheard his father and William Cammisano discussing murders when they did not know he was around. From the conversations he overheard the witness was convinced that William Cammisano, Sr., had killed at least six persons. The witness named five of those victims. The witness's father was a victim of a gangland murder during the River Quay troubles. The witness testified that from conversations he had with his father, just before he was murdered, he believed that William Cammisano, Sr., had killed him.

This testimony further corroborated the information collected by many law enforcement officers over the years regarding William Cammisano's tendency towards violence.

My background and experience in law enforcement related jobs in the Kansas City area dates back to 1953. During the past 23 years I have had a special law enforcement related interest in organized crime. During this time I have maintained a constant trustworthy relationship with criminal justice officials working in the organized crime field.

In my opinion based upon law enforcement related experience, investigations, interviews, discussions with organized crime oriented law enforcement officials and various court records and public documents I believe William Cammisano, Sr. to be among the "Organized Crime Hierarchy" in the Kansas City area. Within this elite group it would be my opinion that he would be ranked in importance and stature somewhere between number three and number five.

Enclosed is a copy of our non-published Spotlight II on Organized Crime in the Kansas City Area. Our Board of Directors did not approve this research for publication but did allow me to let interested law enforcement personnel come to the office and review the material. A copy of this report is being sent to you with the understanding it would be submitted into the record as a sealed document relieving the Commission of any liability. The exception would be that portion which relates to William Cammisano, Sr., which would be entered into the public record.

If the Commission can provide additional information which will be helpful to your staff or the Senate Permanent Subcommittee On Investigations, please advise our office.

Sincerely,

FRANK MAUDLIN,
Managing Director.

Enclosure.

EXHIBIT No. 6

THE RIVER QUAY PROSECUTION

On August 10, 1979, a jury in the U.S. District Court for the Western District of Missouri found Joseph Cammisano guilty of interfering with interstate

commerce by extortion and threats of force, in violation of 18 U.S.C. § 1951. On October 12, 1979, Joseph Cammisano was sentenced to five years imprisonment. His brother and co-defendant, William "Willie the Rat" Cammisano, had previously been sentenced, pursuant to a plea bargain, to five years imprisonment. (See photographs of Joseph and William Cammisano, Exhibits 1 and 2.)¹

DEVELOPMENT OF THE RIVER QUAY

These prosecutions, popularized in the Kansas City metropolitan area media as the River Quay cases, grew out of the destruction, by organized crime violence, of an entire civic redevelopment area as an economic entity. In 1971, Marion Trozzolo, Kansas City college professor and successful inventor, formed the River Quay Corporation to redevelop 19th century buildings in the old Kansas City riverfront area, which was adjacent to the city produce market, long dominated by the Nicholas Civella organized crime group. (See map of River Quay-Market Area, Exhibit 3.)² In an effort to insure a family oriented shopping and entertainment community, the developers rigorously screened potential lessees, particularly for bar businesses.

In 1972, Fred Harvey Bonadonna was allowed to lease and operate Poor Freddie's Restaurant, which immediately became a tremendous financial success because of Bonadonna's policy of catering to civic and cultural groups. Fred Bonadonna was the son of an organized crime member, David Bonadonna, a soldier in William Cammisano's group within the Nicholas Civella organized crime family. His mother, Rosemarie Balistreri, was a notorious criminal who has served a Federal kidnapping sentence. Fred Bonadonna, however, managed to avoid criminal entanglements after one juvenile auto case, and had operated several successful and legitimate restaurants prior to Poor Freddie's.

Bonadonna's restaurant soon became the favored meeting place for River Quay area businessmen and city political leaders, even receiving favorable mention in the New Yorker magazine. Bonadonna's establishment and the Quay generally prospered, particularly when the city government began aggressively promoting the River Quay as a tourist attraction and furnishing free shuttle buses to attract shoppers and patrons from the nearby downtown area. By November, 1974, the area had grown to include 68 retail establishments representing a popular mix of specialty shops, art galleries, restaurants, informal theatres, antique stores and other boutique-type establishments. (See photograph of River Quay area, Exhibit 4.)² Bonadonna became the president of the River Quay Bar and Restaurant Association and Vice President of the Market Area Businessmen's Association, an "establishment" group of civic and business leaders in the River Quay area.

BONADONNA'S CONFLICT WITH THE CAMMISANOS

In 1974, however, urban renewal began in the 12th Street area of Kansas City, an area of cheap hotels, go-go bars and prevalent street prostitution. Numerous of the organized crime figures whose bars dominated this area, including Joseph Cammisano, were required to relocate. (The mover and city relocation specialists involved in these and related moves were convicted of fraud and receipt of kickbacks but insufficient evidence was developed to warrant prosecution of the principles.) In early 1974, Cammisano and certain associates subleased a River Quay warehouse and divided it into four bars, intending to re-establish their 12th Street business practices.

Fred Harvey Bonadonna, however, urged the lessor to prohibit go-go dancers and began to organize civic opposition to licensing "adult entertainment" enterprises in the River Quay through his contacts in the media, city government and the business community. Cammisano and his business associates demanded that he accompany them to the New Orleans businessman then developing the River Quay, Joseph Canizaro, to support their efforts to open go-go bars. Bonadonna consented but secretly alerted Canizaro to his actual opposition. Canizaro refused to assist Cammisano and publicly joined the movement to block the expansion of bars and adult entertainment in the Quay.

¹ May be found in the files of the subcommittee.

² May be found in the files of the subcommittee.

To counter rising adverse publicity, Joseph Cammisano circulated a petition seeking community support for his proposed go-go bar. Bonadonna refused to sign or support the petition, leading to a bitter argument with Joseph Cammisano. Shortly thereafter, David Bonadonna, Fred Bonadonna's father, called him from the auto garage and headquarters of Joseph Cammisano's powerful and feared brother, William "Willie the Rat" Cammisano. With William Cammisano's audible coaching in the background, David Bonadonna instructed his son that he must support Joseph Cammisano's petition, and that he could not oppose "these people". Fred Bonadonna subsequently assisted in securing area merchants' signatures on a petition inviting Joseph Cammisano's go-go bar into the area. William Cammisano later thanked Fred Bonadonna for his efforts, and pointedly cautioned him to listen to his father in these matters.

Fred Bonadonna was well aware of the threat implicit in this message. He knew that his father was a soldier in William Cammisano's organized crime group within the Nicholas Civella organized crime family. As a child, he had been in the immediate area when his father, William Cammisano and an uncle had killed a patron during a dispute which arose in a grocery operated by his uncle as a front for an after hours club and gambling location run by William Cammisano. Fred Bonadonna had been told over the years by his father about numerous murders committed by Cammisano, including a son-in-law and Cammisano's married sister's lover, and several criminal competitors, including Nick Spero, whose family attempted to organize a criminal faction to compete with the Civella organization. (All of these murders are officially unsolved, and Missouri law does not permit prosecution upon an uncorroborated admission.)

Subsequent to the licensing of Joseph Cammisano's first bar in the River Quay, disputes arose over Bonadonna's leasing of city parking lots. Tension was heightened when Cammisano sold that bar and attempted to license another go-go bar at the same time a pornographic theater was proposed for licensing, and a city councilman advanced the idea of establishing a "combat zone" in the River Quay similar to Boston's adult entertainment zone. Bonadonna and area merchants adamantly opposed the plan, resulting in a proposed city license moratorium on all entertainment and liquor licenses in the area. Bonadonna's success in this regard was due largely to his personal friendship with City Councilman Robert Hernandez.

After proposal of the license moratorium, Fred Bonadonna received a panicked call from his father warning that the Cammisano brothers were dangerous and would go to any lengths to secure their control of River Quay bars. Fred Bonadonna refused his father's request to assist in re-licensing the Cammisanos stressing his resistance to what he considered the inevitable prostitution, pimps and drug traffic that accompanied go-go bars.

DEATH THREATS TO BONADONNA

In an emotional plea the next day, David Bonadonna recited to his son the persons killed by William Cammisano because of disputes with other members of the Cammisano family, and begged Fred to help remove the moratorium to save their lives. Fred Bonadonna relented, and due in part to his influence and in part to bureaucratic developments, the proposed moratorium was modified to exempt Cammisano. A brief period of apparent harmony ensued, during which William Cammisano favored Fred Bonadonna with the advice to get out of politics and business associations, confine himself to operation of his restaurant and to carefully follow his father's instructions in the future.

Despite an agreement to the contrary when Cammisano's license was exempted from the moratorium, Joe Cammisano began to promote go-go girls in his bar during mid-1975. Fred Bonadonna complained directly to William Cammisano and was soon advised by his father that the Cammisanos viewed him as an enemy, and that Fred Bonadonna should arm himself and avoid any person who might be a potential assassin. Fred and his father visited William Cammisano at his automobile garage, but the attempted reconciliation degenerated into a violent argument. Recognizing the gravity of the situation, Fred Bonadonna brought his personal friend, Kansas City City Councilman Robert Hernandez, to William Cammisano to try to persuade Cammisano that Bonadonna was doing everything in his power to assist the Cammisano's plans for the River Quay. When Hernandez attempted to defend Fred Bonadonna's action, William Cammisano became violently angry and threatened Hernandez and Bonadonna that

if Joe Cammisano were not allowed to operate with go-go girls, prostitutes, or in any way he desired, he, William Cammisano, would kill anyone, including anyone at city hall, who opposed the Cammisanos, and that everyone knew he could carry out his threat.

DAVID BONADONNA'S DEATH

During 1974 and 1975, Fred Bonadonna had acquired leases on city lots for customer parking. The Cammisanos and their associates continually pressured Bonadonna and the city for free use of these lots to remove Bonadonna's competitive advantage. Bonadonna first gave up two leases, but in response to requests by the city government to generate revenue from the lots, again leased the lots. At a River Quay tavern owner's meeting, Joseph Cammisano threatened Fred Bonadonna that he knew someone (i.e., William Cammisano) who could make Bonadonna give up the lots. Vandalism began to occur at the lots and to the cars therein. In March, 1976, unknown intruders entered Bonadonna's residence and beat his teenage son with baseball bats. David Bonadonna informed Fred Bonadonna that the burglary and beating of his son was a warning from William Cammisano. In May, 1976, Joe Cammisano and several partners applied for a license for a new bar in the River Quay. Fred Bonadonna received extreme pressure from his father and brother to help the Cammisanos secure approval of the license through Councilman Hernandez. Hernandez, at Bonadonna's request, refused to assist, and David Bonadonna told his son that Fred's failure to control Hernandez would result in the father's death because David Bonadonna had warned William Cammisano not to harm Fred Bonadonna. David warned his son to carry a gun and to be careful of any person who might be used by the Civella organization as a killer, specifically including Anthony Civella, Charles Moretina, Carl DeLuna, Peter Tamburello, and others. The means of his own death were clearly foreseen by the elder Bonadonna, who told his son that because David Bonadonna was an organized crime member, Nicholas Civella's personal approval would be required. Once that approval was given, William Cammisano would kill David Bonadonna at the Cammisano garage, where they met daily. Fred Bonadonna pleaded with his father to avoid the Cammisanos, but David was fatalistic and refused to change his life style.

By July, 1976, the new license for the Cammisano bar had been denied. During June, 1976, the Cammisanos had exerted extreme pressure on Fred Bonadonna and city officials but were unsuccessful both before the City Liquor Control Authority, an appeals board, and in the City Council. The Bonadonnas knew that the Cammisanos were furious over the defeat, and David Bonadonna grew steadily more depressed and fatalistic.

On July 22, 1976, David Bonadonna left his residence in a 1966 Mustang on his usual daily routine of visiting William Cammisano's garage. Several hours later, a similar vehicle was seen exiting from the garage in an erratic manner, as though being driven by someone unfamiliar with its manual transmission. The car was found parked within one-half mile of the garage. Blood dripping from the trunk led to the discovery of David Bonadonna's body in the trunk, with multiple gunshot wounds in the back of the head. (See photograph of Bonadonna corpse, Exhibit 5).³

Fred Bonadonna immediately began to carry a gun and installed burglar alarms on his vehicles. On the day following his father's death, he began efforts to sell his business, which had done a volume of \$20,000 plus monthly, but was unable to find a buyer as business quickly declined in the River Quay due to a dramatic series of violent events. The media quickly connected David Bonadonna's murder to the River Quay go-go bar controversy. Poor Freddie's soon became like a stronghold under siege, frequented almost exclusively by friends and followers of Fred Bonadonna. One such acquaintance, John Brocato, was found strangled, with marks of torture on his frozen body, in his car trunk at the Kansas City Airport on November 17, 1976. (See Brocato corpse photographs, Exhibit 6).⁴ On the same date, an unknown assassin was injured while apparently attempting to arm an explosive device in the car of Harold "Sonny" Bowen, an ex-convict and principal bodyguard for Fred Bonadonna.

On February 19, 1977, John "Johnny Green" Amaro was murdered by shotgun blasts in his residence garage less than one block from the homes of Nicholas

³ May be found in the files of the subcommittee.

⁴ May be found in the files of the subcommittee.

and Carl Civella in the Philomena Acres compound populated by the leaders of the Kansas City organized crime family. (See Anaro corpse photographs, Exhibit 7). Bowen, Bonadonna's bodyguard, was a prime suspect in the murder because of prior attempts on his life, and on February 22, 1977, Bowen was murdered by five gunmen in a lounge in a popular entertainment area of Kansas City, Missouri. (See Bowen corpse photograph, Exhibit 8).

After Bowen's murder and numerous incidents wherein Fred Bonadonna observed members of the Civella organization following and observing him, Bonadonna was persuaded to enter the Witness Protection Program and be relocated. Even after Bonadonna's departure from Kansas City in March, 1977, the violence directed at his associates continued.

Gary T. Parker, a police character who had assisted and replaced the murdered Bowen as a volunteer bodyguard for Fred Bonadonna, narrowly escaped being lured into a deserted parking lot where he observed William Cammisano in March 1977. At the end of that month, a building owned by the Bonadonnas in the Quay was totally demolished by a bomb which damaged property a mile distant, leaving only a crater at the building site. (See Bonadonna building explosion photograph, Figure 1).



FIGURE 1.—Remains of a building located in the River Quay section of Kansas City and owned by the Bonadonnas, that was destroyed by a bomb blast.

Informants reported that a hiatus was ordered in the violence by Nicholas Civella after his release from Federal prison after a 90-day study on a gambling conviction, so as not to create unfavorable publicity prior to Civella's final sentencing. On July 15, 1977, Civella received a final sentence of 3 years. On July 31, 1977, Joseph Cammisano's bar in the River Quay was destroyed by explosion, yielding over \$100,000 in proceeds for the failing business. (See Cammisano bar explosion photograph, Exhibit 10.)⁵

Nicholas Civella commenced service of his federal sentence on August 2, 1977. On August 5, 1977, Bonadonna's former bodyguard, Gary T. Parker, was literally blown into pieces by a bomb placed under his car at a tavern owned by Fred Bonadonna's brother. (See Parker photographs, Exhibits 11a and 11b).⁵

⁵ May be found in the files of the subcommittee.

PROSECUTIVE ACTION

After extensive grand jury inquiry designed to develop corroborative testimony as to the Cammisanos' extortionate tactics and to establish the prosecutable property interests of Bonadonna's upon which to base a Federal extortion case, William and Joseph Cammisano were indicted by a Special Grand Jury in the Western District of Missouri on June 16, 1978. The indictment charged the Cammisanos with conspiring to interfere with interstate commerce and to secure property, i.e. Bonadonna's business goodwill, customer patronage and parking lot leases, by wrongful use of fear, threats and violence.

Substantial legal difficulties existed in establishing that cognizable property interests were the objects of the Cammisano's extortionate tactics, as opposed to the intangible political influence he undoubtedly possessed. Fred Bonadonna was also the subject of intense pressure from his surviving family in Kansas City, all of whom feared for their lives, particularly after the Parker bombing at a Bonadonna tavern demonstrated their vulnerability. His mother, brothers and other relatives abjectly pleaded with him not to testify because of their certain belief that he, and possibly all of them, would ultimately be murdered by the Cammisanos. Because of the problems, a sentence bargain was accepted prior to trial in October, 1978, wherein William Cammisano, age 64, agreed to a 5-year sentence of incarceration. His brother Joseph, age 62, and in recent years suffering from severe health problems, agreed to an 18-month sentence. Because of William Cammisano's record and reputation for violence, and because he was the source of the most direct threats against Fred Bonadonna, his 5-year sentence substantially limited his sentencing exposure under the applicable extortion statute, which carries a 20-year maximum. Once William's plea became final, Joseph Cammisano attempted to withdraw his 18-month plea, claiming familial and judicial coercion, and inadequate representation. The District Court's refusal to rescind the plea was reversed on appeal in 1979, and the case against Joseph Cammisano tried in August, 1979.

After a 1 week trial, the jury deliberated 29 minutes before convicting Joseph Cammisano. Among the factors contributing to the speedy verdict were Fred Bonadonna's testimony concerning the numerous and explicit threats from the Cammisanos, the direct corroboration by a Kansas City, Missouri city councilman that William Cammisano repeated a murder threat to him and boasted that everyone knew he could accomplish his threat, and testimony by a Kansas City, Mo., police detective that Joseph Cammisano approached him to help locate Fred Bonadonna, explaining that he (Joe Cammisano) would not do anything himself, but that the information would be given to the "right people". On October 12, 1979, Joseph Cammisano was sentenced to a term of 5 years, after explicit findings by the trial judge supporting a lengthier sentence than that imposed pursuant to the original plea bargain by a different judge. (See Indictment, Exhibit 12).

EXHIBIT 12

In the United States District Court for the Western District of Missouri,
Western Division

No. 78-00114 (18 U.S.C. § 1951)

UNITED STATES OF AMERICA, PLAINTIFF

v.

WILLIAM CAMMISANO AND JOSEPH CAMMISANO, DEFENDANTS

(NMT 20 Years and/or \$10,000)

INDICTMENT

The Grand Jury Charges:

1. That at all times pertinent hereto, an area of downtown Kansas City, Missouri, which abuts the Missouri River and is bordered by the ASB and Broadway

bridges, known as the River Quay, was being redeveloped in order to preserve its historic significance and to promote the establishment there of family-oriented businesses.

2. That at all times pertinent hereto, Fred Harvey Bonadonna was the managing officer of a restaurant and bar known as Poor Freddie's, located at 301 Delaware Street, Kansas City, Missouri, in the River Quay.

3. That at all times pertinent hereto, food, liquor, services and other commodities regularly utilized in the operation of Poor Freddie's moved and were transported in interstate commerce, between various states in the United States and the State of Missouri, and the patrons and employees of Poor Freddie's regularly included residents of Kansas and other states.

4. That during the times pertinent hereto, Fred Harvey Bonadonna was Vice-president of the Market Area Business Men's Association, and President of the River Quay Bar and Restaurant Association, later known as the Red Quay Bar and Restaurant Association, and that these associations were organized to promote and encourage the development of the River Quay.

5. That commencing on or about June, 1975, and continuing thereafter until on or about September, 1976, the exact dates unknown to the Grand Jury, in the Western District of Missouri and elsewhere, William Cammisano and Joseph Cammisano, the defendants herein, did unlawfully, willfully and knowingly combine, conspire, and agree together and with other persons, to obstruct, delay and affect commerce, as that term is defined in Section 1951 of Title 18, United States Code, and the movement of articles and commodities in such commerce by extortion, as that term is defined in Section 1951 of Title 18, United States Code; that is, the defendants William Cammisano and Joseph Cammisano conspired to obtain from Fred Harvey Bonadonna the good will, parking lot leases, customer patronage and other valuable rights and interest in the business known as Poor Freddie's, with his consent, induced by the wrongful use of actual and threatened force, violence and fear.

It was part of said conspiracy that the defendants William Cammisano and Joseph Cammisano would and did utilize David Bonadonna, the father of Fred Harvey Bonadonna and an associate of the defendant William Cammisano, as a conduit to communicate their demands to Fred Harvey Bonadonna; that the defendants would and did utilize William Cammisano's reputation as a violent individual and as a member in a criminal group to intimidate and coerce Fred Harvey Bonadonna; and that the defendants would and did personally threaten Fred Harvey Bonadonna and David Bonadonna with physical violence and death, all in order to obtain said property of Fred Harvey Bonadonna.

OVERT ACTS

In furtherance of the conspiracy, and in order to effect the objects thereof, the following overt acts, among others, were committed by the defendants in the Western District of Missouri and elsewhere:

1. On or about June 9, 1975, the defendant Joseph Cammisano applied to the City of Kansas City, Missouri, for a liquor license to operate Uncle Joe's, a nightclub and bar to be located at 223 W. 3rd Street, Kansas City, Missouri, in the River Quay.

2. On or about July, 1975, the defendant Joseph Cammisano threatened Fred Harvey Bonadonna with physical violence unless Fred Harvey Bonadonna facilitated the approval of Uncle Joe's liquor license application.

3. On or about July, 1975, the defendants William Cammisano and Joseph Cammisano caused Fred Harvey Bonadonna to intercede with the Market Area Business Men's Association on behalf of the proposed liquor license for Uncle Joe's.

4. On or about July, 1975, the defendants William Cammisano and Joseph Cammisano caused Fred Harvey Bonadonna to intercede with the Kansas City, Missouri, City Councilman for the River Quay area, Robert Hernandez, on behalf of the proposed liquor license for Uncle Joe's.

5. On or about July, 1975, the defendants William Cammisano and Joseph Cammisano caused Fred Harvey Bonadonna to intercede with the Director of Liquor Control, W. Yates Webb, on behalf of the proposed liquor license for Uncle Joe's.

6. On or about August 1, 1975, the defendant Joseph Cammisano opened Uncle Joe's for business in the River Quay.

7. On or about September, 1975, the defendant William Cammisano threatened Fred Harvey Bonadonna with physical violence and death unless the defendant Joseph Cammisano was permitted to operate Uncle Joe's in any manner he wished in the River Quay, including the use of go-go dancers and prostitutes.

8. On or about April, 1976, the defendant William Cammisano ordered Fred Harvey Bonadonna to resign as Vice-President of the Market Area Business Men's Association and as President of the Red Quay Bar and Restaurant Association and to end all political activity and associations.

9. On or about May, 1976, the defendant Joseph Cammisano ordered Fred Harvey Bonadonna to give up his parking lot leases in the River Quay.

10. On or about May 20, 1976, the defendant Joseph Cammisano and others applied to the City of Kansas City, Missouri, for a liquor license to operate Il Pagliacci, a bar and restaurant to be located at 400 Wyandotte, Kansas City, Missouri, in the River Quay.

11. On or about June, 1976, the defendant William Cammisano directed Fred Harvey Bonadonna, through David Bonadonna, to use his good will and influence to gain approval of a liquor license for Il Pagliacci.

All in violation of Section 1951 of Title 18, United States Code.

A True Bill.

Date: June 11, 1978.

Foreman of the Grand Jury.
 RONALD S. REED, JR.,
U.S. Attorney, Western District of Missouri.
 ROBERT SCHNEIDER,
Assistant U.S. Attorney.
 DAVID B. B. HELFREY,
Special Attorney, U.S. Department of Justice.
 WILLIAM A. KEEFER,
Special Attorney, U.S. Department of Justice.

CONCLUSION

William Cammisano is now serving his 5-year sentence. Joe Cammisano is appealing his 5-year term of incarceration. The River Quay remains a burned out shell of the community it once was. In 1975, 72 business licenses were in effect for the area. Less than a dozen remain today.

Fred Bonadonna remains in hiding under the Witness Protection Program. Carl Civella, one of Kansas City's organized crime leaders, has been overheard by an undercover Special Agent of the FBI asserting that Fred Bonadonna's murder would be his (Civella's) monument after his death, and soliciting its commission. Prosecutions relating to hidden casino interests, racketeering-murder and bribery of prison officials are being developed against the leaders of the Civella organization to neutralize their ability to inflict reprisals on Bonadonna and others.

EXCERPTS FROM EXHIBIT 8

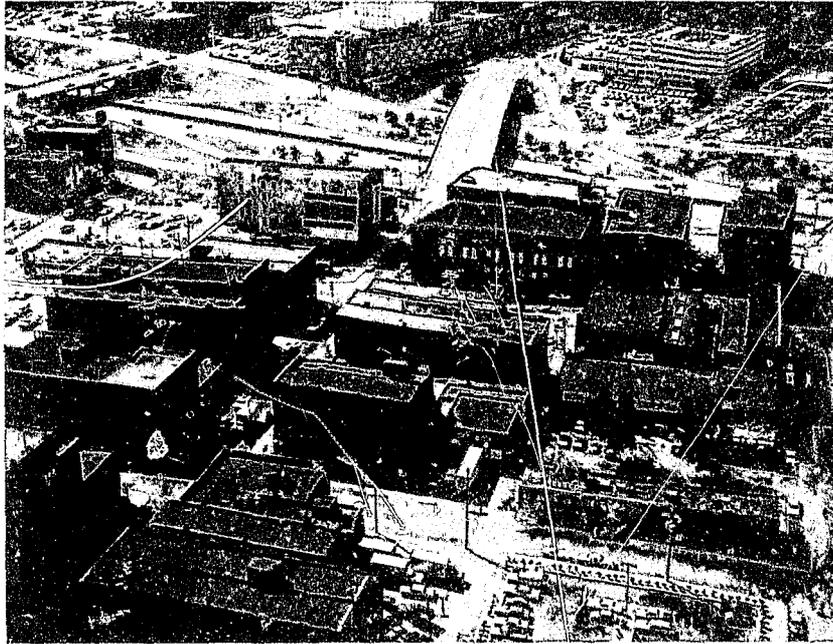


FIGURE 2.—River Quay section of Kansas City, Mo., as it appeared in 1974.



FIGURE 3.—Remains of River Quay taverns after blast on March 27, 1977.



FIGURE 4.—Another view of River Quay taverns after blast on March 27, 1977.

Chairman NUNN. Our first witness will be Mr. Mike DeFeo, attorney in charge of the Kansas City Strike Force, Kansas City, Mo. We are pleased to have you here this morning. We appreciate your cooperation with the subcommittee both now and in past years. You have an excellent reputation and we are pleased to hear your testimony.

STATEMENT OF MICHAEL DeFEO, ATTORNEY IN CHARGE, KANSAS CITY STRIKE FORCE, KANSAS CITY, MO.

Mr. DeFEO. Thank you, Senator. Mr. Chairman, members of the subcommittee, in the hearings this week there will be dramatic disclosures of the brutality, intimidation and violence practiced by organized crime in Kansas City.

These criminal practices have occurred despite the presence of a highly competent, well-respected police department, which achieved professional excellence under former Chief Clarence Kelley, and which has continued to build upon and enlarge that excellence under its present chief, Norman Caron. These same extortionate tactics and murders have also gone largely unpunished to date, despite the untiring efforts and immense dedication of the Kansas City, Mo., Police Department, the FBI and other agencies investigating them.

The question to which I will address myself today is how a community like Kansas City, which enjoys superior local law enforcement and strenuous efforts by Federal investigative and prosecutive agencies, can continue to be victimized by uncontrollable organized crime murders and violence.

The answer which I submit to the subcommittee is a historical one. Once a criminal organization, such as the one in Kansas City, learns during generations of corrupt government and ineffective law enforcement that it can threaten and kill with impunity, it will continue to do so.

An organized crime family's institutional memory of its successful use of violent tactics will dictate their repetition whenever the stakes seem worth the risk, and such tactics will not be deterred merely because community and law enforcement tolerance of such practices has disappeared.

We know through frustrating personal experience that investigation and prosecution of gang murders, extortions, and bombings are rarely successful because of organized crime's use of the principles of obstruction, insulation, gang discipline and intimidation.

Even when prosecutions are successful, as in the cases of William and Joseph Cammisano, which will be the subject of further testimony, we are only achieving symptomatic relief. To prevent the reoccurrence of such violent symptoms we must eliminate their cause, that is, the responsible criminal organization.

That treatment is inevitably gradual and time consuming. It requires the application of new generations of honest law-enforcement to eventually weaken and bring under control a criminal organization which had a hospitable environment in Kansas City for 50 years in which to establish itself, grow, and develop its own immunities and defenses.

In short, murders, bombings, and intimidation are the continuing, non-negotiable price which Kansas City must pay for its past civic corruption and encouragement of gangsterism.

It is generally recognized that Kansas City's problem stems from prohibition gangs. These gangs used their tactics of violence and extortion to monopolize the alcohol business. The leaders of the Kansas City gangs soon consolidated into what was known as the Sugar House Syndicate, the wealth from which founded several of our city's leading

business houses. These men quickly became sophisticated in the operation of a major production, distribution, and service industry. Just as quickly, they acquired, and learned to utilize the leverage of, vast wealth and influence from bootlegging profits and from the sheer size of their organization.

As we know, prohibition ultimately failed. In hearings on the reasons for that failure, a Presidential commission contrasted the relatively law-abiding attitude of voluntary compliance in St. Louis and eastern Missouri with the flagrant disregard of the law and open governmental complicity in its violation in Kansas City.

The reasons for that were that Kansas City was a much younger community than St. Louis. It maintained a frontier mentality, with weak law enforcement and a general disregard for authority.

Even worse, it maintained the corrupt Pendergast political machine, which had achieved near monopoly control over city government comparable to the syndicate's control over bootlegging. Under Pendergast, politics and organized crime blended indistinguishably. The bloc votes of the politically crucial north end area were controlled by the leader of the bootlegging organization, John Lazia.

After returning from a Federal prison sentence, Lazia was accepted as Pendergast's political lieutenant in preparation for a crucial election. By putting his vast bootlegging organization to work delivering votes as efficiently as it delivered whiskey, Lazia received political protection for his liquor, gambling and other illegal activities. Lazia even dictated the affairs of the city's unfortunate police department, making patronage appointments after the department was transferred from State to city control in 1932. Thus, in the early 1930's, Pendergast and Lazia controlled city hall, and the police force of several hundred men had nearly 10 percent ex-convicts among its officers.

The interdependence of corrupt politics and organized crime violence was spotlighted in the city election of March 27, 1934. To preserve their control of public jobs, the city treasury and the law enforcement apparatus, the Pendergast-Lazia organization approached the election like a gang war. Hundreds of thugs physically beat workers for reform candidates away from the polls. Authorities refused to intervene. The day's body count ended with 4 dead, 11 severely injured, hundreds beaten, and thousands deprived of their right to vote. Later in 1934 Lazia himself was murdered. Within days Pendergast displayed his dependence on organized crime by calling Charles Carrollo, Lazia's successor, into his office and renegotiating the previous agreement.

The Pendergast organization allowed illegal gambling and vice activities to operate openly. Every illegal operation paid for this privilege which monthly collection enforced when necessary by Carrollo and his associates. Books were kept and payments made at the offices of the Northside Political Club. Payoffs to prosecutors and individual police officers were taken off the top, with the balance being divided between the syndicate and the Pendergast organization.

Election tactics continued to be the same under Carrollo as they had been under Lazia. In the 1936 election, 50,000 fictitious voters were registered, 1 out of every 4. As a result of this scandal, nearly 300 Carrollo and Pendergast political workers were convicted of vote fraud.

Moreover, through these Federal prosecutions the alliance of corrupt politics and organized crime lost its invulnerability. In 1939, Pendergast and Carrollo were convicted on Federal charges. And the Kansas City, Mo., Police Department was returned to State control to curb rampant abuses which included efforts to tamper with gangland murder evidence to prevent Federal prosecution.

After these reverses, the organized crime group moved to regain the benefits of corruption. Charles Binaggio, who will be referred to in Mr. Bonadonna's testimony later as his father's gang superior, took over the combined political criminal organization which in 1946 attempted to steal a U.S. congressional election by dynamiting the Jackson County Courthouse and stealing the ballots. In the 1948 State election, Binaggio collected political contributions from syndicate members on a promise of return to the wide open corruption of the 1930's. When the State administration failed to cooperate he offered sizable bribes to several police commissioners. In 1950, Binaggio and his bodyguard were slain in their political club under a mammoth picture of President Truman.

That sensational murder, occurring in the then-President's political base, generated national publicity and became a focus of the Kefauver committee hearings.

After the national publicity of the Kefauver hearings the Kansas city organization reduced its profile, but could not completely escape public attention. In 1957, a member of the old Sugar House Syndicate, Joseph Filardo, and a then-relative unknown, Nicholas Civella, were among the attendees at the Apalachin New York meeting of suspected criminal leaders from across the country. In 1961, a Jackson County, Mo., grand jury issued a report criticizing Kansas City as "a criminal playground." One feature which the grand jury found particularly offensive was the fact that beginning in 1953 an admitted arrangement existed between the Kansas City Syndicate and certain persons controlling law enforcement, which allowed the syndicate to conduct gambling, prostitution, and fencing operations in Kansas City in exchange for voluntarily controlling the amount of violence, armed robberies, and burglaries committed in the city.

After this grand jury disclosure the situation improved greatly. The second in command of the Police Department was convicted for tax offenses, and other suspect employees were gradually replaced. Clarence Kelley was selected as chief after his initial retirement from the FBI and labored to encourage the ideals of honesty, professionalism, and public service which have now made the Department one of the most respected in the country.

Consequently, since the 1960's, Kansas City has enjoyed an atmosphere of honest law enforcement and local government. Federal pressure on organized crime has intensified, first with labor racketeering prosecutions of the Kansas City Teamster organization in the 1960's, and later with the opening of a field office of the organized crime and racketeering section in Kansas City in 1971 to furnish increased investigative and prosecutive emphasis on organized crime. This intensification has resulted in significant prosecutions of many members of the Kansas City criminal organization.

Thus, the early 1970's were consumed with the prosecution of Nicholas Civella and members of his bookmaking organization, who were

intercepted on a court-authorized wiretap in early January 1970. As a result of the murder of a crucial witness and of almost incredible legal maneuverings, Civella and his codefendants were not convicted until 1975 on interstate gambling charges, and did not begin their sentences until 1977, 7 years after the electronic surveillance.

During that time, other significant cases were being pursued. James Duardi and others were convicted for conspiring to establish prostitution and gambling in a northeastern Oklahoma resort area by bribery of the district attorney's office. Despite the principal witness having been shot twice through the stomach and left for dead, all defendants, including the corrupt district attorney and his investigator, received 2-year sentences and served approximately 1 year. This case graphically illustrates how a city like Kansas City functions as a regional center of crime and corruption whenever an economic opportunity presents itself in the surrounding area.

In recent years, great effort has gone into investigations of the mob violence, destruction of the River Quay area and the casino-related offenses to be described by Chief Caron, Special Agent Ouseley, and Mr. Bonadonna. While these matters are being pursued, the violence continues. Only last October, members of the Spero faction were convicted of possession of a six-stick dynamite bomb capable of killing innocent bystanders within several hundred feet. This device was to be used against Carl DeLuna and other persons considered by the Speros to be ranking members of the local organization and responsible for a May 1978 attack on the Speros.

In closing, I recognize that municipal history is not a dramatic form of testimony and I beg the subcommittee's pardon if this statement has been tedious. However, I think it important to express the concept that Kansas City suffers today from mob violence because our ancestors in the community tolerated the gang's violence and corruption because of the votes it controlled and the profit it brought. That marriage of convenience lasted into the 1960's or for roughly two generations. During those generations organized criminals built up an immense degree of immunity because of their criminal expertise, wealth, ruthlessness, and the internal discipline of their organization and their ability to intimidate, bribe and obstruct. It has taken 15 years to make a good beginning on the task of learning the structure of the present criminal organization, identifying its illegal activities and sources of income, and incarcerating its members. Admittedly, that is a frustratingly long time. It is also cruelly but inescapably true that it will take many more years to eliminate the structure of the present gang and reduce it to the level of individual thieves and extortionists. During those additional years there will be more gang murders and bombings. Investigatively, their prevention cannot be guaranteed in any manner consistent with our traditional regard for civil liberties, and the available resources and experience teaches us that very few of those crimes will be successfully prosecuted.

That is a disappointingly, frighteningly high degree of social insecurity for our community, which no longer wants or tolerates organized crime. Fortunately, 15 years of law enforcement pressure

are beginning to have their effect on the Kansas City organization. Its aura of invincibility is beginning to be destroyed. Informants are being developed. Electronic surveillances are producing evidence of sophisticated crimes. Substantial prison sentences are being imposed and served. Criminals now dare to become witnesses against their gang superiors. In fact, we feel that we are approaching the point at which being an organized crime member is becoming a criminal liability rather than an asset. There are realistic successes being achieved and we hope for ultimate control of the problem.

Destroying a permanent social organization even an evil one like organized crime is a slow, difficult task, but with the necessary determination we feel that it can be accomplished.

Thank you, sir.

Chairman NUNN. Thank you very much, Mr. DeFeo, for an excellent statement and very interesting bit of history connected with the current events. I have several questions and I will propose that we ask questions of you, Mr. DeFeo, before we go to our next witness. You have given us a description of the organized crime history up to the 1960's. Can you bring us up to date on the organized crime power structure in Kansas City today?

Mr. DeFeo. Senator, there were a series of electronic surveillances in the Kansas City area during the period of May 1978 to February 1979, which I understand may be a part of this record. Those electronic surveillance applications and the affidavits supporting them describe the leadership of the Kansas City organized crime family and particularly the persons utilized as its enforcers in connection with violence and intimidation. If I might pass the buck to some extent to Special Agent Ouseley of the Federal Bureau of Investigation, who was the affiant on many of the applications. I believe that he can probably best explain the material contained therein.

Chairman NUNN. Do you want to defer that question to him, then?

Mr. DeFeo. If I may.

Chairman NUNN. We will wait until his presentation on that. Your statement was filed with instances of political corruption. Can the mob exist without using corruption of political officials?

Mr. DeFeo. Senator, If I may, I would like to answer that in a lawyerly like fashion, to wit: Yes and no. The situation in my opinion is that like any social organization, organized crime has a strong instinct for self-preservation. Its only natural enemies are other rival gangs or law enforcement. Other rival gangs can be dealt with by violence. Law enforcement cannot be because that would provoke a community reaction. Therefore it is inevitable that organized crime will attempt to utilize corruption to neutralize law enforcement as a threat to its existence.

Historically speaking, that effort to neutralize law enforcement has unfortunately been all too successful in the history of law enforcement in this country. However, there are circumstances such as I think exist in Kansas City at the present time where we are fighting the effects of past law enforcement and official corruption, which do not any longer exist to any substantial degree, and organized crime continues to exist based on its past momentum and success even though we do not have a current corruption situation.

Chairman NUNN. What resources would you ask for if you could get all the resources you needed to do your job properly in combating organized crime in the Kansas City area?

Mr. DEFEO. Obviously Senator, I am best qualified to speak from the prosecutive point of view, because I am a prosecutor heading a prosecutive office dedicated exclusively to organized crime activity. We presently have six attorneys assigned in Kansas City who service the Kansas City area and surrounding States. We have several more in the process of being assigned. Very candidly, I think those are adequate prosecutive resources to deal with the problem in Kansas City. With regard to the investigative agencies, I think that we are very, very far from the point of reaching the point of diminishing return. Obviously, with more investigative manpower, more investigations could be made, more prosecutions and more successes.

Chairman NUNN. Are you familiar with Mr. Bonadonna, who will be a witness before our subcommittee later in the week?

Mr. DEFEO. I am, Senator.

Chairman NUNN. Since he will be a witness before us, were you able to verify and corroborate Mr. Bonadonna's statements when he was a Federal witness before you or when working with you?

Mr. DEFEO. Yes, Senator, I have reviewed the statement which was prepared for this committee and I am familiar with his testimony which was given at the trial of Joseph Cammisano and I might say that I have reviewed both that testimony and his statement to this committee in its entirety and to my knowledge and belief, it is completely accurate, factual, and reliable.

Chairman NUNN. Do you believe that Mr. Bonadonna possesses the factual information himself from firsthand knowledge to inform this subcommittee concerning certain segments of the Kansas City mob?

Mr. DEFEO. I think unquestionably he does. His father was an admitted and known member of the Kansas City criminal organization. He has had exposure to these people throughout his lifetime and I think he is eminently qualified to inform the committee.

Chairman NUNN. The subcommittee has many legislative purposes in this hearing. One of them is to look into the possibility of amending Federal statutes to include strike force attorneys within the purview of Federal assault statutes. You may be somewhat biased in that respect, but do you feel that kind of possible legislation would do some good?

Mr. DEFEO. Senator, I might say that in terms of fearing retaliation during my prosecutive career, I have never had that fear because I felt organized crime was a rational, calculating organization and therefore should anything happen to me, they might have to worry about someone truly competent replacing me. So I never had that personal worry. But on the other hand, I do think that any litigating attorney who is in the posture of possibly offending or alienating potential defendants should have that kind of protection. I think that the problem is more acute when one enters into prosecutions of what are normally called emerging organized crime groups, those that have less internal discipline, those that aren't as rigidly controlled wherein individual members might take individual violence against a prosecutor or a judge such as happened in the unfortunate case of Judge Woods.

So I think that there certainly is the need to treat all prosecutors and members of the judiciary alike in that regard.

Chairman NUNN. What is the experience level of prosecutors on your staff?

Mr. DeFeo. Considering the half a dozen attorneys in Kansas City, my experience is of 17 years, that somewhat skews the statistical average, but eliminating my years of service it still comes out at approximately 6 years of prosecution experience.

Chairman NUNN. What do you do to try to insure that you retain skilled trial attorneys?

Do you have the proper pay and incentives to be able to do that?

Mr. DeFeo. I believe we do, Senator, and I think just as important—perhaps more important—in fact, I am certain more important—is the spirit of purpose, of mission, of participating in the worthwhile work and a feeling of morale within the section which we do have and which is extremely important in retaining our good personnel.

Chairman NUNN. Have you had problems regarding the disclosure of grand jury materials to local law enforcement agencies that are cooperating with your office?

Mr. DeFeo. Senator, I don't wish to tread much upon any of Chief Caron's areas here because I know he has strong feelings in that regard, but I must say very candidly that we work very closely with the Kansas City, Mo., Police Department. We value their assistance very highly. We unfortunately find ourselves in what I consider to be ludicrous situations wherein the police department brings us an investigative situation or lead. The police department controls the source of information, the undercover agent or the informant. They supply the bulk of the investigative manpower.

Nevertheless, it is impossible for us once we enter the investigative grand jury stage to share with them the proceedings of what are going on in the grand jury, even though they can be made subject to the same contempt power of the court not to disclose the proceedings as a Federal agent. So we find ourselves in the awkward situation where we must deal with a Federal agency which may be in the investigation solely to handle grand jury materials because the Kansas City, Mo., Police Department is not allowed to do so.

I frankly think that is as I said a ludicrous, anachronistic situation.

Chairman NUNN. Is that a matter of policy or law?

Mr. DeFeo. We believe that it is an unfortunate matter of law dictated by rule 6(e) of the Federal Rules of Criminal Procedure.

Chairman NUNN. Have you made any suggestions to the Justice Department about any legislative changes in that respect?

Mr. DeFeo. Yes, sir. It is being given consideration. I think it would require not only legislation but also action of the Supreme Court in promulgating the type of rule, but that has been proposed within the Department.

Chairman NUNN. Could you furnish us your own view on that subject, whatever you can put in writing?

Mr. DeFeo. I certainly have no difficulty with doing that, Senator. I hope you realize that I am unskilled in the ways of the bureaucracy and I will have to ascertain the proper techniques within our own organization but I will be back in touch with Mr. Steinberg.

[Additional material furnished by Mr. DeFeo appears in the appendix on pp. 332-376.]

Chairman NUNN. Thank you. You stated it has taken over 15 years for law enforcement to learn of the structure of the present criminal organization and to identify the sources of its income and illegal activities. What are the sources of the Kansas City mob income—the major sources of its income and its major activities?

Mr. DEFEO. Historically, and I obviously have a historic bent, the thing that immediately comes to mind is the fact that from the thirties to the seventies, gambling has been one of the mainstays of the organization. Nicholas Civella, his nephew, Anthony, his principal gambling lieutenant, Frank Tousa were overheard in 1970 electronic surveillance which I described. They were ultimately convicted in 1975 and incarcerated in 1977. Mr. Tousa, one of those individuals that I have described and numbers of persons working under him were again overheard in 1974 on court-authorized electronic surveillances, convicted in 1976, and incarcerated. That demonstrates I think the continuing attraction of this lucrative kind of activity.

With regard to other kinds of activity, I might perhaps suggest that during questions addressed to Chief Caron he might be able to cover some of those, or Special Agent Ouseley who is very familiar with some of the matters covered in the electronic surveillance applications which touches upon the sources of income.

Chairman NUNN. In your opinion does the Kansas City outfit belong to a national crime syndicate known as La Cosa Nostra or as the Mafia?

Mr. DEFEO. Senator, I think there is no question that the Kansas City organization is interrelated with similar criminal organizations in other cities. Whether or not these organizations are part of one national organization or whether or not they are coalition of regional organizations, whether or not they should be described by the term Mafia, LCN are matters of differing opinion. Even within law enforcement today, I think the term traditional organized crime is the one most frequently used within the Department. I think it conveys the general sense of the situation and I think at a minimum we know that these traditional organized crime families cooperate intimately with each other on a nationwide basis. Whether or not they are subject to one central overall control is an answer that I am simply not qualified to give. I do not know.

Chairman NUNN. We had testimony yesterday from the people in the FBI on that point, but it is definitely what you would call an organized crime family.

Mr. DEFEO. Unquestionably so.

Chairman NUNN. It does perpetuate itself?

Mr. DEFEO. Unquestionably.

Chairman NUNN. It is tied in with other similar families with other places in the country?

Mr. DEFEO. Very definitely, sir.

Chairman NUNN. Are there other organized criminal groups beyond the one you have described operating in the Kansas City area?

Mr. DEFEO. Certainly the testimony that I referenced in the trial of individuals associated with the Spero faction indicates that there was a group attempting to kill by dynamite the leadership of the present organization including Carl DeLuna and others.

Our office in Kansas City has also prosecuted a major heroin and cocaine distributing organization involving one Nathaniel Mohammad and others back in 1975 which in the opinion of State and local law enforcement and Federal agencies at that time constituted a severe organized crime problem. I think in connection with other emerging groups perhaps it might be advisable to address your question to the chief as we normally are at the end of the pipeline and only get the cases after they have been developed by the investigative agencies. So I think their information would be more current.

Chairman NUNN. We will get into those questions later. I will defer to Senator Eagleton for any questions that he may have and then Senator Danforth.

Senator EAGLETON. I have no question at this time.

Chairman NUNN. Senator Danforth?

Our next witness is Chief Norman Caron, chief of police of Kansas City. We are delighted to have you here, Chief Caron and we appreciate your splendid cooperation. You are accompanied by Sergeant Larry Weishar. Where is Sergeant Weishar?

Mr. CARON. In the back there.

Chairman NUNN. Are you going to be testifying or just be assisting?

Sergeant WEISHAR. I have a slight presentation.

Chairman NUNN. But you won't actually be testifying. We also have special agent of the Federal Bureau of Investigation, Kansas City Field Office, William Ouseley. We are delighted to have you here and I understand you will be responding to questions. Is that correct?

Mr. OUSELEY. That is correct, Senator.

Chairman NUNN. For the benefit of those in the media, and in the audience, and also the Senators, Chief Caron has a presentation including slides, which, if viewed, I think everyone would agree, is both gruesome and very, very unpleasant in terms of looking at. We have the slide presentation to be shown to the Senators and those of the staff who are here. I ask the audience to understand the situation in this respect. We will be glad for you to come up and view these afterwards. It is not classified information, but it is information that is very, very gruesome and ghoulish. I would also say to the members of the news media, the ones with the cameras, it will be up to your discretion as to what you use. I will leave that to your good judgment. I just warn you in advance, members of the printed media, I know that in fairness, if you would like to come up you will probably have to stand here, but if the members of the printed media do want to view it, you can, and the members of the audience, anyone who wants to look at it later on, we will have it here, but it is very, very gruesome. I have viewed it. We are not anticipating putting all of it on, but we really have great difficulty drawing the line.

I believe, Chief you felt it would be of benefit to see the entire presentation.

Mr. CARON. Yes, sir, very much so.

Chairman NUNN. I will defer to your judgment on this. We have a photo album of the same pictures for the media and for the public, if you would rather look at that. You are welcome to do that.

Chief, why don't you proceed?

Mr. CARON. Mr. Chairman and members of the committee, I am honored that you have asked me here today to speak to you on a matter that is as great of concern to me as it is to you.

The concept of positive action toward the control of the widespread problem of organized crime is not a new one. However, your subcommittee is in a unique position of being able to dramatically focus this problem for the Nation. You will hear many individuals, throughout these hearings, who, like myself, have a deep-seated interest in the control and suppression of organized crime. These individuals have first-hand knowledge of the terror, violence, and intimidation that go hand in hand with the existence of organized crime in an urban setting.

As these proceedings continue, I believe that the presentations given by the prominent national law enforcement officials gathered here will point to the fact that organized crime is a big business which knows no geographical boundaries.

The structure of organized crime is multi-faceted. Operations include, but are not limited to, interests in gambling, loan-sharking, prostitution and pornography, narcotics, fraud and labor infiltration. Many would say that these are victimless crimes that generally possess a clientele that voluntarily seek the services offered. I say that those who believe this are short-sighted. The true impact of organized crime lies behind the facade of providing services people desire. The brutality that accompanies the actual enforcement of the services rendered is indeed the more prominent crime.

This violent crime, directly or indirectly, victimizes millions of people every year. Innocent citizens fall victim to organized crime, as organized crime purports to be providing a needed service.

The violent crime that results from the activities of organized crime is viewed by the Kansas City, Mo., Police Department as a major target for our enforcement activities. I feel that this subcommittee should also view this activity as a target for proposed changes in legislation.

Due to the scope of organized crime activities, I am aware that no one agency, by itself, can effectively control organized crime's efforts. Legislation must provide the means so that an unrestricted flow of information be attained between all levels and departments of law enforcement. I would hope that you consider the vastness of the organized crime network and, also, the cooperation that is needed in the arrest and prosecution of the individuals determined to carry out the deadly mission organized crime holds dear.

The image of the western cowtown still exists to many people when they think of Kansas City. It is difficult to imagine that such a city would be a center of organized crime activity. The stereotype of organized crime "families" is more often associated with the likes of New York, Los Angeles, or Las Vegas. However, both the image of Kansas City and the stereotype of the organized crime family is perceived in error. Kansas City, Mo., is a progressive metropolitan area which seeks maximum opportunities for its citizens to enjoy an active life; stressing recreation and the arts. Kansas City also has an organized crime group.

The organized crime group in Kansas City consists primarily of members of the extended Nicholas Civella family and their closest

associates, such as the Cammisano group, organized much like feudal clans of the Middle Ages.

This group has shown to interested parties that they are to be recognized as a power within the total U.S. organized crime structure. Direct links to Las Vegas skimming operations and to Chicago organized crime figures have been established through recent authorized court wiretaps. In addition, during the past decade, several murders can be directly attributed to organized crime activity in Kansas City.

The actions of organized crime in Kansas City went relatively unnoticed by the general public until the mid-1970's. At that time, organized crime activities surfaced, in a head-to-head conflict between the city's desire to develop a "liveable" city and organized crime's desire to have a finger in the pie. The culmination of this conflict was best exemplified in the area of the city called the River Quay.

The River Quay is an old section of Kansas City that was originally built to service the river boats used in early Missouri River trading. The contemporary developers of the Quay were businessmen determined to turn the relatively deserted area into a thriving commercial and residential area with good restaurants, quality shops, and unique clubs. The premise was good, as the Quay became one of the premiere entertainment centers in the city.

Families frequented the Quay, as it had something to offer to everyone. In short, the concept was so successful, it became prime real estate, evidenced by escalating rentals of the old buildings. Due to its success, it was apparent that it was an economic boon to those involved in both the development and to those involved in business ownership. These conditions made the Quay a prime target of organized crime.

Little by little, organized crime infiltrated the Quay. The infiltration of the River Quay began with the Cammisano family. William Cammisano is a member of the Civella organized crime group; and is reputed to be responsible for its enforcement activities. William's brother, Joseph Cammisano, operated a go-go type bar in downtown Kansas City, among other establishments known for their patronage by prostitutes and drug users.

Chairman NUNN. I am going to request those coming up, because of very limited space, to be members of the news media. As I said, the audience will be able to view this through looking at pictures at a later point. You will just have to stand up. I don't know any other way to handle it. I apologize we couldn't get a larger room.

Mr. CARON. In 1974, Joseph Cammisano was required to relocate his bar because of an urban renewal program, and the Department of Housing and Urban Development financed his relocation to the River Quay. H. Harvey Bonadonna will testify later as to the extortion actions of William and Joseph Cammisano in an effort to gain control over the River Quay and to turn a thriving family-oriented development into a seedy area of go-go bars and prostitution.

As time progressed, the ownership of various businesses fell into the hands of recognized organized crime figures. They, too, for a time, enjoyed the prosperity and economic rewards the Quay had to offer. Then greed became prevalent. Legitimate businesses were pressured through various means to meet demands of organized crime, as it

struggled to "control" the Quay. The struggle began to force legitimate business to close.

Pimps in their fancy autos began to appear in the River Quay, assaults and store burglaries increased substantially in the area.

The struggle between legitimate businessmen to foster a family entertainment area in the River Quay and the organized crime groups's desire for a combat zone of "adult entertainment" became more intense.

Although the business position was supported by economic studies, all the civic organizations and the city council and government, by the summer of 1975 the character of the River Quay began to change and bars began to proliferate beyond control.

People began to fear the Quay, as a series of assaults and murders within the area started to erode the esthetic value that had been created. The Quay literally died as this terror spread in a series of arsons and bombings. A dream of legitimate businessmen died in the hands of organized crime.

The total loss to the city of Kansas City is unknown. If the Quay had succeeded, the economic gain to the city would have far exceeded the expectations of the founders and of city officials.

Far more important is the loss of human life and the malicious destruction of innocent people's property.

Chairman NUNN. Are these pictures we are being shown now pictures that are—

Mr. CARON. That is the River Quay as it began to deteriorate and began to have bombings.

Chairman NUNN. This destruction is the result of bombings?

Mr. CARON. That is right, bombings—Larry, what is that particular page right here?

Mr. WEISHAR. This is a view of the aftermath of the destruction of Pat O'Brien's bar.

Chairman NUNN. Let me ask the sergeant, maybe he could explain each one of these pictures as we go along. I think that would be meaningful to the audience and then I don't know how you want to intersperse that with your testimony. I will need to swear you in, though, if you will tell us about those pictures.

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?

Sergeant WEISHAR. I do.

**TESTIMONY OF SGT. LARRY WEISHAR, KANSAS CITY POLICE
DEPARTMENT, KANSAS CITY, MO.**

Chairman NUNN. I will let your assistant determine how far we should go as you testify.

Mr. CARON. Go back to the beginning, Larry, show them how it was originally. There is an aerial shot of the Quay and it does not show the estheticness of it, but it was a stable neighborhood that had a lot of buildings, a lot of historical buildings that had been renovated and restored to their original condition. Go ahead, Larry.

Sergeant WEISHAR. In the lower right-hand corner you will find the bars that we got some pretty good pictures of that were eliminated by the bombing.

You will notice some trees there, and another fine nightclub with youth in mind that also was destroyed by the fire. This is another view of the same area.

Mr. CARON. That is——

Sergeant WEISHAR. The aftermath of the destruction of Pat O'Brien's.

Mr. CARON. To bring home the argument of victimless crime, the explosives used in this area are a complete overkill. Had there been anybody walking up and down the street, or any car driving by at the time this went off, they would have surely been killed. There was no regard to simply destroying property. There was a complete lack of regard for human life.

This is another shot of the same area.

Chairman NUNN. These buildings were blown up by the mob; is that right?

Mr. CARON. The best evidence we can determine, yes, sir.

They were not accidental explosions. They were deliberately set.

Sergeant WEISHAR. This will give you an indication of how much dynamite or explosives they had to have. There is a crater left by one single explosive. The damage to some of the other buildings as a result of the explosion.

Chairman NUNN. I notice as you go farther that the discotheque is not bombed. Does that have any significance?

Mr. CARON. No, but that is out of business now, too. [Laughter.]

This is the Quay now, boarded up buildings, storefronts, completely abandoned. It has made full circle in 10 years, what it was before, as Senator Eagleton so eloquently stated.

It is just a desolate warehouse area. In the fall of the year, in the summertime, Senator, you could go down to the Quay and it would be literally curb-to-curb people, enjoying themselves with their families in the art shops and the antique shops, sidewalk cafes, restaurants, a beautiful place.

The restaurant you just saw, the Village Gate, preceding this photograph, the man that opened that and sunk everything he had in it is bankrupt today and is a physical wreck. He is just completely destitute. Every nickel he had went into that place and it is all gone.

This is the Ebenezer's that was the first place that opened up on the Quay. It is now boarded up. It was a place for young people to entertain.

Now we will get into the death, and I will start reading it and then we can interrupt as we go along here.

Chairman NUNN. I will leave it up to you as to how to show the pictures.

Mr. CARON. Several murders are traceable to the Kansas City organized crime group's activities in the River Quay. They began with the murder of David Bonadonna. F. Harvey Bonadonna's father on July 22, 1976. David Bonadonna was a member of this organized crime group and closely associated with William Cammisano. Bonadonna was shot repeatedly in the head and placed in the trunk of his auto.

David Bonadonna was murdered because of his inability or refusal to force F. Harvey Bonadonna to accede to the demands of the Civella group and in particular of William Cammisano.

Associates of F. Harvey Bonadonna began to be threatened thereafter. Harold "Sonny" Bowen, a police character who served as a bodyguard for F. Harvey Bonadonna, discovered on November 5, 1976, metal fragments and blood splattered in the back seat of his car, the result of an apparently unsuccessful effort to place a bomb in the car. Unheeding the threats, another associate of F. Harvey Bonadonna, John Brocato, was found murdered in the trunk of his car at the airport. Brocato had been strangled and his body bore marks suggesting he had been tortured before his death.

A Civella/Cammisano associate, Johnny "Green" Amaro was shot-gunned to death at his residence by two masked men on February 19, 1977. The Civella group apparently held Bowen and Parker responsible for this murder.

Two days later, on February 21, 1977, the bold and shocking murder of Harold "Sonny" Bowen by four masked men in a bar crowded with more than 30 patrons occurred. Immediately thereafter F. Harvey Bonadonna fled the Kansas City area and subsequently agreed to become a witness and entered the Department of Justice's witness protection program.

This is the shotgun that was found a few blocks away from the killing at Pat O'Brien's, typical of gangland killing, you find the weapon within a block or two of the scene. They are generally not traceable beyond a shipment of stolen guns or perhaps taken out of a burglary or they are not traceable at all.

Thereafter, Gary Parker, another close associate and bodyguard of F. Harvey Bonadonna was murdered when a bomb blew him apart, scattering debris more than 600 feet from the point of detonation. Very gruesome pictures. If you can see, this was set off with an explosive known as Kenopack, which was a relatively new explosive substance that they apparently knew little about. It was set off by remote control and it was set off on Truman Road, which is a main artery in Kansas City, Missouri, at peak hour of traffic and for those people who believe in victimless crime, had that thing gone off—just pure luck that it went off when there were no other cars in the area; otherwise, anyone within the radius would have been seriously injured or killed.

That is the remains of Parker. Can you go back to that? There is one photograph that is important to see. The explosive is right here by the yellow building. Directly across the street is the white building, and if you look close on the top of the white building is a spotted substance. That is where the body of Gary Parker was found. It was blown across the street, hit the wall and fell down. There is debris scattered 600 feet in that entire area. This main artery is Truman Road.

The tragedy of the destruction of the River Quay and the loss of untold millions of dollars in income investment and taxes pales beside the loss of life and the human suffering that organized crime has brought upon Kansas City and its citizens.

William and Joseph Cammisano were indicted on June 16, 1978, for extortion. William and Joseph Cammisano were sentenced to 5

years confinement on October 23, 1978, and August 11, 1979, respectively, after lengthy legal maneuverings, and Joseph Cammisano's conviction is still on appeal.

Some of the other murders attributed to the Kansas City organized crime group include Nicholas Spero on April 12, 1973; Sebastian George Circo on November 17, 1973; Frank J. Tusso; Nicholas L. DiGraci on September 21, 1975; Michael J. Kattou on November 22, 1977; Myron A. Mancuso on May 2, 1978; Michael A. Massey on May 4, 1978; and Michael Spero, the brother of Nick Spero on May 16, 1978.

At the time of the murder of Michael Spero, a Teamster business agent, the three masked men who entered the Virginian Tavern near Kansas City's downtown area, also shot and wounded his brothers, Joseph Spero and Carl Spero, who as a result of the wound is paralyzed from the waist down.

Intelligence sources and information derived from court authorized electronic surveillance indicates that the murderous rivalry between the Civella and Spero groups can erupt at any time in Kansas City with much violence and bloodshed. Joseph Spero and Conrad Metz were convicted in October 1979 of possessing a remote controlled dynamite bomb which was used to murder a principle lieutenant of Nicholas Civella.

The enforcement efforts of local agencies in the suppression of organized crime has traditionally and typically been a supportive one.

The Federal Government has always been regarded as the main law enforcement agency that dealt with organized crime. The local law enforcement agencies' role has been that of assisting the Federal agency with information and manpower. This trend has seen some modification within the past decade.

More and more, local agencies see the opportunity to become involved in the active prosecution of organized crime figures on their own level. This thinking parallels the way I feel about our own enforcement efforts in Kansas City. We do not have the years of experience that the Federal people do to fall back on, however, we are getting better every day at this type of investigation and will continue to get better as time progresses.

This is not to say that the exclusion of the Federal agencies is desirable. The mutual cooperation between all agencies must continue if our goals are to be realized. Lack of this cooperation can only be viewed as counter-productive. Ultimately, we desire the autonomy to prosecute organized crime figures on the State level as a viable alternative to prosecution on the Federal level. We have experienced some degree of success toward this end, however, some legislation has hampered our efforts and some additional legislation is needed in order for us to progress further.

The lasting support of local, State, and Federal legislators is most desirable and most important. Your continued support through appropriate funding and legislation cannot be underestimated. You have in the past shown concern for this cause by actively promoting those items that were beneficial to the successful prosecution of organized crime. I would hope that you realize the great scope that the problem of organized crime encompasses. The violence and wrath that these

crimes and criminals have left in their path permanently scars the image of this country.

Organized crime has inflicted pain and suffering upon thousands of victims, through their brand of "victimless" crime. There is no easy solution to the problems that have been created or will be created. An initial commitment to the problem should be made. Cooperation should be sought in the areas of interagency communication. Also, a legislative harmony must be created so that existing legislation can be both beneficial and compatible with our efforts in this continual fight. A specific area in which legislative action could facilitate Federal, State, and local cooperation in organized crime cases would be to permit local law enforcement personnel access to Federal grand jury and tax information during the course of joint investigations.

Thank you.

Chairman NUNN. Thank you very much, Chief.

We appreciate your gruesome but enlightening presentation.

Chief Caron, you stated that the wholehearted cooperation and efforts by many law enforcement agencies are needed. What is the relationship between your office and the Federal agencies such as the Kansas City Strike Force?

Mr. CARON. It is excellent. We work very closely together. We meet quite frequently. We agree on certain areas of concentration and direct our energies and our investigation toward these target areas and individuals. We have a very close working relationship with Mike DeFeo's strike force and the FBI.

We also work very closely with the State and all other Federal agencies.

Chairman NUNN. Do you believe that Congress, by legislation, can free up the flow of criminal information between law enforcement agencies, particularly between Federal, State, and local when working on joint projects and still protect the privacy rights of average citizens?

Mr. CARON. Not only is it possible, but it is absolutely essential. I am concerned about protecting the rights of our citizens. Local agencies must have access to information that relates to their jurisdiction, whether it comes from Federal grand juries or whether it be criminal information obtained from other Federal agencies. It is crucial to our success.

Chairman NUNN. Where are you blocked from getting that now? What prohibits you from getting the information you need?

Mr. CARON. We are barred from any Federal grand jury information, we are prohibited—

Chairman NUNN. Even if you are helping to present it?

Mr. CARON. That is correct.

Chairman NUNN. So you can appear before grand juries as a witness, but you cannot find out anything about anybody else?

Mr. CARON. That is essentially true, yes. As Mike DeFeo explained, we can develop the information from the beginning, we can pass on the information to the Federal agencies, we can develop the witnesses, the suspects and yet we are barred from sharing with that information. Oftentimes it forces us to go out and reinvent the wheel several times over. It is a bad situation.

Chairman NUNN. Do you get any cooperation at the local level from the Internal Revenue Service?

Mr. CARON. We can't. I am told that we are barred from getting any criminal information from IRS as a result of that 1976 Tax Reform Act. We used to get a lot of criminal information. I recognize, Senator, the need to protect the rights of our citizens. I am just as protective of my tax records as anyone and I don't suggest that we indiscriminately seek information. I am talking about criminal information, relating to criminal subjects. That becomes very important, not only to organized crime, but to the tremendous flow of drug trafficking in this country.

Chairman NUNN. We have introduced legislation on that subject. We are hoping to make progress this year. It would provide the right of Federal prosecutors to pass through to State and local people certain information under the procedures we have set forth in terms of the tax field.

You state that organized crime uses various pressure tactics to attempt to control legitimate businesses in the River Quay area. What types of tactics are you referring to?

Mr. CARON. Loan-sharking, gambling debts, intimidation, control of the vending companies that service the area, the liquor industry, services, unions. They can put all kinds of pressure. One of their favorite tactics is to get some of these people hooked on loan sharking and calling in the notes. Their best source of control is intimidation and violence.

Chairman NUNN. Why would organized crime totally destroy a possible economic bonanza such as River Quay?

Mr. CARON. Greed and the obsession with power and the status that they get from being recognized as that power source; very basic vices that have plagued mankind for many years. They are very evil people, Senator. Make no mistake about it.

Chairman NUNN. Do you think we have enough Federal resources in Kansas City to battle organized crime there?

Mr. CARON. No. Mike DeFeo needs more help, I believe, in terms of people. He is very diplomatic about that. We need more money to continue the efforts we have in white-collar crime. Through LEAA, we recently acquired some radio equipment. We need to continue that. We must get some assistance to hire some analysts who begin to look at real estate transactions and tax records relating to organized crime subjects and what areas they are moving into. These are the type of things we need. We have recognized that for some time now arson for profit has become an organized crime source of revenue. We have recently obtained a Government grant to get into that and also to develop a lot of vertical prosecution in Jackson County.

We have filed on more arson cases this year so far than we have in all of 1979 because of some of these grants. These must continue.

Chairman NUNN. Whose primary responsibility do you believe it is as between Federal, State, and local government to take the lead in prosecuting organized crime?

Mr. CARON. Right now it is the Federal Government. I would like to think eventually locally we can handle our own problems as we develop more expertise, as we develop our legislation in Missouri. We

do not have, for example, any witness protection, witness immunity laws in Missouri. That will be introduced at the next legislative session.

We do not have any title III legislation that allows us to go into electronic surveillance.

We do have some conspiracy laws that have to be modified. Until we get those laws in Missouri, we have to rely on the Federal Government to help us. But ultimately the responsibility will always be in my opinion a joint venture between the local, State, and the Federal people, but it is our nest and our backyard, and as it relates to our local problem, we should be able to resolve it.

When it goes on to a national connection, then we work and extend ourselves and work with the Federal people.

Chairman NUNN. What type of assistance do you get from LEAA now?

Mr. CARON. We are now lucky enough, we have an arson grant that helps us. We have a significant grant on white-collar crime that is targeting in on certain specific crime, organized crime subjects. We have a recent organized crime information system which covers a nine-State area, over \$1,200,000, and we are putting that money to good use.

Chairman NUNN. Are there any other organized crime groups operating in the Kansas City area aside from what we call the traditional organized crime?

Mr. CARON. There is the beginning of an organized crime apparatus in a black community relating to drugs and fencing and prostitution. That is beginning to emerge and there is a tremendous amount of money in it. It started out with the conviction of one individual and it abated for a while, but now it is the beginning of another group that is getting into the cocaine, heroin enterprise.

Chairman NUNN. Does the traditional organized crime which you described this morning involve itself in narcotics?

Mr. CARON. Up to their eyeballs. The myth that the drugs are too dirty for them to handle is absolutely ridiculous. They have been into it for years.

Any illicit activity that shows a profit will be taken over or infiltrated by organized crime. Make no mistake about that. They have always tried to impress people with the fact that for some reason or other narcotics traffic is too dirty for them to involve. That is hogwash. They are into it up to their ears.

Chairman NUNN. Are there any conflicts between the newly emerging groups involved in narcotics and what we traditionally call the organized crime element in Kansas City?

Mr. CARON. In some areas they fought one against another. In other areas they are being financed by the traditional groups to do some of their dirty work for them, particularly in drug trafficking.

Chairman NUNN. What purpose does violence serve for the organized crime elements in Kansas City? What is the purpose of violence?

Mr. CARON. The purpose is to gain control when everything else fails. It is also directed toward the intimidation of people, it keeps people in line. It is a very effective tool. It gives them a tremendous amount of power over those people that are easily intimidated.

Chairman NUNN. What groups are mainly intimidated by the traditional organized crime family in Kansas City?

Mr. CARON. Historically it has always been the case, they always feed off their own at first. You go back in time and you go back to the whole immigration experience in this country and you go into New York and the Irish discriminated and fed off their own people and they began to branch out and now you have the Italians that have intimidated their own people and have moved on and now you are experiencing black hoodlums feeding off black people.

Chairman NUNN. So the traditional organized crime element in Kansas City primarily has intimidated and victimized the Italian community there?

Mr. CARON. Absolutely. In 25 years as a police officer, having investigated dozens of spot killings, I have seen too much terror in the eyes of these people. They do not see anything, they do not know anything. They will tell you they are afraid to talk. They are completely intimidated.

I worked a case where one brother was killed and the other brother had information and he wouldn't talk. He told us if he talked he would be a dead man, and he didn't.

Chairman NUNN. Do you consider the traditional organized crime family in Kansas City to be associated with other families?

Mr. CARON. Yes. Based on the information we have developed through our Organized Crime Division, and based on the electronic wiretaps that have recently been concluded, there is no question that they have connections throughout the country, particularly in Chicago, and Las Vegas.

Chairman NUNN. Do you consider this to be a part of what is known as the Cosa Nostra?

Mr. CARON. If you wish to call it that, yes.

I used Mike DeFeo's definition of "organized crime," but it is the traditional Cosa Nostra or Mafia or organized crime. It is not restricted, by the way, to any ethnic group or any racial group. It is very widespread.

Chairman NUNN. You mean there are ethnic groups that belong in Kansas City or at least are part of the operation?

Mr. CARON. Yes; on the fringes.

Chairman NUNN. What unique talents do local police add to the organized crime struggle?

Mr. CARON. We have that unique ability to develop street information, that longstanding tradition we have that every officer in our Department starts as a basic street cop, and works his way up and over the years he has developed sources of information, neighborhood contacts, witnesses, I am sorry, informants in the underworld and he has that tremendous reservoir that he can tap to develop information that is so invaluable.

That is our strength, plus our numbers. We have, in Kansas City, 1,200 police officers, and we are developing their skills in observing things and reporting it back to our organized crime division. Our size and our experience in the field—

Chairman NUNN. Chief, have you reviewed the testimony of Mr. Bonadonna at our request?

Mr. CARON. Yes, sir.

Chairman NUNN. Do you find any inaccuracies in there, or do you find the statement accurate based on your own experience?

Mr. CARON. Based on my experience, my review of organized crime data that we have received, and in talking to my people, he is frighteningly accurate. He has portrayed a very grim picture of the real life of organized crime in Kansas City. Yes.

Chairman NUNN. Does he have the factual background to be able to make that kind of presentation?

Mr. CARON. Better than anyone I can think of. He has it from having grown up in that type of family and having overheard some of the conversations that took place between his father and other people, and he has tightened up, explained a few mysteries that we have had over the years relative to disappearances of people and the deaths of others that were unsolved.

Chairman NUNN. Chief, would you say we are winning or losing the battle against organized crime? Let's put it this way. Would you say you are winning or losing it in Kansas City, and in your general view of the country?

Mr. CARON. I would say I am beginning to stop losing it. We are beginning to turn the corner, but on a national level, we are losing it. There is no question in my mind that we must develop a national commitment to rid ourselves of drug trafficking and drug usage and we must rid ourselves of this horrible thing known as organized crime. There is no question about it; but we are not winning the battle at this time.

Chairman NUNN. Before we go to our next witness, I want to give Senator Eagleton a chance to ask any questions and Senator Danforth, and then Senator Percy is coming in a few minutes. If his staff would like to ask questions, we will defer.

Senator EAGLETON. I have one question.

Chief, the bombings that took place in the River Quay area that were shown on the slides, would you describe those as bombings and arson for profit or were they more in the category of bombings and arson of individual establishments who would not play along with the mob or was it a mixture of both?

Mr. CARON. It started out, I believe, as a means of intimidation and then, as the Quay deteriorated, it became a matter of bombings and burning to recoup your losses through insurance claims.

Senator EAGLETON. Has any analysis been made either by your department or perhaps DeFeo or perhaps the FBI as to the insurance recoveries, if any, on the bombed-out or burned-out establishments in the River Quay area?

Mr. CARON. I can speak of an area of one we just found out about the other day. It is a little bit away from the River Quay, but it is the same situation, a place called Calamity Kate's. That place, early one Sunday morning, was blown up and it took out the entire block and if I may, for a minute, mention that 5 minutes before the explosion, a schoolbus with about 25 children, church bus—had this explosion taken place then, our arson experts tell us that everyone in that bus would have been killed. They just settled on that for \$225,000.

Senator EAGLETON. But we have no total figures on the insurance recoveries in the River Quay area?

Mr. CARON. I think we can get them for you. We don't have them. We can sure try to get them for you, Senator.

Senator EAGLETON. That is all I have.

Chairman NUNN. Senator Danforth?

Senator DANFORTH. Chief, let's suppose that at an early date the River Quay was a very reputable family-type place and then there was an effort by organized crime to change its character, to move in strip joints and so on.

How did they do that? Did they start out when they found property for sale, just buying it like everybody else would buy property?

Mr. CARON. No. I think, Senator, Mr. Bonadonna would give you a very vivid explanation of how that works in his testimony, but they are not prone to go in as any other member of the free enterprise system and gamble that a particular operation may or may not be successful. They wait until it is proven and then they move in with muscle, intimidation, and try to benefit from the sweat and work of others. They are not your conventional businessmen that are willing to speculate.

Senator DANFORTH. It would seem that if they wanted to have a sure loser they would create a very seedy place that nobody would want to go to and that would be rapidly boarded up. That is exactly what they ended up getting.

Mr. CARON. They have visions of grandeur. They felt that they could maintain the Quay, in my opinion, as a reasonably respectable area but still stress the combat zone mentality. Again, I am assuming greed blinds them quite a bit. There are not that many areas in Kansas City that lend themselves to that type of operation with a readymade crowd.

You already had the attendance, you had the recognized area that had a large following. In my opinion, the attempt was to shift that from a family orientation to begin to bring in an awful lot of conventioners.

Senator DANFORTH. Let me ask you this: In Kansas City, by ordinance, could not the city council zone an area such as the River Quay to exclude adult entertainment? Could they do that?

Mr. CARON. They did originally and, as Mr. Bonadonna explained, they did that by issuing moratoriums on liquor licenses and adult entertainment, but this began to weaken and as the people, as I understand it, began taking over existing establishments, buying them out and shifting the whole—

Senator DANFORTH. You mean originally there were zoning restrictions against putting strip joints and whatever in the River Quay and then that was changed?

Mr. CARON. No. Just the opposite. There were not restrictions. It was something obviously the city fathers had not anticipated and as they began to try, they got in on the action too late. By the time they began to recognize it, began proposing ordinances, it became a fait accompli. They had already moved in.

Senator DANFORTH. You said there was a combat zone between the legitimate business people and the organized crime people. How did the legitimate business people fight their battle?

Did they try to get zoning ordinances passed?

Mr. CARON. Yes, they did, but by the time they got to the zoning approval, the bombings had already started, the murders, the assaults began and people became so intimidated that they just began moving out and it just went overnight, it just went downhill.

Senator DANFORTH. Did any of these places, the organized crime places, have liquor licenses?

Mr. CARON. Yes; they did.

Senator DANFORTH. They had State liquor licenses?

Mr. CARON. City and State, yes.

Senator DANFORTH. That is, they have to, in Kansas City, get both State and city liquor licenses?

Mr. CARON. That is correct.

Senator DANFORTH. At the State level, the supervisor of liquor control does deny licenses to people who are of bad moral character or who are known criminals or consort with criminals and so on. Is the same true in the city of Kansas City?

Mr. CARON. Yes; it is.

Senator DANFORTH. Were these people able to get liquor licenses?

Mr. CARON. Yes, using front groups and using people representing them, using other members of their family who had no record, and there was no legitimate reason to deny them licenses, using wives, brothers and organization's own people who were front owners representing these different groups.

Senator DANFORTH. If they were able to get in by getting liquor licenses through front groups and by buying up businesses and by being able to put in whatever they wanted without any zoning ordinances, what is the purpose of bombing? It would seem to me that that would just destroy their investment. Why would they want to drive people away?

Mr. CARON. I think initially they were not trying to do that, Senator. I think they tried it initially, one time, and before they could even recognize what they had done, it had already intimidated some people that they just pulled out.

Senator DANFORTH. Why would they want to do that at all? Why would they want to do it once?

Mr. CARON. I can't answer that. I know they did it.

Senator DANFORTH. Was the first bombing the crater-type picture that we saw?

Mr. CARON. What was the first one, Larry?

Sergeant WEISHAR. The fire at the warehouse lounge is the first one. It was an individual that was trying to be his own man in the area. He wasn't cooperating, using the services.

Senator DANFORTH. What sort of cooperation did they want?

Sergeant WEISHAR. If you have jukeboxes, cigarette machines, liquor services, services provided by outfit-controlled companies, and you don't—this fellow neglected, did not desire to deal with these people and as a result he was burned out.

Senator DANFORTH. So the bombings were not caused by trying to move into bars and strip joints and so on; the bombings were caused by having people not use the right jukeboxes and whatnot?

Sergeant WEISHAR. That is a portion of it. You have to understand that there were a lot of incidences at the outset of the River Quay in which everybody was interested in it. I am talking about legitimate

owners; the public was attracted to the Quay. Various situations caused the decline in the patronage in that area. So there was an economic loss to a lot of these bars and at the final stages, the bars were not profitable. You could go down at night at primetime at 11, and find 12 patrons in a tavern that you know the fellow had over \$150,000 investment in.

Senator DANFORTH. I am just trying to figure out the reason for bombing.

Mr. CARON. Senator, the bombings were preceded by several murders and the bombings really began as the Quay began to deteriorate as a result of the murders. The other reason for the effort to go toward the combat zone is very simple. It is economic. A hardcore magazine depicting, and I know this from research we have done, depicting child pornography, which sells for \$8, \$9, and \$10 in an adult porno shop, wholesales for \$1. Prostitutes make \$300 and \$400 a night. Watered-down liquor is served at these establishments. They make tremendous profits, way in excess of what a legitimate night club would make.

So the profits toward the kind of combat zone are worth the risk because there is such a tremendous markup in that activity.

The prostitutes are making \$300 and turning most of it over to their pimps. After a while they are hooked on drugs and they work for nothing.

Senator DANFORTH. Did the legitimate business people attempt to get ordinances passed by the city council?

Mr. CARON. It started, as I said earlier, as Mr. Bonadonna will explain, it started in that direction, but by that time it was too late and the Quay started going downhill. It was just, I think everybody in Kansas City fell asleep at the throttle. I think that is a safe statement.

Senator DANFORTH. How did legitimate business people try to protect themselves?

Mr. CARON. Through the city council, through the ordinances, trying to keep the increase in the taverns from happening, and by that time the murders began to occur, the beatings, the killings, and business just dropped off.

Senator DANFORTH. You mean there wasn't any real effort at all to get ordinances passed or to attempt to stop liquor licenses from being granted?

Mr. CARON. That is correct.

Senator DANFORTH. It was just a flash in the pan kind of combat.

Mr. CARON. That is correct.

Chairman NUNN. We are going to get into a good bit of this tomorrow with our witnesses who will be here and testify about some of the details of the tactics used and what the business community and the people, legitimate businesses, tried to do and how that didn't meet with success.

Senator DANFORTH. Thank you.

Chairman NUNN. Senator Percy's staff would like to ask some questions and we will defer to you at this time.

Mr. BERK. I just have one question for the chief. In 1978, we conducted an investigation and held hearings on arson for profit, in which this subcommittee has a continuing interest.

Mr. CARON. I can't hear you.

Mr. BERK. I am saying in 1978 we conducted an investigation and held hearings on arson for profit. We have a continuing interest in that subject. You mentioned that you recently received grants from LEAA which included money for vertical prosecution. I would like you to explain exactly what a vertical prosecution is and why this is of assistance to your efforts.

Mr. CARON. Recently we had a series of fires; we apprehended two suspects. Right at the time of the arrest and at the time of the fires we were able to—we have a prosecutor who has been funded through this grant. That prosecutor arrived at the scene and works with us and directs our officers in all of the legal implications. That prosecutor will follow that case all the way up through the system and ultimately prosecute it in court.

In this case, it is a woman. She is intimately aware of the case; she recognizes what evidence we need and how it is to be used and works with us all the way through. This is the kind of thing that has to be done to get good sound prosecution. At least until our officers and our people are trained to the point they can handle it alone.

Senator DANFORTH. Can I ask one more question?

Chairman NUNN. Go right ahead, Senator Danforth.

Senator DANFORTH. Chief, you mentioned in your testimony that one of the first go-go bars that was established in this area was an organized crime establishment which had to close down its original place of business because of urban renewal, redevelopment, and therefore, they moved to the River Quay area and did it with a HUD grant. Is that right?

Mr. CARON. That is correct.

Senator DANFORTH. I suppose then that HUD will just participate in any kind of relocation, whether it is a topless bar or not? HUD would do that?

Mr. CARON. I don't think that is the only one. I think there are several more like that in Kansas City that are scheduled for significant HUD loans for relocations because they have destroyed 12th Street from Wyandotte to Central where they will put in a hotel. There are four or five of those places eligible for Federal money to be relocated. That is correct.

Senator DANFORTH. It doesn't matter who owns them or what they want to do with it?

Mr. CARON. Apparently not, Senator. That is true. They qualify for those loans.

Senator DANFORTH. What was that first establishment again?

Mr. CARON. Larry?

Sergeant WEISHAR. Doris Cammisano owned the bar at 12th Street called the Pink Pussycat and her license was transferred to the bar called the Sport.

Senator DANFORTH. Doris Cammisano is the wife of—

Sergeant WEISHAR. Joe Cammisano.

Senator DANFORTH. Doris Cammisano, does she herself have a criminal record?

Sergeant WEISHAR. No.

Senator DANFORTH. Does her husband?

Sergeant WEISHAR. He was convicted 2 years ago in connection with the intimidation on Mr. Bonadonna.

Senator DANFORTH. But prior to the relocation of the bar, did he have a criminal record?

Sergeant WEISHAR. Yes, sir. He did. That is why the license was in his wife's name.

Senator DANFORTH. That was the State license and also a local license?

Sergeant WEISHAR. Yes.

Senator DANFORTH. Thank you.

Chairman NUNN. Senator Percy requested we defer until 11:45 before we begin our next witness. We will take about a 5-minute break here and then come back for our next witness.

[Brief recess.]

[Members of the subcommittee present at time of recess: Senators Nunn, Eagleton, and Danforth.]

[Member present after the taking of a brief recess: Senator Nunn.]

Chairman NUNN. Mr. Ouseley, could you give us your present position and tell us a little bit about your background?

Mr. OUSELEY. Yes, Senator. I am currently assigned to the Kansas City, Mo., field division of the FBI. I have been assigned to that Division since 1964. I have worked that entire time, that 16-year span, in the organized crime and racketeering field and I am in my 20th year as an FBI agent.

Chairman NUNN. We have heard Chief Caron refer to the violence in the River Quay area. Did this violence lead to a recent effort to investigate the Kansas City outfit by the FBI?

Mr. OUSELEY. The *River Quay* case was a catalyst for such an investigation initially. We assisted the Kansas City, Mo. Police Department in the local murder case involving David Bonadonna and that, then, quickly led to an expanded investigation into the extortion and tactics employed in the *River Quay* case we successfully brought to a conclusion. That was the catalyst for our stepping further into an investigation of the entire enforcement arm of the Kansas City criminal organization.

Chairman NUNN. Does the pattern of mob killings make it difficult for law enforcement to prosecute them successfully and to detect them?

Mr. OUSELEY. Senator, the pattern of these mob killings is designed for that very purpose. These killings have been meticulously planned down to the minutest detail and they are executed by people who are professional in that field. The effect has been to eliminate the risk to the killers themselves from the intended victims and eliminate the risk of law enforcement detection. Generally, where the intended victim cannot be lured to his death, which is the preferred manner of operation, then the victim must be stalked and his routine is documented so that they can select the proper location which is most opportune for safety and the execution of the plan.

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

Mr. OUSELEY. And what is interesting is that to stalk these victims they must employ many of the same physical surveillance techniques and use of equipment as law enforcement uses. We have found those

techniques to be successful, not only in past killings, but in a string of killings that we based our investigation on.

Chairman NUNN. Has the FBI, at the request of the subcommittee, provided the subcommittee with affidavits filed in the Federal court relating to certain interceptions?

Mr. OUSELEY. Yes, we have, Senator.

Chairman NUNN. Is this one of the techniques you employed to investigate mob violence?

Mr. OUSELEY. The situation I just described that made the detection and development of evidence in gangland murders, made it abundantly clear that our only real avenue of penetrating this mob aspect and obtaining the necessary evidence would be the use of title III status which is the Federal electronic surveillance law and the affidavits you refer to, the first one was filed on May 5, 1978, in the western district of Missouri, designed and directed against mob violence, and we had virtually continuous electronic surveillance from that time, May 5, 1978, to February 14, 1979.

Chairman NUNN. Did this electronic interception disclose the mob plans to murder former mob associate named Carl Spero?

Mr. OUSELEY. The electronic surveillance most certainly did develop evidence of this particular planned murder. You have briefly, by way of just brief background, if you will, you have briefly been told about the Spero murder, and the slides were shown. Three Spero brothers were obviously marked for murder and were located at a bar in May 1978, all there at the same time and a most opportune situation. After the team went into the bar to carry out this contract murder, and the shooting was over, Mike Spero was dead, Joe Spero was wounded, and the third brother, Carl Spero, was left paralyzed after being shot-gunned in the street as he attempted to escape.

By the fall of 1978, we were receiving information that we catalogued in our affidavits to the effect that Carl Spero once again had been marked for a gangland murder.

Chairman NUNN. He was the one that survived?

Mr. OUSELEY. He was the one that survived and had been left paralyzed. He had been marked for murder again in that an attempt on one of the ranking Kansas City criminal organization people, an attempt on his life had been laid at Carl Spero's doorstep. This made it abundantly clear that he must be eliminated once and for all.

Our electronic surveillance provided evidence of the various parts of the plan to kill Carl Spero. One segment of this plan was the importing of a specially designed weapon to be used in the murder, importing this weapon from Las Vegas, Nev.

Chairman NUNN. Did the electronic interceptions ever disclose an actual meeting of mob members to discuss the elimination of Carl Spero?

Mr. OUSELEY. Senator, on November 26, 1978, a meeting was held in the private residence in the Kansas City, Mo., area and at the outset of this meeting Nick Civella and Carl Civella, two of the ranking members of our organization, sat down together to discuss the situation involving Carl Spero. I don't think I can do much better at this point than to use their very words that we intercepted by a court-authorized monitoring device and these are quotes, verbatim quotes,

as best we can make them from the tapes, indicating their plans to kill Carl Spero. These are the people themselves speaking. On the topic of the danger that Spero represented to the organization, Carl Civella: "One of us is going to get hit."

Chairman NUNN. Would you put quote marks around where they say that?

Mr. OUSELEY. All right. Carl Civella says, "One of us is going to get hit." Relative to the lack of enthusiasm shown by some members of this mob to do the work necessary, Carl Civella: "Nobody seems to want to do anything. Everybody is fat. Their bellies are full."

Relative to the methods of setting up the victim, Carl Civella:

We need observers. We need people to go around looking. Our guys have been exposed. Jump in a car, ride around, look, see if they can see his car, see if they could spot him. You get a guy, you got to sleep with the MF. You gotta go when he goes, you got to sit, watch, work, where he goes, what he does, you got to find out places, you got to be sitting a half a block away or a block away. You have to work. You have to make an effort. It is not peaches and cream.

To which, Nick Civella responded:

Let me tell you something. We have got the best bloodhounds in the United States. We got the best and always did have.

As to the particular problem that Mr. Spero represented in this plan to kill him, Nick Civella:

He is too cautious. He is afraid he might get tailed and he could be trapped.

And continuing:

The guy never died and it became a different situation entirely. He knows our people. He suspects our people. You know what we need? We need some disguises for one thing. We need wigs and we need a mustache, a beard.

As to the methods to consider in completing this murder, Carl Civella:

I agree with Willy. I have been discussing it with Willy. What Willy says is we take limbs first, because you can't get to the trunk and you isolate the trunk by itself.

which we believe is an apparent reference or is an apparent reference in stripping away those people identified as being close to Carl Spero. Carl Civella discusses a plan to have a person that Spero trusts over to sell him some weapons and "we will hit both of them."

Civella discusses another plan that was proposed to him by Willy.

Little Willy, he would go out there and sit and crawl and hit him from a mile away and I don't see no sense in why the guy can't even try.

Nick Civella responds,

The house is exposed for a mile. He is a moving target. It would—a 1 in 50 shot. Suppose he misses the guy? Let me tell you, the best place for that guy, the Red Apple,

which was a club known to be frequented by Mr. Spero.

Finally, how the outfit leader, Mr. Nick Civella, sizes up the entire situation:

I am just scared any more dealing on impulse, out of my heart. I want to start dealing with my head. We come awfully close to getting crucified, all of us and we ain't out of the woods yet. We just got to start to use our heads a little, we got to start doing things a little different; if there is a danger we just got to start staying out of those joints until we get this thing finished. We are not going to go around using peckerwoods. I never did want to fool with outside guys.

We are all going to wind up getting hung. We got too much by impulse. The thing for us to do is to be very careful, work year-round. We got to work; we got to do a lot of work; we can't expose ourselves. We can get it finished. There is no reason we can't get it finished.

Chairman NUNN. Mr. Steinberg has a question.

Mr. STEINBERG. Mr. Ouselev, you mentioned that the plans were to import a special weapon. Did the electronic surveillance reveal what the exact plans were to bring that weapon to Kansas City?

Mr. OUSELEV. Beginning in October 1978, we intercepted a series of conversations between Carl DeLuna, a ranking organized crime figure and his associates in Las Vegas wherein the arrangements to prepare and deliver this specially equipped weapon were made.

As with most of these conversations, codes were extensively used as a substitute for names and places. The conversations revealed that Joseph Agosto who was then the entertainment director at the Tropicana Hotel in Las Vegas and the Kansas City organization's representative to oversee their interests in that hotel, he was the principal person that Mr. DeLuna relied on for these arrangements. A person referred to as Mr. Stone was the Las Vegas individual who was to work on the weapon and test it.

And that person referred to as Junior was the Las Vegas person who was to deliver this weapon when it was ready and our interceptions revealed that he in fact did so deliver a weapon in late 1978 to Carl DeLuna.

Mr. STEINBERG. Was there anything on the interception concerning the importance of receiving this weapon?

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

Mr. OUSELEV. Again, there is no better thing that I can do than to quote again from the participants and the importance of obtaining this weapon was made clear as on one occasion Carl DeLuna was overheard to say in the discussion with Mr. Agosto in Las Vegas, as when he was told the delivery was near: "Man, I am anxious to hear from you." And on another occasion when DeLuna commented as to the delay in getting this weapon: "That is more important to me than you can know about." And a conversation also regarding the weapon wherein Mr. DeLuna stated, I should say requested, that Joe Agosto, the Las Vegas representative, asked Mr. Stone to work on several more of these weapons and DeLuna states: "We would like to have a couple in reserve in case one time that you go to use one you can't use it no more, you know." And I think that this vividly points out Chief Caron's observation in his testimony when he showed you the photo of the weapon being left at the scene.

This is the veiled reference that the murder weapon can only be used once, is abandoned immediately to eliminate the risk of being caught in possession of the murder weapon itself immediately following the murder.

Chairman NUNN. Did the electronic interceptions disclose that additional discussions were necessary to resolve the problem of eliminating Carl Spero?

Mr. OUSELEV. Yes; at the conclusion of this particular private meeting when some of the outside visitors had left and there was only Nick Civella, Carl Civella, and Carl DeLuna, Nick Civella indicated he

wanted to get together with his brother Civella and DeLuna and states:

No kids, just guys that are made, made guys, maybe us, Willy and maybe Pete and Charlie. That would be about the extent of it.

And Civella indicates that he plans on spending 3 or 4 hours in order to:

We are gonna knock down and straighten out a dozen things. I want to get it done. Now maybe as quick as possible. I ain't lookin' emotionally to go out and put anybody. but we are going to have to get our heads cut in and get some plans made. We are gonna go to work on it and we are gonna do it effectively, not emotionally. We are gonna do it with our brains.

Chairman NUNN. You have had a lot of experience in this area. What do you think they mean by the term, "made guys?"

Mr. OUSELEY. Made guys is the inside reference to those persons who are members of the criminal organization. And normally have been taken in through some sort of ceremony.

Chairman NUNN. Do they have a name for the organization that they used themselves?

Mr. OUSELEY. Senator, the references—I really never heard them refer to themselves by any name. It is always by reference, such as this: "Made guys" would be the closest. They do not use some of the more popular terms.

Chairman NUNN. When the mob decides to eliminate someone, do they persist in committing the murder with a certain degree of perseverance? It sounds as if they do on the Spero case.

Mr. OUSELEY. Senator, it is one of the earmarks of this aspect of organized crime, the patience that they will go to and I think, again, if I might use some language from one of the members themselves that would probably most aptly size up that situation. In February 1977, Carl Civella was discussing the locating and killing of the Bonadonna who had been forced to flee Kansas City in fear of his life. He was overheard by an undercover FBI agent to declare at this time:

I don't care how long it takes. They should have gotten him a long time ago. It doesn't matter if it takes 6 months, or years. We will get him. That will be my legacy. After I am gone, somebody will get him.

Chairman NUNN. Were these conversations and so forth, obviously planning violence, was there any conviction of anyone for murdering the Speros?

Mr. OUSELEY. Any conviction on the murder? No, Senator. There has been no conviction.

Chairman NUNN. How about on the assault on Carl Spero?

Mr. OUSELEY. No. There has been no conviction.

Chairman NUNN. Are there any pending cases on that; any indictments?

Mr. OUSELEY. The intercepts that we have discussed certainly make up the grounds for a pending investigation into that field.

Chairman NUNN. There is no pending indictments at this time?

Mr. OUSELEY. No pending indictments, no, sir.

Chairman NUNN. Did the wiretap also disclose an entirely separate unlawful and hidden mob interest?

Mr. OUSELEY. The intercepts that we conducted during that period I previously mentioned served to uncover evidence of the unlawful

and hidden interests on the part of organized crime families in the Nevada gaming industry. Yes.

Chairman NUNN. Did the interceptions disclose the nature of the Kansas City outfit's hidden interest in the Tropicana Hotel Casino in Las Vegas?

Mr. OUSELEY. The intercepted conversations indicate that the Kansas City criminal organization has for years maintained a hidden interest in the Tropicana Hotel Casino in Las Vegas, Nev., and that the aforementioned Joseph Agosto, who was then entertainment director at that location, was the Kansas City crime group's principal management agent and we developed this fact—

Chairman NUNN. How do you spell his name?

Mr. OUSELEY. A-g-o-s-t-o.

We developed this fact in that our interceptions were made up of a series of regular telephonic contacts between Carl DeLuna, one of the ranking organized crime figures and Joe Agosto. These interceptions or these conversations were normally over pay phones. They are replete with the use of code names, for the principals being discussed, ambiguous and elusive references and the use of Sicilian language. And Agosto would report on and sought direction on a variety of topics through this telephonic link and as regarded more important management decisions, personal meetings were arranged or messages were sent through the mail, often to places not outwardly connected with our organization, such as lawyers' offices or by means of couriers.

Chairman NUNN. Did the interceptions also disclose other mob interests in the Las Vegas enterprises?

Mr. OUSELEY. The interceptions provided an inside look, if you will, into the complexities of establishing and maintaining such hidden interests, and this included the fact that this was a joint effort between mob families. Yes.

Chairman NUNN. That it was a joint effort? You mean the Las Vegas connection was a joint effort not just the Kansas City mob, but other mob families?

Mr. OUSELEY. That is correct, Senator. Yes.

Chairman NUNN. Shortly after the conversation referring to Kansas City mob representative Carl "Toughie" DeLuna—I will defer to Mr. Steinberg.

Mr. STEINBERG. Mr. Ouseley, was there anything within the Federal interception concerning an arrangement with Mr. DeLuna and Mr. Glick in Las Vegas?

Mr. OUSELEY. Yes; there was.

Mr. STEINBERG. What was that, sir?

Mr. OUSELEY. At the early stages of our interceptions, sort of, if you will, where we came in on the picture, the plans of the Kansas City organization to obtain a further interest in a location or a corporation known as Argent Corp. which is Mr. Glick, you asked about Mr. Glick, and the impact of this was demonstrated again by a conversation wherein DeLuna, Carl DeLuna, was intercepted recounting to Carl Civella how he had gone out to Las Vegas, personally, and said the following to Mr. Glick:

Do what you got to do, boy, make your public announcement that you are getting out of this for whatever reason you want to pick, and get out.

Then there followed a series of telephone conversations between DeLuna and Agosto wherein they discussed various packages; that is, new ownership groups proposed to take over this Argent Corp. in behalf of the mob and replace Glick.

Chairman NUNN. Shortly after this conversation referring to the Kansas City mob, DeLuna telling Alan Glick to leave the Argent Corp., was Glick actually on the telephone here?

Mr. OUSELEY. No. He wasn't, Senator.

Chairman NUNN. But it was a conversation relating to Glick?

Mr. OUSELEY. Yes.

Chairman NUNN. Shortly after that conversation sending a message to Alan Glick to leave the Argent Corp., did Mr. Glick actually make an announcement that he was leaving that corporation?

Mr. OUSELEY. The following week, Senator, the Las Vegas newspapers reported that Alan Glick announced that he was selling out his interest in the Argent Corp., and we incorporated copies of the article with our affidavits. He made such an announcement.

Chairman NUNN. How long after?

Mr. OUSELEY. The following week. I would say it was within 5 days.

Chairman NUNN. Senator Percy, would you like to ask some questions at this point?

Senator PERCY. I thank you, Mr. Chairman.

I am certainly pleased to welcome Senator Danforth. Any time you would like to interject I will be happy to yield to you.

Was there any evidence in the wiretaps, Mr. Ouseley, that the Chicago and Kansas City organized crime families were involved in a dispute of hidden ownership of Las Vegas casinos?

Mr. OUSELEY. It became clear from our intercepts, Senator, that the negotiations revolving around the Argent Corp., were extensive, complicated, and often devious between the Chicago and Kansas City families and actually resulted in some tension between the two families which necessitated the sending of messages and the setting up of personal meetings. But at the same time, although there may have been some strain, these illegal and hidden interests also required close coordination between the two families and their representatives in Las Vegas.

Senator PERCY. Mr. Chairman, if it is possible for me to yield back to you at this point, I would like to come back.

Chairman NUNN. Fine, any time you want to interrupt.

What was the main source of mob income from Las Vegas, hidden interests as disclosed by the wiretap?

Mr. OUSELEY. It would seem that the main benefit from this hidden interest was the skim money that was obtained by the Kansas City organization and the skim money was unreported casino income that is stolen from the casino. This has also been one of the primary benefits of hidden interests.

Chairman NUNN. Did the wiretaps disclose any evidence of couriers who delivered skim money from Las Vegas casinos to Kansas City mob members?

Mr. OUSELEY. Our intercepts documented that an individual by the name of Carl Caruso, who was at the time a junket organizer for the

Dunes Hotel Casino doing business out of a Kansas City, Mo. office acted as the courier of this skim money from the Tropicana, to his superiors in Kansas City. And through Joe Agosto and key casino employees who were in on the scheme, these moneys were skimmed from the casino—

Chairman NUNN. From which casino?

Mr. OUSELEY. This is from the Tropicana, that we have the documentation.

Chairman NUNN. Even though he worked in the Dunes?

Mr. OUSELEY. Right, exactly. And each month after the skimming was completed, each month it was turned over to Caruso in Las Vegas for delivery to Kansas City.

Chairman NUNN. In the November 26, 1978 meeting to discuss the killing of Carl Spero, was the topic of skimming money from Las Vegas casinos also discussed?

Mr. OUSELEY. Senator, the conversations that we intercepted indicated that actually the meeting had been called by Nick Civella to afford him and his top aides, Carl Civella and Carl DeLuna, the opportunity to sit down with their two principal Las Vegas overseers, and that would have been the aforementioned Joe Agosto and an individual by the name of Carl Thomas, who was then a small casino operator in Las Vegas. Although many topics were discussed at this meeting, the real reason for the get-together was to resolve what was then considered to be an infective and dangerous situation regarding the stealing of casino proceeds from the Tropicana, and to sort of size up their problem, again I will quote from the participants. Joe Agosto characterized what they were doing at the time as "an emergency situation," to which Nick Civella responded, "It's got to be a permanent situation."

Senator PERCY. Mr. Chairman, may I ask this question? Was skim money going to the Chicago mob members and if so, how much money are we talking about?

Mr. OUSELEY. Senator, our interceptions did not reveal that fact or the amounts of money that we documented here is what came to Kansas City. We could not document what went anywhere else.

Chairman NUNN. In that November 26, 1978 meeting, were specific methods of skimming money from Las Vegas casino discussed by Kansas City mob members?

Mr. OUSELEY. This lengthy meeting offered, if you will, a textbook version of how to steal money from a casino. I will go over some of these briefly.

These discussions detailed such methods and alternatives such as stealing money from the casino cash boxes, stealing money from the cashier's cage itself, stealing money from the slot machine operation, stealing money from a sports race book to be set up in the hotel for the very purpose of giving them another tool to steal from, stealing money from the Follies, an entertainment show at the Tropicana.

Not only where to steal from, but how to cover up what they are stealing. They discussed how to cover it up with use of "fill slips." This is a slip placed into the box to cover money that was taken out, the slip being fraudulent. Shortweighting the count on income from the slot machines to cover the theft; and the inherent dangers of each of these systems was discussed intimately.

Beyond that, the key personnel whom you might need to carry out these thefts, to include but not limited to, we need the security chief—quote, “We need the security chief for those who go into the countroom and steal money. We need the cashier in the cage, the employee in charge of the scale,” so that they can short-weight it, the people on the count team who go in and count the money, the comptroller, casino management people. All of these individuals were discussed and the fact that in some cases they had them all.

Also, the possibility that those stealing for the mob were also stealing for themselves was raised and was not the type of situation they wanted to go on and as a matter of interest, this necessitated a discussion of how do we control these people. Mr. Nick Civella indicated: “I am for control of everybody. I would like it be either me or him,” referring to Carl DeLuna, “or my brother, the ultimate controller.” Last, the fact that things have a way of changing in all fields, Carl Thomas summed up the problem by saying, “It is getting, you know, each racket is getting tougher and tougher.”

Chairman NUNN. Did Nick Civella ever tell Joe Agosto, the entertainment director of the Tropicana, and Carl Thomas, an expert skimmer, to cooperate in this skimming?

Mr. OUSELEY. The interception had a quote from Mr. Civella that sized up that situation and part of the reason for the meeting being called: “I am glad you’re all here together to touch on various things we have to touch that there is a compatibility between you two guys and that which I’m damned sure I told you sometime back, we’ll get you here together, you’ll get confirmation for whatever you need. Joe will get confirmation for whatever he needs. We’ll be the responsible ones for you and for him.”

Chairman NUNN. Did the interceptions disclose that Carl Caruso, the skim courier you referred to, was scheduled to come back from Las Vegas in February 1979 with skim money for Kansas City members of the mob?

Mr. OUSELEY. We had extensive intercepted conversations leading up to the fact or establishing the fact that Carl Caruso was scheduled to return from Las Vegas on February 14, 1979, and the importance of this date was that he would be bringing back 2 months’ worth of skim money which the parties referred to as “two sandwiches.”

Chairman NUNN. Two sandwiches?

Mr. OUSELEY. Two sandwiches.

Chairman NUNN. Did that denote an amount or just a method of carrying?

Mr. OUSELEY. That denoted the fact that it was the skim. That is how they referred to the money he was bringing back. Prior conversations, Senator, alluded to the amounts of this skim that it would be 40, 60; those figures were mentioned, indicating the amount per month.

Chairman NUNN. Do you have an estimate, based on your surveillance and analysis of these conversations, of how much money was involved in this skim operation from Las Vegas to Kansas City?

Mr. OUSELEY. I can only say that based on these conversations, the two sandwiches that Mr. Caruso brought back amounted to \$80,000.

Chairman NUNN. What period of time did that cover?

Mr. OUSELEY. That was 2 months; that is the 2-month skim package that we are talking about.

Chairman NUNN. Beyond that, it would just be conjecture as to whether that was an average 2-month take or whether it was more or less. Is that right?

Mr. OUSELEY. We have some indications, as I say, in previous conversations that we could pinpoint as we did in February what a particular month's skim was to be; that figure was mentioned. As to a yearly, they never got into that, but I guess we can extend that figure to say that that was—we can only go by what we intercepted and there are specific figures intercepted for a particular month.

Chairman NUNN. What action did the FBI take with this information?

Mr. OUSELEY. With this date in mind, and the importance of the event of February 14, we took that date as a logical date to take overt action and capitalize on the extensive information that we had developed and we did this by means of obtaining extensive Federal search warrants and executed them, keyed upon the arrival of Carl Caruso when he stepped off that airplane, and we had search warrants for Carl Caruso, Nick Civella, Carl Civella, Carl DeLuna, and five other reputed outfit members and the results were cataloged in our returns and basically include \$240,000 in currency seized, 50 diamonds, 25 rifles, shotguns, and handguns, police scanners, key-cutting machines, key blanks, armored vests, manuscript on silencers, extensive records relating to the various aspects of the organization's operation, and the \$80,000 that Mr. Caruso carried off the airplane.

Chairman NUNN. Did the interceptions disclose some of the present structure and membership of the Kansas City outfit?

Mr. OUSELEY. Yes, it did. These conversations certainly pinpointed the leadership as being Nick Civella as the boss, his two top aides being Carl Civella and Carl DeLuna, the made members which were discussed in that conversation being other members of this organization, which would be William Cammisano, Peter Tamburello and Charles Moretino were mentioned in that conversation, and the intercepts also indicated that the enforcement arm was generally made up of some of those people just mentioned, with the addition of Joseph Agosto, Vincent Abbott, and William Cammisano, Jr., and William Cammisano, Sr.

Chairman NUNN. Did the intercepts disclose who the enforcement arm of the Kansas City outfit are or were?

Mr. OUSELEY. I think I have jumped ahead of your question, but it did, and to repeat it, it was the leadership of course participating, to some extent, and then there are key people who are Joe Raguso, Vince Abbott, William Cammisano, Jr., and William Cammisano, Sr. They were the key personnel being used.

Chairman NUNN. In the *River Quay* case, Mr. Bonadonna, who will be here tomorrow as a Government witness, was there any attempt to discredit him with the testimony?

Mr. OUSELEY. Yes. We set forth in our affidavit here the fact that an individual by the name Michael Rufalo was forced into the witness protection program due to the fact that his life—he had become a marked man for failure, refusing to give perjured testimony in behalf of William Cammisano, Sr., and for refusing to carry out instructions to assist in a gangland killing himself.

Chairman NUNN. Who was that who became the marked man?

Mr. OUSELEY. His name is Michael Rufalo, and he is currently in the witness protection program.

Chairman NUNN. Director Webster said in his testimony that he was opposed to certain provisions of the Stanford-Daley legislation, which would prohibit law enforcement agencies from searching the premises of persons who weren't directly subject to the investigation, and I believe he exempted in his comments the news media from this opposition. Did the Kansas City investigation reveal the use of private persons or offices as a conduit for mob activity?

Mr. OUSELEY. The interceptions and the investigation indicate, for example, the November 26 meeting that we discussed at length was held in a residence in the neighborhood where these individuals lived, but it was a third "innocent party" whose home they used. Our interceptions also took us to a law office in Kansas City, Mo., where Nick Civella obviously sought refuge and protection and conducted his illegal activities and we were able to obtain court authorization to utilize electronic surveillance there.

Chairman NUNN. How about search warrants? Did you get a search warrant?

Mr. OUSELEY. We did not get a search warrant for the law office.

Chairman NUNN. How about any of these other third party places? Did you get a search warrant for any of them?

Mr. OUSELEY. I think your question, why we didn't get the search warrant, is that these were "innocent third parties" and the probable cause standard, the fact that they fit that bill, so to speak, made it very difficult to overcome a showing of sufficient probable cause to get into those houses.

We have reason to believe—not reason to believe, we know and we have documented in the transcripts—that it is standard operating procedure, just as I mentioned, that letters were being sent to locations not outwardly connected with the mob. Lawyers' offices or other individuals, they continually used third persons.

Chairman NUNN. Mr. DeFeo, do you have a view as a strike force chief about the Stanford Daily legislation and the effect that that would have, if it was passed as presently introduced, on law enforcement, particularly efforts against organized crime?

Mr. DeFeo. Senator, I am certain I would have to defer to the department's official position on that. However, in this particular circumstance in the Kansas City searches I can point out that some of the evidence seized, which included, I believe, the armored vests and certain properties stolen from the Government, stolen from the burglary of a Government investigative vehicle, was found in a residence of an innocent third party, to wit, Mr. DeLuna's 82-year-old mother, I believe, and obviously recovery of that vital evidence would have been precluded by restriction on third party searches.

Chairman NUNN. Is this a common kind of practice of organized crime to store certain intimidating goods and evidence in innocent third parties' businesses and homes?

Mr. DeFeo. In my opinion, extremely so. Their whole technique is geared to the techniques of insulating themselves from direct criminal liability, placing as many barriers between themselves and law en-

forcement as possible, and one of the most obvious ways is to use their lawyers as fronts, to use their parents, to use their friends, and to use their victims.

Chairman NUNN. What do you think will be the result if the Stanford Daily legislation did pass as to the effort against organized crime, if it passes without change?

Mr. DEFEO. I would have to say it would preclude searches fruitful in this instance.

Chairman NUNN. This would be damaging?

Mr. DEFEO. In this particular circumstance, it would certainly be the case.

Chairman NUNN. Do you agree with that, Mr. Ouseley?

Mr. OUSELEY. Absolutely, Senator. The whole fabric of the organized crime is secrecy and using third parties and doing things that would not outwardly be connected to them by law enforcement.

Chairman NUNN. Is it possible to be successful in organized criminal investigations without the use of well-placed informants?

Mr. OUSELEY. Senator, it would have been impossible for us to have ever gotten this case started in the initial stages without the information being furnished to us by confidential informants.

The probable cause requirements of electronic surveillance are monumental, as I am sure you are aware, and throughout the investigation their ability to clarify things for us—we would not have been where we are today without confidential informants. They are absolutely necessary in conspiratorial crimes.

Chairman NUNN. The court-ordered wiretaps seem to have been vital to your successful investigation. Is that correct?

Mr. OUSELEY. Absolutely.

Chairman NUNN. Our staff has informed us that the Department of Justice has a policy which limits the so-called emergency provisions of the electronic interception law to only those situations that involve life and death, where the statute itself is not limited in this manner. Is that your understanding of the Justice Department policy?

Mr. OUSELEY. That is correct, Senator.

Chairman NUNN. Were there situations other than actual life and death situations in the Kansas City investigation where emergency interceptions and authorization would have been important?

Mr. OUSELEY. Senator, after 18 months, or whatever that period of time, to extend these electronic surveillances, I couldn't count the number of times where a particular interception made apparent an imminent meeting that would have obviously, because of what we had already heard, we knew the content of what they were going to be discussing, evidentiary; absolutely, there were many instances of meetings such as that.

This is an overt group but we were unable to obtain emergency authority because "it was not life and death" but we had many, many instances of known meetings that we were unable to cover.

Chairman NUNN. How long has that been a Justice Department policy? Do you know the origin of that?

Mr. MCWEENEY. I am privy to exceptions to that departmental policy, most recently in the last 6 months where life-and-death situations were not present, emergency authority was granted concerning high-level organized criminal activity. The cases are still pending.

Mr. Ouseley refers to it in this case. Mr. DeFeo may have knowledge about it. I don't know it to be a hard and fast policy of the Department of Justice. They view serious situations, criminal conspiracy, on high-level organized crime people in the country on a case-by-case basis and I know for the past 6 months, as I said, two exceptions to that rule.

Mr. DeFeo may have more comment on that. He is the Deputy Chief of the strike force.

Chairman NUNN. Is it your understanding that life and death situations is a hard and fast rule, or were you aware there were exceptions, Mr. Ouseley?

Mr. OUSELEY. I was not aware of any exceptions in Kansas City.

Chairman NUNN. That means you haven't asked for any exceptions. Is that right? That means if you had been aware, you might have asked for the exceptions in certain cases; is that correct?

Mr. OUSELEY. I think so; yes. In fact, we applied for and obtained one emergency authority on that second meeting that I discussed that Mr. Civella called, but it was the life and death situation. It was the planning of the murder.

We obtained that, but it had been my understanding as a working agent, that doesn't apply unless it is life or death; and we discounted that as an alternative.

Chairman NUNN. Mr. McWeeney, wouldn't it be good if you had agents like Mr. Ouseley out there on the firing line who knew that in certain situations there were exceptions to this policy? If they don't know, it doesn't do any good to have exceptions; they are not going to ask for it.

Mr. McWEENEY. I think the exceptions are generally in extraordinary areas and I will defer to Mr. DeFeo on that as far as any policy.

Mr. DEFEO. Senator, it is my understanding that it has been the Department's policy in the past. I think that in this investigation, the progress showed that we were acquiring increasing sophistication in the utilization of electronic surveillance.

To my knowledge, we have not previously, for instance, been able to utilize certain techniques involving pay phones that we have been able to in this circumstance. We have not been able to secure authorization for lawyers' offices, which was done in this instance, and therefore I think this is a relatively recent development, as Mr. McWeeney has indicated, and I am certain that it will be communicated.

I think it is simply a situation where the Department has to try to balance the use of the technique and try to keep it within controllable limits and not permit its overuse.

Chairman NUNN. I can understand the difficulty of balance here, and I also understand the importance of it.

I am going to defer to Senator Percy for further questions along this line. While Chief Caron is still here, could you furnish for the record, Chief, to the extent of your ability—I am not asking you to go out and do an independent research paper on this because I know you have more to do than that—but to the extent of your present information, without going into the new study or anything that would take a lot of man-hours, would you furnish for us the best estimate of the monetary losses relating to the River Quay area?

Mr. CARON. I certainly will, sir.

Chairman NUNN. The losses, perhaps also the insurance claims that were made for the bombings which give us some indication of the amount of damage done there and also the overall estimates of how much legitimate business was lost by reason of what the mob did to the River Quay area?

Mr. CARON. I will, certainly. It will take a few days but I will have it delivered to your office as soon as we have it.

[The material referred to, when received, will be retained in the files of the subcommittee.]

Chairman NUNN. Thank you very much.

Senator Percy, I will defer to you at this point.

Senator PERCY. Thank you very much. I would like to say that I fell in love with Kansas City at the Republican Convention there. I had been to Kansas City many times before, but never for an extended period of time, for a week, and it is such a splendid city, I think you all appreciate and recognize that.

Federal redevelopment money went into the River Quay project and you saw the tragedy that happened to this development.

If they could do it in Kansas City, would they be likely to do it in other cities, and do you know whether they have followed that pattern?

Mr. OUSELEY. I have no knowledge of similar cases from my personal experience. The only other thing I could comment on that would be, the type of activity is not uncommon to organized crime moving into a successful area.

Senator PERCY. Part of the objective of this hearing might be to alert other cities, so that when they have a successful project, they have to watch out for it and be sensitive to the slightest indications that illegitimate forces are moving into the development of that project.

Chief Caron, in your testimony you mentioned that legislation must provide the means so that an unrestricted flow of information can be obtained between all levels and departments of law enforcement. We hope you would take into account the vastness of the organized crime network and also the cooperation needed in the arrest and prosecution of individuals who are determined to carry out the deadly missions that organized crime holds dear.

As you know, this subcommittee has been giving attention to the relationship between IRS and the Justice Department and enforcement officials who have maintained that if the rules of the game were the same back in the days of Al Capone as they are today, Al Capone would never have been in prison.

Could any of you comment on what you feel personally should be done to bring IRS into the fight against organized crime? Describe for us, if you can, the difficulty of prosecuting members of organized crime today because of the techniques they use to avoid apprehension. If IRS could be brought back into this structure effectively, would it be possible to prosecute on a network basis, on an obvious standard of living way beyond the legitimate income; would that help jail criminals that can't be gotten for murder, prostitution, all the other illegitimate practices they are in, including narcotics, but who could be prosecuted for income tax evasion?

Mr. CARON. There is no question of it, Senator. They are acquiring wealth and success by using the law, by using accountants, lawyers,

what have you. We in turn must combat that type of activity with the same type of people and the same resources.

We are now in the position of an IRS agent being aware of criminal information relating to some organized crime subject and he can't share it with local police. As we said earlier, we are in the position of the local police developing information, turning it over to the Federal people, having this information pursued and discussed in a Federal grand jury, yet that very grand jury information is barred from local police. Those things have to be changed.

We must begin to share that information with the local, Federal, and State agencies if we are going to make any success, because that is at the levels that they operate and, as I said earlier, anyone that tells you that we are winning the war against organized crime or drug trafficking is not being very candid.

I said in Kansas City that we have begun to see the end of losing the battle. That is a far cry from winning it, but we are turning the corner and we are doing it because we are working with Mike DeFeo and Bill Ouseley, and we meet very frequently and we target in on certain people, but we are inhibited quite a bit because we do not have access to some of that information.

It is very important. It is crucial to the success of the war against organized crime.

Senator PERCY. Mr. DeFeo, would you want to comment on the need for IRS involvement?

Mr. DEFeo. I certainly would second Chief Carson's remarks. In addition, I might remark that earlier in the historical presentation of the history of the city and the organized crime problem, I pointed out how historically it corrupted political leaders, and its organized crime leaders have historically all fallen to various forms of the tax laws, Pendergast, Carrollo, people of that nature.

That is not happening any more and we are not likely to see it again until the interchange of information is radically restructured.

Senator PERCY. Mr. Ouseley?

Mr. OUSELEY. I would only add, Senator, that if we can all work together, all the agencies, free flow of information is a powerful tool.

Senator PERCY. Thank you very much. The wiretap statute requires the Government to list all prior interceptions involving the same individuals since, as in the Kansas City case, your wiretaps disclosed criminal activities in other areas such as Las Vegas and Chicago.

Is there a danger that the listing of other intercepts in the public court papers will disclose other secret FBI investigations?

Mr. OUSELEY. I can only say that this case is probably typical of the type of cases we are getting into, multijurisdictional cases, and one case is dependent upon the other. The fact that we do have to list prior interceptions makes it very difficult to, for one office possibly working a case, to reveal their affidavits without affecting a case in another jurisdiction and at times, these have to remain sealed for probably a longer time than would be necessary, holding up investigation and various other problems.

Senator PERCY. What types of places did you wiretap to record discussions with the Kansas City mob?

Mr. OUSELEY. Our wiretaps that we have authority for and listed in these affidavits include automobiles, two restaurants, social club,

private residences, pay telephones, and hotels; microphone and coverage and telephone taps of a law office; I think that is the shopping list.

Senator PERCY. They were never detected at any time?

Mr. OUSELEY. No. We have no information that these were detected.

Senator PERCY. I can think of some people that could have used you back a few years ago. A case called Watergate. [Laughter.]

What kind of manpower is needed to conduct an investigation like this?

Mr. OUSELEY. The conducting of a physical, electronic surveillance requires massive commitment of manpower to man these installations, install them, man them, maintain them, transcribe, type, and conduct an ongoing investigation at the same time to capitalize on the information as it comes off the wires, so to speak. It is all-consuming at the time and you can do nothing else and it takes a tremendous amount of manpower prior, during, and after.

Senator PERCY. Did the investigation disclose any evidence of Nick Civella using the Teamsters to gain a foothold in Las Vegas?

Mr. OUSELEY. Senator, our affidavit sets forth information to the effect that Nick Civella's ability to control the Central States pension fund loan was key to their obtaining an interest in the Tropicana Hotel.

Senator PERCY. Could you disclose which Teamster organization is involved?

Mr. OUSELEY. It would have been the, that would have been the Central States Conference and their pension and welfare end of the Central States Conference of Teamsters.

Senator PERCY. Where is that located?

Mr. OUSELEY. Chicago, Ill.

Senator PERCY. You stated that the Kansas City mob told Alan Glick to leave the Argent Corp. Who was to take over the Argent Corp.

Mr. OUSELEY. As I mentioned previously, the packages that were being proposed during our intercepts by both the Kansas City group and the Chicago group involved individuals who they were putting up front to buy ownership which included a Las Vegas individual by the name of Jay Brown, who is an attorney, a female who was at the time a principal owner of the Tropicana. Missy Briggs was another package they presented. The landlords of the Tropicana Hotel, two brothers, Las Vegas residents, were also trying to buy into the hotel and our wiretap identified that one group that was being brought as prospective buyers was being sponsored by Alan Dorfman of Chicago.

Senator PERCY. Alan Dorfman is a name quite familiar to this subcommittee. Did he represent Chicago interests?

Mr. OUSELEY. The intercepts indicated that he was tied up in these negotiations on behalf of the Chicago criminal organization.

Senator PERCY. Were there any discussions by Kansas City outfit members concerning the amount of money this Las Vegas hidden interest was worth to them?

Mr. OUSELEY. The amounts of money that are involved come to us from different avenues. One was, of course, the amounts of skim that we discussed. That was certainly one area. The expectation of money

also was documented in a conference wherein Joseph Agosto was indicating a scheme to steal \$1 million from the show, the entertainment show at one hotel and half a million dollars from the entertainment show at the Tropicana, to which Nick Civella stated derisively, "You mean that is a lot of money?"

The indications are that the expectations of what was coming out of their hidden interest was substantial.

Senator PERCY. Did the Kansas City mob and the Chicago mob propose different package, or hidden ownership of the Argent Corp.?

Mr. OUSELEY. Yes. These are the packages that I discussed just prior. These were negotiations that were going on as to new ownership. I think I named some of those people.

Senator PERCY. Did Nick Civella want a certain representative of the Chicago interest out of the Stardust so that the Kansas City interest could be better served?

Mr. OUSELEY. Excuse me. I don't think I got the full question.

Senator PERCY. Would you like the question repeated?

Mr. OUSELEY. Yes.

Senator PERCY. Did Nick Civella want a certain representative of the Chicago interest out of the Stardust so that Kansas City interests could be better served?

Mr. OUSELEY. I see, the Stardust. The intercepts at that particular time revealed the fact that there was an individual at the Stardust holding a similar position of entertainment director by the name of Frank "Lefty" Rosenthal.

Apparently—well, not apparently. Our conversations indicated that this was a soft point and that in any negotiations, Kansas City wanted him removed as part of their plan.

Senator PERCY. Did Lefty Rosenthal remain in his position?

Mr. OUSELEY. He remained in his position for the entire duration of our electronic surveillance. I don't know what transpired since February 1979.

Senator PERCY. Were there discussions concerning the fact that neither the Chicago representative nor the Kansas City representative could make any agreement until they cleared it with Chicago and Kansas City?

Mr. OUSELEY. We have on that point numerous conversations wherein, as part of instructions flowing from Kansas City organized crime representatives to Joe Agosto, he was told in no uncertain terms that he was not to enter into any negotiations or discussion of these packages or anything else until he had received prior approval from his people, referring to Kansas City.

Senator PERCY. Were there discussions concerning how Joe Aiuppa from Chicago respected Nick Civella from Kansas City and didn't like the tense situation between the Chicago and Kansas City mobs?

Mr. OUSELEY. I don't know if I can find that exact quote, but we had an interception during this period of time when there were tense negotiations and sensitive negotiations wherein Mr. Agosto reported to DeLuna that a comment was made by Joey Aiuppa to the effect that he had great respect for Civella and was upset with the tenseness of this situation.

Senator PERCY. Was there a conversation about the fact that L. Roy Rosenthal's potential licensing problems with the Nevada Gaming and Control Board would jeopardize the mob's financial interests?

Mr. OUSELEY. We did have such interceptions and that was a factor. They felt it was a dangerous factor and I think led to their desire to have him out.

Senator PERCY. Did Nick Civella discuss obtaining insight or information to be used in obtaining stock of Las Vegas casinos?

Mr. OUSELEY. The insider stock situation resulted from the fact that the Tropicana Hotel had designed a merger with a publicly traded corporation in order to get itself on the stock market quickly and be able to issue stock. The timing and the manipulations of how this was being done was documented in our conversations and Agosto continually was told to keep them abreast of this situation so that they could capitalize on it to the fullest amount of their inside situation.

Senator PERCY. Did Nick Civella ever discuss the problem of stealing from the slot machines as opposed to stealing cash?

Mr. OUSELEY. I would have to say on that, the topic, yes, the topic of stealing from the slot machines was discussed as being one of the best ways to go. However, comically, they were trying to determine how a person can physically carry that much money out of the casino.

It weighs a lot, money, and it would take 50 guys in a chain, he said, to take it out, at which point he was advised that that is why they had to set up a separate bank for the slots and steal the money, not the coins.

Senator PERCY. Did the interception disclose that a Chicago representative attended a meeting in Kansas City with Nick Civella to discuss the problem between Kansas City and Chicago and, if so, who was that person?

Mr. OUSELEY. The negotiations that we discussed and the problems therein resulted in a fact of calling a meeting; a representative from Chicago did come down to meet with Nick Civella.

The results of that meeting were reported. Subsequently, we picked it up on our interceptions and that person who came down is identified as Jackie Cerone, a known member of the organization.

Senator PERCY. Did Nick Civella then go to Chicago to meet with Joe Aiuppa?

Mr. OUSELEY. The intercepts indicate that Nick Civella did in fact travel to Chicago and met with Joe Aiuppa.

Senator PERCY. Mr. Chairman, perhaps you would want to ask questions relating to tomorrow's testimony, providing background for it.

Chairman NUNN. Just one other question. You mentioned a little while ago in your testimony, I didn't know whether it was very often or occasionally that there was use of the Sicilian language to disguise plans. Did I misunderstand you?

Mr. OUSELEY. No. The intercepts are replete with use of Sicilian language, from small phrases to full conversations.

Chairman NUNN. Is that to throw anybody off who might be listening in or is that the normal pattern of conversation of these particular individuals?

Mr. OUSELEY. Senator, I would guess that it was used as a security measure as with other codes, but we have Sicilian-speaking agents.

Chairman NUNN. Thank you very much.

Senator Percy, do you have any further questions?

Senator PERCY. Just one last question. Have you reviewed the statement of our witness for tomorrow, Mr. Bonadonna and, if so, in your estimation is it accurate?

Mr. OUSELEY. I have reviewed the statement and I find it to be accurate and correct.

Senator PERCY. Thank you, Mr. Chairman.

Chairman NUNN. Thank you very much. You have all been enormously helpful. We appreciate your patience in a rather long hearing, but I can assure you that on behalf of the subcommittee, we are all very thankful for the splendid cooperation we have had from both the FBI and the Justice Department.

Chief, we appreciate your being here. We appreciate your capable assistant being here and we hope you will express our appreciation to all of the men on your force. We look forward to working with you.

I assure you we will take into strong consideration the suggestions you made about legislation that would accelerate and increase the interchange of information between Federal and State and local law enforcement.

Mr. CARON. Thank you, sir.

Chairman NUNN. Our witnesses tomorrow will be Mr. Harvey Bonadonna, businessman, who was the target of mob violence, under the witness protection program. We will also hear from Mr. William Cammisano, of Kansas City, member of the mob as it has been identified here today. We do not know the extent of his testimony at this time, but we will be calling him tomorrow.

We will be in room number 1202 tomorrow. We will begin at 10 o'clock. The subcommittee stands in recess.

[Whereupon, at 1:15 p.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, May 1, 1980.]

[Members of the subcommittee present at time of recess: Senators Nunn and Percy.]

ORGANIZED CRIME AND USE OF VIOLENCE

THURSDAY, MAY 1, 1980

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

The subcommittee met at 10 a.m., pursuant to recess, in room 1202, Dirksen Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. Sam Nunn (chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; Senator Thomas F. Eagleton, Democrat, Missouri; Senator Lawton Chiles, Democrat, Florida; Senator James R. Sasser, Democrat, Tennessee; Senator Charles H. Percy, Republican, Illinois; and Senator John C. Danforth, Republican, Missouri.

Members of the professional staff present: Marty Steinberg, chief counsel; W. P. Goodwin, Jr., staff director; Michael Levin, deputy chief counsel; Peter Sullivan, assistant counsel; Jack Key, Raymond Maria, William Colombell, Raymond Worsham, and Donald Zell, investigators; Myra Crase, chief clerk; Mary Donohue, assistant chief clerk; Joseph G. Block, chief counsel to the minority; Charles Berk, general counsel to the minority; Howard Marks, Howard Shapiro, and Richard Shapiro, investigators to the minority; Lynn Lerish, executive assistant to the minority; Ira Shapiro, chief counsel, Governmental Efficiency and District of Columbia Subcommittee; Peter Levine, general counsel, Intergovernmental Relations Subcommittee; Janet Studley, counsel, Federal Spending Practices and Open Government Subcommittee; and Alan Bennett, counsel to the minority, Governmental Affairs Committee.

Chairman NUNN. The subcommittee will come to order.

[Members of the subcommittee present at time of reconvening: Senator Nunn.]

Chairman NUNN. Before we begin this morning, I want to say something to the news media representatives who are with us today.

Our first witness today is Mr. Bonadonna, a businessman who formerly lived in Kansas City, Mo. As a result of the situation involving the River Quay in Kansas City—about which we heard a great deal yesterday—Mr. Bonadonna volunteered to join the Federal witness protection program.

Mr. Bonadonna now lives in a different locale under a new identity. The people in his new hometown know nothing of his true identity.

Threats have been made against Mr. Bonadonna and his relatives if he testifies publicly about organized crime in Kansas City. Obviously, the Kansas City mob knows what Mr. Bonadonna looks like, but they do not know where Mr. Bonadonna lives.

Should a photograph of Mr. Bonadonna appear on television or in the newspapers in his new hometown, it would greatly increase the chances of mobsters finding him or his family and doing harm to them.

In light of the threats to his life, Mr. Bonadonna has requested that no television, motion picture or other cameras photograph him during this testimony. In accordance with the subcommittee's rules of procedure, without objection, we are granting his request.

Mr. Bonadonna is now sitting before us with a screen behind his back in order to protect his identity. In addition, no television or other photographs will be permitted of him during this session, although cameras can televise or photograph the proceedings from the other side of the screen.

But that is not enough.

Two years ago we received testimony from another relocated, protected witness. At his request, we prohibited photographs of him during those hearings. However, some newspapers ran file photos—and I believe also some television—ran file photos of him. Anyone in his new hometown who saw those photographs could have identified that witness.

We had information that a mob contract was out on the witness' life. That contract has not been carried out, but I can tell you that those file photographs greatly increased the chances of the mob's discovering the witness' whereabouts.

In order to avoid a repeat of that situation, representatives of the subcommittee and the FBI have contacted the wire services and some newspapers and requested that they refrain from releasing or using any file photographs of Mr. Bonadonna.

I repeat that request to everyone representing the news media here today. I sincerely hope that the news media will exercise their own good judgment and not run any photographs of Mr. Bonadonna.

At the completion of Mr. Bonadonna's testimony, this room will be cleared of all unauthorized personnel so that he can leave the chamber. Before he leaves the chamber, I will ask that all the cameras, although they can remain here, be turned to the rear of the room.

As soon as he has departed, we will resume the public hearing.

Mr. Bonadonna has an extraordinary story to tell about how organized crime violence has affected him, his family, and his businesses. He is appearing here voluntarily and without any preconditions except the security arrangements I have already mentioned. And I think the subcommittee shares that, that his requests are both understandable and reasonable.

Mr. Bonadonna, on behalf of the subcommittee, I want to welcome you and to commend you on your courage in sharing your story with us, which may help curb the growth of organized crime in this country.

We appreciate your being here. We usually ask our witnesses to stand and take the oath. I will permit you to remain seated, if you will raise 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. BONADONNA. I do.

**TESTIMONY OF F. HARVEY BONADONNA, ACCOMPANIED BY
WILLIAM OUSELEY, SPECIAL AGENT, KANSAS CITY FIELD
OFFICE, FEDERAL BUREAU OF INVESTIGATION**

Chairman NUNN. Before we begin your prepared statement, I want to ask you just a few preliminary questions.

[At this point, Senators Percy and Eagleton entered the hearing room.]

Chairman NUNN. Did you personally receive threats when you agreed to testify for the Justice Department?

Mr. BONADONNA. Yes, Mr. Chairman, I did.

Chairman NUNN. Did you receive threats at that time against members of your family?

Mr. BONADONNA. Yes, Mr. Chairman, I did.

Chairman NUNN. Is it a fact that various members of your family have been injured or killed as a result of those threats?

Mr. BONADONNA. Yes; I did have deaths in my family because of those threats.

Chairman NUNN. Since it has become known that you would appear before the subcommittee today and give testimony against the Kansas City mob, have you received any additional threats concerning you or your family?

Mr. BONADONNA. Yes, Mr. Chairman, I have.

Chairman NUNN. Mr. Ouseley, you are here this morning, and you testified before us yesterday. Has the FBI confirmed or verified the existence of the recent threat to Mr. Bonadonna's family?

Mr. OUSELEY. Mr. Chairman, I have personal knowledge that these threats have been made and are in existence. Yes.

Chairman NUNN. Is it your opinion that there is a real danger to Mr. Bonadonna and his family?

Mr. OUSELEY. Mr. Chairman, from everything that I know and my experience over the years and in this case particularly there is a definite and real danger to his life and his family.

Chairman NUNN. I want to make it unmistakably clear to the Kansas City mob or to anyone else that if any harm comes to Mr. Bonadonna or his family or his relatives wherever they may be located because of his testimony and cooperation with this subcommittee, that we will insist to the greatest extent of our power that the full power and force of the U.S. Government be brought to bear to see that they are brought to justice.

I also want to once again repeat my earlier requests to the news media that they not run any photographs of Mr. Bonadonna. None of us knows where Mr. Bonadonna lives under his new identity but there is something we do know.

If a photograph of him appears in his new hometown or on television, where his fellow citizens know nothing of his background, the chances of harm coming to him or members of his family are greatly increased.

Senator PERCY. Mr. Chairman, I should like to indicate at the outset that yesterday I put the question to FBI Agent Ouseley as to whether or not he read Mr. Bonadonna's testimony and whether he considered it authentic. The answer was affirmative from Agent Ouseley. We very much appreciate your appearance here, Mr. Bonadonna, and speaking in behalf of the minority members of this subcommittee, I can assure you we stand fully in support of every statement made and every request made of the news media by the chairman.

Mr. BONADONNA. Thank you, Senator.

Chairman NUNN. I know you have an opening statement here and I would encourage you to take your time, to have a glass of water any time you want it. You have water there before you. If you want to talk to Mr. Ouseley about any part of the statement or questions, you are welcome to do that. If you need any kind of break, if you will give us a signal, we will try to accommodate you. You proceed at your own pace. We are delighted to have you here and I repeat we admire your fortitude and courage in cooperating with both law enforcement and with this subcommittee.

Mr. BONADONNA. Thank you, Senator. My name is F. Harvey Bonadonna. I have been jointly interviewed by Jack Key and Marty Steinberg of the Senate Permanent Subcommittee on Investigations. I have voluntarily agreed to make the following statement. No promises or threats have been made to obtain my testimony.

Prior to my relocation and new identity as a result of being placed in the witness protection program, I was a life-long resident of Kansas City, Mo.

Chairman NUNN. Mr. Bonadonna, I didn't intend to interrupt you this quickly. We have a vote up there. I believe it might make more sense for us to go vote and come back before you read your statement. Senator Percy, do you agree with that?

Senator PERCY. Yes.

Chairman NUNN. So we will be back in approximately 10 minutes. The hearing will be in temporary recess.

[Brief recess.]

[Members of the subcommittee present at time of recess: Senators Nunn, Percy, and Eagleton.]

[Member present after the taking of a brief recess: Senator Nunn.]

Chairman NUNN. We had two votes on the floor and that is the reason we were delayed. Mr. Bonadonna, you had just started your statement and we will ask you to continue at this point.

Mr. BONADONNA. All right, Mr. Chairman.

Upon growing up in Kansas City, I quickly learned about the Mafia, or the "outfit," as it is referred to in Kansas City. When I was approximately 10 years old, I realized that my own father, David Bonadonna, was a member of the outfit. He worked for the old-line outfit leader—Charles Binaggio. I was present on many occasions when my father met with outfit leaders in restaurants, bakeries and other businesses to discuss business. During this period of time, in my early years, Nick and Carl Civella and Willie and Joe Cammisano were "young Turks" on the rise to power in the outfit.

During my formative years, my father attempted to isolate his children from the activities of the outfit. He became extremely secretive and attempted to separate his family from his business.

In 1950, Charles Binaggio and Charles Gargotta were shot to death in Kansas City. After this time, Nick Civella rose to be the leader of the outfit. Since my father had been loyal to the old outfit chief-tain, Charles Binaggio, he was held in disfavor with the Civellas and Cammisanos who rose to power.

One of the first memories I have concerning my realization about the outfit is that, upon the killing of Charles Binaggio and Charles Gargotta, my father actually locked us kids up in the house for 2 weeks and wouldn't let us go outside. He feared more violence from the young Turks against the old order outfit families. My father told me that Nick Civella and Willie Cammisano and others were respon-sible for these murders.

As I grew older, I realized more and more what the outfit did. Although I was kept out of the criminal activity by my father, I ob-served his activities on behalf of the outfit.

Years after the Binaggio murder, my father began working with Willie Cammisano, an outfit member right under Nick Civella. My father assisted Cammisano in legal businesses and illegal outfit activities.

Personally, the only conviction I have occurred when I was 17 years old while in the U.S. Air Force. I was charged with violation of the Dyer Act—auto theft. The matter was fully resolved at the time and I have received a Presidential pardon.

In the 1960's, I went into the bar and restaurant business. I opened a place called "Mr. B's" which was a successful operation.

In 1972, I was shown the River Quay redevelopment area of Kansas City. I fell in love with it immediately. The River Quay was a rede-velopment project down near the river where old historic buildings were being refurbished in an attempt to construct an "old town" atmosphere. I understand that Alexandria, Va., has a similar area.

In fact, I visited it the other night. It is very nice.

I liked the idea and immediately sought out a location to lease. I also became a charter member of the River Quay Businessmen's Associa-tion, vice president of Market Area Businessmen's Association, presi-dent of River Quay Bar and Restaurant Association, and member of Mayor's Corps of Progress. Our objective was to develop the River Quay area, renovate the old buildings and establish a quaint family entertainment area.

The city's response was excellent. The idea really caught fire and was supported and nurtured by citizens and city officials. Substantial city services and public projects were geared toward the River Quay area.

When I first talked about opening up a place in River Quay, my father's "associates" laughed at me. Carl "Cork" Civella and Willie and Joe Cammisano told me I was a fool to take a chance on the area.

However, in 1972, 1973, and 1974 the River Quay boomed. Many restaurants, boutiques, shops, bars, et cetera, opened there. The city ran a shuttle service from the Crown Center—a hotel in downtown Kansas City and shopping complex—to the River Quay.

In 1974, when it was clear that the River Quay was a viable economic and social force in the city, I received a visit from Joe Cammisano, Willie's brother. Joe visited my place of business and told me that he

initially thought I was a fool to invest in the River Quay project. He told me that the River Quay used to be a red light district with seedy bars and prostitutes, and that if he came down there, he'd like to make it like it used to be. I told him that the River Quay Association had taken great pains to make it a family entertainment area and that we didn't want that kind of element in the area.

I knew from personal knowledge and from conversations with my father that the Cammisanos operated go-go joints and afterhour—the word “joints” we use as bars—and clubs all over the Kansas City area which were hangouts for “outfit” members and associates. Joe Cammisano and his family ran some bars which had a heavy concentration of prostitutes in the 12th Street area of Kansas City. I felt if Joe and Willie Cammisano came into the River Quay area, they would ruin it.

My fears were correct because shortly after this conversation, Joe and Willie Cammisano wanted to open a bar in the River Quay called the “Fabulous Forties.” I don't think that Willie was part of that at that time, but I think Joe was the owner.

Chairman NUNN. Should we scratch the word “Willie Cammisano” there?

Mr. BONADONNA. Yes.

To attempt to open any place in the River Quay, there were a couple of hurdles to overcome. First, the developer from New Orleans, Joe Canizaro, was very instrumental in obtaining property to lease in the River Quay area. Second, before a bar could be opened, the support of adjoining landowners was necessary.

At this point in time, my father talked with me. He told me that Willie and Joe Cammisano wanted a bar in the River Quay area. I told my father of my objections, but my father reminded me of Willie's position with the “outfit” and told me I had no choice but to help them. My father told me that I would have to go to the developer, Canizaro, on the Cammisanos' behalf and also try to help them petition to let them in. My father told me that the Cammisanos felt that I was one of the more influential businessmen in the River Quay project and I could help them.

My father was working for Willie Cammisano and the “outfit” at this time. I felt I owed something to him. Also, I was aware of Willie Cammisano's violent nature.

I remembered Frankie Pace's killing. My father was initially arrested for it and released. My father told me that Willie killed Pace because Pace had insulted one of Willie's brothers. I also remembered Willie killing a black man in my uncle's store—I called him uncle—in my uncle's store when I was about 16 years old. They had padded this black man's bill and he was arguing about it. Willie Cammisano overheard the argument and he and others present killed the black man.

Also, when I was growing up and Willie was a frequent visitor to my home, I overheard Willie talking to my father about murders. He told my father how he had switched guns when they shot the black man.

I also overheard Willie and my father discuss the murders of Nick Ergovich and an unidentified black man, who were all killed by or for Willie Cammisano in various disputes. Willie's reputation was unquestioned in the “outfit” and in the Kansas City area.

Chairman NUNN. Let me ask you one question there. On the murder of the black man in your uncle's store, when you were 16 years old, did you actually witness that?

Mr. BONADONNA. No, Mr. Chairman, I didn't actually witness it. What happened, I went there to get some money from my uncle because I had a date. It was a weekend night and he usually gave me \$5 or \$6 to go out on dates. This black man came into the place of business and he was arguing about them padding his tab and the black man left and then he came back with a weapon and as soon as he walked in the door, my uncle told me to get out of there. As I was running down the street, I heard an eruption of gunfire and from later instances and conversations that I was witness to, they had shot the black man with a machinegun and he had 10 or 12 or 15 45-caliber machinegun slugs in him, 32-caliber slugs in him, and 30-caliber ammunition in him. Then what they did after they shot the man—he was dead; they were afraid they might get caught with the machinegun—they shot the back wall of the store with the machinegun and took the pistol out of the black man's hand and emptied the pistol into the black man on the floor to look like it was this black man's machinegun and he was defending himself.

Chairman NUNN. All right; thank you. Go ahead.

Mr. BONADONNA. My father brought up each of these murders committed by or at the direction of Willie Cammisano each time I objected to supporting Cammisano's objectives in the River Quay.

My position was not good. On one hand, I was worried about Willie's reputation and violent tendencies and my father's position, and on the other hand, I was worried about this successful redevelopment project that I and hundreds of others had contributed so much to.

I decided to meet Mr. Canizaro, the developer, in private, to tell him that I was against the Cammisano's coming into the area but that publicly I would have to appear to favor it.

After my private talk with Mr. Canizaro, I had to accompany Joe Cammisano and others to Mr. Canizaro's office to publicly support the Cammisanos' effort to open their bar.

I had been called by my father from Willie Cammisano's garage and instructed to take Joe Cammisano to Mr. Canizaro and vouch for him. I knew my father was working for Willie and I felt I had to publicly support the Cammisanos even though I was against it. My father also told me to take a petition around to obtain an exemption for the Cammisanos from the licensing moratorium. In the background, I heard Willie tell my father, "Make him do this and that and have the papers signed."

Thereafter, I personally took the petition around and obtained signatures of various River Quay businessmen. I gave the petition to Joe Cammisano. I also went down to Willie's garage and told Willie that I had gotten the petition signed. Willie thanked me for helping his brother, Joe.

For some reason I still don't understand, Joe didn't like the first petition and tore it up and circulated another one. I signed this one also. I felt I had to sign these petitions and assist the Cammisanos to protect my family.

The Cammisanos started renovating a place to open the Fabulous Forties but sold it before it opened.

At this time in 1975, I was becoming more and more involved in civic and political activities. The River Quay was a success in every sense of the word. I became an officer in the Market Area Businessmen's Association. Our purpose was to combine the ideas and talents of businessmen, civic leaders, and politicians to the betterment of the River Quay area.

Sometime in 1975, my father told me that the Cammisanos again wanted to open a bar in the River Quay. Remembering my past experience and having knowledge of a dispute over licensing on X-rated theaters, I told my father that Willie should hurry up and apply for his license because we would be voting on a moratorium shortly. A short time later, my father told me that Willie and Joe had a commitment for a license and there was no concern over the moratorium.

Chairman NUNN. Let me ask you one question there.

When you say, "We would be voting on the moratorium," what position did you hold? Were you in the River Quay Businessmen's Association?

Mr. BONADONNA. I was vice president of the Market Area Businessmen's Association which was a group of civic leaders in the area; the good people like other gentlemen, Webb Townley, who is the owner of Century Hardware, and a Kansas City Power & Light representative. We also had a railroad representative and a representative of the city. It was a group of businessmen that were trying to stop the licensing, keep out the criminal element, keep prostitution down, and try to make it like an area of Alexandria, Va.

Chairman NUNN. When you say "we vote," does that mean you vote in the form of a recommendation to the city council, or did you have the authority actually to keep out X-rated?

Mr. BONADONNA. No. We were trying to get that authority. What we did is for many months we held meetings of the Market Area Businessmen's Association, and we voted on a moratorium to submit to the city.

Chairman NUNN. The city would have the final word. You were in the form of a businessmen's group who were going to advise the city council. When you say "we vote," you mean you were voting—

Mr. BONADONNA. No. The Market Area Businessmen's Association was only acting in an advisory capacity.

Chairman NUNN. You were not on the city council?

Mr. BONADONNA. No, sir.

[At this point Senators Percy and Eagleton entered the hearing room.]

Mr. BONADONNA. Subsequently, the city council proposed a moratorium on additional bars and X-rated theaters in the River Quay. I had spent a lot of time and energy working with the Market Area Businessmen's Association and city leaders for the moratorium and obtaining support for it.

While the moratorium was pending, the director of liquor control refused to act upon Joe Commisano's pending liquor license application as well as the license for the X-rated theaters. I and the Cammisanos had thought that Joe's license problems had been handled and were surprised to learn of this problem.

My father called me and told me that Willie was mad and wanted me to get them a license. I told my father that I had given them an early warning and thought they took care of it. I said I couldn't go back on the moratorium now after being so heavily involved in supporting it. My father told me that Willie thought I blocked the license and felt I was responsible. My father told me that it was important for me to make Willie think I was doing their bidding. I told my father that I didn't want to do it; that I felt that if they got a toehold, they would bring in prostitutes, pornography, and the criminal element. My father told me I had no choice.

My father reminded me of all the murders Willie committed. He told me Willie was ruthless and even had his own son-in-law murdered. I knew both from my father and others that Willie was called "Willie the Rat" because he killed people and stuck them in sewers so the rats could eat them and dispose of the bodies. My father began to become more and more open about the outfit. He told me that the outfit was run by Nick Civella and that Willie was a key member. My father told me I couldn't fight the outfit. My father told me that he was a member under Charles Binaggio and after Binaggio was killed, my father was told to cease all operations or be killed. Since 1950, my father stayed dormant until he began working for Willie Cammisano. My father said that the Kansas City outfit was part of a nationwide organization that had people everywhere. My father told me that they could get their New Orleans people to force the developer, Mr. Canizaro, to knuckle under also.

He told me that the outfit controlled gambling, prostitution, loan-sharking, the Teamsters Union, casinos in Las Vegas, fencing of stolen property, and financed burglary throughout the United States. He told me that the outfit already had a number of River Quay merchants in their pockets as a result of juice loans and gambling debts.

Chairman NUNN. What do you mean by a juice loan?

Mr. BONADONNA. They would get people who were in business that were struggling and needed money, or they would have—they would lure them into a gambling situation where they would lose a lot of money, and then they would give them, loan them some money, say \$10,000, and what they would do is charge them like 5 percent a week on that money.

The 5 percent could never be taken off the initial \$10,000. They would have to pay the 5 percent and if they could pay it off, pay the whole \$10,000 off at one time, but they would pay 5 percent a week on all of the money they borrowed from the outfit.

He told me that I had to do what they wanted because they'd get to my family to force me to do it. My father said that these weren't people to fool around with. He said he'd see what he could do.

A couple of days later, my father talked to me. He told me that Willie was very upset with me and that I could get us, dad and myself, killed. He said that Willie said I had the influence to take care of it but I wouldn't help them. My father told me that if I helped them, Willie would assure me that there would be no prostitutes or similar activity.

Shortly after this, my father and I went to Joe Cammisano's place to discuss the matter. Before we could even get a word out, Joe started

cursing me and telling me that I would get people killed over this. Joe accused me of trying to keep him out of business.

My father told Joe that we were there to straighten things out and that I would help the Cammisanos get their liquor license on one condition, that they wouldn't run go-go girls or prostitutes in the River Quay area.

Joe gave his word that there would be no prostitutes. He also told me to just leave these political things alone from now on or someone could get hurt.

After this, my father and I went back to Willie and told him we'd get the liquor license and reminded him of the promise about the prostitutes.

I then went to the city council, and the liquor control department to plead with them to ease the proposed moratorium so Joe could get his license. Despite the fact that these people wanted the moratorium and I had been one of the prime movers for it, I was instrumental in easing the moratorium for Joe.

My friends realized what a predicament I was in and came to my aid. My actions not only aided Joe Cammisano in obtaining a liquor license, but also resulted in the licensing of an X-rated theater which was opposed by all in the River Quay and was a highly emotional issue. However, the only legal maneuver available to obtain a liquor license was for Joe Cammisano was to exempt all pending licenses from the proposed moratorium.

Senator, I could clarify something here at this point. Joe Cammisano actually never had a license issued him in his name. His licensing was through his wife because he was not qualified for a license. When I use the word Joe Cammisano, I mean——

Chairman NUNN. You mean his wife?

Mr. BONADONNA. I mean his wife or family, Cammisano family business.

I told Willie what I had done for him. At that time he told me to get out of politics and quit all of the civic organizations and quit being such a leader in the community. He told me to just take care of myself and leave everything else alone.

Willie then made a phone call to Carl Civella. I overheard him tell Carl that he, Willie, had already told me to get out of politics and civic matters. Willie said I was getting too well known and politically powerful and I should stay out of their way.

After the moratorium was watered down to exempt pending applications and Joe got his license, my father told me to call Willie and tell him. I called Willie and told him that Joe's license was kicked loose. Willie then asked me to get him a copy of the petition seeking the moratorium so he could see the names of all the people who blocked their effort to get into River Quay.

Apparently, after their license was blocked, a lot of businessmen claimed to have nothing to do with it out of fear of Willie. Willie was going to check the names on the moratorium petition to see who lied to him.

I obtained the petition and gave it to Willie. Willie took the names off the petition of those people who had lied to him about signing it. I didn't know what he was going to do to them, but I was afraid for

them. My father and Joe Cammisano were present and I told Willie that Joe threatened to kill us. I told Willie that I did what I did for them because of my father. Willie told me not to get excited and everything would be OK now.

Willie told me to take my father's advice and not to interfere with the outfit any more.

Not too long after this, I came to work to find a huge signboard of a scantily clad woman over Joe's bar and a sign saying, "Girls, Girls, Girls." I was furious, as was the membership of the Market Area Businessmen's Association. This meant that Willie and Joe were going back on their word and were going to run go-go girls and prostitutes.

My father and I went down to see Willie. I told Willie that both he and Joe had promised not to run prostitutes in River Quay. Willie said he'd take care of it.

About 1 to 2 weeks later, my father came to my place of business. He told me that they, the Cammisanos, didn't believe me about my helping to get their license. My father said that they thought I fooled them. He told me that someone else was taking credit for getting the license kicked loose.

He told me I had better take precautions against them and watch myself. He also told me that he and Willie were having a falling out over this and I could get him killed.

My father and I went to see Willie again. I told Willie that I did everything I could to help them. Willie told me that I lied to them and that my father and I were trying to fool them. My father told Willie not to attempt anything on his family, and Willie and my father had a heated argument.

Shortly after this, Vince Cammisano, Willie's son, came to me and told me that Willie and my father were on the cuts. I told Vince I did everything I could for Joe and Willie. Vince told me that I should take City Councilman Bob Hernandez down to see Willie to prove that I was telling the truth.

I telephoned Mr. Hernandez and asked him to do me a favor and go with me to see Willie to explain what I had done to help Joe and Willie get their license. Bob agreed to go with me to see Willie and explain things to him.

When we saw Willie, I introduced Mr. Hernandez as a city councilman and told Willie that Bob would explain what I did to help them. Bob Hernandez started to tell Willie how I had helped to change the moratorium, but Willie cut him short and exploded in a violent rage.

He told me that if I wanted credit, he'd see to it that I got credit for everything. He told Mr. Hernandez and me that no one was to mess with his brother. He said if his brother wanted to run whores or do whatever he wanted, no one better mess with him. Willie told Hernandez that he'd kill anyone who got in his way, including politicians.

Bob Hernandez, not knowing exactly who Willie was, told Willie that he better not threaten a councilman. This only aggravated Willie more and he again repeated his threats to kill anyone who got in their way. When Hernandez and I left, Hernandez told me that he was stunned and he felt like he'd been through a scene from the god-father.

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I called my father and told him what happened. My father told me to be very careful. He told me to carry a gun and be careful with my car.

My father went down to see Willie and try to calm things down. Willie told my father that he'd kill me. My father told Willie that he'd have to kill him first.

Previously, Willie and Joe Cammisano expressed interest in certain parking lot concessions in the River Quay. I suggested they lease an adjoining parking lot, which they agreed to do if I induced the city to spend approximately \$10,000 improving the parking lot, which it did.

Let me clarify this a little if I may, please. Joe was with a group of his friends and Willie wasn't present at this time when the parking situation was discussed and they wanted me to get a lot so they could use it for parking at that time.

Due to my request for the improvement to the lot, I was obligated to lease the lot in the event they failed to lease the lot. Subsequently, they refused to lease the lots and the market manager made me honor my commitment to lease the improved lots, which I did.

After the controversy regarding the moratorium and the obtaining of a liquor license for Joe Cammisano's tavern, the pressure mounted regarding the leasing of the parking lots and I released the lower two lots, which allowed them to lease those lots.

They didn't follow up on the offer, so I began operating the lots again. Joe told me I had better turn the parking lots loose. I told Joe that I had turned two lots loose for months but they didn't pick them up, so I was running them. Joe told me that he knew someone who could force me to give up the parking lots. After this, I experienced all kinds of vandalism in my parking lots.

Subsequently, three men broke into my house. They put a pillowcase over my 16-year-old son's head and beat him with a club. Although the men took my personal property to make it look like a robbery, my father told me that this was just a warning from Willie.

My father told me that Willie wanted my parking lots and I had better give them up.

Around this same time, the Cammisanos tried to get yet another exemption to the moratorium to open up another bar. I refused to help them on this one. The license was denied.

Shortly after this, my father came to see me. He told me that I was really in trouble now over the parking lots and the new license. My father told me I was going to get him killed. The outfit wanted me out of the way completely. He told me to carry a gun and be careful of people he identified as outfit enforcers. He also told me about specific kinds of bombs and detonating devices the outfit used so I could watch out for them.

My father said that he felt sure that the outfit would kill him. He said that he would probably be killed at Willie's garage. He told me that he had told Willie not to go near me, but he felt that in doing so he had signed his own death warrant.

My father told me that since he was a "made member" of the outfit, Willie would have to get Nick Civella's approval to kill him. My father told me that if they killed him, to get my family out of town

quick. I told my father I'd do anything if they'd just leave us alone. My father said it was too late for that now.

In fact, my father and I went to a dynamite stash used by the outfit to store explosives. I was told that these explosives had been put at various bankers' houses and used to extort bank officials. We removed the stash so it couldn't be used against us, and got rid of it.

In July 1976, my father was killed in just the way he said he would be. I was terrified for my family. I tried to sell my place, but I couldn't.

Chairman NUNN. How long after he told you he was going to be killed was this July 1976 death?

Mr. BONADONNA. I don't know the exact day but it was within maybe 6 weeks, 8 weeks.

Chairman NUNN. Within 6 or 8 weeks?

Mr. BONADONNA. Yes, sir. I went to the police. While sympathetic and suggesting protective measures, they could not arrest the Camisanos or their outfit associates. I then took various precautions to protect myself, including wearing a bulletproof vest, carrying a fire-arm at all times, placing an alarm on my car, and altering my daily routine.

Many violent incidents subsequently occurred.

In November 1976, Harold Sonny Bowen, a friend of mine, found that a detonator had accidentally gone off in his car. I would like to add something here on that at this point, Mr. Chairman. We used to go to the bank in Mr. Bowen's car. Mr. Bowen would drive me to the bank on my morning bank runs and I felt like they were trying to get me at the time. On one occasion, someone attempted to plant a bomb in the car and the detonator accidently went off.

Blood from the bomber and metal fragments were all over the car.

In November 1976, John Brocato was found in the trunk of a car at the airport. He had been tortured and strangled.

Chairman NUNN. Who is John Brocato?

Mr. BONADONNA. John Brocato was a friend of mine, who came to my place of business. He was a friend of my brother's and my brother was my partner in my place of business and he was just a friend of ours.

In February 1977, Sonny Bowen was shot to death in a bar. Prior to Bowen's death, he told me that members of the outfit had been stalking me in an attempt to locate a safe location to murder me.

This was not new to me because I was fully aware of them stalking me and I was on the alert at the time.

I was really shaken by this and I left Kansas City to think things over. After I came back in March 1977, a building I owned housing two nightclubs was completely destroyed by bombs.

My wife talked me into going to the FBI. After this, I entered the witness protection program. I had to give up my businesses, home, friends, and family and be secretly relocated with a change of identity.

Chairman NUNN. At the time you went into the witness protection program had you already testified in court?

Mr. BONADONNA. I testified in the grand jury, Mr. Chairman.

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

Mr. BONADONNA. I had testified before that time. They had knowledge that I went to the grand jury and testified and they were doing everything in their power to get me not to go to court against them.

Other explosions and arsons rocked the River Quay. The outfit literally killed the River Quay project.

The outfit never gave up. When I was to testify against Joe Cammisano, the outfit tried to get Mike Ruffalo to sign a false affidavit discrediting my testimony. The FBI uncovered this plot.

I remember things that are now burned into my memory about the outfit and what they did to my family.

I remember Willie Cammisano showing up at my grandmother's house and at my father's funeral as a slap in the face. I remember being forced to go to the Kansas City Star to deny that Willie had anything to do with my father's death. The outfit did not want to upset the Italian community against them.

Chairman NUNN. How did they make you go to the Kansas City Star to deny Willie had anything to do with your father's death?

Mr. BONADONNA. I have another brother that was driving home, I guess, from work one night, and stopped by one of the Cammisano's family bars and my brother was told to come to me and advise me to go to the Star and deny Willie Cammisano had anything to do with my father's death.

I refused to do so. My brother got very upset, said you are going to get us killed like you got dad killed, you got to do this, we don't want anymore trouble, we have had enough, haven't we? It was like, you know, why fight it, just let them have what they want, they have already killed dad, let them do it. What will it hurt to do this, to let the people know.

Chairman NUNN. Was the mob afraid of the opinion of the Italian community turning against them because of your father's death? Is that what you are saying?

Mr. BONADONNA. The mob cannot, and I believe this is the way in all of the States, the mob cannot flourish without the fear that they instill in the Italian community, but Italian communities are now starting to grow up.

They are seeing these people for what they really are and maybe some day they will stand up against them and fight them, because they can't stand the publicity. Every time they get cited or put in jail or get subpoenaed, the first thing they do is they come out and they say everybody is against Italians.

These people are not the Italians. These people are criminals. These people kill, they murder, they extort, they put girls in prostitution, they do everything. I mean they are not—the real Italian people are the people who go out there and take care of their family and feed their kids and go to church on Sundays and work hard every day and you never hear of these people. These people just—the mob members are just 1/10 of 1 percent of the Italian people and for them to call themselves Italians is a disgrace to me and to most of the Italian people in the United States. It is just a shame that they have to be Italian.

Chairman NUNN. I think that says it all.

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

Mr. BONADONNA. In my travels in this witness protection program, Mr. Chairman, I have met a lot of Italian people, and nowhere that I have been have I ran up against people like the mob in Kansas City. That is why I made this statement.

I knew this already, but the more I travel, the more I see it. Nowhere in the United States that I have been are the Italians put down as hard as they are in Kansas City.

Chairman NUNN. The Italians are really the victims of the mob in Kansas City?

Mr. BONADONNA. They are the victims with the mob. Without the Italian community in Kansas City and without the mob preying upon them as they do, the mob couldn't exist.

Chairman NUNN. What they do is intimidate the Italian community?

Mr. BONADONNA. They intimidate them. If something happens, you can't believe the support you receive and this is one reason why I am here today. I have the support of a lot of Italian people that I never even knew that would go to my family and say, you know, I am so proud, I wish I had the guts to get up and do what he is doing. I haven't got guts.

I am a victim of circumstance. I am not a brave man. I am not a crusader but these people are for me, but they are scared to speak out. They are just afraid if they speak out, if they say something or they do something, that they will have repercussions.

I ran into an Italian family in my travels other than where I live at, and the person was so scared that someone might see him talking to me and would get back that he had talked to me that he might have repercussions from it. This is the fear that they have in Kansas City.

The mob, what they do is they get their people that they have control over, they go out and get other people to stand up and say Mr. Civella is an upright citizen or Mr. Cammisano is an upright citizen; he is this; he is that. It is a farce.

The real Italian people, the ones that do it are doing it because they are in fear. They have to do these things.

Chairman NUNN. I think the Italian community has certainly every right to be proud of you and what you are doing and how you are fighting it.

Mr. BONADONNA. I am not proud of me. I am not proud of myself. I am sick and tired of being walked on. I am sick and tired of the Italian community being stepped on. I am sick and tired of kids that go to a person's house and because they have an Italian last name they associate them with the mob.

Every time you go anywhere, because of this criminal element in the United States, every Italian has to carry the stigma because they are Italian. It is true that they are Italian, but it is a shame they have to be Italian, and not be called by some other name. I am just sick and tired of it and this is why I am here.

I remember the discussions that my father had with other mob members about killing Teamster leaders in Kansas City so they could put their own man in to get access to union funds and power.

I remember talks with outfit members who told me that all thieves in the area had to split their loot with the outfit and that Nick Civella got first choice.

I remember outfit members who talked to me about financing robberies.

I remember Nick Civella's outfit forcing bar owners to use the outfit's vending concessions.

I remember conversations of outfit members about their control of coffee, liquor, vending, and other businesses in the Kansas City area.

I personally know that the Civella's and Cammisano's "hooked" people with gambling or loan-sharking debts and taking over their businesses.

I know that Nick Civella even went to the Apalachin meeting in New York State.

I have been told over and over that the Kansas City outfit is part of the national syndicate and that it is one of the most close-knit and well respected groups in the country. I have been asked to outline the leadership of the outfit. I have done this to the best of my ability. My chart is a result of things my father has told me, overhearing conversations of outfit members and direct contact with outfit members.

[See attached chart.]

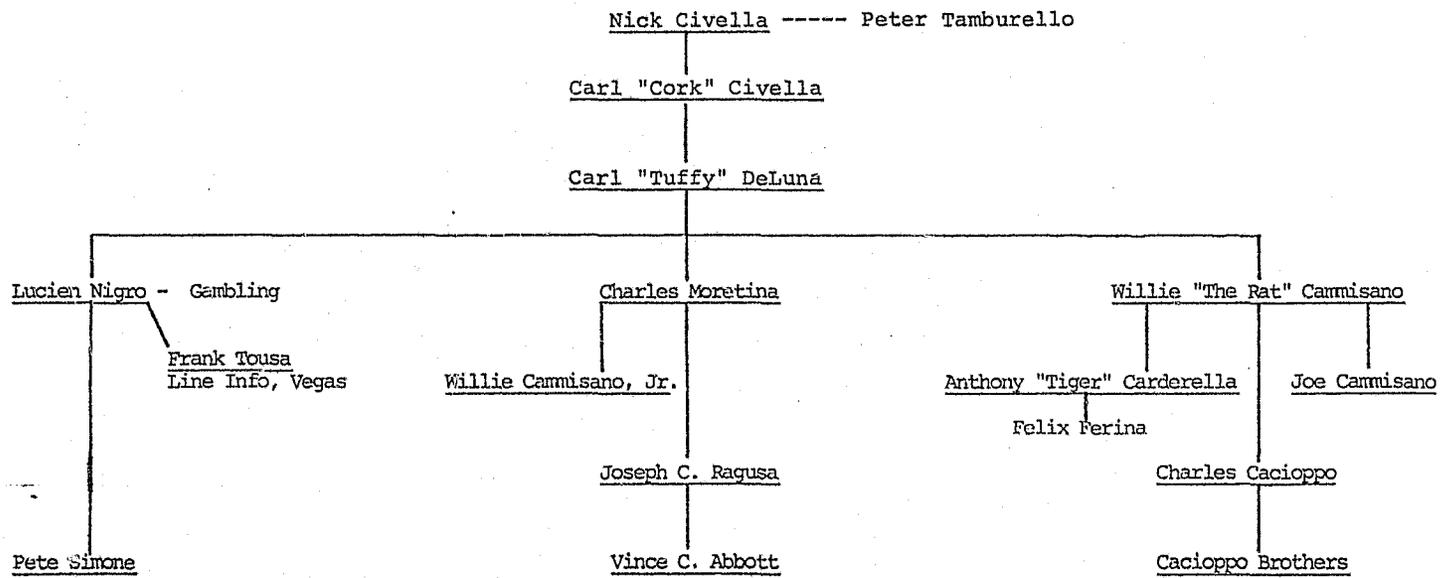
Mr. BONADONNA. Even though my father was in the outfit, I never thought it could happen to me. I know now why people aren't too concerned with the Mafia. They think it's a story and that it will never happen to them.

Even if they have limited participation, like gambling or a juice loan, they think that the mob's there just to provide services, but I now know that there is always a day when they'll call their chips in. Once they're into you, you're theirs. They'll stop at nothing. It happened to me and I was in the best position to protect myself from it with my father. It can happen to you.

Chairman NUNN. Thank you very much, Mr. Bonadonna.

We have got the chart at the end of your testimony, which is attached. Could you run down that chart for us just briefly so we can identify the people in the record?

KANSAS CITY "OUTFIT"



Mr. BONADONNA. The head of the chart is Nick Civella. He is the leader of the Kansas City outfit in Kansas City.

There is a gentleman named Pete Tamburello, who is Nick Civella's bodyguard, chauffeur, and whatever other things that Nick Civella needs.

Carl "Cork" Civella is right under Civella.

The under boss and working boss of the Kansas City Mafia is Carl "Tuffy" DeLuna.

Under Carl "Tuffy" DeLuna he has his different organizations, Charles Moretina.

Moretina is the killer or murderer for the "Tuffy" DeLuna group.

Under Charles Moretina is Willie Cammisano, Jr., and Joe Ragusa and Vince Abbott, who are killers for DeLuna.

"Cork"—this is from what my father told me, that "Willie the Rat" works under "Cork." He has to answer to Nick.

Anthony "Tiger" Carderello, Felix Ferina, Joe Cammisano. Joe is not a killer. He is just there. He is just a brother of Willie Cammisano.

Charles Cacioppo and the Cacioppo brothers work for and under "Willie the Rat" Cammisano.

On the gambling side, there is the gentleman named Lucien Nigro. He runs their bank, their gambling games, and Frank Tousa, who runs their lines, football bets, and is their Las Vegas connection.

Pete Simone, who is the up-and-coming gambler in the area, is the one in charge of the casinos, or I say "casinos," their gambling operations throughout the city that brings in the young crowds and the people of his age group.

Chairman NUNN. Thank you very much, Mr. Bonadonna, for an excellent statement.

I think it would be of great benefit to this committee, and I hope it will be of benefit to the entire Senate, and I believe it will be of benefit to the Congress and the executive branch and to the people of the country in having a better understanding of the vicious, violent nature of organized crime.

I think your statement about the relationship of organized crime in the Italian community, the fact that the Italian community is victimized, is perhaps the clearest delineation between the mob and the Italian community that I have heard since I have been involved in this subcommittee.

I think that will also help put this matter in perspective and I do believe that there will be a great number of people in the Italian community who will commend you for your courage in making this statement.

Mr. Bonadonna, your statement mentioned that many businessmen get hooked by the outfit.

What are the methods the outfit uses in influencing otherwise honest businessmen?

Mr. BONADONNA. First of all, if a man is in business and he is anywhere successful and has a cash flow, they loan him or make available to him gambling areas to gamble for large amounts of money. We are not talking about a few hundred dollars. We are talking about thousands, \$20,000, \$30,000. They get him hooked on gambling and when they get him to the point where he hasn't got any more money to run

his business, they introduce him to the juice loans and once they get him into the juice loans, they have got him actually hooked.

They have vending services. They need vending services. They need groceries, they need meats.

While I was there, they were trying to organize the union for the bartenders and the barowners in the area. They need union laborers. That is their way of getting men.

Chairman NUNN. Did the selective violence committed by the outfit intimidate the community?

I think you have already made that pretty clear.

Mr. BONADONNA. Yes. They did, Mr. Chairman.

Chairman NUNN. Did you your father ever tell you about his initiation into organized crime?

Mr. BONADONNA. He didn't actually describe it to me. I know that my mother had argued with him, you know, about him going out and taking an oath of some sort, but Art came over and I remember, papa; I was very young and he would take me to a place called the Roma Bakery, which was the headquarters for the old "mustached Pete" type of Mafia leader that came directly over from Sicily at the time.

Chairman NUNN. Did you have friends and relatives and acquaintances who are also in the outfit?

Mr. BONADONNA. Yes, I did, Mr. Chairman.

Chairman NUNN. Did these people seem to pursue legitimate businesses and get intimidated as far as going into the outfit or the mob, or did they seek from the beginning to make a career in crime?

Mr. BONADONNA. These people did not want to work. They would see how members flourished, had flashy cars, not doing anything, and they would try to find where they could make a score, like what could I rob, what can I do to make a fast dollar.

The ones that I was with, they weren't interested in legitimate jobs. They wanted to go out and prey upon the community, to steal.

Chairman NUNN. So the high lifestyle with members of the outfit had an influence on the courage of others to come in?

Mr. BONADONNA. Certainly. You have to understand, here is a 16- or 17-year-old kid that has nothing to his name, his family has no money, and he goes down by these gambling casinos in Kansas City and he stands and sees this guy on the corner, driving new Cadillacs, new Lincolns, new cars all the time, large wads of money, fancy clothes, and every one of them, every one of them would always have some flashy girl friend or something on their arm.

This was very impressive to a young kid at that stage. I know that I was impressed with it at the time. You know, it was very impressive not having to work, I mean never work, you know, just be there every time you see them; nobody ever worked.

Chairman NUNN. You mentioned an incident involving a city councilman in Kansas City. We have heard people say before that the mob doesn't usually overtly coerce politicians.

Is it your opinion that if other things failed, the outfit will resort to violence even with respect to public officials?

Mr. BONADONNA. They would do anything they would have to do to get what they needed done. If a public official would offend them or continually beat them down, I personally feel they would take some form of action against that official.

I might add here that Councilman Hernandez, Bob Hernandez, one of the most honest, courageous councilmen that I have ever had the pleasure to call my friend, he is still my friend, the guy stood up and did what he thought was right for the people of Kansas City. I hope to God nothing ever happens to him.

Chairman NUNN. Nothing has happened to him yet?

Mr. BONADONNA. No, sir; it hasn't.

Chairman NUNN. Your testimony indicates that various city rules, ordinances, and licenses were manipulated to benefit organized crime. Is this the standard method of operation based on your knowledge and your firsthand experience?

Mr. BONADONNA. I am sorry, Senator; repeat that, please.

Chairman NUNN. Your testimony indicates that various city rules, ordinances, and licenses were manipulated to benefit organized crime. Is this sort of a standard procedure that they attempt?

Mr. BONADONNA. Yes, it is, Senator. On one occasion all of the liquor dealers and licensees of Kansas City and throughout the State of Missouri were upset and were trying to get a statute passed in the State legislature, which was at the time of the Republican National Convention in Kansas City, because the liquor laws had been subverted and liquor was being sold at Kemper Arena.

All the liquor dealers in town were infuriated that we had to purchase and abide by rules and regulations set up by the State, and we were mad because they had somehow subverted the law and got to sell liquor in the facilities there.

So the liquor association introduced a bill in the State Legislature of Missouri to stop this and to get another passed.

We had lobbied very strongly to get this one specific statute passed and because of the connections that the concessionaire had with the mob family, a State legislator piggybacked another bill that would be very beneficial to the concessionaire to sell alcoholic beverages in the Kemper area and, subsequently, the statute was defeated because the person that we had in there voted against it. It was killed by one vote, I believe.

Chairman NUNN. In trying to take over the River Quay area, and I assume they took over part of it, and when they couldn't take over all of it they ended up destroying it—if they had taken it over, though, what benefit would the outfit have gotten out of being a significant force in the business in the River Quay area?

Mr. BONADONNA. First of all, they would have legitimate income from the bars and restaurants. They could have run prostitution, pornography; they could bring in money from other robberies and run it through their restaurants and bars to wash it up.

They would have fake jobs for mobsters and associates.

On this point, I will say something else. Right after the Jimmy Hoffa killing or disappearance of Jimmy Hoffa, his son, stepson, I believe it was, Mr. O'Brien, was brought to Kansas City and given a job, a fake job. I don't know if it was to hide him or what it was.

I personally met the man and I didn't realize who it was until after I left. The barowner at the time told me who it was.

Chairman NUNN. So they use it to provide jobs for people whom they may want to favor for one reason or the other?

Mr. BONADONNA. That is true, Senator.

It gives them places where they can go and sit and have meetings and not be conspicuous and conduct loan-sharking activities in the area.

Chairman NUNN. In your opinion, could the outfit have operated in Kansas City over the years without some degree of corruption?

Mr. BONADONNA. No, they couldn't. They do rely on corrupt officials.

May I add here that Kansas City has some of the finest politicians and officials, and the State of Missouri has, too.

There are a few, very, very few, maybe five or six, but they have these people in the key places, that are corrupt in Kansas City.

Chairman NUNN. Can you explain to us the purpose of the killing of Frank Pace's son?

Mr. BONADONNA. At the time of Frank Pace's death, Frank Pace's son was about 8 years old. I think that was about his age and he had no knowledge of what was going on.

All they know, he found his father in the back seat of his car, shot in the face a couple of times, and he had no knowledge of who killed his father or why his father was killed.

As the son grew older, he became about 21 or 22 years old, he was trying to find out who killed his father and have vengeance for his father's death.

Willie Cammisano, who was responsible for this murder, I guess got nervous and had Frank Pace's son ambushed in front of his home in the early hours of the morning, shot to death by shotgun.

Chairman NUNN. In your statement you mentioned some violence against the Spero's. Do you know the motive for that violence?

Mr. BONADONNA. I know the motive behind the violence of Nick Spero. Nick Spero was a Teamster Union official. He was getting extremely powerful in the Teamsters Union in Kansas City and was having trouble with the Civella organization because he was not doing the bidding for Civella and was building up his own organization and Carl Spero, his brother, was trying to, about to get out of jail, and the mob felt if Carl got out and Nick was out, knowing that, they had to kill Nick. So they killed Nick before Carl got out to unify the power.

Chairman NUNN. How did Willie Cammisano get the nickname "Willie the Rat"?

Mr. BONADONNA. My father told me that in the early years and even up to the point that he killed his son-in-law, or had his son-in-law killed, he would take people's bodies after he had killed them, stuff them into sewers in Kansas City and the rats would eat them and dispose of the bodies, so there would be no trace of the bodies.

Chairman NUNN. He was known by that name?

Mr. BONADONNA. "Willie the Rat."

Chairman NUNN. That is what his associates called him to his face or behind his back?

Mr. BONADONNA. He doesn't like the name. A lot of people called him "Willie the Rat" but I doubt very much if anybody called it to his face.

Chairman NUNN. Did you ever hear Willie Cammisano talk to your father about switching guns he had used in murders?

Mr. BONADONNA. That was the incident about the black man; it was the machinogun.

Chairman NUNN. I didn't hear that.

Mr. BONADONNA. That was the incident about the black man and I told you previously about it.

Chairman NUNN. Did Willie ever tell you and your dad "Dead men's eyes stay open"?

Mr. BONADONNA. Yes, he did. I was at his place of business one day and I was telling him of the man I had seen who had died and his eyes were wide open and Willie sort of chuckled and said, "Yes, when they kill him," he says, "their eyes just stand and look at you, glare at you." It gave me a little chilling experience at that time.

Chairman NUNN. At this point I will defer to Senator Percy for questions.

Senator PERCY. If Willie Cammisano was not particularly fond of the name, "Willie the Rat," was there a side benefit, however, in that someone in that business has to have credibility and if he is widely known for this particular practice, would that give him the added credibility that when he says something, he means it, and he is willing to enforce it?

Mr. BONADONNA. Yes, Senator Percy; that's correct.

Senator PERCY. I would like to ask—you commented to Senator Nunn on people who are in organized crime outfits who want to get out but cannot, about your own relationship there. It appears as though there was an effort, steady, persistent, to get you deeper and deeper involved with them, but at no time in your testimony did I hear you say that they had actually pressured you to become a member of the mob.

Could you explain whether they did or not and, if they didn't, why they didn't?

Mr. BONADONNA. First of all, they did not want me in the organization as a member. They had a very close-knit group. There are not a lot of them. I would say maybe 30 at the most. I am not sure of that figure, but around 30, I think.

I was being associated with the FBI agents by the organization. I had been affiliated with different law enforcement agencies in my work that I was doing in the River Quay area, in my social life, and I don't feel like they would have asked me to come into the organization.

They were just trying to use my influence with the political leaders and to get me to do their business.

Senator PERCY. Was your father protective of keeping the pressure off getting you in?

Did he take the position with the mob that he didn't want you in?

Mr. BONADONNA. Senator Percy, I don't know. I don't know what my father did in that respect. I know that my father would try to disassociate us kids from mob activities. He would tell us to "get your businesses going, work hard," you know. "You don't need these things. If you make a living, what do you need this for?"

Senator PERCY. Did you get a feeling that, as you acceded to one request of theirs and fulfilled it, even without any enthusiasm, just publicly did it, but really didn't follow through on it, that, as you did each thing, they tried to get you to do more, that they were never really

satisfied? They constantly tried to get you a little deeper with each request?

Mr. BONADONNA. Yes, Senator Percy. They did. At one time, when I got this one license for Uncle Joe's, I felt like I had got this for Uncle Joe's, my father made a statement to me that, "They could sure use you in this organization. They couldn't have spent \$10,000 and get done what you got done by favoritism and friends that you have in the city council."

They never stopped. Once you have a seat of power, or seat, if you make a friend, that is how they get to politicians. They will find a person that has befriended a politician and, if he is of Italian descent or has any Italian connections at all, they prey upon that, and they use his influence to get concessions from the politicians.

Senator PERCY. What advice would you give to the businessman that is approached for protection and he makes, let's say, a modest payment for protection to start with? Is the pattern that they are going to stay with the moderate payment or, once he makes that payment, the more successful he gets, the larger the payment is going to be and, once the principle is established, he is really hooked, and they are going to keep persisting; and, then, if he tries to get out of it, it is going to be harder?

Mr. BONADONNA. You are right, Senator. It does.

Senator PERCY. From what I have seen in Chicago, that is the way it works there.

Mr. BONADONNA. It does. Once they get you hooked, there is no way in the world you can get out without paying off the complete initial payment, and then what happens, say you borrow \$10,000, you have 5 percent per week payment, and you miss a week's payment, that 5 percent becomes the initial money and you now have to pay the 5 percent on the \$10,000 plus the 5 percent you didn't pay and pay 5 percent on that, and it continues to do so.

There is a gentleman in Kansas City now that is so deep, if he lived to be 350 years old, he could never pay them off.

Senator PERCY. A businessman had better be wary, also; he had better be really desperate for money to start loan-sharking with them, because they never really want the principal paid off? They want to keep you hooked all the time?

Mr. BONADONNA. That is one of their sources of income. They can have a man on juice or loan money, and they can say, "All right, Joe, Frank is your man; you collect the money from him; that is your salary to live by."

They use these guys, they use these people, turn them into slaves is what it amounts to. It amounts to one man is juice, he is paying juice to one of the mob members; this mob member is using that money to live on. It is his salary.

That is some of the ways they do it. There are all kinds of ways of doing it.

Senator PERCY. Did anyone ever discuss with you the situation where Nick Civella got a share of some stolen diamonds?

Mr. BONADONNA. Harold Sonny Boen; he is dead now—it breaks my heart to even say he is dead. He was a national jewel thief.

The Civella family would finance his expeditions throughout the United States, even as far as Hawaii, to pull off diamond robberies and jewel robberies.

He got caught in California and went to prison. When he came out of prison, Sonny wanted to stop. It scared him in prison. He learned a lesson. Sonny was explaining to me a diamond robbery that he had pulled earlier, that they had got a large amount of diamonds.

When I say a large amount, there were so many diamonds that they were grabbing them by handfuls and splitting them up. They got tired of picking them up.

Nick Civella told me that. He told me—Nick Civella came down there and took his pick of the diamonds that he wanted for letting them pull the robbery in Kansas City.

Senator PERCY. Did the FBI ever corroborate this story by a search?

Mr. BONADONNA. Just recently I understand that they pulled a search warrant against Civella's house and they found some diamonds similar to those that Sonny had described to me.

Senator PERCY. Were other businesses in the River Quay project controlled by the outfit?

Mr. BONADONNA. There was another barowner in the area. They were all part of the outfit, but the one that comes to mind the strongest is another bar in the area, had a business, and he was located right across the street from three or four of the outfit bars.

Business was extremely good, large turnout, a lot of people coming in there. He had three separate fires within about, I guess, about a year, and finally a third one finally put him out of business.

Senator PERCY. Our staff has informed us that some of these mob members have lavish lifestyles. Some of our experiences in Chicago lead us to believe that they may have lavish lifestyles sometimes, but they seem to maintain modest residences there and a modest appearance, no appearance of great wealth. But we are advised that some members do have lavish lifestyles.

Can members of the outfit effectively keep enough legitimate business going so that they can justify that lavish lifestyle which is largely derived from illicit gains?

Mr. BONADONNA. The heads of the Mafia, a lot of them try to get into legitimate businesses. They use that to have a reason to show where they got the money, but what they do with the money, they wash other money, illegal money, through their businesses.

There is no way that some of these people can live in the style and lose the money that they lose at gambling tables to support the way they are living. There is no way.

Senator PERCY. In other words, they couldn't—

Mr. BONADONNA. They couldn't; no.

Senator PERCY. There used to be great fear of Internal Revenue Service, and obviously Al Capone was one of many who was nailed not because of his involvement in murders, prostitution, narcotics, but simply because he didn't pay income taxes on his income, which was proven through a net worth tax.

Is that fear still prevalent today, or do they feel now that they are more or less immune from it and that IRS's hands are tied?

Mr. BONADONNA. For some reason or another, I can't understand why, the IRS quit investigating these mobsters.

If the IRS—I don't know what you, Senator Percy, or Mr. Chairman Nunn, can do about this, if you can motivate the IRS into getting facts accurately and investigating organized crime figures and making them prove where they are getting the money that they are spending, make them prove where they are getting the money they are losing at the gaming tables, you would put the fear of God in them, because you could put a damper on an organization overnight if you started this again.

Chairman NUNN. Isn't that the single most powerful tool against organized crime?

Mr. BONADONNA. I feel like it is. I feel like it is. I feel that they are scared of income tax. They are scared of the Internal Revenue Service. They are more scared of the Internal Revenue Service than they are of the FBI.

Senator PERCY. Do you feel members of this committee, including the chairman and myself who are sponsoring legislation to bring about an alteration in the law, are correct in moving ahead, provided we protect private rights of individuals? We are seeking to free up IRS and allow them to cooperate with the Justice Department so that in a proven method, as you testified, these people living in lavish styles way beyond the legitimate income can be proven to have committed the crime of not paying their taxes. If you can't pin them on anything else, shouldn't we pursue that vigorously?

Mr. BONADONNA. I feel like you should, Senator Percy. I again would like to say this: I personally feel that when this legislation is passed, that you do whatever you can to protect the honest citizen, but don't leave loopholes where a criminal can jump through it. It is a strong, strong deterrent to them.

Senator PERCY. Do you feel that if, as a result of your testimony, you stimulate the Senate, hopefully the House, to move on this, that it might well justify the risk that you are taking? As I perceive it, your motivation has been outrage at the murder of your father and outrage that the project that you felt was of great benefit to a great city, Kansas City, was just literally ruined and taken over by the mob.

Do you feel the benefit derived from your testimony then would be to see us stimulated to move ahead in this area?

Mr. BONADONNA. Anything that you can do in this area, Internal Revenue Service getting special programs going for police departments, especially the Kansas City, Mo., Police Department, a good police department, one of the finest in the country. They don't have the tools, they don't have the knowhow, they don't have the things they need to fight organized crime. Some sort of a program where you would educate or help these law enforcement agencies throughout the State, even so far as the State income tax thing, anything that you can do to help fight organized crime would be of great benefit not only to Kansas City, but to the whole United States, every city in the United States.

Senator PERCY. One last question before we yield to our colleagues. Do you have any concern that the Freedom of Information Act which was designed to make more accessible the records of Government to individuals, that there may be a fallout that we hadn't anticipated that allows criminals who might use that source of information to determine who informed on them?

Does it actually cause you to be concerned that your identity might be uncovered and that you might be placed in greater danger simply because of your desire to cooperate with your Government, but also the fact that we have on the books the statute known as the Freedom of Information Act?

Mr. BONADONNA. I feel that the Freedom of Information Act is a very scary thing, especially in my case. I know there are records; the Government has records all over, and there are records of me, who I was, who I am now, and if somehow some person in the organized family—and I don't know how—if they ever got hold of these records through the Freedom of Information Act, they would destroy me and my family.

I am sure other people in this program, other people that do step forward just like in Kansas City, if another Italian person has the courage to step up after I have been gone or whatever you have in this Freedom of Information Act, and they are able to find out who informed on them, you will put that person in jeopardy.

You know, it is a bad law. I mean, it is good in some ideas, it was originally done, but the loopholes in it are too big and it is a bad law.

Senator PERCY. What we have to do is preserve the good parts of it, but certainly plug up the loopholes?

Mr. BONADONNA. Yes, sir.

Senator PERCY. Thank you very kindly. I very much appreciate your testimony.

Chairman NUNN. Senator Sasser?

Senator SASSER. Thank you, Mr. Chairman.

Mr. Bonadonna, in your testimony this morning you mentioned that your late father had told you that the organization or the outfit could get their New Orleans contacts to force the River Quay developer to knuckle under.

Could you tell us just how much contact and coordination the Kansas City outfit had with other organizations, criminal organizations, across the country, to your knowledge?

Mr. BONADONNA. From my father's telling me and from the things that I have seen and from different Mafia members telling me, they are connected throughout the United States. It is a network of criminals that have allegiance to a so-called don or godfather or head of the outfit, and this head of the outfit has been befriended by other leaders in other cities and they all need help, as in the case of a gentleman by the name of Bruce Sheitz, who is in the witness protection program.

He was a Federal witness against a Mafia chieftain in Omaha, Nebr., and Omaha called upon the Kansas City outfit to kill him.

They attempted to kill him. They shot him about five times, but he lived and went on to testify. They do this all the time, Senator.

Senator SASSER. You have had some experience with the witness protection program that the Justice Department operates. Can you give us some suggestions today as to how we can encourage more citizens like yourself to cooperate in fighting organized crime?

I am very much concerned about the intimidation factor that organized crime utilizes and also concerned about the blase attitude of

the society-at-large as far as recognizing organized crime and do what we can do to combat it.

Do you have any suggestions as to how we can encourage people to cooperate in fighting organized crime?

Mr. BONADONNA. Senator Sasser, you are on a subject that I am glad you want to discuss. I want to get into this.

The witness protection program in the United States is one, is another one, of the good tools that was passed to help people in my position and other areas, who come in and stand up and take the chances that I have taken to survive.

You have to do something about the implementation of your program guidelines. My experience is all that I am speaking of, the U.S. Marshal's Office—I don't know if it is in Washington or where it probably is—but the kindest thing I can say is they are extremely ineffective.

They have problems that they just don't know how to handle. They just don't know how to handle, as far as a businessman like myself coming into the project. They have no idea what they are doing or how to do it.

I can enumerate many things that have happened and I will just leave it at that in case you want more.

Senator SASSER. Let me just ask you this: Is the witness protection program effective in allaying an individual's fear, legitimate fear, of mob reprisals in the event that they do testify, in the event they do give information?

Mr. BONADONNA. As I said before, basically, Senator, the witness protection program—and when I first testified, I had no knowledge of anything about the witness protection program.

Senator SASSER. You knew nothing about the witness protection program at the time you came forward as a witness?

Mr. BONADONNA. No. I came forth. I was told they had a program of this nature. I had no knowledge of the program or the workings it had or anything like that. I just came into it.

Like I said, the program, the Marshal's Office that handles the program, there are a lot of good marshals and they have the feeling that they want to do well and I know they want to, but I just don't think that they have the expertise or that they have the wherewithal or what. I don't know, I mean, I want the witness protection program to work for me.

At this point in my time I have not—I am almost at the point in my life where I am almost going to be forced to go back into the Kansas City area because of the inadequacies of the witness protection program.

I do not want to do this, but you know, because of the inadequacies that I am having in the witness protection program, I am at the point where I have a limited time left to stay in it.

Chairman NUNN. Can you tell us about those inadequacies?

Mr. BONADONNA. Documentation. When I came to the witness program, when I first got into the witness program, when I got located in the area that I am in now, it took me almost 2 years, just 2 years, to get a driver's license. For 2 years I drove around the State I am in now with my Bonadonna's driver's license.

All I had to do was get stopped by a police officer, and if he ran a traffic check on me or anything, I would have been exposed at that point in time.

It took me—I don't know the exact dates of it—but it took me a long time and it seemed like a year or more just to get a social security card, yet every time I would call the Marshals' Service I would ask them, "Please give me this."

"It is in the works." "We lost the papers. Would you please re-sign another paper?" "We can't get that."

And the driver's license incident, after 2 years they gave me a driver's license that looked like it came out of a crackerjack box and they made me sign a paper stating that I would—anything I did with this driver's license, that they would not be responsible for it.

I had to go into the State license bureau, and in fact, I even signed the Governor's name on the driver's license to make it look more legitimate than it did.

I turned it into the State license bureau, got issued a driver's license that I have now in my pocket.

Chairman NUNN. Did they know who you were? Did they know the background?

Mr. BONADONNA. They had. I walked in—like me handing you a piece of paper stating that you were Frank Smith, and typing up a driver's license that doesn't even look like a driver's license, say, "Go down to the State license bureau, tell them this is your new resident of the State, turn this in. They will issue a new license."

What really irked me is, even the license plates on my car—I had a tremendous amount of trouble with them to even help me get the license plates on my car other than my Missouri license plates. I had to finally get the license I had for Kansas City. The U.S. Justice Department sent a set of plates down that were clean and I could drive around the State with my car for almost 2 years and then when I finally got to the point where I was trying to get my titles on my car changed, they made me sign other papers stating that they would change these titles over, but this car would not be ever driven in the State in which I resided.

I mean it was just—it it a joke.

Another thing. You know I worked for 20 years and I worked hard. I worked very hard. I established credit.

Chairman NUNN. Let me interrupt you just to say this: You go right ahead. This is very, very valuable testimony, but be extremely careful that you don't say anything that jeopardizes your present identity.

Mr. BONADONNA. I know that. Like I said, I worked 20 years to establish credit. To this date, to date I cannot fill out a credit application to buy a home. I cannot fill out a credit application to get a Sears and Roebuck charge card. I cannot fill out any kind of a work application.

I got no documentation on who I was, what school I went to, where I come from. I am having problems now trying to get an application filled out and all that I needed was them, the Marshals Service, to take this application and vouch for my character and give me five people who have known me for 5 years.

In Kansas City I can write 500 people, judges, lawyers, senator, mayors that would give me a good credit reference in this program.

You know, I am upset and I am just upset at the program. It is just not a good thing.

Chairman NUNN. It is not professional?

Mr. BONADONNA. No way in the world is it professional. It is being held up, it is being mismanaged or something. I don't know if it is the agents in the field or if it is the agents here in Washington. I don't know.

I feel like it is the agents in the field. I like to think the agents in Washington are really concerned and I feel like they want to help. I feel like when they issue out an edict to get something done, that it goes right back to the incompetency of the agent in the field who doesn't know what he is doing or his hands are tied.

For example, I wanted to get a birth certificate to show that I was born, that I am a legitimate person, because they came to me and told me, well, "It is against the law in the State that you are in to issue a phony birth certificate," yet they gave me a phony social security card, a phony driver's license, a phony car driver license and also, after almost 2½ years, I finally, after much trouble—I finally got a passport.

But they will issue me a passport, but they won't issue me a birth certificate. They just don't know what they are doing. That is all there is to it. They are very insensitive.

They have—I, you know, I don't know. I wish they would make it right, because there are other people who want to come into this program.

Chairman NUNN. One of the areas we are looking into is the witness protection program. We have heard numerous complaints about it and I agree with you there are a great deal of well-meaning, competent marshals, but the overall service in the witness protection program is obviously not being run in a professional way from the top to the bottom.

In my opinion, that is one of the most important elements in the fight against organized crime in this country. I think we must do something to revitalize it or recharge the responsibility on this.

I appreciate, Senator Sasser, your questions on this and your answers.

Mr. BONADONNA. Thank you, Mr. Chairman.

Senator SASSER. Let me just ask two more questions, Mr. Chairman, and that will conclude my questioning.

One final question about the witness protection program—and let me add I think that this is important and valuable information you are giving us about this program.

Did the Justice Department give you assurances of what assistance you would be given under the witness protection program once you were involved in it? Once you found out about it, became a participant in the witness protection program, did Justice, the Justice Department, give you assurances of what sort of help they would give you?

Mr. BONADONNA. Yes, Senator Sasser, they did. They told me that I would get a complete dossier filled out on a birth certificate, social security card, driver's license and whatever other identification I needed to establish a new identity and, too, I would get help in obtaining the job and to a lifestyle that I was accustomed to or, you know, at least an existing lifestyle.

I have been in this program now, I think, 3 years and a couple of months and at this point in time I have not received—the only thing I have received is a driver's license, a social security card and a passport. That is as far as—that is as far as I have been able to get.

One of the things I think that is very important in this witness protection program—if those people who are qualified, only those who are qualified—there should be something that you can do to have them able to get a line of credit to buy a home.

If the person has the money and the qualifications in his prior life, he should be given the opportunity to purchase a home, purchase a car or just to be a citizen, just do the normal things that everybody does.

In this program you have to pay cash for everything. In this program you can't apply for any credit card because you don't have the background. In this program have you ever tried to rent a car without a credit card?

It is almost impossible.

Senator SASSER. You can't rent one with cash, can you?

Mr. BONADONNA. No. They won't take it. It is almost impossible. Yet the Justice Department—not the Justice Department, the Marshals Service, I know they are charged to do these things. I used to make the statement about them being ineffective at the time. I don't think the top people are ineffective.

Senator SASSER. I gather that you think the problem with the program is in the field with the marshals themselves. Is that a correct assumption?

Mr. BONADONNA. Yes, sir, it is.

Senator SASSER. One final question.

In your testimony concerning attempts to get a liquor license for Joe Cammisano, you mentioned that many of your friends realized the predicament that you were in and came to your aid.

Was there widespread knowledge of the outfit or mob's attempts to gain a foothold in River Quay?

Mr. BONADONNA. I don't know if there was widespread knowledge, but there were a lot of the shopowners in the area, be it the artists, the small shopowners, the lettercraft shopowners, the antique shopowners were all extremely concerned that this mob was coming into the River Quay area. They were extremely concerned.

Senator SASSER. Did they identify this as the mob that was coming or the outfit that was trying to get a foothold in River Quay?

Mr. BONADONNA. Yes, they did, Senator.

Senator SASSER. So they knew of this reasonably close-knit criminal organization and feared their coming into that area?

Mr. BONADONNA. That is correct, Senator, yes.

Senator SASSER. No further questions, Mr. Chairman. Thank you.

Chairman NUNN. Thank you very much, Senator Sasser.

Mr. Bonadonna, in your statement, you mentioned William Cammisano told you that someone else took credit for getting their liquor licenses kicked loose. Who was that?

Mr. BONADONNA. You want his name, Senator?

Chairman NUNN. Let's lay the background first. Give us his position.

Mr. BONADONNA. He was a State legislator.

Chairman NUNN. State legislator?

Mr. BONADONNA. Yes, Mr. Chairman.

Chairman NUNN. How do you know that?

Mr. BONADONNA. I know the man personally myself.

Chairman NUNN. Did you ever see and hear that State legislator in a conversation with Carl Civella?

Mr. BONADONNA. Yes, I did, Mr. Chairman.

Chairman NUNN. Could you tell us where that occurred, the circumstances?

Mr. BONADONNA. It was right after a city election in which the criminal organization in Kansas City had lost an important council seat which controlled the area where most of the bars and restaurants were in. They previously had a city councilman in there that was in their favor that all the bars—I think about 6 percent of the bars in Kansas City are located in this district, and they had lost that seat in the election.

I went down to Civella's meat company, purchased meat one day for my restaurant, and I walked in the office and this State legislator was in there with a couple of his other cronies or political—whatever they were—and "Cork" was verbally—

Chairman NUNN. "Cork?"

Mr. BONADONNA. "Cork" is Carl Civella.

Chairman NUNN. Is Nick Civella his brother?

Mr. BONADONNA. Yes. He was verbally beating them to death, hollering at them.

Why did you let this happen? Why don't you get off your ass, get out of his car, quit wearing your golf caps, get out in the street and push these voters? Get them to vote.

And the legislator was almost in tears in saying,

But I did everything I could. I was promised a number of votes from a certain person. I was promised this vote from this person. These guys didn't deliver to me. What am I to do? I am just an organizer. I can't make these people get out and vote. I am doing the best I can.

It was a violent argument—not violent, verbal, hollering at the legislator.

Chairman NUNN. Did you know the legislator before that conversation occurred?

Mr. BONADONNA. I have known him most of my life.

Chairman NUNN. What was his name?

Mr. BONADONNA. Alex Fazzino.

Chairman NUNN. You mentioned that your father told you to watch out for certain mob enforcers. Did the Kansas City outfit have people who were enforcers or who were known to dispense punishment and terror?

Mr. BONADONNA. Yes.

Chairman NUNN. Did you know who they were at that time?

Mr. BONADONNA. I didn't know all of them. The ones I knew that were enforcers I knew. Some of them my father told me. I did know who were enforcers and I got to know them all eventually. There are still some I don't know.

Chairman NUNN. Why did you decide to stand up and testify against the outfit in Federal court.

Mr. BONADONNA. I got, as I stated before, I had trouble when I was a kid, 17 years old. I got a violation against me and I went to the Presidential pardon and got myself a Presidential pardon and from that point in my life I felt I would never get into this situation again, like—almost like I am now.

And I was ashamed for these people were able to coerce and threaten and scare people. I was ashamed that I could see a person that was an enforcer that was nothing to be able to go to a man like Joseph Canizero, who was an upstanding citizen, and force him to do something against his will.

I was ashamed that my—that my kids might try to go to someone's house and because of my Italian last name be not admitted in their home. I just didn't want that. I was ashamed. Someone had to stand up to these people.

Nobody has ever done it. Somebody had to stand up to them.

Chairman NUNN. What does the mob call itself in Kansas City?

Mr. BONADONNA. It calls itself the "outfit" or the "clique."

Chairman NUNN. Do they use the word "Mafia"?

Mr. BONADONNA. No. They try to stay away from that. Nick Civella cannot keep his control over the Kansas City Italian community if he gets notoriety. They try to stay away from any Mafia because "Mafia" has a criminal meaning to it.

Chairman NUNN. Do you have any doubt in your mind that organized crime on a nationwide basis exists?

Mr. BONADONNA. No doubt, Senator. It exists, it is here. I am a product of it. I have lost a father, a brother, many of my friends because of the organized crime and I am sure there are other people like myself. They destroyed untold families.

Chairman NUNN. What can the ordinary citizen in this country do to combat organized crime in your opinion?

Mr. BONADONNA. There are a lot of things.

Chairman NUNN. Mr. Bonadonna, what can ordinary citizens in Kansas City or in other places in the United States do to combat organized crime?

Mr. BONADONNA. They can refuse to use their services is one thing. They can refuse to buy products that they know the family, organized crime families, organized or run. They can refuse to buy stolen merchandise from some shady dealer out of the trunk of a car.

They can—one of the key things they can do is these Mafia members or these families shun them, stay away from them. If they have functions, don't attend them. If they try to get into organizations, keep them out. Things of that nature.

If they don't have the support of the community, they can't exist. Expose them. The news media, use any media that you can have, expose these people, let the community know exactly who they are so they can identify these people that are doing this.

Chairman NUNN. Do you think it is the important function of the Federal Government, in some capacity, to expose people who are in organized crime who are members of families?

Mr. BONADONNA. Extremely important, extremely important.

Chairman NUNN. Why is it important?

Mr. BONADONNA. Because of the average citizen out in the United States in the Kansas City area, they don't know who these people are

a lot of times. I was shocked, I was shocked and I had an interview with Mr. Steinberg that people are so naive that they don't believe this is happening, but it is there. It is there!

If you expose these people and let the public know who they really are and what deeds they have done, the people will be able to shun them and will be able to not use their services, and will be able not to do these other things.

Also when an election comes up, don't just go out and vote because someone's friend told you to vote, this man is a good man to vote for.

Read, find out what his policies are, what his thoughts are, vote on the man and his ideas and his policies, not because he is a friend of somebody that you knew that might get him to do a favor down the line somewhere.

Chairman NUNN. One other question. Do you know people who are in the mob or the outfit or the organized criminal element who would like to get out and can't?

Mr. BONADONNA. Yes; I do, Mr. Chairman. There are people who want to get out and can't. There is one instance. I know of a man who wanted out and they forced him to stay in, and I told him that he was too valuable in the position that he was in, that he had to stay where he is and he came out.

There are others that want out. There are others that are just sitting back and waiting to see, and this witness protection program, that is why I worked so hard to make it go, and I will continue to go hard until the last day.

They are waiting to see if I succeed. If I succeed, they will step forward. I talked to my aunt, one of my aunts, and she is an older person. She is very old. She is like about 80 years old.

She tells me that there are people that are sitting back and they wish their sons could get into the witness protection program, and get out of the mess they are in. They want out, but they don't know. They don't know where to go.

There is no way to go. The witness protection program is not that well known in Kansas City. It is now, but it wasn't at the time.

Chairman NUNN. If you had to list top priorities of what the Federal Government can do to improve its efforts against organized crime, would the witness protection program, made effective and efficient, be at the top of your list?

Mr. BONADONNA. It would be at the extreme top of my list along with the Internal Revenue Service getting at the organized crime.

Chairman NUNN. You believe that IRS should get involved against organized crime?

Mr. BONADONNA. Yes.

Chairman NUNN. When did the Internal Revenue Service begin not to really be active against organized crime? Can you date it or is it just a general impression that you have?

Mr. BONADONNA. I remember that everyone, you know, when I was younger, that everyone was scared because of the Internal Revenue Service. You couldn't go out and buy a new car because you had to know where the money was coming from.

You had to make out phony bills of sale that you pay more for a car than you actually did, so they could show that they got this much more money that they were spending and then all of a sudden it just stopped.

I have no idea when, where or how.

Chairman NUNN. But you know right now that the outfit or the mob doesn't fear the Internal Revenue Service as they once did?

Mr. BONADONNA. Not at all. They think it is a joke.

Chairman NUNN. Senator Danforth?

Senator DANFORTH. Yes. Thank you.

I would like you, if you would, to lead me through the history of what happened at River Quay. In its early years, I guess in the early 1970's, it was quite a nice place, wasn't it?

Mr. BONADONNA. It was extremely nice, Senator. It was a family area. We had a lot of shops, we had a lot of businesses and restaurants. It was an extremely nice area to be in, yes.

Senator DANFORTH. And at that time there was no noticeable organized crime infiltration of the River Quay, is that right?

Mr. BONADONNA. At that time, no.

Senator DANFORTH. And families would come down to the River Quay and patronize the shops and eat in the restaurants and enjoy themselves?

Mr. BONADONNA. The entire family, the fathers, mothers, grandmothers, grandkids, the husbands and wives would come down with their kids and the next week I would see them again with their father and their mother saying, "Would you look at this? Isn't this beautiful?" and going through the area.

We had numerous street functions where we had bands in the streets where people were able to dance and enjoy themselves.

Senator DANFORTH. About what time was that?

Mr. BONADONNA. That was in the late 1970's, 1972 and early 1973.

Senator DANFORTH. Late 1972 and early 1973? Then what happened?

Mr. BONADONNA. One bar got into the area and I almost make it my fault of that happening, but I was naive myself at that point in time, too, got into the area and we had—they started having a few small fights, which was nothing in their bar.

Senator DANFORTH. What was the name of that bar?

Mr. BONADONNA. Delaware Daddy's.

Senator DANFORTH. Pardon?

Mr. BONADONNA. Delaware Daddy's.

Senator DANFORTH. Delaware?

Mr. BONADONNA. Yes, D-a-d-d-y.

Senator DANFORTH. D-a-d-d-y?

Mr. BONADONNA. D-e-y.

Senator DANFORTH. D-a-d-d—Daddy?

Mr. BONADONNA. Yes.

Senator DANFORTH. The first word?

Mr. BONADONNA. Delaware.

Senator DANFORTH. Delaware like the State?

Mr. BONADONNA. Yes, Senator.

Senator DANFORTH. That was the bar?

Mr. BONADONNA. Yes, Senator, it was.

Senator DANFORTH. Was that owned or operated by an organized crime figure?

Mr. BONADONNA. Here again, this is only my summation of the situation. I can't give you specific times and dates and places of things

that happened, but here was a gentleman who was 5 or 6 months behind in his house payment. Here was a gentleman driving an old, extremely old car. Here was a gentleman that did not own much of his own, then all of a sudden he comes up with \$65,000 or \$70,000 cash to put in a bar in the area.

Senator DANFORTH. What was the man's name?

Mr. BONADONNA. Paul Scola.

Senator DANFORTH. Scola?

Mr. BONADONNA. Yes, Senator.

Senator DANFORTH. Did he have any kind of a record?

Mr. BONADONNA. Not to my knowledge, but he had family connections with the Civella family.

Senator DANFORTH. With the Civellas?

Mr. BONADONNA. Yes, Senator.

Senator DANFORTH. That was the first bar that was questionable?

Mr. BONADONNA. Yes, Senator, it was.

Senator DANFORTH. Then fights began in that bar?

Mr. BONADONNA. Yes, Senator. There were fights in there. There was a time when Carl "Tuffy" DeLuna was in the bar and there was local law enforcement agents that were friendly to the Civella family in the bar.

They would have knockdown, drag-out fights right in the bar. The law enforcement officer would go in the backroom and hide so he wouldn't be recognized.

Senator DANFORTH. Would do what?

Mr. BONADONNA. Would go in the backroom to hide so they wouldn't be recognized until they finished the fight. It was a mess.

Senator DANFORTH. What law enforcement agency was this person connected with?

Mr. BONADONNA. It was the Kansas City—Missouri—Liquor Control.

Senator DANFORTH. That is the municipal liquor control?

Mr. BONADONNA. Yes, Senator.

Senator DANFORTH. What is the name of that man?

Mr. BONADONNA. Nelson G. Martin.

Senator DANFORTH. Was there anyone else connected with the law enforcement agency?

Mr. BONADONNA. He is the only one that I know of that was there.

Senator DANFORTH. Did DeLuna show up at that bar?

Mr. BONADONNA. Mr. DeLuna was in there with his girl friend at the time.

Senator DANFORTH. What was the next establishment that was related to organized crime?

Mr. BONADONNA. That again—the ones that I am familiar with, my brother and I bought a building down the street from us. We cut it up into two bars and there were three partners. I was a third owner at the time and I left the leasing up to the third partner, who was Mr. Frank Ancona to lease the building out. Before I realized what had happened, there were two guys that came into the area that had got the leases. But then when the bar was to be built, one of the guys it was leased to—somebody else took the lease over.

I have no idea to this day how it happened, but they came in and the intentions were supposedly good, and at this time I was still naive.

I was not sure these guys were actually connected with the crime family, but later on I found out they were.

Senator DANFORTH. What were the names of those two bars?

Mr. BONADONNA. One bar was named Pat O'Brien's and the other one was Judge Roy Bean's Jersey Lilly.

Senator DANFORTH. When were those bars opened approximately?

Mr. BONADONNA. I don't really know. Approximately 1973, late 1973 or 1974. I am not sure.

Senator DANFORTH. What were the names of the proprietors of those bars?

Mr. BONADONNA. The proprietor on the liquor license was Pat O'Brien, was owner of Pat O'Brien's. The proprietor on the liquor license of the Judge Bean's Jersey Lilly was Willie Labasia.

Senator DANFORTH. Were they in your opinion fronts for somebody else?

Mr. BONADONNA. Yes, they were.

Senator DANFORTH. For whom?

Mr. BONADONNA. Pat O'Brien was a front for a gentleman known as Pete Simone, who is in the gambling end of the crime family.

Senator DANFORTH. Simone?

Mr. BONADONNA. Pete Simone, yes, sir.

Senator DANFORTH. How about Judge Roy Bean's?

Mr. BONADONNA. Judge Roy Bean's, that I am not sure who is the front for. All I know is on Saturday nights I would see Carl DeLuna down at the place counting the money with Willie Labasia. I would always leave, but every Saturday night they would go down and make their collection.

I am not saying that is what happened, but that is what I deduced happened.

Senator DANFORTH. What was the next establishment?

Mr. BONADONNA. That is when all my troubles really started. We were concerned with the 12th Street—say 12th Street come into the area, Cammisano family, in the 12th Street bars, which had a very bad reputation, prostitution, drugs, fights, things of that nature, and disturbances.

There were four bars in the area. They tried to stop them, but they couldn't.

Senator DANFORTH. Four bars tried to come into the area from 12th Street?

Mr. BONADONNA. Yes, Senator, one—two—two of them were from 12th Street and two of them were friends of organized crime families trying to come into the area.

Senator DANFORTH. Who operated those four bars?

Mr. BONADONNA. The original bar was the "Fabulous '40's" that was going to be operated by the Cammisano family. The second bar was called, I think, "Huck Finn's." It was Huck Finn's. It was going to be operated by a friend of the Cammisano family, although I didn't think he was involved in organized crime.

I don't know. His name was Lonnie Roccaforte.

Senator DANFORTH. Was what?

Mr. BONADONNA. Lonnie Roccaforte.

Senator DANFORTH. What was the third?

Mr. BONADONNA. The third bar was named the "Godfather" and originally it was—there was a gentleman named Steve Como, who was fronting for someone. I am not sure who the person was fronting for. I can't say at this point in time.

Senator DANFORTH. Steve Polo?

Mr. BONADONNA. C-o-m-o, Steve Como, and he was subsequently turned down for a liquor license because he could not prove where he had got the money to operate this business.

Senator DANFORTH. He did not get a liquor license?

Mr. BONADONNA. No, he didn't. They just got someone else.

Senator DANFORTH. Is he the only one who couldn't?

Mr. BONADONNA. No. What they did is, when he was turned down because he couldn't prove his financial worth, they got someone else and I don't remember who the party got them in at that time.

Senator DANFORTH. What was the next one?

Mr. BONADONNA. The fourth bar was "Moma Giolino's." This gentleman came in the area. He was a very rough person. I don't feel like he personally was connected with organized crime, but he was a friend of the outfit and it was a meeting place for them.

Senator DANFORTH. It was a meetingplace?

Mr. BONADONNA. It was a meetingplace for them to have dinner after hours and things of that nature.

Senator DANFORTH. Moma Giolino's?

Mr. BONADONNA. Moma Giolino's.

Senator DANFORTH. Were there more in addition to these?

Mr. BONADONNA. There was another one that came in the area around this time. It was the "Village Gate," who was a cousin to Paul Scola, who owned Delaware Daddy's.

Senator DANFORTH. Let me ask you this: Were all of these bars?

Mr. BONADONNA. Yes, they were, Senator.

Senator DANFORTH. They all had to have liquor licenses. They had to have liquor licenses from the city of Kansas City and they also had to have a State liquor license. I don't know anything about the municipal ordinance in Kansas City with respect to State liquor or municipal liquor licenses, but with regard to the State liquor licenses, as I recall how it works, there are supposed to be various tests about known organized crime people and so on, to be able to prevent them from getting liquor licenses.

Is that extremely easy to circumvent just by fooling the authorities, by putting in a front?

Mr. BONADONNA. Yes. That is the way they do it. Say an organized crime figure wants to put his business, a liquor bar; that is one of the key things in Kansas City as far as, you know, having a place to show that they have an income. They will get someone who has not been convicted of a crime, that is clean, and that has some sort of a business sense about him.

As Chairman Nunn asked me earlier, how do they get legitimate business people involved—this is the way they do it. They hold out this front, saying we are going to put you in business; we have \$100,000, \$200,000 to build this business up for you. You will be the owner. We will pay you the salary. We will take a portion.

That is it.

Senator DANFORTH. There was some sort of permit system or zoning ordinance so that a business that wanted to come into River Quay had to go through some sort of screening in addition to the liquor license; is that right?

Mr. BONADONNA. Yes, Senator. That was my primary function in the vice presidency that I held, in the Market Area Businessmen's Association. We were trying to get legislation through the city to give us the power to screen these applicants and, if we did get this power, we were able to try to keep out organized crime figures.

Subsequently, because of me and getting a moratorium changed, the thing just collapsed.

Senator DANFORTH. You never got such an ordinance?

Mr. BONADONNA. We had it up in front of the council for a vote, but because we were so inconsistent, we had the firm at one point, we went up there, and when I was forced to go up there and have my councilman in the area ask him if he would change the wording because I was in danger, and he did so, it made us seem very inconsistent, and the council just felt we were not, you know, insensible.

I guess they—it just went into limbo, and I guess it is still in limbo. We tried. We tried hard.

Senator DANFORTH. Was it a long battle?

Mr. BONADONNA. Extremely. I would be in meetings every single morning for 3 or 4 or 5 months at a time.

We had a 2-hour meeting in the morning. The local officials, Mr. Webb Townley of Century Hardware—I am sure you are familiar with Century Hardware—he would be there every morning.

If he wasn't there, he would send one of his aides to be there.

The Kansas City Power and Light Co. had people there. The railroad had people there. The market area purveyors worked on this thing. We had meetings many times, and we just couldn't—we had it worked out. We had it in form, and we presented it to the city, but they would always find something in there that would hurt somebody, so we would go back and work on this thing. We worked on it 5 or 6 months. I guess it was that long.

Finally we got it up there, and we had it in a form everybody could live with; it was a good form. It would have restricted organized crime from coming into the area.

But because I had to intercede on behalf of the Cammisanos and change the ordinance, and to this day I find out now, to this day, I don't think some of the members of the Market Area Businessmen's Association realized that I am the one who went up and had one word changed in it that completely wiped out everything we worked so long for. That is why I was fighting so hard.

Senator DANFORTH. Let me ask you about this conversation. Carl Civella's—is it Carl Civella's Meat Market?

Mr. BONADONNA. Yes.

Senator DANFORTH. After the municipal election—when did that occur?

Mr. BONADONNA. It was likely, it seems like it was the next morning after the vote was tallied up and the results were given.

Senator DANFORTH. What year was that?

Mr. BONADONNA. I don't know. I guess it was around 1973 or 1974, Senator. I am not sure about the date. It was the first election of the city council. They lost the city council seat.

Senator DANFORTH. "They" being?

Mr. BONADONNA. Being the syndicate, the Mafia, the outfit.

Senator DANFORTH. So they considered that they had a city council seat?

Mr. BONADONNA. They did have a city council seat; before that election they had it tied up.

Senator DANFORTH. Before what?

Mr. BONADONNA. For 16 years before, they had the city council seat tied up, they had a city councilman there that was a cousin to Cork Civella.

Senator DANFORTH. Who was he?

Mr. BONADONNA. I believe his name was Paul Capra.

Senator DANFORTH. He lost the election?

Mr. BONADONNA. Yes, he did.

Senator DANFORTH. Who was present at that meeting?

Mr. BONADONNA. I happened to walk in on the meeting. I went there to pick up a meat order. We have to go to the office to pick up a bill. I walked in there; Alex was there; there were two other people there. I don't know them by name; I know faces. I am pretty hard on names unless they stick in my mind, but they were in the office, and Cork was calling verbally Alex Fazzino, about why he had not got out of the car, put on his straw hat and get out and get the voters out, to get to the election.

Mr. Fazzino was almost in tears saying, "I tried, I was promised x number of votes from so and so. I was promised x number of votes from this other person. They just never delivered them."

That was basically the conversation.

Senator DANFORTH. Was there something about a liquor license getting kicked free?

Mr. BONADONNA. Which one are you talking about?

Senator DANFORTH. I don't know. I think you said something about some help with the liquor license getting "kicked free"?

Chairman NUNN. Senator Danforth, he went into that in considerable detail in his prepared statement, and I think the sequence was that he had been helping and was trying to convince these fellows he had been helping, and someone else was taking credit for it, and they didn't believe him, and that is where the legislator came into play.

Isn't that right?

Mr. BONADONNA. Yes.

Chairman NUNN. That preceded the question on the State legislator who was taking credit for having kicked the liquor license free?

Mr. BONADONNA. Yes.

Senator DANFORTH. Was this a State or municipal liquor license?

Mr. BONADONNA. This was a municipal liquor license.

The system works in Kansas City that the State, basically, relies upon the investigative powers of the city before they will issue a State liquor license. The State will not issue a State liquor license unless the city has issued a letter of intent to give a State liquor license.

It is almost like what comes first, the chicken or the egg. The State will not issue one unless the city issues one, and the city will not issue one unless the State issues one. That is the way it works.

Senator DANFORTH. This was the Cammisano liquor license?

Mr. BONADONNA. Yes, it was.

Senator DANFORTH. It was being what? Was there some snag?

Mr. BONADONNA. There was a moratorium in effect that had stopped and regulated the liquor licenses in the area, and Cammisano's license fell under that moratorium.

Senator DANFORTH. How did you get it kicked free?

Mr. BONADONNA. I went to a councilman and I went to the liquor director, and I told him in my capacity as a vice president of market area businessmen's association that we were in favor, which I was not telling the truth at the time, I was willing to protect my family, that we were in favor of this license down in the area.

Then I went to Councilman Hernandez, and I told him:

I can't tell you why, but this is very important to me. I have got to get this license kicked loose. Is there anything you can do to get that license kicked loose?

His reaction to me was:

I can have a license kicked loose, but I will have to change a word and, if I do, it will make us look inconsistent in our moratorium. It will allow pornography dealers and all of these things to come to the area.

Councilman Hernandez is an extremely, extremely honest, honest person, very courageous, very courageous to stand up to these people. Yet, because of our friendship, and I still hold him as a dear friend, because of our friendship he was willing to take this stand for me and try to help me out.

He did so, and the license was eventually kicked loose.

Senator DANFORTH. When was the first bomb in River Quay?

Mr. BONADONNA. I think they bombed out, they blew up a building that was 80 or 85 feet long and about 35 feet wide, and it had walls out there 2 feet thick, the building was built over 100 years ago, and it had been a bank building.

They put enough explosives under this building that it took the whole building off of the foundation and sent it out almost for half-a-block area. That was the first bomb.

Senator DANFORTH. When was that?

Mr. BONADONNA. That was in, I think, late March, maybe early April. I am not specific on that point.

Senator DANFORTH. Of what year?

Mr. BONADONNA. Of 1977.

Senator DANFORTH. 1977?

Mr. BONADONNA. Yes, Senator.

Senator DANFORTH. Whose establishment was bombed?

Mr. BONADONNA. Pat O'Brien's and Judge Roy Bean's.

Senator DANFORTH. They were operated by—

Mr. BONADONNA. By Pat O'Brien and by Louis Abraski.

Senator DANFORTH. Do you know why that bombing occurred?

Mr. BONADONNA. I have a feeling why it occurred.

First of all, it sent me a message that I was not to testify before the grand jury; second of all, they felt that I didn't have insurance on the

building, which I did. I did have insurance on the building and, if they could burden me with the financial responsibilities, that I might, you know, put pressure on them in that respect.

Third of all, I felt like that they felt like River Quay, because of the murders and all of the things that had happened down there, that the business was going downhill and, to save an investment and collect the insurance that they had, they would bomb the building out.

It is my understanding that about 1 week before—maybe 1 month after—there was over \$100,000 fire insurance policy taken out on one of the establishments. I know they both had policies.

Senator DANFORTH. Who owned the building?

Mr. BONADONNA. My brother and I owned the building at that time.

Senator DANFORTH. You mean you were the people holding the lease?

Mr. BONADONNA. The people—

Senator DANFORTH. Leases of the building, took out the insurance policies?

Mr. BONADONNA. What happened is that my brother and I had the building; after the murders of my father, and things of that nature, we were having financial problems on top of all of the other problems we had, because the business had plummeted; we were having, the people in the building would not pay their rent; we were paying the payments out of pocket, and I dropped the insurance policy on the building.

The bank who had the mortgage on the building, unbeknownst to me, got hold of my brother and Dave took out a policy on the building for my brother and I.

That is why I had a policy on the building. I did collect on the insurance on that.

Chairman NUNN. Thank you, Senator Danforth.

Senator CHILES?

Senator CHILES. Did the outfit hurt any other people in the attempt to influence you not to testify?

Mr. BONADONNA. Yes, Senator, they did.

My brother, 33 years old, was in Kansas City, and before he died, I talked to him, and he was telling me of times that they would stick guns to his head, try to find out where I am at and try to force me not to testify.

They waited until a specific moment when a friend of mine, Gary Parker, who is a good kid, he had done nothing wrong—I don't know why—the reason I realized was because he was my friend—they put a CR-4 explosive in his car right outside of my brother's bar, restaurant. And at 4:30 in the afternoon, and exploded the car right at the traffic, without any feeling for life or anybody else they killed.

And in doing so, they sent me a message:

Don't testify. This could be you. We are going to destroy your brother's business. We will destroy anything that your family has.

I felt, that this meant me. Subsequently, the pressures that they put upon my 33-year-old brother, who is now dead—he drank himself to oblivion, and he is dead.

Senator CHILES. He drank himself—

Mr. BONADONNA. He drank himself to death within 1 year, I guess 1½ years, because of the pressures that was put upon him.

Senator CHILES. To what extent is this Kansas City organized crime involved in the sale or distribution of drugs?

Mr. BONADONNA. That, Senator, I don't know. I mean I am honest with you. I just don't know.

Senator CHILES. Yesterday we heard from the head of the Kansas City Police Department that the tide is beginning to turn and that the battle against organized crime is beginning to be won in Kansas City.

Do you agree with the opinion that the tide is turning?

Chairman NUNN. Excuse me. Before he answers that.

The Kansas City Police Chief made it clear he wasn't saying it was beginning to be won. He said that he thought they had reached the point where they finally stopped losing.

He made a clear distinction on that.

Senator CHILES. I wasn't here, so I don't want to misstate what he said. What do you think?

Mr. BONADONNA. Senator Chiles, I feel that a committee such as this has a great influence on organized crime. I feel like they are checkmated at this point in time. There hasn't been any murders since all of this stuff has happened, you know, to this point; they are scared. They are running scared now.

The time has come for people like yourselves to strike a blow and stamp these people out.

What would be a very good thing is if you could take this committee to Kansas City and have a hearing there and give them the publicity and let the people in the community and the law enforcement, give them the help that they need to stamp them out.

Yes, you are doing a good job, and I think they are going on the checkmate.

Senator CHILES. But do you think right now they are lying low?

Mr. BONADONNA. They are not laying low. They have been mortally wounded. They have—I am talking about the Kansas City crime—I don't know about the United States—they are mortally wounded. They are laying there in their death throes, they are flopping. It is just a question of how long, how much more pressure can be put upon them to put them out of business.

Senator CHILES. In addition to the public opinion that you have talked about very eloquently, what do you think is needed in terms of additional assets for law enforcement? What does law enforcement need in order to effectively deal with this?

I am talking about a change in the law.

Mr. BONADONNA. As I stated before, the Internal Revenue Service has got to get back into the organized crime investigation.

Two, you should have laws to help laws in the State of Missouri to get their Internal Revenue Service into the crime prevention.

You should have programs or some kind of funding or something for the Kansas City, Mo., police departments to have a school on how to cope with these organized crime problems.

There are a lot of things that I am not really that versed on, but I see things that happen and that they need help.

I don't know. You have better people qualified better than I. They need help in that town. The city police department is not equipped. They don't have the wherewithall or the know-how or the laws are not being strictly enforced.

The laws in the court, instead of giving these guys 2 years or 1½ years or 3 years for attempted murder, give them 20 years, make the law stronger than what they are. It will have an effect throughout the Nation, not only there.

Senator CHILES. Do you think a murder-for-hire statute that would make it a Federal crime for murder-for-hire, and allow the FBI to come in on that type of crime be helpful?

Mr. BONADONNA. Extremely. In my father's case, when my father was killed, they had an eyewitness that actually seen my father's car being driven out of the Cammisano garage where I feel he was murdered.

The police department for some reason or other didn't follow through on this lead and it was through my intervention with the Federal official in Kansas City, telling him it was, I guess the magistrate judge, the Federal magistrate judge in Kansas City, ask him to please investigate this place, that this was 1 week later.

If the FBI was able to get on the investigation right at the time, I feel like they would have cracked the case within days.

Chairman NUNN. Thank you, Senator.

Senator DANFORTH. May I ask a question?

Chairman NUNN. Certainly.

Senator DANFORTH. You mentioned earlier that in your opinion the political officials, governmental officials in Kansas City and the State of Missouri are by and large honest, respectable people?

Mr. BONADONNA. Ninety-nine percent of them are honest, reputable and caring people.

Senator DANFORTH. I agree with that, being one of them. Let me ask you this: You said that in your opinion there were five or six who were corrupt. What do you mean by "corrupt"?

Mr. BONADONNA. Corrupt, where a State senator or a State legislator or a city councilman would go in and physically change a law or try to get a senator, for example, a person would get in trouble with the State income tax people, when the State income tax in Missouri was investigating organized crime, when they would get in trouble with the State income tax people, a senator would go up and he would use his powers to get someone off; or to get a judge that is an elected official to give out different sentencing, very small sentencing to people because he was someone in organized crime.

These are the things that I am talking about. There are not many of them, but they have a few in key positions. I don't know them all. I just know some of them.

Senator DANFORTH. Do you have any personal knowledge of any State senator or State legislator or city councilman or judge or other official who has done something which is corrupt?

(At this point, Senator Chiles withdrew from the hearing room.)

Mr. BONADONNA. From my viewpoint, I feel like Mr. Fazzino has done things that have been corrupt, the way he does them is very under-the-table, but he does get things done.

I feel that a senator who is dead now, this senator was Frank Hale—

Chairman NUNN. Let me just ask this question. I think it is important, as Senator Danforth said, of your personal knowledge. Everybody you have talked about so far you have had personal knowledge of, direct knowledge of. I think we ought to be very careful in this area as to what you have personal knowledge of versus what you may have picked up third, fourth-hand.

Senator DANFORTH. Let me say this, Mr. Chairman. I have great, great qualms about getting into this area because public officials depend on their reputations for their whole careers and their futures.

On the one hand, since the witness stated that there are five or six corrupt officials, I am reluctant just to pass it over and say absolutely nothing.

On the other hand, if you have knowledge of what you personally saw or heard or were present to, I think it is my obligation to ask you.

Mr. BONADONNA. The only instance that I personally saw and seen was a piggyback of a bill—

Senator DANFORTH. A what?

Mr. BONADONNA. Was the piggybacking of a statute on a bill that was trying to pass through the State senate that would benefit organized crime, an organized crime family personally.

Senator DANFORTH. Would you tell me what happened?

Mr. BONADONNA. In my capacity as a member of the board of directors of the businessmen's association, we were lobbying a bill in the State legislature for a liquor law extension.

We had lobbied a lot of the senators, a lot of the legislators, and we had done everything we could to get this law passed.

This particular legislator also was helping us get this law passed. When the bill got to the floor of the legislature, on the bill, he had piggybacked another bill of his that was to let in a person that had concession, that was trying to get a concession company into the Kemper Arena, I think it was, and because one of the legislators had lobbied that was going to go for us changed his vote, the bill was killed.

Senator DANFORTH. But the legislator in question, whom you feel was doing something improper, was the one who offered an amendment to a bill on the floor of the State senate?

Mr. BONADONNA. Yes.

Senator DANFORTH. What happened to that amendment?

Mr. BONADONNA. It was killed. Then we resurrected the amendment and I got hold of the—I am not sure about this part—but I think the amendment was resurrected and we got it passed through the legislature and when it got to the State, the State senators, the senate, it was killed again and it is now dormant.

Senator DANFORTH. What would the amendment have done?

Mr. BONADONNA. Because of the River Quay area and because of the convention, the Kemper Arena Center—

Senator DANFORTH. Because of what?

Mr. BONADONNA. Because of the Kemper Arena and the Convention Center coming to the Kansas City area and because of different conventions in St. Louis, we were trying to get a bill passed where the bars in specific locations with a certain amount of people living in

the area, it was allowed for the city to regulate and open up the bars, past the 1:30 closing period. That was the bill.

Senator DANFORTH. What was the amendment that would have benefited you?

Mr. BONADONNA. The amendment was that instead of closing at 1:30, they would be able to notify by a separate State liquor license for 2:30 and 4:30, to give them 2 more hours during convention time.

Senator DANFORTH. That was an amendment which was specifically designed to benefit organized crime?

Mr. BONADONNA. No. No. That was an amendment specifically designed for the betterment of the bars in the convention areas so we can, like the Republican convention was in Kansas City, the conventioners worked long hours and the delegates worked long hours and they get out at 1:30, 12 o'clock at night at the convention. The bars in the State of Missouri have to close down at 1:30. We wanted the bars to stay open until 4:30.

Senator DANFORTH. Are you talking about the bill or the amendment to the bill?

Mr. BONADONNA. It is the bill we are talking about.

Senator DANFORTH. There was an amendment which a State senator offered to that bill.

I am sorry. I thought you were saying there was an episode that you know of where a State senator did something improper.

Mr. BONADONNA. He is telling me what you meant by it. The piggyback was that there was a concessionaire who was trying to get a liquor license or some kind of a licensing in the Kemper Arena at the time and the person who owned the company, the concession company, was affiliated with the Civella family some way.

The bill was piggybacked on top of this bill that we were trying to send through.

Senator DANFORTH. Let's talk about this amendment that was the piggyback. It would have provided that a specific individual could get a liquor license at Kemper Arena?

Mr. BONADONNA. To the best of my knowledge, I think that was the amendment.

Senator DANFORTH. When was that, approximately? Do you know?

Mr. BONADONNA. No. Senator, I don't know the exact date.

Senator DANFORTH. Can you approximate it? Was it about the time of the Republican Convention?

Mr. BONADONNA. It was during the early 1970's.

Senator DANFORTH. And the point of the amendment was specifically directed at one particular potential licensee?

Mr. BONADONNA. That was my understanding from the legislator that had lobbied. He told me he voted against it.

Senator DANFORTH. That is, the legislator who killed the amendment said that that is why he voted against it?

Mr. BONADONNA. Yes.

Senator DANFORTH. But there was another State senator who was pushing it?

Mr. BONADONNA. Not the senator, the State legislator. It failed in the legislature the first time; the second time, they resurrected it and brought it up for the vote again and the second time it got through

the legislature because we had lobbied. I had lobbied myself, legislator myself again. To the best of my knowledge I think they go through the legislature, went on to the senate, but was killed in the senate.

Senator DANFORTH. This particular amendment?

Mr. BONADONNA. Yes.

Senator DANFORTH. That is the amendment dealing with the specific licensing?

Mr. BONADONNA. Yes; because it was a piggyback on top of the bill that we wanted in. It killed everything. That was my understanding of the way it happened.

Senator DANFORTH. Do you view the effort to piggyback this amendment, did you view that as being improper or doing a special favor?

Mr. BONADONNA. I felt it was, yes.

Senator DANFORTH. You thought it was. And who was the beneficiary of this license?

Mr. BONADONNA. I don't remember his name.

Chairman NUNN. Let me ask you this question. Do you know whether the particular legislator that was trying to piggyback was a part of organized crime or directly under their influence? Do you know whether he took any money? Do you know if he did anything improper?

Mr. BONADONNA. I don't know if he took any money. I have no knowledge of any financial doings at that level. All I know is that the legislator in question was the same legislator that was at the meeting when "Cork" was reprimanding him in the meat company and he was the same legislator.

Chairman NUNN. The one you named previously?

Mr. BONADONNA. Yes.

Chairman NUNN. Do you have any evidence that he has taken money from organized crime?

Mr. BONADONNA. None whatsoever.

Chairman NUNN. Do you have any evidence that he directly violated the law?

Mr. BONADONNA. None whatsoever.

Chairman NUNN. What you are confining your testimony to is his meeting with Carl Civella?

Mr. BONADONNA. Yes.

Chairman NUNN. He later introduced the amendment that would have benefited the Civella family?

Mr. BONADONNA. Yes. He is constant companion of the Civella family.

Chairman NUNN. You witnessed the discussion with him and the Civella's after an election in which he was admonished by Carl Civella?

Mr. BONADONNA. Yes.

Chairman NUNN. But you are not alleging any specific crime against him?

Mr. BONADONNA. No.

Chairman NUNN. You are not alleging any specific act of corruption that you personally know?

Mr. BONADONNA. None whatsoever.

Chairman NUNN. Senator Danforth, the staff has gone into detail on a great deal of this. The line has been drawn as to the question of what

he personally had knowledge of and, I think in this area, we have to have some criterion and even then it is very, very difficult. We have tried to proceed with great caution and I know you are concerned about both sides of that.

Senator DANFORTH. I am. As I say, I am trying to walk a tightrope because I didn't open up this line of discussion. It having been opened up, I think it would be a little bit strange if I absolutely shut the door, but I do want, I did want to confine the subjects to the matters that the witness had personal knowledge of, and I take it that relates to only one member of the State legislature, and not to five or six individuals.

Further, that with respect to that one member of the State legislature, the witness is aware of no criminal activity or no activity which would be arguably viewed as—

Chairman NUNN. That is right. He has limited his discussion of that matter to what he personally observed and there is no allegation of criminal activity on that particular legislator's part.

I think the record speaks for itself as to what he testified to and the affiliation and so forth.

Mr. Bonadonna, I don't want to close without giving you a chance to say anything else that is on your mind this morning. You have been through a lot of questions. We have been through your prepared testimony, but if you have anything else you would like to say to this subcommittee, we would be delighted to receive it.

Mr. BONADONNA. No, Mr. Chairman. I think I have said enough. I have said everything I have to say.

Chairman NUNN. We are grateful to you for your testimony. We are appreciative of your courage and tenacity in trying to combat what you have personally experienced and what you know has affected so many people adversely in Kansas City and around the country.

I think your testimony here has been of tremendous benefit to this subcommittee and will continue to be of great benefit as we look at the various legislative suggestions which we have under consideration to try to improve law enforcement's efforts against organized crime.

I thank you for being here and, at this stage, I am going to ask that, first of all, the cameras be turned to the back of the room.

Second, I don't want the marshals or the Capitol police to have to fool with expensive cameras, so I would ask that the camera people do that while they are here. After you do that, then I would ask that the room be checked by the marshals as to whether all cameras are turned to the back of the room, and then after that is done, I would ask that the room be vacated.

So, first, let's have all of the cameras turned to the back of the room and when the marshals have certified to me that that has been done, then I will ask that the room be vacated.

We will be back in approximately 5 minutes for the appearance of Mr. William Cammisano.

[Members of the subcommittee present at the time of recess: Senators Nunn, Danforth.]

[Brief recess.]

[Members present after the taking of a brief recess: Senators Nunn, Chiles, Percy, and Danforth.]

Chairman NUNN. Who is head of this operation for the Capitol Police? Could you state to us that all cameras are turned to the back of the room?

Sergeant HAUGHTON. Yes, sir; in fact, they are all turned and the room is clear of all unauthorized personnel.

Chairman NUNN. The room is clear of everyone except people who are authorized to be here?

Sergeant HAUGHTON. Yes, sir; that is correct.

Chairman NUNN. The subcommittee will come to order.

Mr. Cammisano, would you please stand and take the oath as we require of all of our witnesses? Would you raise 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. CAMMISANO. I do.

**TESTIMONY OF WILLIAM CAMMISANO, ACCOMPANIED BY
COUNSEL, BRUCE HOUDEK, KANSAS CITY, MO.**

Chairman NUNN. Mr. Cammisano, before we ask you any questions, I want to advise 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 question or questions.

Second, under the rules of procedure for the Permanent Subcommittee on Investigations your attorney may be present during your testimony.

In that regard, I understand you do have an attorney with you. Could we get the attorney to state his full name and address?

Mr. HOUDEK. My name is Bruce Houdek. My address is 1006 Grand Avenue, Kansas City, Mo.

Chairman NUNN. Mr. Cammisano, is Mr. Houdek your attorney representing you here today?

Mr. CAMMISANO. Yes.

Chairman NUNN. You understand you have the right to consult with your attorney after we ask any question, or you can consult with your attorney at any time under the rules of our subcommittee. You understand that right?

Mr. CAMMISANO. I do.

Chairman NUNN. As I have indicated, in addition to your rights as a witness, you also have an obligation while testifying before this subcommittee. You have sworn to testify truthfully. If you do so testify, you are obligated to provide truthful answers so as not to subject yourself to the laws and the penalties regarding perjury.

Mr. Cammisano, do you understand your rights and your obligations as a witness before this subcommittee?

Mr. CAMMISANO. I do.

Chairman NUNN. Would you please state your full name for the record?

Mr. CAMMISANO. William Cammisano.

Chairman NUNN. At this point, I am going to ask Chief Counsel Marty Steinberg to explain to you, Mr. Cammisano, the purpose of these hearings, the legislative purpose, and he will do that at this time.

Mr. STEINBERG. Mr. Cammisano, in the interest of making you aware of your obligation under the law to testify fully and truthfully at this hearing, we are pointing out the following matters to you.

First, the subcommittee has full legal authority to compel your testimony. Senate subcommittees are authorized by Standing Rule of the Senate XXVI(1) to require by subpoena the testimony of witnesses. In addition, Senate Resolution 361 expressly authorizes the Committee on Governmental Affairs, and its duly authorized subcommittees, one of which is this subcommittee, to require by subpoena the testimony of witnesses.

We are providing you with copies of rule XXVI, Senate Resolution 361, the subcommittee's rules, and, of course, you have previously been served with a subpoena.

You should be aware of the penalties for either refusing to testify, or testifying falsely. Under 2 U.S.C. section 192, for refusing to answer any question pertinent to the question under inquiry, you can be prosecuted for contempt of Congress and punished by up to 1 year in prison.

Under 18 U.S.C. section 1621 and other statutes, for testifying falsely on material matters, you can be prosecuted for perjury, or for making false statements and punished by up to 5 years in prison. We are furnishing you with copies of those statutes.

The opening statement of Senator Nunn has been supplied to you which outlines the purpose, legislative authority, and extent of our present hearings.

Briefly, let me repeat our legislative role.

The power to investigate affords Congress a logical and necessary extension of the legislative process. This broad power encompasses inquiries concerning the administration of existing laws as well as proposed laws or amendments. It includes surveys of defects in our social, economic, or political system for the purpose of enabling Congress to remedy them.

Senate Resolution 361 sets out this subcommittee's authority to investigate the matters we have under consideration.

The particular subject matter of this hearing can be described as follows:

- (1) To investigate the structure and membership of organized crime.
- (2) To determine what legal and illegal activities are engaged in by organized crime.
- (3) To determine the extent of organized crime's infiltration into legitimate businesses.
- (4) To attempt to develop a national strategy against organized crime.
- (5) To attempt to determine the legal impediments which interfere with law enforcement's efforts in organized crime.
- (6) The need for new legislation to deal with organized crime.
- (7) To evaluate the effectiveness of law enforcement in dealing with organized crime.
- (8) To determine the vulnerabilities of certain businesses and unions to organized crime.
- (9) To determine the conditions in our country which foster organized crime.

(10) To educate the public and the Congress concerning organized crime.

Of particular legislative interest to the subcommittee are legislative suggestions concerning:

- (1) A Federal murder-for-hire statute.
- (2) Increased sentencing for those who use violence to commit a Federal crime.
- (3) A mechanism whereby the Government can seek to reduce a prisoner's sentence if he cooperates.
- (4) An amendment to the Federal assault statute to include all Federal prosecutors and investigators.
- (5) To determine if bail and sentencing laws are adequate.
- (6) To determine the legal impediments to investigating organized crime.
- (7) To determine if the Rico statute should be amended to specifically cover enterprises whose sole object is criminal activity.

Our hearings have also explored the use of violence as a tool by organized crime to:

- (1) Exert influence and control.
- (2) Exert internal group discipline.
- (3) Eliminate competitors.
- (4) Coerce victims.
- (5) Intimidate the public.

In that respect with regard to the Kansas City area, we have heard in our hearing that:

- (1) There is an organized criminal group in the Kansas City area.
- (2) William Cammisano is a member of this group.
- (3) Cammisano is part of the enforcement arm of this group.
- (4) As a member of the Kansas City mob's enforcement arm, Mr. Cammisano participated in planning and executing numerous violent acts in the River Quay area and in other acts of mob violence.
- (5) Mr. Cammisano has been convicted with respect to his involvement in the Kansas City River Quay incident.
- (6) Members of Federal and local law enforcement in Kansas City have detailed the involvement of Mr. Cammisano in these and other violent acts.
- (7) Mr. Bonadonna gave direct testimony concerning Mr. Cammisano's threats and use of violence for the Kansas City mob.

Moreover, electronic interceptions have disclosed:

- (1) Meetings Mr. Cammisano attended to plot the murder of a mob rival.
- (2) The interest of Mr. Cammisano and his associates, Nick Civella, Carl Civella and Carl DeLuna and others, had in skimming proceeds of Las Vegas casinos.
- (3) Various other illegal activities of the Kansas City mob.

Therefore, Mr. Cammisano, you have been called to testify before this subcommittee to be questioned with regard to:

- (1) The structure and membership of the Kansas City mob.
- (2) What factors led to the mob's attempt to control the River Quay project.
- (3) The use of violence by the Kansas City mob.
- (4) The Kansas City mob's plans for the River Quay project.

(5) The extent of the mob's investment and income from the River Quay project.

(6) The extent and nature of the Kansas City mob's hidden interest in Las Vegas casinos.

(7) The income derived by the Kansas City mob from Las Vegas casinos.

(8) The relationship between the Kansas City mob and the Chicago mob with regard to their interest in the Las Vegas casinos and any profits derived from skimming operations.

(9) The activities of the Kansas City mob.

Chairman NUNN. Thank you, Mr. Steinberg.

Mr. Cammisano, before I begin my questions, I again repeat for your benefit that you do have the right to have an attorney present.

You have an attorney present and if you would like to consult your attorney before answering any question, you have that right under our rules and procedures. You understand that right?

Mr. CAMMISANO. I understand it.

Chairman NUNN. Mr. Cammisano, could you give us your address?

Mr. CAMMISANO. 5700 North Grant.

Chairman NUNN. Is that in Kansas City?

Mr. CAMMISANO. It is.

Chairman NUNN. That is your permanent address?

Mr. CAMMISANO. It is.

Chairman NUNN. Kansas City, Mo.?

Mr. CAMMISANO. That is right, sir.

Chairman NUNN. Where are you presently located?

Mr. CAMMISANO. Springfield, Mo., serving a sentence at the U.S. Medical Center, Springfield, Mo.

Chairman NUNN. Is that a Federal penitentiary?

Mr. CAMMISANO. It is.

Chairman NUNN. Mr. Cammisano, what crimes have you been convicted of?

Mr. CAMMISANO. My lawyer will have to explain that; I don't know.

Chairman NUNN. Your lawyer is not permitted to testify before the committee. He can advise you.

Mr. CAMMISANO. I was convicted of the Hobbes Act.

Chairman NUNN. Under the Hobbes Act. When was that conviction?

Mr. HOUDEK. You want the date of sentencing?

Chairman NUNN. Yes, if you have that.

Mr. HOUDEK. It was November—

Chairman NUNN. Could we get Mr. Cammisano, if you could advise him, but we prefer to have him testify.

Mr. HOUDEK. I have a certified copy of the transcript of the sentencing.

Chairman NUNN. If you could indicate to him the date and get him to read that into the record.

Mr. CAMMISANO. November 21, 1978.

Chairman NUNN. How long have you been incarcerated?

Mr. CAMMISANO. About 16 months.

Chairman NUNN. Has all of your service been in that particular penitentiary you have named?

Mr. CAMMISANO. It has.

Chairman NUNN. Mr. Cammisano, do you belong to any criminal organization which is—

Senator PERCY. Could we ask—

Mr. CAMMISANO. I refuse to answer, based—

Chairman NUNN. Wait just a minute. I haven't completed the question. Excuse me.

Senator PERCY. Could you tell us how long the conviction is for?

Mr. CAMMISANO. Five years.

Senator PERCY. Are you eligible for parole at the end of a given period?

Mr. CAMMISANO. I was denied parole.

Senator PERCY. Pardon?

Mr. CAMMISANO. I was denied parole.

Chairman NUNN. Mr. Cammisano, let me ask you one other question here. Is this the first crime you have been convicted of, or have you been convicted of other crimes?

Mr. CAMMISANO. I refuse to answer, based on my rights under the U.S. Constitution, including my rights not to incriminate myself, right of privacy, my right to due process of law, equal protection of law, and the plea bargain agreement in my case.

Chairman NUNN. Mr. Cammisano, do you belong to any criminal organization which is known by various names, such as the "outfit" or the "La Cosa Nostra" or the "Mafia" or the "clique"? Do you belong to an outfit under any of those names?

Mr. CAMMISANO. I refuse to answer, based on my rights under the U.S. Constitution, including my right not to incriminate myself, the rights of privacy, my rights to due process of law, equal protection of law, and the plea bargain agreement in my case.

Chairman NUNN. Mr. Cammisano, have you ever been initiated into the outfit?

Mr. CAMMISANO. I refuse to answer, based on my rights under the U.S. Constitution, including my right not to incriminate myself, the rights of privacy, my rights to due process of law, equal protection of law, and the plea bargain agreement in my case.

Chairman NUNN. Mr. Cammisano, can you identify the leaders and members of the outfit in Kansas City?

Mr. CAMMISANO. The same answer.

Chairman NUNN. Mr. Cammisano, have you ever been involved in any manner with the operation of illegal businesses in the Kansas City area with other outfit members?

Mr. CAMMISANO. The same answer.

Chairman NUNN. Mr. Cammisano, did you attend a meeting on November 28 and 29, 1978, with Nick Civella, Carl Civella, Charles Moretina, Carl DeLuna and/or Peter Tambarello or any of those named persons at the residence of Jack Trombino?

Mr. CAMMISANO. The same answer.

Chairman NUNN. Are these listed people that I have just named, or any of those people members, or are they made members of a criminal organization in Kansas City, Mo.?

Mr. CAMMISANO. The same answer.

Chairman NUNN. Mr. Cammisano, have you or has anyone you know, such as Nick Civella or Carl DeLuna received any income from skimming operations of Las Vegas casinos, in particular the Tropicana Hotel casino?

Mr. CAMMISANO. The same answer.

Chairman NUNN. Mr. Cammisano, did you get a certain percentage of any Las Vegas skimming operations?

Mr. CAMMISANO. The same answer, sir.

Chairman NUNN. Mr. Cammisano, did you play any part in the murder of David Bonadonna in 1976?

Mr. CAMMISANO. The same answer, sir.

Chairman NUNN. Mr. Cammisano, did David Bonadonna visit you at your garage on Monroe Street on the day of his murder, which was July 22, 1976?

Mr. CAMMISANO. The same answer, sir.

Chairman NUNN. Mr. Cammisano, in connection with the attempted murder of Carl Spero, did you discuss with Carl Civella that you had to strip away the people surrounding Carl Spero to get at him?

Mr. CAMMISANO. The same answer, sir.

Chairman NUNN. Did you discuss that you recommended stripping away from the limbs of Carl Spero and his associates?

Mr. CAMMISANO. The same answer, sir.

Chairman NUNN. Mr. Cammisano, as a result of problems you or your brother, Joe Cammisano, had obtaining licenses in the Kansas City River Quay project, did you commit or have committed various acts of violence such as murder, bombings and arson?

Mr. CAMMISANO. The same answer, sir.

Chairman NUNN. Mr. Cammisano, did you ever threaten a city councilman that if your brother was bothered in his attempts to run prostitutes in the Kansas City River Quay area you would kill him and anyone else who got in his way?

Mr. CAMMISANO. The same answer, sir.

Chairman NUNN. Senator Percy, do you have a question?

Senator PERCY. I have just one question, Mr. Cammisano. We have heard testimony just yesterday and today, disturbing testimony from Kansas City law enforcement officials and Mr. Bonadonna. And we have heard about one section of the city, the River Quay, which at one time was established as a thriving entertainment center for thousands of people to enjoy their leisure time.

We have heard testimony that subsequently there were numerous bombings, arsons, and murders that devastated the area and ruined the lives of honest businessmen. All of these efforts and attempts displayed a complete disregard for human life. We have also been told that traditional organized crime exists for only one reason: to make money by illicit means.

Could this subcommittee obtain from you any reason why or what would possess a person to murder, to destroy the life of friends and family members to achieve such an end?

Mr. CAMMISANO. The same answer, sir.

Mr. PERCY. Thank you.

Chairman NUNN. Senator Danforth?

Mr. Cammisano, we have many, many questions we would like to ask you this morning. The subcommittee of the full Committee on Governmental Affairs have determined that your testimony is necessary for our hearings on mob violence. Accordingly, the subcommittee has applied to the U.S. District Court for the District of Columbia for an order immunizing your testimony from use in prosecutions against you and the court has issued such an order.

I will ask the clerk to furnish you a copy of that order and if you have a copy, also for his attorney.

Mr. Cammisano, I am furnishing you with a copy of that order and a copy of the statutory provisions: 18 United States Code, annotated 6001 to 6005, under which it was issued. I am going to read the order to you.

The order is entitled:

In the U.S. District Court for the District of Columbia, Senate Permanent Subcommittee on Investigations, U.S. Senate, Washington, D.C. 20510, applicant.

On consideration of the application by the Senate Permanent Subcommittee on Investigations, and the memorandum of points and authorities, and exhibits, in support thereof, the Court finds that the procedural requisites set forth in 18 U.S.C. 6005 for an order of the Court have been satisfied. Accordingly, it is

Ordered that William Cammisano may not refuse to appear and testify before the Senate Permanent Subcommittee on Investigations on the basis of his privilege against self-incrimination, and it is

Further ordered that no testimony compelled under this Order (or any information directly or indirectly derived from such testimony) may be used against William Cammisano in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order.

This is signed by the U.S. District Judge, George L. Hart, Jr., U.S. District Judge for the District of Columbia, dated April 18, 1980.

Mr. Cammisano, you should be aware that the courts have consistently ruled the refusal by a witness to testify after a court has granted an immunity ordered and after the immunity order has been communicated to the witness constitutes contempt.

Mr. Cammisano, if you would prefer, or your attorney would advise you, we would extend you the privilege of testifying in executive session, nonpublic session, if you would so choose.

The subcommittee will also offer to explore with you and your counsel any degree of protection necessitated by your testimony.

Mr. Cammisano, you have had a chance to consult with your attorney. Do you understand the immunity order that has been read to you?

Mr. CAMMISANO. And the order is void and invalid.

Chairman NUNN. I ask you the question, if you understood the immunity order that had been read to you?

Mr. CAMMISANO. I understand; I understand.

Chairman NUNN. Could you answer that question?

Mr. HOUDEK. He has already said he understood it.

Chairman NUNN. I did not hear that. You do understand the immunity order that had been read to you? You might want to repeat your previous statement. You have that privilege.

Mr. HOUDEK. I don't understand.

Chairman NUNN. You do understand the immunity order that has been read to you?

Mr. HOUDEK. You understand the order?

Mr. CAMMISANO. I understand.

Mr. HOUDEK. Yes; he understands it.

Chairman NUNN. Mr. Steinberg, I will turn the questioning over to you at this stage.

Mr. STEINBERG. Mr. Cammisano, do you belong to any criminal organization which is known by various names such as the "outfit," the "clique," or the Mafia?

Mr. CAMMISANO. I refuse to answer, based on my rights under the U.S. Constitution, including my right not to incriminate myself, rights to privacy, my right to due process of law, equal protection of law, and the plea bargain agreement in my case, and the order is void and invalid.

Mr. STEINBERG. Mr. Chairman, I would ask you to rule on the witness' objection.

Chairman NUNN. Mr. Cammisano, as chairman I overrule your objections because we have obtained a court order that has been read to you and that court order speaks for itself, and you said you understood that court order. So your objection is overruled to the question.

Mr. STEINBERG. Mr. Cammisano, I ask you again, do you belong to any criminal organization which is known by various names such as the "outfit," the "clique," or the Mafia?

Mr. CAMMISANO. I refuse to answer, based on my rights under the U.S. Constitution, including my right not to incriminate myself, rights to privacy, my right to due process of law, equal protection of law, and the plea bargain agreement in my case, and the order is void and invalid.

Chairman NUNN. Mr. Cammisano, that objection is overruled without objection from the members of the subcommittee, the basis of the immunity order that you have been granted.

Mr. STEINBERG. At this point, do you want to specify any specific grounds you are relying on in refusing to testify besides those you have already named?

Mr. CAMMISANO. The same answer.

Mr. STEINBERG. Mr. Chairman, would you direct the witness to testify?

Chairman NUNN. Mr. Cammisano, you are directed to testify and I again read to you the court order:

On consideration of the application by the Senate Permanent Subcommittee on Investigations and the memorandum of points and authorities, and exhibits, in support thereof, the court finds that the procedural requisites set forth in 18 U.S. Code 6005 for an order of the court have been satisfied. Accordingly, it is ordered that William Cammisano may not refuse to appear and testify before the Senate Permanent Subcommittee on Investigations on the basis of his privilege against self-incrimination, and it is further ordered that no testimony compelled under this order (or any information directly or indirectly derived from such testimony) may be used against William Cammisano in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order.

Signed U.S. District Judge George L. Hart, April 18, 1980.

Mr. Cammisano, pursuant to this order and pursuant to my authority as chairman of the subcommittee, I order you to testify and I order you to answer the questions that are being asked of you.

Mr. CAMMISANO. The same answer, sir.

Mr. STEINBERG. Mr. Cammisano, can you identify the leaders and members of the "outfit" in Kansas City?

Mr. CAMMISANO. The same answer, sir.

Mr. STEINBERG. Mr. Cammisano, have you or anyone you know, such as Nick Civella and Carl "Toughie" DeLuna, received any income from skimming operations of Las Vegas casinos, in particular the Tropicana Hotel?

Mr. CAMMISANO. The same answer, sir.

Mr. STEINBERG. Mr. Cammisano, did you play any part in the murder of David Bonadonna in 1976?

Mr. CAMMISANO. The same answer, sir.

Mr. STEINBERG. Mr. Cammisano, in February of 1972, did you meet with James Spunuzzi, Eugene "Checkers" Smaldone, Frank Bompensiero, and Nick Civella in Kansas City to discuss the plans to muscle in Las Vegas casinos?

Mr. CAMMISANO. The same answer, sir.

Mr. STEINBERG. Have you ever been called or referred to by the nickname, "TSU," t-s-u?

Mr. CAMMISANO. The same answer, sir.

Mr. STEINBERG. As a result of problems you or your brother, Joe Cammisano, had in obtaining licenses in the River Quay project, did you commit or have committed various acts of violence such as murder, bombings, and arson?

Mr. CAMMISANO. The same answer, sir.

Mr. STEINBERG. Did you ever threaten a city councilman that if your brother was bothered in his attempts to run prostitutes in the Kansas City River Quay area you would kill him and anyone else who got in your way?

Mr. CAMMISANO. The same answer, sir.

Chairman NUNN. Mr. Cammisano, we have numerous other questions we would like to ask you. Do you intend to continue to refuse to comply with the order of the chairman of the subcommittee and the order of the U.S. Federal court? Do you intend to refuse to, continue to refuse with any questions we may ask?

Mr. CAMMISANO. The questions on this subject.

Mr. STEINBERG. As we have told you, Mr. Cammisano, when we first talked to you, we intended to ask you questions on the subject matters we advised you of.

If we ask questions on those subject matters which we have outlined in detail before, do you intend to repeat the same answer?

Mr. CAMMISANO. The same answer, sir.

Chairman NUNN. The same answer—I would at that point, would you repeat that question, Mr. Steinberg on this point? I would ask that the witness read his answer instead of referring to same answer. He has given more than one answer.

Mr. STEINBERG. Mr. Cammisano, we advised you prior to your testimony of the exact subject matters we intended to ask you about. If we continue to ask you questions under that subject matter, would you continue to repeat the answer you have given before and, if so, what is that answer?

Mr. HOUBEK. I would like a little clarification of the question. Are you talking about the statement you made at the beginning of the hearing today?

Mr. STEINBERG. That is correct.

Mr. HOEDEK. You had conversations with him at the U.S. Medical Center and I assume you are not referring to that.

Chairman NUNN. We are talking about the statement read to him today.

Mr. HOEDEK. OK.

Mr. CAMMISANO. The same answer.

Mr. STEINBERG. Would you read the answer, please?

Mr. CAMMISANO. I refuse to answer, based on my rights under the U.S. Constitution, including my right not to incriminate myself, rights of privacy, my right to due process of law, equal protection of law, and the plea bargain agreement in my case, and the order is void and invalid.

Mr. STEINBERG. Mr. Cammisano, you are saying that you understand that the chairman has ordered you and directed you to answer each and every question; is that correct?

Mr. CAMMISANO. The same answer, sir.

Mr. STEINBERG. Mr. Cammisano, at this time your subpoena will be continued until this matter can be brought to the attention of the Federal district court.

Chairman NUNN. At this point the subcommittee will be adjourned until 9 o'clock tomorrow morning.

[Whereupon, at 2 p.m., the subcommittee recessed, to reconvene at 9 a.m., Friday, May 2, 1980.]

[Members of the subcommittee present at time of recess: Senators Nunn, Chiles, and Danforth.]

APPENDIX

FBI PROPOSALS

TO AMEND THE

FREEDOM OF INFORMATION ACT

WILLIAM H. WEBSTER
DIRECTOR

(235)

OFFICE OF THE DIRECTOR



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

June 19, 1979

To make the 1966 Freedom of Information Act more effective and responsive to an open society, Congress amended the law in 1974. Because some of the amendments required law enforcement agencies to disclose information in their files, Congress, recognizing the sensitive nature of those files, included provisions which permit law enforcement agencies to withhold certain types of information. Thus, enactment of the amendments was an effort to strike a balance between the disclosure of sensitive information and the need to withhold from public disclosure information which the national security and effective law enforcement demand be held in confidence.

When President Lyndon B. Johnson signed the Freedom of Information Act into law on July 4, 1966, he said, "This legislation springs from one of our most essential principles: a democracy works best when the people have all the information that the security of the Nation permits." I am as convinced today of the undeniable validity of that proposition as President Johnson was more than a decade ago.

The objective of public disclosure aimed toward the goal of an informed citizenry is one to which the FBI is committed. For example, although the Privacy Act provides for the exemption of files compiled for law enforcement purposes, the Bureau processes first-person requests under the Freedom of Information Act to afford the requester the maximum possible disclosure. In 1978 the FBI made final responses to 20,000 Freedom of Information-Privacy Acts requests. We have placed in our public reading room over 600,000 pages of materials concerning such matters as our investigations of the assassinations of President Kennedy and Dr. Martin Luther King, Jr.; Cointelpro; and many significant cases of historical interest. The public can review any of these materials at no cost. I am well pleased with the FBI's demonstrated response to the mandate of Congress in this area.

It should be noted our response has been achieved at a substantial cost. With over 300 employees at FBI Headquarters assigned full time to Freedom of Information-Privacy Acts matters, the Bureau expended over nine million dollars in the program last year. Furthermore, we have learned that because of the Act the FBI is not now receiving vital information previously provided by persons throughout the

private sector, foreign, state and municipal law enforcement organizations, informants and other sources.

I have described the FBI's experience with the Freedom of Information Act in testimony before Committees of Congress. Several of our Oversight Committees asked me to submit to them proposed changes in the Act. In response to those requests, I have prepared some amendments.

My proposals, which do not necessarily represent the views of the Department of Justice or the Administration, endeavor to refine the Act, not to repeal it. As you consider them, I ask you to observe not only what they would do, but also what they would not do. They would not, for example, diminish the rights and privileges a criminal defendant or civil litigant now enjoys under the rules of civil and criminal procedure, nor would they limit or restrict in any way the power of the Department of Justice or the Congress or the Courts to oversee any activity of the FBI. What they would do, I submit, is make those adjustments to the Act suggested by reason and experience.

Existing time limits for responding to requests would be changed to establish a relationship between the amount of work required in responding to requests and the amount of time permitted to do the work. The proposals also would change the law to permit, not require, us to disclose our records to felons and citizens of foreign countries. We

also propose deleting the requirement a record be an investigatory record before it can be protected under existing exemption (b) (7). This proposal would enable the FBI to protect such noninvestigatory records as manuals and guidelines to the extent the production of them would cause any of the harms specified in existing exemptions (b) (7) (A) through (F).

The proposals would divide all FBI records into two categories. The first category would consist of the most sensitive information the FBI possesses: records pertaining to foreign intelligence, foreign counterintelligence, organized crime, and terrorism. The proposals would exempt them from the mandatory disclosure provisions of the Act. Title 28, Code of Federal Regulations, Section 50.8, which provides for access to files over 15 years old of historical interest, will remain in effect.

All other FBI records would be in the second category and subject to the Act's mandatory disclosure provisions.

Several proposals are designed to reestablish the essential free flow of information from the public to the FBI. We propose the statute specify that state and municipal agencies and foreign governments merit confidential source protection when they provide information on a confidential basis. To make clear we are permitted to withhold seemingly innocuous information which standing alone may not identify

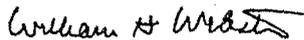
a source, but which could do so when combined with other information subject to release under the Act or known to the requester, we propose we be permitted to withhold information which would tend to identify a source. This proposal would, adopt the comments of several courts and make the language of the exemption conform more closely to the original intent of Congress.

To increase our ability to protect confidential sources, we are proposing a seven-year moratorium on law enforcement records pertaining to law enforcement investigations. The FBI will not use the moratorium in concert with a file destruction program to frustrate the Freedom of Information Act.

Because the proposals are permissive in nature, they would not prohibit releasing information. To insure fundamental fairness and to address matters of public interest, the FBI will draft with the Department of Justice a policy for disclosing information even though the law would permit withholding it.

These proposals would protect legitimate law enforcement interests while carefully preserving the basic principle underlying the Freedom of Information Act. In my view they merit your consideration.

Sincerely yours,



William H. Webster
Director

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TIME LIMITSExisting Law

Subsection (a) (6) (A) requires each agency upon any request for records to make the records available within 10 days.

Subsection (a) (6) (B) permits the agency in narrowly defined unusual circumstances to extend the time limits for no more than 10 additional days.

If an agency fails to comply with the time limits, subsection (a) (6) (C) enables the person who made the request to file suit in United States District Court to enjoin the agency from withholding documents. The subsection provides that if the Government can show exceptional circumstances exist and the agency is exercising due diligence, the court may allow the agency additional time.

Observations

Every working day the FBI receives approximately 60 new requests for records. Although we do not have any records pertaining to the subject matter of some requests and others require processing only a few pages, some requests encompass thousands of documents. In most instances more than ten days elapse before we can identify, locate and assemble

the requested documents, much less process them for release. Contrary to what some may imagine, there is no machine which reproduces in a matter of minutes all the requested information contained in any one or more of the millions of FBI files. Often we must review many documents which contain information concerning other individuals as well as the requester.

The ability to respond to requests within an extremely short time period depends largely on the sensitivity of the records the agency's duties and functions require it to maintain. The FBI must review its records with extreme care prior to releasing them. That review entails a page-by-page, line-by-line examination of each document. To proceed in any other manner would jeopardize classified data, valid law enforcement interests, and third-party privacy considerations.

The volume and nature of work involved and, to an extent the limited resources available, render it impossible for the FBI to meet the 10-day time limit. As the General Accounting Office concluded after a 14-month review of our operations, "Considering the nature of the information gathered by the FBI, the processing of requests within 10 working days will probably never become a reality." "Timeliness and Completeness of FBI Responses to Freedom of Information and Privacy Acts Requests Have Improved," page 12

of a Report to the Congress by the Comptroller General of the United States, April 10, 1978.

The General Accounting Office determined the FBI appeared to be making every effort to reduce the response time and it is noteworthy the Comptroller General did not recommend any administrative or managerial changes to reduce that time.

Our failure to meet the time limits does more than place us in the unseemly posture of failing to be in strict compliance with the law. It creates a vicious circle. When we miss a deadline the person who requested the records can file a lawsuit. Time spent responding to the lawsuit naturally results in time lost responding to the requests of others. That in turn delays even more our responding to those other requests.

The conclusion appears inescapable. The time limit provisions should be modified.

Proposal

We propose subsection (a) (6) (A) be amended to read: "Each agency, upon any request for records made under paragraphs (1), (2), or (3) of this subsection shall --

"(i) notify the person making the request of the receipt of the request and notify the person making the request within 30 days after receipt of the request of the number of pages encompassed by the request and the time limits imposed by this subsection upon the agency for responding to the request; determine whether to comply with the request and notify the person making the request of such determination and the reasons therefor within 60 days from receipt of the request (excepting Saturdays, Sundays and legal public holidays) if the request encompasses less than 200 pages of records with an additional 60 days (excepting Saturdays, Sundays and legal public holidays) permitted for each additional 200 pages of records encompassed by the request, but all determinations and notifications shall be made within one year; and notify the person making the request of the right of such person to appeal to the head of the agency any adverse determination;

and

"(ii)

"(B)

"(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in attempting to respond to the request, the court shall allow the agency additional time to complete its review of the records...."

Commentary

Our proposal has two main features. It would establish a relationship between the amount of work required to respond to a request and the amount of time permitted to do the work. It would insure we would be granted additional time to respond to requests if exceptional circumstances exist and if we are exercising due diligence.

Our current practices of acknowledging receipt of the request promptly and notifying the requester at the outset if we do not have any records concerning the subject matter of his request would not be affected.

The proposal would require us to notify the requester within 30 days of the number of pages encompassed by his request and to inform him of the applicable time limits.

In the absence of exceptional circumstances the proposal would permit no more than 60 working days to process every 200 pages of records encompassed by the request. Because some requests require the review of thousands of pages and the proposed schedule could result in a prolonged response time, we suggest the imposition of a maximum time limit of one year, absent exceptional circumstances.

Although we are convinced making the time limits proportional to the amount of work required is a sound idea, we are not wedded either to the 60-day:200-page ratio or the one year maximum limitation. We propose that schedule with the realization the subsection under consideration applies to all Executive agencies, not just to those which, like ours, must review extremely sensitive records in a detailed, careful, and time-consuming manner.

If we were able to begin working on requests as soon as they are received, we could process most, but not all of them within the proposed time limits. Because we could not meet the 60-day:200-page deadline in exceptionally complex cases, or the one year maximum limit in exceptionally large requests, or either when confronted with other exceptional circumstances, our proposal would make clear we will be given additional time if we can show the court there are exceptional circumstances and that we are exercising due diligence in attempting to respond to the request.

"Unfortunately, we are not currently in a position to begin working on a request soon after it is received. We note, indeed we underscore, the number of requests now on hand and awaiting processing and the volume and scope of incoming requests and pending litigation are so great, that four to six months usually elapse between the time a request is received and the time we are able to furnish the records to the requester.

We propose the 60-day:200-page schedule, with the exceptional circumstance provision intact, as a reasonable alternative to existing law, notwithstanding the four- to six-month delay imposed mainly by the backlog of work. The proposal relies on Open America v. Watergate Special Prosecution Force, 547 F.2d 605 (D.C. Cir. 1976). In that case the court found the deluge of requests in excess of that anticipated by Congress is a factor to be considered in determining the existence of exceptional circumstances.

CERTAIN ALIENS; FELONSExisting Law

Subsection 552(a)(3) requires each agency upon any request for records to make the records promptly available to any person.

Observations

Although only a citizen of the United States or an alien lawfully admitted for permanent residence may make a request for records under the Privacy Act, the Freedom of Information Act imposes upon the FBI the duty to furnish records to any person in the world who asks for them.

At present about 16 percent of our Freedom of Information Act requests are made by or on behalf of prisoners. The actual figure could be higher because only those requests which bear the return address of a prison or which state the requester is a prisoner are counted in our statistical tabulation. The percentage of requests from prisoners is growing. A little more than a year ago only six percent of the requests were made by prison inmates.

Although we do not know how many requests are made by convicted felons, it may be assumed we are receiving requests from persons who have been convicted of a felony but

are no longer under sentence. Members of organized crime families, for example, despite having been convicted of felonies, are free to request FBI documents. We do receive requests from organized crime figures.

Furthermore, because the present statute requires us to furnish FBI records to "any person," a citizen of a foreign country, even a citizen of a hostile foreign country, may demand and receive FBI documents. We have had requests from individuals who reside in foreign countries.

Because every request must be honored and because we receive more requests than we can process immediately, it is our policy to respond to requests in the order in which they are received. The result is the requests of most citizens must wait their turn while the Bureau responds to requests for FBI documents from felons and residents of foreign countries.

Proposal

We propose amending existing subsection (a)(3) by adding the following sentence:

"This section does not require a law enforcement or intelligence agency to disclose information to any person convicted of a felony under the laws of the United

States or of any state, or to any person acting on behalf of any felon excluded from this section."

We propose subsection (e) be amended to define "person" as "a United States person as defined by the Foreign Intelligence Surveillance Act of 1978."

Commentary

The Foreign Intelligence Surveillance Act of 1978 defines "United States person" as "a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3)."

Subsection (a) reads, "Foreign Power" means --

"(1) a foreign government or any component thereof, whether or not recognized by the United States;

"(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

"(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;"

The legislative history of the Freedom of Information Act makes clear the passage of the law was prompted in no small part on the premise that the opportunity to obtain information is essential to an informed electorate. Our proposal would tailor the Act to serve that purpose, while carefully preserving the rights of the electorate. The definition of "person" is sufficiently broad to insure the rights of public interest groups and associations would not be affected.

Some of those the proposal could exclude from the Act are not a part of the electorate because they are citizens of foreign countries. The proposal also would preclude felons from demanding as a matter of right the benefits of the Act at taxpayers' expense. That would have two advantages. First it would enable the FBI to respond more promptly to the requests of those for whom the Act primarily was designed. Indeed, most felons have lost their right to vote and thus are not part of the electorate. Secondly, it would put to an end the current practice of convicts who are making requests for the purpose of identifying those who probably

were responsible for their conviction. [It can be assumed many of these felons do not require proof beyond a reasonable doubt in identifying a particular person as a source of information.] If felons can be prohibited from voting in elections, a right lying at the very heart of our democracy, the law should permit their being excluded from FBI files as well as the voting booth.

The proposal would not limit existing habeas corpus or civil and criminal discovery procedures, all of which will remain as they are today. Furthermore, the proposal does not prohibit the Bureau from responding to requests of felons and those who are not United States persons. It provides we would not be required to respond to those requests. Thus, the FBI would be permitted to make records available and we shall work with the Department of Justice to draft guidelines governing access under the Act to a law enforcement or intelligence agency's information by felons and those who are not United States persons.

PROTECTION OF LAW ENFORCEMENT INTERESTSExisting Law

Subsection 552(b) provides the Act does not apply to matters that are --

"(7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

"....

"....

"Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection."

Observations

The FBI observes there are difficulties in applying this exemption in such a way that legitimate law enforcement interests receive adequate protection. Those interests include protecting highly sensitive information, ongoing investigations, manuals and some other noninvestigatory records, and confidential sources.

Proposal

We propose subsection (b) (7) be amended to read as follows:

"(b) This section does not apply to matters that are--

"(7) records maintained, collected or used for foreign intelligence, foreign counterintelligence, organized crime, or terrorism purposes; or records maintained, collected or used for law enforcement purposes, but only to the extent that the production of such law enforcement records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy or the privacy of a natural person who has been deceased for less than 25 years, (D) tend to disclose the identity of a confidential source, including a state or municipal agency or foreign government which furnished information on a confidential basis,

and in the case of a record maintained, collected or used by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by the confidential source including confidential information furnished by a state or municipal agency or foreign government, (E) disclose investigative techniques and procedures or (F) endanger the life or physical safety of any natural person; PROVIDED, however, this section shall not require a law enforcement or intelligence agency to (i) make available any records maintained, collected or used for law enforcement purposes which pertain to a law enforcement investigation for seven years after termination of the investigation without prosecution or seven years after prosecution; or (ii) disclose any information which would interfere with an ongoing criminal investigation or foreign intelligence or foreign counterintelligence activity, if the head of the agency or in the case of the Department of Justice, a component thereof, certifies in writing to the Attorney General, and the Attorney General determines, disclosing the information would interfere with an ongoing criminal investigation or foreign intelligence or foreign counterintelligence activity."

We also propose the following definitions be added to subsection (e):

"Foreign intelligence" means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons.

"Foreign counterintelligence" means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, international terrorist activities or assassinations conducted for or on behalf of foreign powers, organizations or persons.

"Terrorism" means any activity that involves a violent act that is dangerous to human life or risks serious bodily harm or that involves aggravated property destruction, for the purpose of --

- (i) intimidating or coercing the civil population or any segment thereof;
- (ii) influencing or retaliating against the policies or actions of the government of the United States or of any State or political subdivision thereof or of any foreign state, by intimidation or coercion; or

(iii) influencing or retaliating against the trade or economic policies or actions of a corporation or other entity engaged in foreign commerce, by intimidation or coercion.

"Organized crime" means criminal activity by two or more persons who are engaged in a continuing enterprise for the purpose of obtaining monetary or commercial gains or profits wholly or in part through racketeering activity."

Commentary

Our proposal would divide all FBI records into two categories. The first category would consist of the most sensitive information the FBI possesses: records pertaining to foreign intelligence, foreign counterintelligence, organized crime, and terrorism. The proposal would exempt them from the mandatory disclosure provisions of the Act. All other FBI records would be in the second category and subject to the Act's mandatory disclosure provisions.

Title 28, Code of Federal Regulations, Section 50.8, will remain in effect. That section, based on an Order dated July 17, 1973, provides for access to files of historical interest. The complete text is in the appendix.

The proposal substitutes for the Freedom of Information Act's "compiled," the definition of "maintained" used in the Privacy Act of 1974, 5 U.S.C. § 552a (a)(3). Not only would the proposed change aid the consistency of the two related statutes, it also would preclude any gap in protection resulting from a narrow interpretation of "compiled." The thrust should go to the purpose for which the records are maintained, collected or used, and not solely the purpose for which they originally were compiled.

The FBI's Most Sensitive Records

The FBI is charged with the responsibility for foreign intelligence, foreign counterintelligence, terrorism and organized crime investigations within the United States. Our activities in these four areas invariably are among the most sensitive the FBI conducts and the records we maintain, collect and use in connection with these matters are our most sensitive. The degree of sensitivity of information is directly proportional to the degree of harm resulting from the disclosure of that information to the wrong person.

Most of our investigations in these areas are detailed, complex and extensive. Thus, of all our records our most sensitive are also the most vulnerable to examination by those motivated by other than legitimate reasons to

identify sources and determine the scope, capabilities and limitations of our efforts.

Although one of the purposes of the Freedom of Information Act was to compel disclosure of agency information to assist in informing the electorate, one cannot conclude all citizens request and receive the FBI's most sensitive information for the purpose of making themselves a more informed electorate.

This is not to intimate all persons who desire to examine these records have evil motives. A few, no doubt, do. We know, for example, of an organized crime group which made a concerted effort to use the Freedom of Information Act to identify the FBI's confidential sources.

In these types of cases revealing the absence of information in our files is most damaging. The lack of any investigative activity in a particular place at a particular time conveys in clear and unmistakable terms our limitations. That we do not possess records showing FBI investigative activity in a certain city is to announce we have no knowledge of what transpired there. It is important to remember under the Freedom of Information Act we are required to explain why information is being withheld, identify with as much specificity as possible the nature of the information, and describe the document not being disclosed.

It must be recognized that hostile foreign governments, terrorist and organized crime groups not only have the motive to subject our releases to detailed analysis, they have the resources to finance such an examination by knowledgeable and skilled analysts.

Risks surface internally as well. The FBI traditionally has operated on the "need-to-know" principle: sensitive information is provided only to those FBI employees who have a need-to-know the information. It would not be uncommon for a veteran Special Agent assigned to the Criminal Investigative Division to have no knowledge about a foreign counterintelligence case, and for an employee assigned foreign counterintelligence responsibilities to know only a portion of the details of that same case. Yet, to respond to a Freedom of Information Act request all relevant records must be assembled in one place. Throughout the response, appeal and litigation stages the records receive much more exposure than they otherwise would.

We must remember, too, it is human beings in the FBI who review our records and try to decide what must be released and what properly should be withheld. Human beings have made mistakes in the past; they will make them in the future. Furthermore, there is a limit to human knowledge. FBI employees do not know, cannot know and have no way of learning the extent of a requester's knowledge of names, dates

and places. The Freedom of Information Act analyst in the FBI may have no way of knowing or learning the significance to a hostile analyst of a particular item of information. Yet, somehow, the FBI employee is supposed to make an intelligent judgment.

To our knowledge no confidential source has ever experienced physical harm as a result of one of our releases, but one of the most alarming aspects of this entire area is that the greatest danger lies in a hostile foreign government identifying an FBI source and leaving that source in place. We are heartened by the absence of an identifiable victim; we remain concerned.

We have not lost sight of our commitment to be as open as possible. To that end we have defined the four highly sensitive categories in an effort to strike a proper balance between openness in government and keeping secret those things which are fit to be kept secret from the world.

Through its elected representatives the public has placed upon the FBI our foreign intelligence, foreign counter-intelligence, terrorism and organized crime responsibilities. We recognize the American people have a right to know how the FBI is discharging those responsibilities. The Act does not require any person who desires to receive a document to show a need for the information or to express a reason for requesting it. We do not suggest the Act be changed to impose any

such requirements. What we are proposing is that the public's right to know about these highly sensitive matters be channeled through the existing powers of its courts, its Congress, and its other representatives.

The FBI must account to the public for its activities in these particularly sensitive areas. We should give our accounting not to the world, but to the public's courts, Congress, and Executive. All other FBI records would remain subject to direct public access.

All Other FBI Records

Existing subsection (b) (7) clearly does not protect law enforcement manuals because they are not "investigatory records." With the law in its present form, we are unable to reduce to writing in a manual, training document or similar paper those items of information we want our Special Agents in the field to know without running the risk of having to provide our game plan to those who would use our own information to avoid detection or capture.

The manner in which the courts have struggled to find some basis to justify withholding those portions of law enforcement manuals which deserve protection may be seen in such cases as Cox v. Department of Justice, 576 F.2d 1302 (8th Cir. 1978); Cox v. Department of Justice, ___ F.2d ___

(8th Cir. 1979); Caplan v. Bureau of Alcohol, Tobacco and Firearms, 445 F.Supp. 699 (S.D.N.Y. 1978); aff'd on other grounds, 587 F.2d 544 (2nd Cir. 1978).

The difficulty the courts have had in relying on existing exemption (b) (2), which protects all records relating solely to the internal personnel rules and practices of an agency, lies in part in the difference between the House and Senate Reports on the scope of exemption (b) (2). The House Report would allow manuals to be protected; the Senate Report would not.

We propose deleting the requirement the record be an investigatory record before it can be protected under exemption (b) (7). The proper test ought to be whether the production of the record would cause any of the harms subsections (b) (7) (A) through (F) are designed to prevent. Ginsburg, Feldman and Bress v. Federal Energy Administration, Civ. Act. No. 76-27, 39 Ad. L.2d (P & F) 332 (D.D.C. June 18, 1976), aff'd, No. 76-1759 (D.C. Cir. Feb. 14, 1978), vacated pending rehearing en banc (D.C. Cir. Feb. 14, 1978), aff'd mem., No. 76-1759 (D.C. Cir. 1978).

If our proposal were enacted, exemption (b) (7) would protect all FBI records to the extent the production of them would cause any of the harms addressed in exemptions (b) (7) (A)

through (F). See Irons v. Bell, et al., ___ F.2d ___ (1st Cir. 1979). Remaining portions of records would be disclosed under the Freedom of Information Act.

Ongoing Investigations

Effective law enforcement demands that in certain situations the existence of an investigation not be disclosed. Although existing exemption (b) (7) (A) permits the withholding of information to the extent that the production of records would "interfere with enforcement proceedings," we know of no way to respond to a Freedom of Information Act request without alerting the requester there is an ongoing investigation. Subsection (a) (6) (A) (i) requires us to inform the requester the reasons for our determination whether to comply with his request. Thus, we are required by the statute to cite (b) (7) (A) to protect an ongoing investigation and by citing that exemption we confirm the existence of the investigation.

The General Accounting Office found, "(I)f requesters, unaware that they are under investigation, seek access to their records, they would immediately realize the situation once the agency cited the (b) (7) (A) exemption to withhold information that may harm a pending investigation. Thus, the agency faces a dilemma. It cannot lie to requesters by saying that no records exist, nor can it choose to ignore the

requesters.... Because the use of the (b) (7) (A) exemption puts the agency in a 'no-win' situation, some feasible procedure is needed by which the Government's and public's interests are served fairly and efficiently." "Timeliness and Completeness of FBI Responses to Freedom of Information and Privacy Acts Requests Have Improved," pages 57-58 of a Report to the Congress by the Comptroller General of the United States, April 10, 1978.

Our proposal would solve this dilemma. It would enable us to avoid alerting a requester only in those instances in which alerting him would interfere with an ongoing criminal investigation or foreign intelligence or foreign counter-intelligence activity. To insure the provision would be employed only when absolutely necessary, our proposal would require the Director of the FBI to certify in writing to the Attorney General and for the Attorney General to make the determination that disclosing the information would interfere with the ongoing criminal investigation or foreign intelligence or foreign counterintelligence activity.

Personal Privacy

Exemption (b) (7) (C) permits the FBI to withhold information in its investigatory records which would "constitute an unwarranted invasion of personal privacy." This

exemption does not protect any interests of deceased individuals because personal privacy considerations do not survive death.

Our proposal would extend the privacy interests protected by this exemption for 25 years after death.

Confidential Sources

Although exemption (b) (7) (D) is designed to protect confidential sources, there are difficulties with making the exemption so that for which it is intended. It is essential these difficulties be minimized or eliminated because the confidential source is indispensable; he is the single most important investigative tool available to law enforcement. "The courts have also recognized the danger that citizen cooperation with law enforcement agencies will end if such confidential sources are not protected." May v. Department of Justice, Civil Action No. 77-264SD (D. Me. 1978).

In responding to a request for information from an investigative file, we must review each record to determine if we can release the information. The duty is ours to establish the need to withhold, and we must demonstrate that records being withheld contain no "reasonably segregable" information; that is, information not specifically protected by exemption (b) (7) (D) or any of the other eight exemptions.

In practice this means that an FBI employee, even though he has learned to evaluate more carefully what information is reasonably segregable, does not know, cannot know, and has no way of learning the extent of a requester's knowledge of dates, places and events. The person most knowledgeable about what particular information may lead to source identity is, unfortunately for us, oftentimes the requester who is the subject of the investigation. What appears to us to be innocuous or harmless information may provide the requester the missing piece of the puzzle. Stassi v. Department of Justice, et al., Civil Action No. 78-0536 (D.D.C. 1979). When the records pertain to investigations of organizations and the members have the opportunity to pool and compare the information furnished to them, the danger becomes more apparent.

We have further concern for the inadvertent disclosure which may result from human error. That is a risk present whenever a page-by-page review of thousands of documents is undertaken.

Still, an FBI employee must review the relevant materials and predict what information can be released. The consequences of erring are severe.

Approximately 16 percent of our Freedom of Information Act requests are coming from prison inmates. Our experience tells us that in many instances their requests

are being made for the purpose of identifying informants. We know that an organized crime group made a concerted effort to identify sources through the Freedom of Information Act.

The FBI's ability to discharge its responsibilities depends in large measure upon the willingness of human beings to furnish information to us. To the extent the Freedom of Information Act or any other statute or event or circumstance inhibits someone from telling the FBI what he knows, our ability to do our job is made more difficult.

We have found that there are those in many segments of society who are refusing to provide us information because they fear their identity may be disclosed under the law. These people are not only confidential informants, but also private citizens, businessmen and representatives of municipal and state governments. Included as well are officials of foreign governments. The FBI is not suggesting that every person who is reluctant to provide us information does so solely because of the Freedom of Information Act. We are saying we do have examples -- actual case histories -- of people who have told us they do not want to provide information to us because they fear disclosure under the Act. Several of these examples are in the appendix.

The Report of the Comptroller General captioned, "Impact of the Freedom of Information and Privacy Acts on Law Enforcement Agencies," dated November 15, 1978, contains

several specific examples of documented instances wherein established or potential sources of information declined to assist us in our investigations. This General Accounting Office Report points out our belief that the Acts have had the greatest impact on informants in the organized crime and foreign counterintelligence areas, two of the areas in which the FBI currently concentrates its greatest efforts. Our sources of information in the foreign counterintelligence field are usually well educated, sophisticated and informed about the laws, court decisions and media coverage concerning the release of information from FBI files. They are very sensitive to the fact that Freedom of Information-Privacy Acts disclosure of their cooperation with us could jeopardize their community standing or livelihood, or more seriously, given the appropriate situation, their life or physical safety.

We consider this perception by the public to be a serious impairment to our capabilities. The Comptroller General's Report concluded the various law enforcement agencies surveyed almost universally believe that the ability of law enforcement agencies to gather and exchange information is being eroded, but the extent and significance of the information not being gathered because of the Freedom of Information Act and the Privacy Act cannot be measured. It is true quantitative measurement of the loss of information is most

difficult to ascertain. In many cases we will never be sure why a source or potential source of information declined to provide vital information to us, but the Freedom of Information Act has been specifically cited by many as the reason for their refusal to cooperate.

The practical problems that confront us in applying the existing (b) (7) (D) exemption and the risks present whenever sensitive records are reviewed for public disclosure place us in the position of not being able to dispel as completely mythical or imagined the perceptual problem which exists among the citizenry. Our proposal addresses the practical and perceptual problems.

The first part of exemption (b) (7) (D) permits the FBI to withhold information which "would" identify a confidential source. The second part protects any confidential information the source furnished to the FBI in the course of a criminal or lawful national security investigation. To make clear we are permitted to withhold seemingly innocuous information which in and of itself would not identify a source, but which could identify a source when combined with other information subject to release under the Freedom of Information Act, we propose amending subsection (b) (7) (D) to permit withholding information which would tend to identify a source.

Changing the exemption from "would disclose the identity of a confidential source" to "would tend to disclose the identity of a confidential source" adopts the comments of the courts in such cases as Nix v. United States of America, 572 F.2d 998 (4th Cir. 1978), Church of Scientology v. Department of Justice, 410 F.Supp. 1297 (C.D. Cal. 1976), and Mitsubishi Electric Corp., et al., v. Department of Justice, Civil Action No. 76-0813 (D.D.C. 1977).

The proposal also would make the language of the exemption conform more closely to the original intent of Congress. The author of the exemption, Senator Hart, stated, "The amendment protects without exception and without limitation the identity of informers. It protects both the identity of the informer and information which might reasonably be found to lead to such disclosure. These may be paid informers or simply concerned citizens who give information to law enforcement agencies and desire their identity be kept confidential," 120 Congressional Record 17034 (emphasis added).

Our proposal would make clear state and municipal agencies and foreign governments which furnish information on a confidential basis are confidential sources within the meaning of the exemption. The proposal would be consistent with Nix, supra; Church of Scientology, supra; Lesar v. Department of Justice, 455 F.Supp. 921 (D.D.C. 1978);

May, supra; and Varona Pacheco v. F.B.I., et al., 456 F.Supp. 1024 (D. Puerto Rico 1978).

Our proposal also would eliminate the requirement that the information be furnished "only" by the confidential source before it may be protected. Striking the word "only" would preclude the possibility of a successful demand the information must be released because the same information was furnished by two or more confidential sources.

Moratorium

The Act should include a moratorium provision. The requester who has as his purpose identifying FBI sources can review an FBI release while names, dates, places and relationships are relatively fresh in his mind. That recollection, undimmed by the passage of time, is of no small aid to the individual endeavoring to identify a confidential source by subjecting an FBI release to a detailed analysis.

We propose we not be required to release law enforcement records pertaining to a law enforcement investigation for seven years after termination of the investigation without prosecution or seven years after prosecution.

We will not use the moratorium provision in concert with a file destruction program to frustrate the Freedom of Information Act.

Because some investigations are ongoing for extended periods, records pertaining to them could be withheld for a long time. Since our proposal is worded to permit, not prohibit, our releasing information during the moratorium, we will be able to and we shall work with the Department of Justice to formulate a policy for access to records of public interest and to information pertaining to protracted investigations.

Physical Safety

Exemption (b) (7) (F) permits the FBI to withhold information which would endanger the life or physical safety of law enforcement personnel.

Our proposal would permit protecting the life or physical safety of any natural person.

PUBLIC RECORDSExisting Law

Subsection 552(b), after itemizing those matters to which the Act does not apply, reads,

"Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection."

Observations

This provision prevents an agency from withholding an entire document when only a portion of it is exempt. It necessitates our making a line-by-line review of records to determine if any portion should be released. Such a review requires a great deal of effort and expense with very little corresponding benefit to the requester in some cases, especially those involving requests for records pertaining to ongoing investigations.

Proposal

We propose the last sentence of subsection 552(b) be amended to read,

"Any reasonably segregable portion of a record not already in the public domain which contains information pertaining to the subject of a request shall be provided to any person properly requesting such record after deletion of the portions which are exempt under this subsection."

Commentary

Exemption (b)(7)(A) allows an agency to withhold investigatory records compiled for law enforcement purposes, but only to the extent that their release would interfere with enforcement proceedings. The FBI uses this exemption most often in responding to requests for records about pending, ongoing investigations. Of course, the (b)(7)(A) exemption, like all others, must be applied with the reasonably segregable clause in mind. The General Accounting Office concluded, "As a result requesters would probably not receive any information they were not already aware of, while the agency would have devoted many useless hours deciding what information could be released." "Timeliness and Completeness of FBI Responses to Freedom of Information and Privacy Acts Requests Have Improved," page 57 of a Report to the Congress by the Comptroller General of the United States, April 10, 1978.

Our proposal would harmonize the (b) (7) (A) and "reasonably segregable" provisions without striking discord in the design of either.

IN CAMERA REVIEWExisting Law

Subsection 552(a)(4)(B) empowers United States District Courts to order the production of any agency records improperly withheld from the person who requested the records. It requires the court to determine the matter de novo and permits the court to examine agency records in camera to determine whether the records should be withheld under any of the exemptions set forth in subsection (b) of the Act. The subsection places the burden on the agency to sustain its action.

Observations

To meet the burden of justifying our withholding information, the FBI often must submit detailed affidavits describing the information being withheld and explaining with specificity why that information fits within the exemptions of the Act. The filing of a public affidavit in litigation may result in more harm than releasing the documents themselves.

In Kanter v. Internal Revenue Service, et al., 433 F.Supp. 812 (N.D.Ill. 1977), the court observed, "The government is correct in noting that a detailed index would be a cure as perilous as the disease. Such an index would

enable the astute defendants in the criminal case who were the plaintiffs in this Freedom of Information Act lawsuit to define with great accuracy the identity and nature of the information in the possession of the prosecution. 433 F.Supp. at 820.

"...(T)he principal problem with a standard ... index is the government's fear that detailed itemization and justification would enable the objects of its investigation to 'fill in the blanks,' i.e., that it would impede its enforcement almost as seriously as complete disclosure (T)he court acknowledges the validity of the government's concern." 433 F.Supp. at 823.

In recognition of the danger, agencies are permitted to submit more detailed affidavits to the court in camera when a public affidavit would harm governmental interests. Phillippi v. CIA, 546 F.2d 1009 (D.C. Cir. 1976); Kanter v. IRS, et al., supra; S.Rep. No. 93-854, 93d Cong., 2d Sess. Affidavits submitted for in camera review usually contain as much information or more than the documents themselves, an analysis of the information and an assessment of the damage its release would cause. For example, the affidavit may explain exactly how the release of certain information would identify an informant or harm national security. Yet one court recently

ordered the release of all but two paragraphs of an affidavit which an agency had submitted in camera. Baez v. National Security Agency, et al., Civil Action No. 76-1921 (D.D.C. Memorandum and Order Filed November 2, 1978). The case is being appealed.

Furthermore, some reservations have been expressed over the use of in camera inspections. The critics maintain in camera inspections defeat the adversary process because the plaintiff and his attorney are not permitted to examine the documents. See, for example, the concurring opinion in Ray v. Turner, 587 F.2d at 1199. (D.C. Cir. 1978).

Proposal

We propose the second sentence in subsection 552(a)(4)(B) be amended to read as follows:

"In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action; but if the court examines the contents of a law enforcement or intelligence agency's records withheld by the agency under exemptions

(b) (1), (b) (3), the introductory clause of exemption (b) (7), or exemption (b) (7) (D), the examination shall be in camera. The court shall maintain under seal any affidavit submitted by a law enforcement or intelligence agency to the court in camera."

The phrase "the introductory clause of exemption (b) (7)" refers to a clause we propose be added to existing subsection (b) (7).⁷

Commentary

Under this proposal the burden would remain on the agency to sustain its action, and the power of the court to make de novo determinations and inspect agency records in camera would not be affected.

The proposal would make clear that if a court decides to review the records of a law enforcement or intelligence agency, the review of some of those records must be in camera. Records which could be reviewed only by the court would include those being withheld under exemption (b) (1) -- properly classified information; exemption (b) (3) -- information required by some other statute to be kept confidential; the introductory clause of exemption (b) (7) -- foreign intelligence, foreign

counterintelligence, terrorism and organized crime information; and/or exemption (b)(7)(D) -- information identifying a confidential source.

The proposal also would insure that affidavits submitted by law enforcement or intelligence agencies for in camera examination are reviewed only by the court.

Adoption of this proposal would dismiss the suggestion that a plaintiff or his attorney should examine highly sensitive documents, which are being reviewed by a court in camera, so the plaintiff can assist the court in determining whether the documents should be disclosed to the plaintiff. Congress, in enacting the de novo determination and in camera inspection provisions of the Act, was adamant in its conviction that the courts could be entrusted to make intelligent decisions about highly sensitive Government documents. Our proposal rejects the notion the courts have shown themselves incapable of making in camera determinations without the assistance of the plaintiff or his attorney.

As to affidavits submitted for in camera review, the proposal adopts the philosophy of Kanter, supra at 824, "The method of a detailed index was devised by the court in Vaughn v. Rosen for the benefit of the court rather than the plaintiffs. There is no reason why the court cannot consider

such an index in camera, thereby preventing undue disclosures to the plaintiffs. While in camera consideration will deprive the court of the benefit of plaintiffs' critique of the index, it does have certain advantages. It is preferable to the laborious task of scrutiny of the documents themselves. Furthermore, a properly drawn index will summarize documents, and put into relief their fundamental facts and importance. An index will also focus the court's attention on the basis of the government's claim that each document is covered by one of the exemptions." See also Lesar v. Department of Justice, 455 F.Supp. 921 (D.D.C. 1978).

CONTINUED

3 OF 5

ANNUAL REPORTExisting Law

Subsection 552(d) requires each agency to submit to Congress on or before March 1 of each calendar year a report covering the preceding calendar year. It also requires the Attorney General to submit an annual report on or before March 1 for the prior calendar year. Both reports must include statistical compilations for various aspects of the processing of Freedom of Information Act requests.

Observations

We are required to keep two sets of statistics: one for the calendar year report required by the statute and another for programs operating on a fiscal year basis. The administrative burden and unnecessary expense which result from these duplicative efforts could be eliminated if the existing statute required a fiscal year report.

Proposal

We propose the first sentence of existing subsection 552(d) be amended to read,

"On or before December 1 of each calendar year, each agency shall submit a report covering the preceding fiscal year to...."
and the last paragraph of subsection 552(d) be amended to read,

"The Attorney General shall submit an annual report on or before December 1 of each calendar year which shall include for the prior fiscal year a listing of...."

APPENDIX

SURVEY OF IMPACT OF
THE FREEDOM OF INFORMATION ACT (FOIA)
AND
PRIVACY ACT (PA)
ON LAW ENFORCEMENT ACTIVITIES

INTRODUCTION

On April 25, 1978, the General Accounting Office (GAO) requested Federal Bureau of Investigation (FBI) participation in a GAO study on the impact of the Freedom of Information Act (FOIA) and the Privacy Act (PA) of 1974 on law enforcement activities. To compile data for the GAO request, the FBI canvassed its Headquarters components and 59 field divisions. The following examples include instances of perceived and/or actual impact reported by FBI field offices and Headquarters divisions in response to the GAO request and subsequent to the GAO study. Examples which involve classified matters are not included.

A. STATE AND MUNICIPAL LAW ENFORCEMENT AGENCIES

An FBI office noted a trend to exclude Agents working organized crime matters from key intelligence meetings in their area. Several state law enforcement officers have mentioned a concern for the security of information in connection with Freedom of Information-Privacy Acts (FOIPA) disclosures as the reason for the closed meetings. The office undertook efforts through meetings with state and local law enforcement agencies to improve their understanding of the FOIA and PA legislation. These efforts have not met with complete success.

*

The Attorney General for a certain state has advised he intends to follow a policy concerning the release of state records to be in conformity with the FOIPA. Consequently, in applicant background investigations, state police arrest records concerning relatives of applicants are not made available to the FBI.

*

Due to the FOIPA, difficulty has been experienced on several occasions in obtaining information from a certain police department. Some officers have stated their reluctance to make information available concerning subjects of local investigation because of these Acts. The organized crime control bureau and the intelligence division of the police department have expressed concern over the FBI's ability to protect sources of information.

*

In a civil rights investigation in which the subject was a former employee of a law enforcement agency, the head of that agency advised subject's personnel file contained several previous complaints concerning his alleged brutality. However, the agency refused to make the personnel file or information contained in it available to the FBI, out of fear the subject would have access to this information under the PA.

*

In a recent civil rights investigation, an effort was made to obtain a copy of a police department report of the victim's death. Local authorities would make the report available for review but declined to provide a copy for inclusion in the FBI's investigative report. Anticipating a civil suit would be filed against the city and police department arising from the victim's death, they questioned the ability of the FBI in view of the FOIA and PA to maintain the local report in confidence.

*

A representative of a certain police department intelligence division has stated he is very reluctant to furnish information regarding possible domestic revolutionaries. He is fearful such information could inadvertently be released pursuant to the FOIPA.

*

A detective of a prosecutor's office was contacting his local sources relative to the whereabouts of a former resident who was a Federal fugitive charged with murder. The detective said his sources and contacts in the Cuban community were reluctant to provide information in this case or others because of the fear of disclosure under the FOIA.

The following letter was written by the Chief of Police of a major city:

"With respect to FBI files being made accessible to persons or organizations pursuant to the Privacy Act or the Freedom of Information Act, I request that all investigative records of information, from whatever (deleted) Bureau of Police source (including the (deleted) Police Bureau as an organization, its employees, etc.), in your files be protected and kept confidential.

"If such protection cannot be assured to this organization by the FBI, we will only be able to cooperate in the exchange of non-sensitive, non-confidential information. The (deleted) Bureau of Police would not be able to pass on sensitive information to the FBI without this assurance of confidentiality, and the effectiveness of the working relationship between our organizations would be greatly diminished."

*

A chief of police stated in the early part of 1977, that if any information is released by Federal law enforcement agencies as a result of a request under the FOIPA, which indicated that the source of information was his police department, he would no longer allow his department to furnish information to any Federal law enforcement agencies.

*

A representative from the criminal conspiracy section of a certain police department has stated his section is very reluctant to discuss information concerning possible intelligence operations. The representative stated he feared this information could inadvertently be released by the FBI to an individual pursuant to an FOIPA request.

*

In civil rights matters, officers of a certain police department have been cautioned by their departmental attorneys that, when interviewed as subjects by FBI Agents, they should respectfully decline to furnish any information based on the 5th Amendment. They have been cautioned further that any statement they do make to the FBI would be subject to disclosure under the FOIPA.

*

Two police departments in a certain state will not share their informants and, more importantly, a substantial amount of their informant information on Federal violations, for fear an informant will be disclosed accidentally by the FBI through a request in connection with the FOIPA.

*

It has been observed the exchange of information among local police, state and Federal investigators at the

monthly meetings of a police intelligence organization has decreased substantially. Because of uncertainty over what information may meet FOIA or PA disclosure criteria, there is very little information exchanged at these meetings.

*

Since the spring of 1976, a southern office of the FBI has encountered an express reluctance by a police department and a sheriff's office's intelligence unit to cooperate in furnishing written information to the FBI on security, as well as criminal, matters. A member of the intelligence unit stated that, despite past FBI assurances that all intelligence information would be considered confidential, it had been learned a former black activist, who had made an FOIA request to the FBI was furnished a copy of an intelligence report previously furnished to the FBI by the police department. Although this document did not reveal the identity of any informant, that local agency advised it had no choice but to decline to furnish further written information to the FBI, in order to prevent this situation from arising again.

*

In the course of a fugitive investigation, an FBI Agent was denied information contained in city employment records, due to the PA. Subsequently, the Agent was able to obtain these records through a Federal search warrant which was served on City Hall. However, because of delays required to obtain the search warrant, the Agent missed apprehending the fugitive at his place of employment.

B. FOREIGN LIAISON

In recent conversations with two members of a foreign police agency in an investigation concerning copyright matters, these officers stated they did not furnish all information to the FBI as they had in the past, due to the FOIA.

*

On April 11, 1978, an individual who has some contact with foreign police department officers declined to actively assist the FBI because of the fear of seeing his name in the newspapers. He advised the promise of confidentiality by law enforcement in today's political environment is worthless.

*

A citizen who has close contact with a foreign police agency discontinued his association with the FBI because he feared that, under the FOIA, information might be released which would identify either himself or this foreign police agency.

*

In the past two years, several Agents have had contact with foreign police representatives visiting the United States. These representatives have come from Western countries, some of which have experienced internal problems with terrorism. These police representatives generally offered the observation that, despite their high regard for the reputation and professionalism of the FBI, they believed (one said it was sadly amusing) all of the fine efforts of the FBI are sometimes diluted, if not negated, when the investigative results have to be furnished under the FOIPA to subjects of investigations. This same dismay over restrictions on the FBI was relayed by a person who traveled to another foreign country and visited that country's national police force.

C. ABILITY OF LAW ENFORCEMENT PERSONNEL TO OBTAIN INFORMATION FROM THE GENERAL PUBLIC

1. AIRLINES

In an FBI case an airline company accepted a stolen check for airline passage. As their computers indicated to the ticket agent the check was stolen, the airline refused to issue the ticket which had been completed by the ticket agent. During the course of FBI investigation, the airline was requested to surrender the completed but unused ticket as evidence; however, the company declined to make the ticket available to the FBI due to the FOIPA.

2. BANKS

Citing the PA, a large bank would not make available details of a particular financial transaction without a subpoena, although the bank was the vehicle in a possible 2.2 million dollar fraudulent Interstate Transportation of Stolen Property transaction.

*

A former president of another bank obtained loans using fraudulent financial statements. The former employee's bank would not make available to the FBI the personnel file, the loan file, or the results of the internal audit regarding the president's activities, based on the PA. This information was not available from other sources.

*

During an investigation concerning the disappearance of \$1,000 from a bank, investigating Agents contacted a senior vice president to request background information on a particular suspect bank employee. The vice president advised that, due to recent Federal and state privacy legislation, he could not furnish personnel information concerning this employee, as he feared the employee might then have grounds to file a lawsuit for invasion of privacy.

*

In an investigation involving false statements to an estimated 50 to 65 banks resulting in 3.8 million dollars in lawsuits, an FBI office served a subpoena for bank records on a bank and made request to interview bank officers who had been personally contacted by subjects. The bank, a victim of the scheme, would not permit the requested interviews without additional subpoenas directed to the officers involved. By way of explanation, the bank advised the PA prevented discussion of any information concerning a bank customer without subpoena.

*

A certain bank was the victim in a Bank Fraud and Embezzlement - Conspiracy case. Losses suffered in this case were approximately \$476,000. Bank officials advised that under bank policy, which was based on the FOIPA, they would furnish no information to the FBI without a subpoena duces tecum.

3. HOSPITALS AND PHYSICIANS

In an applicant investigation a waiver was provided the FBI to obtain medical records concerning hospitalization at the health center of an educational institution. The school physician refused to provide any information either to the FBI or to the applicant, even

after the latter personally went to the health center to sign a second waiver drawn by the school. The office of the school president advised refusal to release information was due to the PA.

*

An individual identified as operating a check-kite scheme with banks in several states had been hospitalized. Investigation determined this individual had initiated his check-kite scheme from a hospital telephone. Nevertheless, hospital officials, citing the FOIPA, refused to verify his hospitalization or dates of confinement.

*

In a fugitive case, an FBI Agent attempted to obtain background data on the fugitive from a private hospital where he had been a former patient. Hospital officials expressed the belief that Federal privacy law inhibited them from verifying the subject's status as a former patient, much less releasing background information on him.

4. HOTELS

A hotel which is a part of a large nationwide hotel chain refused to furnish information on guests, including foreign visitors, without a subpoena due to the enactment of the FOIPA.

*

During a fugitive investigation of a subject wanted by Federal and local authorities for extortion and firearms violations, an Agent contacted the security officer at a hotel. The purpose of this contact was to develop background information on a former employee of the hotel, an associate of the fugitive, who had knowledge of the fugitive's current whereabouts. Security officials at the hotel refused to furnish any information from their files without a subpoena because they felt they were open to civil litigation under the provisions of the PA.

*

Numerous hotels and gambling casinos in the State of Nevada, which would formerly furnish information from their records on hotel guests and gambling customers during

routine investigations, now require a subpoena before they will release any information to the FBI. The reason given by hotel officials is for hotel protection, in the event of a lawsuit following an FOIPA release to these subjects of investigation.

5. INSURANCE COMPANIES

Information submitted to Medicare through an insurance company, which would show Medicare fraud perpetrated by the staff of a hospital, was withheld by the company, citing the PA. It was necessary to obtain a Federal Grand Jury subpoena for the desired information.

*

In the field of arson investigations, major insurance companies and the Fire Marshal Reporting Service have stated they will provide no information to Federal law enforcement agencies except under subpoena. They advise their legal departments believe this position is necessary for protection against civil suit, in the event of an FOIPA disclosure.

*

In a Racketeer Influenced and Corrupt Organizations investigation involving numerous subjects in an arson-for-profit scheme in which insurance companies are defrauded after the insured property is burned, at least 15 insurance companies, numerous insurance claims adjusting firms, and insurance agents have refused or have been most reluctant to furnish files regarding losses and coverage because of the universal fear that the information furnished could be obtained by the insured in an FOIPA disclosure which the insured might use against the insurance company or firm in a civil suit. FBI recourse has been the obtaining of Federal Grand Jury subpoenas to obtain the desired information, which in every instance caused delay in the investigation. Many of these firms cited widespread news publicity resulting from FOIPA disclosures as cause for their total lack of confidence in the FBI maintaining any information confidential.

6. LEGAL PROFESSION

On May 5, 1977, a nationally known U. S. District Court judge refused to be interviewed on an applicant matter because he wanted any information furnished about the

applicant to remain confidential. It was the judge's opinion the FBI could not prevent disclosure of this information at a later date to the applicant under the PA.

*

In response to an FBI inquiry concerning an applicant, a former Assistant United States Attorney (AUSA) confided that significant information, meaningful and derogatory, would not be forthcoming concerning the applicant because of the FOIPA. When pressed by the FBI Agents upon this point, the former AUSA stated that he would counsel his clients not to furnish the FBI with derogatory information in applicant-suitability matters.

*

During an investigation in March, 1978, by a mid-western FBI office, private attorneys were interviewed concerning the qualifications of a candidate for a Government position. These private attorneys initially declined to furnish derogatory information in their possession concerning the candidate, in view of the provisions of the PA. They did furnish pertinent information on a promise of confidentiality, and it is unknown what information they withheld due to fear of the effect of the PA.

*

A Federal district judge was interviewed in a background investigation concerning a departmental applicant. The judge stated he did not feel that the FBI could provide confidentiality concerning his statements. He declined to furnish candid comments concerning the applicant and stated he did not wish to be interviewed concerning any FBI applicant investigations in the future.

*

A prominent attorney was contacted concerning an applicant. He indicated he was in a position to furnish uncomplimentary information concerning the applicant, but advised the interviewing Agent that due to the FOIPA he would not do so. Thereupon, he furnished a brief, neutral commentary.

*

In connection with a suitability investigation concerning a nominee for U. S. district judge, two attorneys

contacted in July, 1976, expressed extreme reluctance to furnish their true opinion regarding the qualifications of the candidate. They indicated they were fearful that, should the candidate be appointed to a judgeship and later learn of their statements, he would find a way to punish them professionally through his position. The attorneys eventually provided their comments after receiving an express promise of confidentiality; however, there is no assurance that they were as candid as they might have been.

*

In a recent background investigation conducted pertaining to a Federal judgeship, one attorney contacted advised he had derogatory information concerning the judicial candidate. However, he declined to furnish this information to the FBI stating he felt the information would eventually be disclosed to the applicant under the PA. He felt that, if this disclosure ever occurred, he would be unable to practice before the applicant's court.

7. NEWSPAPERS

In a Corruption of Public Officials case, consideration was being given for change of venue to another city. The local FBI office was requested to review newspaper clipping files to determine the amount of publicity the corruption matter had received. On April 10, 1978, a newspaper editor advised that, in light of the FOIPA, no information from newspaper clipping files would be made available to the FBI except upon service of a subpoena.

8. POLITICIANS

Recently in a southern state, the state chairman on one of the state's two major political parties was interviewed regarding a presidential appointment. This individual was advised of the provisions of the PA at the outset of the interview and requested confidentiality. He made one or two statements of a derogatory nature and then requested that these statements be disregarded. He advised that, although he was aware his identity could be protected under the PA, he was not confident this protection would be effective. After the above statement, the interviewee would provide only a general statement regarding the appointee's honesty and terminated the interview.

*

In a southwestern state, a highly placed political figure offered to furnish information to the FBI concerning a multimillion dollar act of political corruption. The information was never received because the Agent could not guarantee that his identity would not later be inadvertently disclosed through sophisticated queries sent to the FBI through the FOIA. This source feared that the adversary in this matter could collect pieces of information from the FBI through the FOIA, then assemble the information, possibly using a computer and identify the source.

*

During the course of a public corruption investigation, the interviewing Agent in a southern office detected reluctance of witness police officers to provide complete information, subsequent to a discussion of the FOIPA. It was the opinion of the interviewing Agent this reluctance was based on apprehension by the police officers this information could be made available to the subject, a trial judge before whom the police officers frequently appeared.

9. PRIVATE COMPANIES

During a routine investigation, a Special Agent sought the cooperation of a company personnel manager to determine the subject employee's residence from company records. Citing the restrictions of the PA, the personnel manager would neither confirm the subject's employment with his company nor provide any background information.

*

During a recent national security investigation involving a possible Foreign Agents Registration Act violation, a lead was set out to interview the owner of an electronics firm regarding the purchase of loudspeakers and other electronics used by foreign nationals in a public demonstration. The owner of the electronics firm refused to disclose this information unless a subpoena was issued, stating he feared the customers who rented his equipment might learn of his cooperation, under the FOIPA, and bring a civil action against the electronics firm for breach of confidentiality.

*

In connection with bank fraud matters being investigated in a certain city, an auto dealer refused to furnish time cards of employees because he would violate the PA.

*

Because of the FOIPA, the policy of an oil company limits the type and amount of information that the company will provide to the FBI regarding an applicant for employment. The personnel clerk for that company advised that, even when an applicant has executed a waiver form, the only information the company will furnish regarding the applicant's employment is as follows: verification of employment, dates of employment, position and salary.

*

During the course of an investigation, Agents sought to review employment records at a department store and were advised that employment records were no longer available because of the PA. Agents also attempted to secure information concerning the subject from two other stores and were advised that this information was not available without a court subpoena.

*

In an investigative matter regarding an electronics company, a former employee of the company, who was a principal witness, became fearful that he would be sued by the subjects of the investigation and the company if he provided information to the FBI. He was reluctant because he believed this information would be available through the FOIPA; if the criminal allegation was not ultimately resolved in court, he feared he would become civilly liable. On several occasions, this witness asked what his civil liability would be and expressed reluctance in providing information of value to the investigating Agent.

*

Another investigative matter was based on information furnished by businessmen in a small town. When they initially furnished the information, these sources asked that they not be called upon to testify. Being businessmen in a small town, they expressed fear the information they provided would be used against them and harm their businesses. When these sources learned information which they furnished

might be obtained through the provisions of the FOIPA by the investigation subjects, they stated they would not furnish any further information to the FBI.

*

In a fugitive investigation, information was developed that the subject was a former employee of an oil company. When contacted, the oil company management declined to furnish any background information from their personnel files concerning subject's former employment. The stated reason for not furnishing this information was concern for possible future company liability should the fact of FBI cooperation become known to the subject under the FOIPA.

10. PRIVATE LENDING COMPANIES

An Equal Credit Opportunity Act case involved a limited investigation based on a Department of Justice memorandum which directed that 14 former employees of a loan company be identified and interviewed. Citing the PA, the loan company's legal counsel declined to identify to the FBI the 14 former employees. Instead, he had his current employees make personal contact with these 14 individuals to request their permission to release their names to the FBI. This indirect process delayed the investigation for a one-week period. The company was also asked to release loan applications of certain individuals who had been granted loans within the past 18 months. On the basis of the PA, the loan company declined to release these financial documents.

11. PUBLIC UTILITIES

During a recent security investigation, a lead was set forth requesting utility checks to be made to obtain information regarding certain individuals. Officials of a utility were contacted and advised that checks of their records would not be possible due to the provisions of the PA.

*

A local security office of a telephone company referred an illegal telephone call case to an FBI resident agency. However, the company refused to furnish any data concerning the principals involved in the violation without a subpoena for telephone company records.

*

In a fugitive investigation, an FBI office was given reliable information concerning the nonpublished telephone number of the fugitive's location on the Christmas holiday. The FBI holiday supervisor tried in vain to obtain the location of the number from various officials at the telephone company and the fugitive was not apprehended. The company insisted a subpoena was needed, based on FOIPA considerations, before this type of information could be released to the FBI.

12. QUASI-LAW ENFORCEMENT

The disciplinary board of a state supreme court advised that, because of FOIPA considerations, all requests for information by the FBI must be in letter form and a release authorization signed by the applicant must be enclosed with the request letter. It was intimated that a written request might not elicit all information if the disclosure could cause difficulties for the board.

*

An association will no longer provide any information to law enforcement agencies or investigators unless served with a subpoena. This association has in the past assisted the FBI in coverage of aspects of the racing industry. The association has advised its current restrictive policy is the direct result of FOIPA legislation.

13. TRAVELER'S AID

A kidnapping case involved a 65-year-old victim who had been brutally beaten, stabbed and left for dead in a rural area of one state. The victim could only provide nicknames for the kidnappers. Investigation revealed that the subjects had attempted to gain transportation from the Traveler's Aid Society. The Society, after being advised of the urgency of the matter, nevertheless refused to supply information on December 20, 1977, from records which would identify one of the subjects and possibly reveal the whereabouts of both subjects. This information was subsequently obtained the next day by subpoena duces tecum and teletyped to an FBI office within a few hours after receipt. Both subjects were arrested in another state on December 26, 1977. However, a few hours prior to the arrest, one subject shot and killed an individual in that other state.

14. UNIONS

On alleged privacy grounds, an international union will no longer provide information to law enforcement agencies unless served with a subpoena.

*

During the course of a Racketeer Influenced Corrupt Organizations case involving certain union members and company officials, the investigating Agent contacted nonunion employees concerning alleged harassment by union members and the firing of several rifle shots at nonunion members. A prospective witness to a particular incident declined to furnish any information to the FBI, on FOIPA grounds, stating that, "the Government just can't keep a secret anymore."

*

In a similar FBI case, a labor union official refused to furnish information to the FBI. He claimed he would have no confidence in the security of his information in view of the ability of individuals to obtain their files under the FOIPA.

15. WESTERN UNION

During the course of an investigation to locate and apprehend a fugitive, a Special Agent and a cooperating witness attempted to obtain information from a Western Union office, concerning a telegraph money order and message sent to the cooperating witness from the subject. Employees at the Western Union Company advised they could not disclose any information regarding the money order or message, due to "privacy concerns," without a court order.

16. MISCELLANEOUS

In an investigation regarding an escaped Federal prisoner, a man telephoned an FBI office and advised he knew the location of the fugitive. The caller stated he was concerned that the fugitive would find and kill him if he furnished the FBI the information. The caller was given assurances that his identity and any information he gave would be considered confidential. The caller refused to give his name, specifically stating, "I know about the FOIA. Anything I tell you guys will get back

to him." When asked the location of the fugitive, the caller stated he was in a motel on a certain street and then hung up the phone. After contacting numerous motels on that street, the fugitive was located and apprehended.

*

In a bank robbery investigation a high school student was identified as a suspect. When officials at the high school were approached in an attempt to obtain necessary information concerning the suspect (descriptive data, address, whereabouts, etc.), the officials declined to furnish the information due to the FOIPA. After the loss of precious time, the school principal was finally convinced that the student posed a threat to the community, in view of the fact he was armed and probably desperate. He eventually provided the information and the student was arrested.

*

During the course of another bank robbery investigation a warrant was obtained for a female subject. The investigation determined the subject had applied for a job through the state unemployment office. That office refused to provide any information, advising it was protected by state and Federal privacy acts. It was necessary to obtain a subpoena to force the unemployment office to disclose the requested information. During the period of time between the service of the subpoena and its return, the subject committed another bank robbery. The FBI believes that if the information had been disclosed at an earlier time, the second bank robbery would not have occurred, as the subject would have been arrested more promptly.

*

One FBI office received information from an AUSA indicating a woman had information concerning ghost employees and other frauds within the Comprehensive Employment and Training Act (CETA) program. When contacted, the woman refused to be interviewed because she feared that her identity might be disclosed through an FOIPA request.

*

Two individuals in a position to furnish important information regarding a series of train wrecks refused to do so because they feared the FOIA would force the FBI to reveal

their identities. This attitude existed even after assurances were given by the Agents regarding the FOIA.

D. IMPACT ON CURRENT INFORMANTS OR POTENTIAL INFORMANTS
RESULTING FROM PRESENT FOIPA DISCLOSURE POLICIES

Three individuals were separately contacted in an effort to obtain their cooperation in organized crime matters. Each of these individuals advised the contacting Agent they felt their confidentiality could not be maintained due to current FOIA legislation. It is believed these individuals would have been cooperative had they not feared the FOIA and they would have been valuable FBI informants. Because of the wide publicity which the FOIA has received, these individuals were well aware of the public's ability to gain access to information in FBI files.

*

Shortly after a skyjacking began, an unidentified caller stated to a Special Agent that he was a medical doctor and that the skyjacker was probably identical to an individual who was an outpatient at the psychiatric clinic where the caller was employed. He stated the individual was schizophrenic and was dangerous to himself and to other persons. The caller suggested that a psychiatrist should be available during all negotiations with the skyjacker. The caller's identity was requested since he was obviously knowledgeable concerning the skyjacker and could furnish possible valuable information in an attempt to have the skyjacker peacefully surrender. Despite the fact that several lives were in jeopardy, the caller stressed that he was unable to furnish his name because of FOIPA requirements and terminated the call. Because of this telephone call, the FBI did have a psychiatrist available during negotiations with the skyjacker (who had been correctly identified by the caller) and the skyjacker's surrender was accomplished without loss of lives or property.

*

For approximately three years, a telephone caller known to the FBI Agent only by a code name furnished information in a wide variety of cases, from drug-related matters to terrorism. The caller never identified himself and advised he could never testify since to do so would risk death. The caller finally terminated his relationship, expressing fear that an inadvertent release of information by the FBI, under the FOIA, might identify him.

*

An individual in a position to know information about an FBI subject stated to a Special Agent that she would not furnish any information lest it and her identity appear in the newspapers. She made reference to information which was being published in the press as a result of an FOIPA request.

*

An Agent was recently in contact with an individual believed capable of providing reliable direct and indirect information regarding high-level political corruption. This individual advised his information would be furnished only if the contacting Special Agent could guarantee that the individual's identity would never be set forth in any FBI files. The contacting Agent attributed this individual's reluctance to have his identity set forth in FBI files to a fear of the FOIPA and its effect on the FBI's ability to maintain confidentiality of information from informants.

*

In August, 1976, an FBI field office contacted a source to determine why he was not now providing the FBI with information as he had been in the past. This source replied that he was in fear of losing his job and of retaliation by individuals about whom he might furnish information. The source asked if the FBI could guarantee the confidentiality of his relationship and of the information he furnished. He stated he was particularly concerned about confidentiality in light of the FOIA. In view of his apprehensions, this individual is no longer being contacted by the FBI.

*

A particular organized crime case involved an investigation to identify male juveniles being transported interstate for homosexual activity. Due to fear of reprisals stemming from FOIA disclosures and PA problems, various school officials would not cooperate in the investigation to verify the identity of the juveniles. In the same case, prominent citizens in a community displayed reluctant cooperation with the FBI out of fear of FOIA disclosure.

*

A potential source advised he would not cooperate with the FBI due to fear his identity would be publicly revealed, which would be detrimental to his profession.

This potential source referred to news accounts in the local press regarding material made available under the FOIA, which had disclosed the names of several individuals in professional capacities who had assisted the FBI and the nature of their assistance. This type of publicity, according to the potential source, would be detrimental to any individual in business who elected to cooperate with the FBI.

*

A Special Agent advised that an individual in a high management position in a state agency wished to provide information to the FBI on a confidential basis. During one of the Agent's initial conversations with this source, confidentiality was requested, specifically that the source's name never be mentioned in FBI files due to "past legislation, FOIPA, etc." This person was in a position to furnish information concerning white-collar crime and political corruption; however, the potential source subsequently refused to cooperate with the FBI, in spite of the Agent's assurances.

*

An FBI office has had success in developing a number of valuable informants from a group of loanshark victims. Recently, upon interview, several of these individuals stated a desire to cooperate, but have refused to do so for fear of the subjects of the investigation learning their identities through an FOIPA release.

*

A criminal informant, who furnished very significant information in an automobile theft ring case, advised he feared for his life after reading in various newspapers of disclosures made under the FOIPA. As a result, this source will no longer furnish information which is singular in nature.

*

Several attempts have been made to reactivate a former source, who had been extremely cooperative and productive. Current attempts to persuade the source to once again aid the FBI have been negative. The former informant refuses to cooperate, as he believes his identity cannot be kept secure due to FOIPA disclosure policy.

*

An informant was recently closed inasmuch as the source advised he believed the FBI could not efficiently protect the confidentiality of his relationship and his identity, due to the FOIPA. This source has previously provided excellent information regarding gambling and organized crime. He stated that he is afraid, if his name ever surfaced as providing information to the FBI, he would lose his business and everything he has worked for in his life.

*

In 1976, an active informant stated he would no longer continue in that capacity because it was his belief, as a result of the FOIPA, his identity and confidentiality could no longer be protected.

*

In an Interstate Transportation In Aid of Racketeering investigation, an individual was successfully developed as a potential source of information concerning racketeering and political corruption. However, upon learning of the provisions of the FOIPA, this individual requested that his conversations not be recorded and refused further cooperation.

*

Another field office informant related a conversation which occurred between himself and several organized crime figures. One individual commented that within the next few years the FBI will be severely restricted in its efforts to obtain information from confidential sources. He stated that he fully expected the provisions of the FOIPA would be successfully utilized in identifying FBI informants. Agents subsequently contacting this valuable source have noted a subtle reluctance on his part to more fully penetrate the particular organized crime activities which he is in a position to cover.

*

An FBI office in a major city has received information from several reliable informants that most organized crime members in the area have been instructed to write to FBI Headquarters requesting file information pertaining to themselves. These informants have advised the sole purpose of this process is to attempt to identify informants who have supplied information to the FBI on organized crime

matters. Requests have been submitted by virtually every organized crime figure in the area.

*

An informant who has a great deal of knowledge concerning a violent group is reluctant to furnish information on the gang because of the FOIPA. He has considerably reduced the amount of information he furnishes to the FBI.

*

An informant who has furnished considerable information concerning a terrorist organization advised that he is very upset about the FOIA. He has learned through conversations that former and current extremists are writing to FBI Headquarters under the FOIA in an effort to identify and expose informants. The informant indicated he is apprehensive about the Bureau's ability to properly safeguard information furnished by him.

*

A long-time confidential informant stated, "I can't help you any more due to the Freedom of Information Act." This informant had previously furnished valuable information which led to arrests and recovery of Government property. Even though the promise of confidentiality was explained to the informant, he still refused to furnish further information.

*

A former informant regularly furnished information resulting in recovery of large amounts of stolen Government property and the arrest and conviction of several subjects. In a pending case, the former informant refused to cooperate because of his fear of the FOIPA, which he felt would in fact jeopardize his life should he continue cooperating with the FBI.

*

In January, 1978, an office of the FBI received information one prime bombing suspect was applying under the FOIA for his file. Sources close to the suspect advised he was seeking to discover the FBI's knowledge of his activities and the identities of Agents who were investigating him.

*

In a western field office, a former highly productive confidential informant advised that he did not feel secure, due to widespread publicity concerning FBI informants and the FOIA legislation. He stated that, although he continued to maintain his confidentiality regarding his relationship with the FBI, he was not sure that the FBI could do the same. Due to this source's feelings, he discontinued all contact with the FBI.

*

An informant furnished information concerning organized crime figures and on organized crime conditions. Subsequently, the source acquired the conviction that no guarantee could be given that his identity would be protected. Accordingly, the source declined to furnish any further information to the FBI.

*

The Drug Enforcement Administration (DEA) was advised that an informant of one FBI office might be in a position to provide timely information concerning large narcotics shipments, in exchange for a reward from DEA and the guarantee of confidentiality. A local representative of DEA responded that confidentiality could be guaranteed by DEA only in instances where the informant was operated by DEA as a source. DEA reward money could be paid to any individual supplying information; however, the true identity of an FBI source would be reflected in DEA records for such payment. The FBI source was advised of the results of the inquiry with the DEA. The source subsequently furnished the identities of the drug subjects of which he had knowledge. This information was disseminated to DEA. However, the source declined to have further contact with these subjects, for fear his identity would be made known at some later date under an FOIA request to DEA.

*

An FBI informant is well connected to the organized crime element. Over the past year the informant's productivity has dramatically decreased. Consequently, this decrease was discussed with the informant, who stated that he had begun to doubt the FBI's ability to protect the contents of its own files and information provided by its informants. He had learned that an organized crime figure had received over 300 pages of FBI documents and was unquestionably trying to identify informants.

*

The criminal informant coordinator of a northeast office has been told by an individual, who would potentially be an excellent source of criminal information on the waterfront, that even though he had cooperated with law enforcement personnel in the past he would never do so again. He stated that he was afraid that one day, as the result of FOIPA, he might "see his name in the newspaper."

*

An informant who has been furnishing information to Special Agents of the FBI since 1953, regarding gambling, prostitution, stolen goods, and criminal intelligence information, when last contacted by an Agent, indicated he would no longer furnish any information to the FBI due to the fact it could be disclosed under the FOIPA. The informant felt his personal safety could be jeopardized by the disclosure of his identity, and he no longer wanted to take the personal risk and provide information regarding criminal activities.

*

An organized crime informant has expressed great concern over his safety due to the recent disclosure of information released under the FOIPA. A Special Agent has advised that he believes the informant will terminate his relationship with the FBI because of his concern.

*

A confidential source stated he was fearful his name would become known to certain individuals. He cited their possible access through FOIPA requests to the information he has provided. The source became unproductive and contact with him was discontinued.

*

A confidential source advised that "general street talk" was that one should not provide information to the Government since this information would eventually be publicized as a result of the FOIPA.

*

A long-time informant announced that he felt his confidentiality could no longer be guaranteed and refused to furnish further information. Provisions of the FOIPA were explained to the informant, particularly relating to

disclosure of informants and informants' information; however, this informant still wishes to sever contacts with the FBI.

*

Agents recently contacted a former criminal informant who associated with several individuals currently under investigation. The source, who displayed knowledge of the FOIA, expressed extreme concern of the disclosure provisions. The two Agents spent approximately one-half hour discussing this with the source. Both Agents were of the opinion that the FOIA prevented them from obtaining details of value.

*

An asset advised that, while talking with an individual who is a known intelligence officer of a foreign country, he was advised that certain officials of that country were using the FOIA law to obtain information from the files of the FBI and other agencies through intermediaries. The official expressed some humor over the fact that such information is available.

*

An individual, who is in a position to furnish possible foreign counterintelligence information, expressed the opinion the Federal Government could not protect his identity in view of the constant scrutiny by Congress of the FBI and CIA and the subsequent news media leaks. This individual also stated he would be fearful that his identity would be revealed through access to records by the public under the FOIA, as well as extensive civil discovery proceedings exemplified by the Socialist Workers Party civil lawsuit. In addition, this individual expressed concern over former intelligence agency officers who were publishing books, possibly jeopardizing the confidentiality of sources.

*

In another FBI security investigation, an individual was located who was in a unique position to act as an operational asset in foreign counterintelligence activities. While willing to assist the U. S. Government for patriotic reasons, this individual felt his identity might be revealed under the FOIPA. He therefore felt compelled to report a

pending highly sensitive undercover operation concerning national security to his employment supervisors, thereby jeopardizing that most sensitive operation.

*

An informant expressed deep concern over security and possible disclosure of his relationship with the FBI, noting recent instances in which FBI sources had been identified in the press. The informant, who had provided critical information for many years in matters of the highest sensitivity, requested that his relationship with the FBI be terminated and that his name be deleted from the FBI records.

*

One informant is a well-known and highly respected individual with many dealings with certain foreign countries. The informant has repeatedly voiced concern over possible disclosure of his identity through the FOIA. The source has now requested that all contacts be minimized in frequency and duration, that all information furnished be paraphrased, that his real or code names never be used, and that access to his information be severely restricted within the FBI. It has become apparent also, that while the informant's dealings with certain foreigners are known to have increased, the frequency of his FBI contacts, the length of these contacts, and the amount of substantive information furnished have declined.

*

A former source of excellent quality was recontacted, since his background was such that he could develop information of value concerning a terrorist group. After three hours of conversation, the former source agreed to cooperate with the FBI but only in a very limited manner. He stated that due to the FOIA he no longer believes that FBI Agents can assure his complete protection. He made it clear that he will never again function as he had previously in behalf of the FBI, noting that disclosure of his identity would most assuredly cost him his life.

*

An individual who has requested his identity be protected and who has provided information pertinent to a suspected foreign government intelligence officer, has also expressed concern pertinent to revelation of his

identity as furnishing information to the FBI. This individual queried the Special Agent involved in the investigation as to whether his identity could be protected and stated that he was concerned because of future business dealings with certain foreign countries. He felt that should his identity become known to foreign government officials, it would cause damage to his business relationships. Because of the above, this individual stated that he did not wish to be contacted on a regular basis by the FBI.

*

In September, 1977, a former Special Agent advised an FBI Agent that an informant had contacted him upon learning that an FBI subject had obtained documents under the FOIPA. The informant expressed the fear that his identity as a confidential source against this subject would be revealed. This subject was trying to identify individuals who had provided information to the FBI concerning his activities.

*

In a western FBI office, an individual was contacted in a recent foreign counterintelligence investigation, as he was in a position to furnish valuable information on a continuing basis regarding the subject. Although this potential source displayed an otherwise cooperative attitude, he stated he would not furnish information for fear his identity might be revealed at some future date due to provisions of the FOIA.

*

Members of an organization dedicated to bringing about a movement based on Marxism-Leninism, recently discussed the FOIA. A decision was reached to direct inquiries to both the FBI and the CIA under provisions of the FOIA requesting information concerning the organization. It was anticipated that a comparison of information concerning individuals, including dates, times and activities, would identify informants in the organization.

*

In 1976, a most valuable and productive FBI informant ceased his activity in behalf of the Bureau. His reason for this decision was his concern over the FOIA, which he believed offered the distinct possibility of

disclosing his identity as an informant. This source provided coverage on two major subversive- and/or violence-oriented groups of investigative interest.

*

Recently an informant, who is furnishing information regarding certain foreign visitors to the United States, expressed great concern over the possibility of his identity being disclosed. The source stated that he recently read in a local newspaper that foreign visitors could gain access to FBI records through the FOIPA.

*

A businessman was being approached by an intelligence officer of a foreign government. Upon interview by the FBI, the asset stated that were it not for the FOIPA, he would be willing to be operated against this and other hostile intelligence officers. However, because of FOIPA, he felt a real danger that his identity would be divulged which would in turn seriously and detrimentally effect his business overseas. For this reason, asset has refused to become involved in a foreign counterintelligence operation.

*

Since the advent of the FOIPA, numerous documents containing information furnished by an FBI asset of long-standing have been released under provisions of these laws. These releases have had a deleterious effect upon an asset's relationship with the FBI. There has been a noticeable decrease in the volume of information furnished by the asset, who has been frank to state that he no longer has his former confidence that the FBI can maintain the confidentiality of his relationship. On numerous occasions, the asset has expressed reluctance to furnish information which he fears might be released under the FOIA, resulting in his physical jeopardy or leaving him open to civil suit. This asset has not yet terminated his relationship with the FBI, but the relationship is now a very tenuous one.

*

A source who previously furnished information on a timely basis relating to foreign terrorist activities has expressed reluctance to furnish additional information because of the possibility of his identity being exposed due to the FOIPA.

*

A southwestern confidential source, who is in a position to furnish information concerning Middle East terrorist matters, advised that he did not desire to continue contact with any representative of the FBI or to furnish information because of fears that his assistance might become known. The source stated that his concern was due to various media articles relating to actual or potential FOIPA disclosure of information furnished confidentially to law enforcement agencies.

*

An informant of one FBI office has expressed concern that individuals about whom he was providing information were requesting their FBI files under the FOIPA. This informant expressed fear for his personal safety and that of his family. This source had in the past provided reliable and corroborating information about individuals who have been convicted of Federal crimes. There has been a recent reduction in amount and quality of the source's information.

*

On several occasions in the recent past, an informant voiced his concern for his safety out of fear that his identity would in the future be revealed under the FOIPA. He stated that when he began assisting the FBI it was his understanding that his identity and the information he furnished would always remain confidential.

E. MISCELLANEOUS (OTHER RELEVANT EXAMPLES)

1. SUITABILITY INVESTIGATIONS

In an applicant investigation, an official of a police department refused to be candid in his remarks pertaining to the applicant in view of the FOIPA.

*

In a recent applicant case, a source expressed concern less he be identified as the provider of derogatory information. He clearly indicated he was aware that the applicant would have access to this information through the PA. Other officers interviewed simply refused to be candid regarding the applicant, due to their awareness that the information might be released to him.

*

In a suitability investigation, a local police department refused to make a record check on the applicant's brother without a waiver from the brother, because it was believed there was a possible PA violation.

*

Special Agents have recently observed a general reluctance by local law enforcement officers to furnish derogatory hearsay information in suitability investigations. Members of the law enforcement community have been apprised of the access and disclosure provisions of the FOIPA.

*

A former high official of one city was being considered for a White House staff position. An individual in that municipality refused to comment since he believed the candidate would be able to obtain this information through the PA. The official, who was aware of the Act's provisions, stated he still believed someone in the White House would have access to comments made.

*

During a 1978 Special Inquiry investigation in one city, the interviewee advised he was a business competitor acquainted with the appointee. He inquired as to what degree of confidentiality could be provided if he furnished information regarding the appointee. The PA provisions were explained to the interviewee. This was not a sufficient degree of confidentiality and he would have nothing to say about the appointee.

During the same investigation, a police officer advised he had derogatory background information concerning the appointee. He said he did not want to "go on record" with the FBI concerning this information in view of the PA. He stated that he considered the information so pertinent that it required his direct contact with the Congressional Committee, which had requested the investigation. After receiving the officer's information, the Committee requested the FBI to discontinue the suitability investigation.

2. LAWSUITS

A \$600,000 civil suit was filed by a Honolulu plaintiff against a neighbor regarding derogatory information provided the FBI approximately 20 years ago concerning the

plaintiff in a suitability investigation. The FOIPA request made by the plaintiff allegedly had enabled her to identify the defendant as the source of the derogatory information, which she claimed in her lawsuit was defamatory. The civil action required the defendant to retain private counsel at great personal expense and resulted in personal trauma. The defendant's retained counsel was successful in obtaining dismissal of the suit on the technical defense of "Statute of Limitations." The primary issue of whether or not a person could sue an individual who had provided information to the FBI was not addressed.

*

In early 1978, an employer contacted one FBI office concerning certain derogatory information furnished in 1967, on an employee who was then seeking a position with the White House staff. This individual, who has subsequently made a PA request to the FBI, determined that the former employer had provided derogatory information concerning her, and threatened to sue the employer if correction of this information was not forwarded to the FBI. The employer's written retraction of the previous information was subsequently submitted to the FBI.

*

An unsuccessful applicant for the position of Federal Bankruptcy judge obtained his file under the FOIPA. He subsequently decided that several former employers and law partners had furnished derogatory information to the FBI concerning him. He filed civil suit against these former employers and law partners and also filed an FOIPA civil suit against the FBI.

*

A subject found guilty in a criminal case, subsequently filed a civil action against witnesses who testified against him in that matter. He made several FOIPA requests to discover the identities of additional witnesses whom he may join in his civil suit.

THE PROPOSED
FREEDOM OF INFORMATION ACT

If our proposals are enacted, the Freedom of Information Act will read as follows:

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public --

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if--

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person. This section does not require a law enforcement or intelligence agency to disclose information to any person convicted of a felony under the laws of the United States or of any state, or to any person acting on behalf of any felon excluded from this section.

(4) (A) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action; but if the court examines the contents of a law enforcement or intelligence agency's records withheld by the agency under exemptions (b)(1), (b)(3), the introductory clause of exemption (b)(7), or exemption (b)(7)(D), the examination shall be in camera. The court shall maintain under seal any affidavit submitted by a law enforcement or intelligence agency to the court in camera.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Civil Service Commission shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Commission, after investigation and consideration of the evidence submitted, shall submit its findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Commission recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6) (A) Each agency, upon any request for records made under paragraphs (1), (2), or (3) of this subsection shall--

(i) notify the person making the request of the receipt of the request and notify the person making the request within 30 days after receipt of the request of the number of pages encompassed by the request and the time limits imposed by this subsection upon the agency for responding to the request; determine whether to comply with the request and notify the person making the request of such determination and the reasons therefor within 60 days from receipt of the request (excepting Saturdays, Sundays and legal public holidays) if the request encompasses less than 200 pages of records with an additional 60 days (excepting Saturdays, Sundays and legal public holidays) permitted for each additional 200 pages of records encompassed by the request, but all determinations and notifications shall be made within one year; and notify the person making the request of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request--

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraphs (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in attempting to respond to the request, the court shall allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are--

(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records maintained, collected or used for foreign intelligence, foreign counterintelligence, organized crime, or terrorism purposes; or records maintained, collected or used for law enforcement purposes, but only to the extent that the production of such law enforcement records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy or the privacy of a natural person who has been deceased for less than 25 years, (D) tend to disclose the identity of a confidential source, including a state or municipal agency or foreign government which furnished information on a confidential basis, and in the case of a record maintained, collected or used by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by the confidential source including confidential information furnished by a state or municipal agency or foreign government, (E) disclose investigative techniques and procedures or (F) endanger the life or physical safety of any natural person;

PROVIDED, however, this section shall not require a law enforcement or intelligence agency to

(i) make available any records maintained, collected or used for law enforcement purposes which pertain to a law enforcement investigation for seven years after termination of the investigation without prosecution or seven years after prosecution; or

(ii) disclose any information which would interfere with an ongoing criminal investigation or foreign intelligence or foreign counterintelligence activity, if the head of the agency or in the case of the Department of Justice, a component thereof, certifies in writing to the Attorney General, and the Attorney General determines, disclosing that information would interfere with an ongoing criminal investigation or foreign intelligence or foreign counterintelligence activity;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record not already in the public domain which contains information pertaining to the subject of a request shall be provided to any person properly requesting such record after deletion of the portions which are exempt under this subsection.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(d) On or before December 1 of each calendar year, each agency shall submit a report covering the preceding fiscal year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include--

- (1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;
- (2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;
- (3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;
- (4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;
- (5) a copy of every rule made by such agency regarding this section;
- (6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and
- (7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before December 1 of each calendar year which shall include for the prior fiscal year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(e) For the purpose of this section--

(1) the term "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency;

(2) the term "person" means a United States person as defined by the Foreign Intelligence Surveillance Act of 1978;

(3) the term "foreign intelligence" means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons;

(4) the term "foreign counterintelligence" means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, international terrorist activities or assassinations conducted for or on behalf of foreign powers, organizations or persons;

(5) the term "terrorism" means any activity that involves a violent act that is dangerous to human life or risks serious bodily harm or that involves aggravated property destruction, for the purpose of --

(i) intimidating or coercing the civil population or any segment thereof;

(ii) influencing or retaliating against the policies or actions of the government of the United States or of any State or political subdivision thereof or of any foreign state, by intimidation or coercion; or

(iii) influencing or retaliating against the trade or economic policies or actions of a corporation or other entity engaged in foreign commerce, by intimidation or coercion;

(6) the term "organized crime" means criminal activity by two or more persons who are engaged in a continuing enterprise for the purpose of obtaining monetary or commercial gains or profits wholly or in part through racketeering activity.

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TITLE 28

CODE OF

FEDERAL REGULATIONS

SECTION 50.8

Policy with regard to criteria for discretionary access
to investigatory records of historical interest.

(a) In response to the increased demand for access to investigatory files of historical interest that were compiled by the Department of Justice for law enforcement purposes and are thus exempted from compulsory disclosure under the Freedom of Information Act, the Department has decided to modify to the extent hereinafter indicated its general practice regarding their discretionary release. Issuance of this section and actions considered or taken pursuant hereto are not to be deemed a waiver of the Government's position that the materials in question are exempted under the Act. By providing the exemptions in the Act, Congress conferred upon agencies the option, at the discretion of the agency, to grant or deny access to exempt materials unless prohibited by other law. Possible releases that may be considered under this section are at the sole discretion of the Attorney General and of those persons to whom authority hereunder may be delegated.

(b) Persons outside the Executive Branch engaged in historical research projects will be accorded access to information or material of historical interest contained within the Department's investigatory files compiled for law enforcement purposes that are more than fifteen years old and are no longer substantially related to current investigative or law enforcement activities, subject to deletions to the minimum extent deemed necessary to protect law enforcement efficiency and the privacy, confidences, or other legitimate interests of any person named or identified in such files. Access may be requested pursuant to the Department's regulations in 28 CFR Part 16A, as revised February 14, 1973, which set forth procedures and fees for processing such requests.

(c) The deletions referred to above will generally be as follows:

(1) Names or other identifying information as to informants;

(2) Names or other identifying information as to law enforcement personnel, where the disclosure of such information would jeopardize the safety of the employee or his family, or would disclose information about an employee's assignments that would impair his ability to work effectively;

(3) Unsubstantiated charges, defamatory material, matter involving an unwarranted invasion of privacy, or other matter which may be used adversely to affect private persons;

(4) Investigatory techniques and procedures; and

(5) Information the release of which would deprive an individual of a right to a fair trial or impartial adjudication, or would interfere with law enforcement functions designed directly to protect individuals against violations of law.

(d) This policy for the exercise of administrative discretion is designed to further the public's knowledge of matters of historical interest and, at the same time, to preserve this Department's law enforcement efficiency and protect the legitimate interests of private persons.

[Order No. 528-73, 38 FR 19029, July 17, 1973]

[Additional material furnished by Michael DeFoe, attorney in charge, Kansas City Strike Force, Organized Crime and Racketeering Section.]



Address Reply to the
Division Indicated
and Refer to Initial and Number

UNITED STATES DEPARTMENT OF JUSTICE

~~WASHINGTON, D.C. 20530~~

Suite 601
1125 Grand Avenue
Kansas City, Missouri

SENATE PERMANENT
64106 COMM ON INVESTIGATIONS

MD:slh

RECD JUL 3 1980

REFERRED _____
INITIAL _____ FILE NO. _____

June 30, 1980

Mr. Marty Steinberg
Chief Counsel
United States Senate
Permanent Subcommittee
on Investigations
Washington, D.C. 20510

Dear Mr. Steinberg:

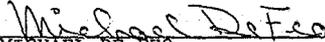
Reference is made to my testimony before the April 30, 1980, hearing of the Permanent Subcommittee on Governmental Affairs. As you will recall, Chairman Nunn inquired concerning problems affecting disclosure of grand jury materials to local law enforcement. I advised him of our experience in the Kansas City Field Office of the Organized Crime and Racketeering Section, which was that Rule 6(e) of the Federal Rules of Criminal Procedure prohibited such disclosure.

I also agreed to send the Subcommittee the views on this subject which I had previously submitted to the Department. Enclosed is a memorandum dated April 21, 1980, as well as a copy of the judicial opinion referenced therein, United States v. Tager.

Of course, this memorandum simply represents my personal views and recommendations as a prosecutor with some years of experience. The Department may or may not agree with my legal

analysis or with my recommendations for curative action. However, I was authorized by the Criminal Division to make these views known to the Subcommittee for its information.

Sincerely,


MICHAEL DE FEO
Attorney in Charge
Kansas City Strike Force
Organized Crime and
Racketeering Section

Enclosure

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Ralph Culver, Room 516
Federal Triangle Building

FROM : Michael DeFeo, Deputy Chief
Organized Crime & Racketeering Section

SUBJECT: Suggested Discussion Topics For
Federal-State Law Enforcement Committees

DATE: April 21, 1980
MD:slh

Reference is made to the above request which was received on April 18, 1980.

It is suggested that the Department and state authorities consider joint action to secure a revision of Rule 6(e), Federal Rules of Criminal Procedure, to permit disclosure of grand jury materials to state authorities. As reflected by the attached opinion in *U. S. v. Tager*, the committee and legislative history establish that such orders cannot now be supported.

As federal-state cooperation increases, the need to work grand jury investigations cooperatively with state and local officers increases. Present practice requires involvement of federal investigators, who may be given access to grand jury materials but may not share them with their state or local counterparts, who often are the originators of the investigation and contribute the majority of the investigative manpower. This situation could readily be remedied by amending Rule 6(e)(3)(A)(ii) to provide that disclosure may be made to "such individuals" or "such law enforcement personnel", rather than the present limitation to "government", i.e., federal, personnel.

The secrecy of the grand jury could be maintained by the practice, which could be mandated by the amended rule, of conditioning such disclosure upon a court order prohibiting further disclosure and execution of an acknowledgment thereof by the recipient.

bcc: David Margolis
Miscellaneous Reports
→ Rule 6(e)
Kansas City, Mo. P.D. File

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)
Plaintiff,)
)
vs.) No. 78-20052-01
)
)
ARIEL HENRY TAGER,)
Defendant.)

FILED
JUN 22 1979

MEMORANDUM OPINION
AND ORDERS

ARTHUR G. JOHNSON, Clerk
By *[Signature]* Deputy

This matter comes before the Court on numerous pre-trial motions filed by defendant Tager. Oral argument and a two day evidentiary hearing were held on these motions on the defendant's request. Thereafter the parties submitted additional evidence requested by the Court. Grand jury materials were assembled and presented to this Court for review on several of these motions. Parties have since submitted numerous and lengthy supplemental briefs on their principal contentions. This matter is now ready for resolution.

Defendant's two primary motions request a dismissal of the indictment and suppression of certain documentary evidence claimed to be the product of illegal searches. The former motion challenges numerous aspects of the grand jury procedure utilized herein and alleges a variety of abuses that defendant claims should warrant a dismissal of the indictment. The latter motion challenges the sufficiency of the affidavit supporting the issuance of the warrant, the scope and nature of two alleged searches, and also raises various alleged privileges regarding the materials seized pursuant to the warrant. Defendant's other motions are treated in a separate order.

Defendant charges numerous instances of grand jury abuse by Special Strike Force Attorneys for the Department of Justice. This Court shall primarily deal with defendant's claim that government lawyers impermissibly breached the grand jury's secrecy when they disclosed grand jury materials to an agent of the insurance companies who allegedly are the victims of defendant's conduct. The government contends that disclosure was made in conformity with an order lawfully entered by a judge in this judicial district pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure. Defendant challenges the authority of the court under Rule 6(e) to issue the order obtained by the government.

1. THE ISSUE UNDER RULE 6(e)
OF THE F.R.Cr.P.

The law in this area is largely untested, certainly unsettled, and unclear in many respects. This Court, however, is inclined to agree with defendant that no authority exists for the grand jury disclosure admitted herein. This Court believes that properly interpreted, Rule 6(e) neither authorizes nor permits a court to order the disclosure here obtained by the government. Another federal judge in this district, however, has impliedly held otherwise. Although that decision is not necessarily binding on this Court, it is the policy of the judges in this district to defer to the judgment of their colleagues who have initially ruled on a given question of law. That deference is even more appropriate where, as here, the law on the point is unsettled. This Court will therefore defer to the earlier ruling on this matter as the law of this judicial district until the Court of Appeals for this Circuit instructs otherwise. This Court does so, however, only with great reservation. A brief summary of the facts is appropriate.

A federal grand jury sitting in Topeka, Kansas, returned on April 27, 1978, a twelve-count indictment against defendant Tager and others, charging one count of conspiracy to obtain money through fraudulent means, and eleven substantive counts of mail fraud, all in violation of 18 U.S.C. §§1341, 371. The substance of the indictment alleges a broad scheme by certain individuals -- among them several lawyers such as defendant here -- to defraud insurance companies through submission of false personal injury claims. All of Tager's codefendants have entered pleas of guilty to some of the counts against them and have been sentenced by this Court.

The parties here agree that the instant investigation developed from the independent efforts of the Insurance Crime Prevention Institute (hereinafter "ICPI"), an insurance investigative unit designed to aid in law enforcement and prosecutorial action against perpetrators of insurance fraud. The ICPI is a non-profit organization funded by approximately 325 insurance companies. Mr. Ed House, a paid employee of ICPI and a retired police detective, initially undertook the investigation of various insurance claims whose veracity was suspect. House examined insurance company files and documents, conducted preliminary interviews, and upon his determination that fraud did or might exist, turned over his findings to the United States Postal Inspection Service. The grand jury investigation followed.

The initial grand jury investigation into this matter began before a Kansas City, Kansas grand jury. When the government learned of information that could jeopardize the integrity of the investigation before that body, the investigation was transferred to a different grand jury sitting in Topeka, Kansas. Without a court order, government lawyers during the investigation gave House access to subpoenaed insurance files to obtain his assistance in preparing.

the case before the grand jury. House aided the government attorneys in selecting certain files as targets for subpoenas. He frequently accompanied the officer who served the subpoenas to retrieve the documents. House's other participation consisted primarily of assisting the Strike Force attorneys in their review of insurance files, explaining and interpreting specialized documentation used by different insurance companies, and answering government questions regarding insurance practices in general. House testified that he had previously seen each subpoenaed grand jury file during his ICPI investigation. Under ICPI procedure, House additionally had access to copies of any of these files and others from the member insurance companies.

On March 2, 1978, the government attorneys submitted a motion and proposed order to my distinguished fellow jurist, Judge Rogers, in Topeka, Kansas, that authorized disclosure of grand jury testimony and materials to House "as deemed necessary by attorneys for the government to assist in the presentation of matters pertaining to this investigation to the grand jury."¹ Evidently pursuant to this order, House continued to aid the government attorneys. He assisted in interviewing witnesses subpoenaed before the grand jury. House was also permitted to review testimony of witnesses before the grand jury. Except for one brief occasion when he acted as a courier and delivered documents to the grand jury, House did not himself appear in the grand jury room with the government attorneys. Nevertheless, it is safe to characterize House's association with the ongoing grand jury investigation as substantial and continuous. House apparently played an integral part in the preparation and organization of the appropriate material for presentation to the grand jury. Defendant contends that the disclosure to House, both before and after the order entered March 2, was improper and in violation of Rule 6(e). After extensive research and while denying the relief requested, this Court agrees defendant's position may be soundly based.

Rule 6(e), Federal Rules of Criminal Procedure, sets forth the grand jury secrecy rule as presently employed.² Subsection (1) states the general rule that secrecy is required and that a knowing violation thereof may be punished as a contempt of court. Subsection (2) "provides for three, and only three, exceptions" to the secrecy rule. In re Biaggi, 478 F. 2d 489, 492 (2d Cir. 1973) (Friendly, C.J.). A court may permit a disclosure at a defendant's request upon a showing that grounds may exist to dismiss the indictment. This is manifestly not involved here in the disclosure to House. Subsection (2)(A) permits disclosure of matters occurring before the grand jury to "an attorney for the government" and to "such government personnel as are deemed necessary" to assist that attorney in the performance of his or her duty to enforce federal criminal law. The last exception, subsection (2)(C)(i), permits disclosure upon order of the Court "preliminarily to or in connection with a judicial proceeding." The government has here sought to justify its disclosure to House solely under this last provision, subsection (2)(C)(i).

The crucial issue in this matter concerns the breadth of disclosure permitted under subsection (2)(C). This Court must decide whether the government may augment the disclosure authorized under subsection (2)(A) by utilizing the exception found in (2)(C) to obtain disclosure to persons assisting in the grand jury presentation who do not come within the former subsection. Only one other district court has expressly commented on this narrow issue, and only one Court of Appeals has approached this issue. The case law is hardly conclusive.

The government here sought the expert interpretative aid of a non-attorney to assist in the presentation of material before the grand jury. This was precisely the situation wherein disclosure was contemplated under subsection (2)(A). The necessity for this disclosure caused Congress to amend Rule 6(e) in 1977 expressly to provide for this very

type of disclosure within that subsection of the rule. Yet, as the government here apparently concedes, Congress did not see fit to provide for disclosure within that subsection to persons like House -- non-government personnel whose expertise the government attorneys desired for assistance before the grand jury.

Both the committee that drafted the new subsection (2)(A) and the Congress that enacted it considered and rejected the use of non-government personnel as expert assistants to a government attorney participating in the grand jury investigation. The Court must conclude that both bodies decided that this assistance was either unnecessary or undesirable and should not be permitted within the scope of the rule. The Court must conclude that both bodies intended to exclude such people from "assisting an attorney for the government in the performance of such attorney's duty."

Utilization of (2)(C) under the instant circumstances would permit on court order disclosure to persons not within the ambit of (2)(A) to enable them to assist a government attorney participating in an ongoing grand jury investigation. This would circumvent the parameters of subsection (2)(A). This Court finds that in enacting (2)(A) Congress rejected this proposition by implication. This Court further finds that this interpretation of (2)(C) is both unsupported by, and inconsistent with, its traditional usage that has been continued under the new Rule 6(e). A brief examination of the legislative history and the judicial precedent surrounding Rule 6(e) supports this view.

Rule 6(e) was originally adopted in 1946 and was essentially a codification of existing practice in federal courts. See Rule 6(e), Federal Rules of Criminal Procedure, 5 F.R.D. 539, 549 (1946); Note, Administrative Agency Access to Grand Jury Materials, 75 Colum.L.Rev. 162, 164-65 (1975).

The original rule read in pertinent part as follows:

"(e) Secrecy of Proceedings and Disclosures. Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the attorneys for the government for use in the performance of their duties. Otherwise a juror, attorney, interpreter or stenographer may disclose matters occurring before the grand jury only when so directed by the court preliminarily to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No obligation of secrecy may be imposed upon any person except in accordance with this rule."

The Advisory Committee notes to the original rule explained that:

"[g]overnment attorneys are entitled to disclosure of grand jury proceedings, other than deliberations and the votes of the jurors, inasmuch as they may be present in the grand jury room during the presentation of evidence."

Otherwise, the rule "continue[d] the traditional practice of secrecy on the part of members of the grand jury, except when the court permits a disclosure." Notes to Rules of Criminal Procedure, 4 F.R.D. 405, 409 (1945).

The exceptions to the "traditional practice of secrecy" contemplated by the advisors that permitted disclosure on court order order are not difficult to ascertain. The three general areas of exceptions to the grand jury secrecy rule extant today were present in the original rule -- disclosure to attorneys for the government in the performance of their duty, disclosure "in connection with" a judicial proceeding, and disclosure to a defendant to support a motion to dismiss the indictment. Cases deciding questions of grand jury disclosure prior to the adoption of the rules focused primarily on the maintenance of secrecy during deliberations and later disclosure in connection with either related litigation or a trial of an indicted party. Cf. In re Report and

Recommendation of June 5, 1972 Grand Jury, 370 F.Supp. 1219, 1228 (D.D.C. 1974) (Sirica, J.) ("Advisory Committee had in mind only cases where the disclosure question arose at or prior to trial").

Case law cited by the Advisory Committee to illustrate the "traditional practice of secrecy" codified in the rule primarily dealt with disclosures to a defendant to support a motion to dismiss the indictment. These cases, and the authority upon which they rely, generally discuss the circumstances under which disclosures for that purpose may be made. See Cobbledick v. United States, 309 U.S. 323 (1940); Schmidt v. United States, 115 F.2d 394 (6th Cir. 1940); Cox v. Vaught, 52 F.2d 562 (10th Cir. 1931); Murdick v. United States, 15 F.2d 965 (8th Cir. 1926); Grace v. United States, 4 F.2d 658 (5th Cir. 1925); Atwell v. United States, 162 F. 97 (4th Cir. 1908); Chadwick v. United States, 141 F. 225 (6th Cir. 1905); United States v. American Medical Ass'n., 26 F.Supp. 429 (D.D.C. 1939). These cases provide insight only into the scope of the third secrecy exception. None stand as authority for acknowledging a greater or lesser restriction upon those individuals to whom disclosures might be made in order to aid the government attorneys in their grand jury work.

Few early cases can be found that face disclosure questions in circumstances that illustrate the other two secrecy exceptions -- the "government attorneys" provision, and the "judicial proceeding" exception. As will be developed below, the "government attorneys" exception was restrictively understood in older grand jury practice. Only more recently did courts begin to broaden its parameters to embrace assisting personnel.

The only early case with possible bearing on the "judicial proceeding" exception is In re Grand Jury Proceedings, 4 F.Supp. 283 (E.D. Pa. 1933). There a district court

permitted disclosure for use in a different civil lawsuit after the grand jury had terminated its investigation. Unrestricted by language of any rules regarding grand jury secrecy, the district court expansively announced a broad power of discretion in the trial court to authorize disclosure. The court found that disclosure would be permitted whenever in its discretion it determined that the interest of justice so required. None of the early cases, however, deal with the permissible scope of disclosures during a pending grand jury investigation to enable government attorneys to gain assistance in the performance of their duty.

The holding herein is ultimately dependent upon the judicial construction given the "judicial proceeding" grand jury secrecy exception -- the scope of disclosure that a court may direct "preliminarily to or in connection with a judicial proceeding." The language of this exception has been carried forward verbatim from the original Rule 6(e) to its most recent amendment. Because the issue before the Court is the applicability of this exception to personnel assisting the government attorneys, an analysis of the "government attorney" exception is appropriate. This latter exception has recently been amended by Congress to make express provision for disclosures to "assisting personnel." The legislative background to the Congressional modification of this exception, the present 2(A) provision, illuminates the intended breadth of the companion subsection relevant here.

The original Rule 6(e) permitted disclosure without court order only to "attorneys for the government" for use in performance of their duties. The phrase "attorneys for the government" was narrowly defined in Rule 54(c), Federal Rules of Criminal Procedure, and included only the Attorney General, an Assistant Attorney General, a United States

Attorney, or an Assistant United States Attorney. Rule 54 (c), Federal Rules of Criminal Procedure, 5 F.R.D. 539, 548 (1946). The rule therefore sanctioned disclosure only to those whose presence before the grand jury during the presentation of evidence was permitted. See Advisory Committee Notes, Federal Rules of Criminal Procedure, 4 F.R.D. 405, 409 (1945). Thus, the rule referred only to attorneys for the federal government and not to state or municipal attorneys. Special February 1971 Grand Jury v. Conlisk, 490 F.2d 894, 896 (7th Cir. 1973); In re Holovachka, 317 F.2d 834, 836 (7th Cir. 1963); Corona Constr. Co. v. Ampress Brick Co., Inc., 376 F.Supp. 598, 601 (N.D. Ill. 1974); United States v. Downey, 195 F.Supp. 581, 584 (S.D. Ill. 1961). Attorneys for federal administrative agencies were similarly not included among those who might assist the United States Attorney in preparing grand jury materials. In re Grand Jury Proceedings, 309 F.2d 440, 443 (3rd Cir. 1962); In re Grand Jury Investigation, 414 F.Supp. 74 (S.D.N.Y. 1976). Attorneys for corporations owned by the United States were also excluded from this service. United States v. General Electric Co., 209 F. Supp. 197, 202 (E.D. Pa. 1962) (T.V.A.).

This strict definition created problems, however, with regard to non-attorneys whose assistance was absolutely necessary for the preparation of complicated cases before the grand jury. These assistants often could not perform their work without having access to grand jury materials or minutes. In difficult cases the government attorneys could not adequately perform their function without such assistance, either in evaluation of evidence or in investigation. See Advisory Committee Notes, Report of the Committee on Rules of Practice and Procedure to the Judicial Conference of the United States, Rules of Procedure, Communication from the Chief Justice of the United States, H.R. Doc. No. 464, 94th Cong. 2d Sess. 9 (1976) [hereinafter Rules of Procedure, Communication from the Chief Justice].

In response to this problem, the United States Judicial Conference Advisory Committee on Criminal Rules prepared an amendment to Rule 6(e) in late 1972 that modified the definition of "attorneys for the government." This amendment was approved for distribution to the bench and bar in early 1973 by the Standing Committee on Rules of Practice and Procedure. After collecting responses and suggestions for six months, the Advisory Committee made revisions in its initial draft, and the proposed rule was approved by the Judicial Conference in September, 1975 for transmittal to the Supreme Court. Proposed Amendments to the Federal Rules of Criminal Procedure, Hearings on H.R. 5864 before the Subcomm. on Criminal Justice of the House Comm. on the Judiciary, 95th Cong. 1st Sess. 84 (1977) [hereinafter Hearings on Proposed Amendments] (statement of Professor Wayne LaFave, Reporter, Advisory Committee on Criminal Rules).

The new rule was submitted to Congress on April 26, 1976, but Congress acted to postpone the effective date of some of the changes until August 1, 1977, or until Congress approved the new rule, so that Congress might have additional time to review the proposal. Amendments to the Federal Rules of Criminal Procedure, H.R. Rep.No. 95-195, 95th Cong. 1st Sess. 2 (1977) [hereinafter H.R.Rep. No. 95-195]; 123 Cong. Rec. H7866 (daily ed. July 27, 1977) (remarks of Rep. Mann); Act of July 8, 1976, Pub. L. No. 94-349, 90 Stat. 822. As ultimately enacted, H.R. 5864 made the effective date of these amendments October 1, 1977. Federal Rules of Criminal Procedure, Pub.L. No. 95-78, §4, 91 Stat. 319, 322 (1977).

The relevant portion of the proposed Rule 6(e) added to the definition of "attorneys for the government" "such other government personnel as are necessary to assist" the attorneys in the performance of their duties.³ The proposed amendment reflected the fact that government personnel often assisted the Justice Department in grand jury proceedings.

The Advisory Committee that drafted the proposed rule stated that the amendment conformed to the majority trend in case law, which less restrictively construed the old rule and permitted the assistance of government agents in the grand jury investigation. The Committee noted that:

"[a]lthough case law is limited, the trend seems to be in the direction of allowing disclosure to government personnel who assist attorneys for the government in situations where their expertise is required."

Rules of Procedure, Communication from the Chief Justice,
supra, at 9.

The House Committee that considered the amendment questioned whether the limited case law on this point was clear. The Committee further found lacking any consistent practice within the Justice Department concerning what grand jury matters might be disclosed, to whom and under what circumstances that disclosure might be made. H.R. Rep.No. 95-195, supra, at 4. Indeed, the Committee felt that the proposed amendment would fail to clarify the existing situation and might even lead to further unclarity in the practice. Id., at 5 n.9.

The House Committee disapproved the amendment proposed by the Supreme Court because of the rule's failure to spell out clearly all the details of the grand jury disclosure permissible within its terms. The Committee also expressed its frustration with the overall unclarity surrounding the prevailing practice under the original Rule 6(e). The Committee recommended that the rule be entirely rewritten. H.R. Rep. No. 95-195, supra, at 9.

An alternative proposal submitted by some members of the Committee would have provided access without court order under the first sentence of the rule only to criminal investigative personnel.⁴ This proposal would have permitted the grand jury to seek further assistance from "purely civil, investigative or administrative personnel" pursuant to court

order under the second sentence of the rule. H.R. Rep. No. 95-195, supra, at 15 (additional views of Rep. Wiggins). No reference was made to any provision either in the old rule or in the alternative proposal that would embrace disclosure upon court order to non-government personnel assisting the grand jury. This alternative proposal was not approved by the Senate.

The House Committee could not agree on appropriate language for the new rule. 123 Cong. Rec. H3224 (daily ed. April 19, 1977) (remarks of Rep. Wiggins). The Committee later deferred to an amendment drafted by the Senate Subcommittee on Criminal Laws and Procedures working in liaison with the House Subcommittee on Criminal Justice. Both houses in Congress ultimately enacted this latter draft, the current Rule 6(e), into law. 123 Cong. Rec. H3223, -24 (daily ed. April 19, 1977) (remarks of Reps. Mann and Wiggins); 123 Cong. Rec. H7866 (daily ed. July 27, 1977) (remarks of Rep. Mann).

The Senate modification to H.R. 5864 continued without change the two additional exceptions to grand jury secrecy that were embodied in the old Rule 6(e), including disclosure upon court direction "preliminarily to or in connection with a judicial proceeding." As stated by Representative Mann:

"[T]here is no intention to change the current practice with regard to those parts of rule 6(e) not directly involved in the Supreme Court's proposed amendment. Thus, [H.R. 5864, as modified] is not intended to change any current practice with regard to these two exceptions. . . ."

123 Cong. Rec. H7867 (daily ed. July 27, 1977). See also Hearings on Proposed Amendments, supra, at 55, 84, 106 (statements of Prof. LaFave, Reporter, Advisory Committee on Criminal Rules, and Richard Thornburgh, Deputy Attorney General). Cf. Federal Rules of Criminal Procedure, S.Rep.

No. 95-354, 95th Cong. 1st Sess. 8, reprinted in [1977] U.S. Code Cong. & Ad. News, 527, 532 [hereinafter S.Rep. No. 95-354] ("Committee believes and intends that the basis for a court's refusal to issue an order under paragraph (C) to enable the government to disclose grand jury information in a non-criminal proceeding should be no more restrictive than is the case today under prevailing court decisions").

The government here has understandably refrained from contending that House might be characterized as "government personnel" within the ambit of subsection 2(A) and that disclosure to him might therefore be made without court order whenever government attorneys deemed his assistance necessary. Discussion in the legislative history clearly indicates that "government personnel" embraces only federal agency employees. It is repeatedly referred to as including "Government agency personnel," or "representatives of government agencies actively assisting United States Attorneys in a grand jury investigation." H.R. Rep. No. 95-195, *supra*, at 4; S. Rep. No. 95-354, *supra*, at 6-7. In his explanation to the House Subcommittee on Criminal Justice, Professor LaFave stated that the amendment:

"is intended to make it clear that Rule 6(e) does not forbid United States attorneys to make use of other government personnel, such as employees of administrative agencies and government departments, when such outside expertise is necessary."
(Emphasis added.)

Hearings on Proposed Amendments, *supra*, at 105. Every example cited in the deliberations on the amended rule embraced solely officials of United States governmental agencies, such as the F.B.I., I.R.S., S.E.C., the Postal Inspection Service, the Departments of Labor and the Treasury, or the Secret Service. H.R. Rep. No. 95-195, *supra*, at 4; Federal Grand Jury, Hearings on H.J. Res. 46, H.R. 1277 and related bills before the Subcomm. on Immigration, Citizenship & International Law of the House Comm. on the Judiciary, 94th Cong. 2d Sess. 56 (1976) [hereinafter Federal Grand Jury, Hearings on Related Bills] (statement of Edward Levi, Attorney General of the

United States); Hearings on Proposed Amendments, supra, at 29, 105, 204, 229 (statements of Judge Becker, U.S. District Court for Eastern District of Pennsylvania; Prof. Wayne LaFave, Reporter, Advisory Committee on Criminal Rules, Professors Leon Friedman and Melvin Lewis); see also Robert Hawthorne, Inc. v. Dir. of Internal Revenue, 406 F.Supp. 1098, 1126 (E.D. Pa. 1976) (E. Becker, J.).

As noted above, the wording of the amended section now found in 2(A) was originally proposed by the Supreme Court to conform to the recent trend in case law. This trend did not include agents from without the federal government. See, e.g., Special February 1977 Grand Jury v. Conlisk, 490 F.2d 894, 896 (7th Cir. 1973); in his explanation of the breadth of "government personnel," Representative Wiggins of the House Subcommittee on Criminal Justice cited cases that typified this trend. All dealt with federal agency assistance to the United States Attorney. 123 Cong. Rec. H7868 (daily ed. July 27, 1977), citing United States v. Evans, 526 F.2d 701, 707 (5th Cir. 1976); United States v. Hoffa, 349 F.2d 20, 43 (6th Cir. 1965), aff'd., 385 U.S. 293 (1966); United States v. U.S. District Court, 238 F.2d 713, 721 (4th Cir. 1956) (disclosure to superiors in the Department of Justice); United States v. Anzelmo, 319 F.Supp. 1106, 1116 (E.D. La. 1970); United States v. Culver, 224 F.Supp. 419, 432 (D.Md. 1963).

Even critics of the amendment, who disapproved the expanded parameters of permissible disclosure, recognized that potential disclosures contemplated by the new language reached only governmental employees -- from members of Congress to employees of O.E.O. or the military services. Hearings on Proposed Amendments, supra, at 147, 229 (statements of Bernard Nussbaum, Esq. and Prof. Melvin Lewis). Only one critic of the amendments to the rule voiced her concern that it was unclear whether the rule, as proposed by the

Supreme Court, would "open the door to permitting private contractors to be retained by the Government attorney for purposes of analyzing the [grand jury] evidence or data."

Hearings on Proposed Amendments, supra, at 181 (statement of Phyllis Bamberger, New York Legal Aid Society).

The proposed use of Rule 6(e) to authorize disclosures like that challenged in the instant case was not overlooked by the Advisory Committee or the House Committee responsible for the new rule. The possibility of permitting non-government personnel to assist the government attorney in work before the grand jury was expressly investigated and considered by the Advisory Committee that drafted that (2)(A) language ultimately adopted by the Senate. The amended (2)(A) language was specifically designed not to embrace that possibility. Professor LaFave, Reporter for the Advisory Committee, explained his understanding to the House Subcommittee on Criminal Justice during questioning by Representative Mann:

"Mr. Mann: Along that same line, the rule seems to restrict to other Government personnel the experts -- and I will use that term loosely -- that the attorney for the Government may call upon.

We have a pretty big Government with a lot of experts but on certain matters there may not be a governmental employee who is expert in that field.

Is it your intention not to permit the prosecutor to call in an astrologer or astronomer, for example?

Prof.LaFave: Yes, that is correct.

Apparently representatives of the Justice Department whom we talked to about this particular problem did not seem to think that was a problem, in other words, that there was an occasion when they would need an expert and couldn't find the astrologer some place in the Federal Government.

Apparently that is not the problem."

Hearings on Proposed Amendments, supra, at 92. (Emphasis added.)

Had the Advisory Committee or the Committee on Rules and Practice intended to authorize disclosure to persons such as House, they could have easily deleted the word "Government" from "Government personnel." Additionally, Congress gave the proposed amendments considerable attention because of its "great concern" with the alteration of a rule that "touch[ed] upon the basic function of the grand jury system." 123 Cong. Rec. H3223 (daily ed. April 19, 1977); 123 Cong. Rec. H7868 (daily ed. July 27, 1977) (remarks of Rep. Mann). Apprised of the contemplated breadth of 2(A), Congress could have altered it with little effort. This Court must conclude that Congress intended that the scope of the 2(A) secrecy exception go no further than to federal personnel who assist in the preparation of the grand jury investigation. Non-governmental personnel may not be given access to grand jury material under this subsection, regardless how essential the government attorneys might consider that assistance to be.

The only other possible basis for the disclosure to House in the instant case is that found in subsection (2)(C) -- disclosure by court order "preliminarily to or in connection with a judicial proceeding." The government impliedly argues that the proceedings of the grand jury whose materials are sought for disclosure constitute a "judicial proceeding" within the ambit of the rule. Thus, without regard to the limits of subsection (2)(A), this Court might authorize disclosures to investigative agents assisting the government attorneys because that authorization would be in connection with a "judicial proceeding." At issue in this case is whether any limitation inheres in (2)(C) on the disclosures that might be ordered thereunder.

The construction of (2)(C) advanced here by Special Strike Force attorneys represents a novel use of the "judicial proceeding" exception to grand jury secrecy. The new subsection (2)(C), originally the second sentence of the old Rule 6(e), has typically been used only in cases where

disclosure is ordered in connection with a judicial proceeding other than the grand jury proceedings wherein disclosure is sought. This would appear self-evident from the face of the rule itself.

If the government's argument is correct, the (2)(C)(i) provision for disclosures in connection with "judicial proceedings" subsumes within it both other exceptions to the secrecy rule. Subsection (2)(A) deals with disclosures to assisting personnel in connection with the grand jury proceeding wherein disclosure is sought. Subsection (2)(C)(ii) deals with an indicted defendant's access to materials from that same grand jury. Reading these subsections in pari materia, this Court is inclined to find that the (2)(C)(i) reference to "judicial proceedings" embraces judicial proceedings other than the grand jury proceeding whose materials are sought for disclosure. With analogous reasoning, courts have excluded from the "judicial proceedings" contemplated by the rule any proceeding instituted solely to obtain the disclosures sought. See In re Biaggi, 478 F.2d 489 (2d Cir. 1973); Hiss v. Department of Justice, 441 F.Supp. 69 (S.D. N.Y. 1977).

Others have similarly concluded. One critic of the Supreme Court's proposed draft of Rule 6(e) cautioned against its adoption and noted in passing:

"There are two sentences in [the old] rule 6(e). There is the first sentence and then the second one that says in connection with a judicial proceeding, which, of course, by its terms can't be the grand jury itself. That is fairly clear."

Hearings on Proposed Amendments, supra, at 159 (statement of Bernard Nussbaum). Mr. Nussbaum then continued his argument against the proposed (2)(A) language, referring to the (2)(A) provision as the exception for disclosures "in connection with the grand jury itself." Id. As if to state the obvious, Professor Charles Alan Wright entitles his treatise's section

on this provision "Disclosure for Use in Other Proceedings." 1 Wright, Federal Practice and Procedure, §109 at 188 (1969). Cf. Douglas Oil Co. v. Petrol Stops Northwest, ___ U.S. ___, 99 S.Ct. 1667, 1674 (1979) ("Parties seeking grand jury transcripts under Rule 6(e) must show that the material they seek is needed to avoid a possible injustice in another judicial proceeding.").

There is, however, authority to the contrary. Although not cited by the government here, a line of cases deals with disclosure of grand jury witnesses' testimony to that witness. Many of these cases consider disclosure either expressly or implicitly in a context where the grand jury proceeding itself is the only "judicial proceeding" in connection with the contested disclosure might arguably be sought. See In re Braniff Airways, Inc., 390 F.Supp. 344 (W.D. Tex. 1975); In re Grand Jury Witness Subpoenas, 370 F.Supp. 1282 (S.D.Fla. 1974). In the seminal opinion announcing this rule, however, Chief Judge Pettine qualified his order by making disclosure permissible only after the conclusion of the grand jury proceedings wherein disclosure was sought. In re Minkoff, 349 F. Supp. 154 (D.R.I. 1972).

This Court's concern is not whether these cases correctly conclude that a grand jury proceeding is a "judicial proceeding" within the meaning of the rule. Courts have so held in connection with grand jury proceedings other than the one wherein disclosure is sought. In re Grand Jury Investigation of Banana Industry, 214 F.Supp. 856 (D.Md. 1963). This comports with the generally broad interpretation given the "judicial proceeding" language now found in (2)(C). See, e.g. Haldeman v. Sirica, 501 F.2d 714 (D.C. Cir. 1974) (disclosure of grand jury material to House Committee considering impeachment); In re Special February 1977 Grand Jury v. Conlisk, 490 F.2d 894 (7th Cir. 1973) (disclosure in connection with police

disciplinary investigation); Gibson v. United States, 403 F.2d 166 (D.C. Cir. 1968)(state criminal proceedings); United States v. Shillitani, 345 F.2d 290, 293 (2d Cir. 1965), vacated on other grounds, 384 U.S. 364 (1966)(parole hearing); Doe v. Rosenberry, 255 F.2d 118, 120 (2d Cir. 1958)(disbarment proceedings); United States v. Salanitro, 437 F.Supp. 240 (D. Neb. 1977)(state disbarment proceedings and state judge impeachment proceedings); In re Grand Jury Investigation of Ven-Fuel, 441 F.Supp. 1299 (M.D. Fla. 1977)(House Committee investigating need for legislation); In re Report and Recommendation of June 5, 1972 Grand Jury, 370 F.Supp. 1219 (D.D.C. 1974)(investigation into Presidential impeachment by House Committee); In re Grand Jury Investigation, 414 F.Supp. 74 (S.D.N.Y. 1976)(civil litigation); In re Cement-Concrete Block, Chicago Area Grand Jury, 381 F.Supp. 1108 (N.D.Ill. 1974)(civil litigation); In re Grand Jury Transcripts, 309 F.Supp. 1050 (S.D. Ohio 1970)(police disciplinary proceedings); In re Bullock, 103 F.Supp. 639 (D.D.C. 1952)(police disciplinary proceedings); Note, Administrative Agency Access to Grand Jury Materials, 75 Colum.L.Rev. 162, 170 (1975).

... Rather, this Court is concerned with the narrow issue whether the specific grand jury investigation in which disclosure is sought constitutes a "judicial proceeding" within the terms of the rule. This would permit (2)(C) to accomplish what (2)(A) cannot, and authorize disclosure of the type for which (2)(A) was intended but was not drafted to embrace. If In re Braniff Airways, Inc., supra, and In re Grand Jury Witness Subpoenas, supra, might be understood to support this proposition, they must be seriously questioned.

Indeed, Chief Judge Pettine had a recent opportunity to review exactly this issue when the government there sought a similar order to permit a state investigative officer to assist the government attorney. Judge Pettine found that the government had failed to show the specific and compelling

need necessary to justify a (2)(C) order. He then distinguished his opinion in In re Minkoff, supra, and concluded:

"However, Rule 6(e)(2)(C) is not designed nor has it been used in the past as a source of authority for a court to order disclosure to assist with the present grand jury proceedings. Typically, the court authorizes disclosure relevant to federal civil proceedings, not in the grand jury proceeding itself."

In re Grand Jury Proceedings, 445 F.Supp. 349, 350 (D.R.I.), appeal dismissed, 580 F.2d 13 (1st Cir. 1978). Additionally, Judge Pettine found that disclosure to a state agent involved in the investigation of the case would potentially undermine several of the objectives of grand jury secrecy, including the preservation of the grand jury's independence. The Court refused to grant the requested disclosure.

Another district judge has similarly concluded by implication in a recent decision. Chief Judge Daugherty found no authority in the rule to order disclosure of a witness' testimony during the pendency of an ongoing grand jury probe and prior to the return of an indictment against the person seeking the disclosure. In re Grand Jury 1974, 377 F.Supp. 1282 (W.D.Okla. 1974). Had the predecessor of (2)(C) provided for disclosure "in connection with" the grand jury proceedings whose disclosure was sought, as the government here contends, authority would have existed in the rule for the disclosure sought before Judge Daugherty. The Court would necessarily have justified its refusal on other grounds.

Three general reasons exist for this Court's difficulties in accepting the government's proposed construction of (2)(C) -- inconsistency with traditional practice under this provision, the Congressional treatment of (2)(A) in its most recent amendment, and the problems of internal inconsistency within the new Rule 6(e) if the breadth of (2)(C) is so expansively construed. The traditional practice under

this provision of Rule 6(e) is clear. Chief Judge Pettine's analysis of (2)(C) comports with the prior use of this secrecy exception, dating back to the enactment of the provision in 1946. In Douglas Oil Co. v. Petrol Stops Northwest, supra, U.S. _____, 99 S.Ct. at 1673, the Supreme Court recently stated:

[C]ourts have been reluctant to lift unnecessarily the veil of secrecy from the grand jury. At the same time, it has been recognized that in some situations justice may demand that discrete portions of transcripts be made available for use in subsequent proceedings [citation omitted]. Indeed, recognition of the occasional need for litigants to have access to grand jury transcripts led to the provision in Fed. Rule Crim. Proc. 6(e) (2)(C)(i) that disclosure of grand jury transcripts may be made "when so directed by a court preliminarily to or in connection with a judicial proceeding." (Emphasis added.)

Courts have traditionally employed the 2(C)(i) provision, originally the second sentence of the old Rule 6(e), to authorize disclosure in other litigation after the grand jury has been discharged. See In re Bonanno, 344 F.2d 830, 834 (2d Cir. 1965) (refusal to disclose grand jury witness testimony to defendant in related contempt trial during pendency of grand jury investigation); In re Grand Jury Investigation, 414 F.Supp. 74 (S.D.N.Y. 1976); Capitol Indemnity Corp. v. First Minnesota Constr. Co., 405 F.Supp. 929 (D. Mass. 1975) (access denied until grand jury investigation concluded); In re Cement-Concrete Block, Chicago Area Grand Jury Proceedings, supra; In re Grand Jury 1974, supra; United States v. Scott Paper Co., 254 F.Supp. 759 (W.D. Mich. 1966); United States v. Badger Paper Mills, Inc., 243 F.Supp. 443 (E.D. Wis. 1965). The first sentence of the old Rule 6(e) controlled disclosures to government attorneys for use in the performance of their duties. Courts found their sole authority within that provision to permit disclosures to other personnel assisting the attorneys. See

In re Special March 1974 Grand Jury, 541 F.2d 166 (7th Cir. 1976); Cosen v. United States, 533 F.2d 1119 (9th Cir. 1976); United States v. Evans, 526 F.2d 701 (5th Cir. 1976); United States v. Universal Mfg. Co., 525 F.2d 808 (8th Cir. 1975).

In perhaps the two most comprehensive opinions to deal with grand jury disclosure, Judge Edward Becker set forth principles governing the circumstances and conditions under which disclosure to assisting personnel was proper under the old rule. See Robert Hawthorne, Inc. v. Dir. of Internal Revenue, 406 F.Supp. 1098 (E.D.Pa. 1976); In re Grand Jury Investigation, William H. Pflaumer & Sons, Inc., 53 F.R.D. 464 (E.D.Pa. 1971). Judge Becker couched these conditions solely within the terms of the first sentence of the old Rule 6(e) -- the "government attorneys" exception. Disclosures to "assisting personnel" were justified in complicated cases solely on the basis of the authority provided for government attorneys to be present before the grand jury during the presentation of evidence. Although the "judicial proceeding" exception then existed in the second sentence of 6(e), the court made no attempt to find in that provision its authority to grant the requested disclosure.

Perhaps the most compelling indication that (2)(C) was not intended for the disclosure obtained here is that found in the Congressional and early judicial treatment of the amendment to (2)(A). The "considerable difficulty" that the House Committee encountered with the language of the new rule suggests that serious consideration was given the present (2)(A) subsection, regarding both the character of those who might gain disclosure of grand jury materials, the conditions under which that disclosure might be made, and whether a court order should be necessary therefor. See 123 Cong.Rec. H3223 (daily ed. April 19, 1977) (remarks of Rep. Mann). Congress closely examined the problem because access to grand jury

materials gained from agency personnel assisting the government attorneys would render grand juries vulnerable to potential abuse. Agencies with indirect access to subpoena power far beyond that given them by Congress might exploit their access to grand jury materials for purposes unrelated to the proper criminal investigative role of the grand jury. See, e.g., H.R. Rep. No. 95-195, supra, at 4; Hearings on Proposed Amendments, supra, at 19, 42, 86, 111, 152, 204 (statements of Terry Segal, David Epstein, Bernard Nussbaum, and Professor Leon Friedman).

The Congressional hearings thus focused on what conditions or safeguards ought properly to be created for disclosures to assisting personnel. Indeed, courts permitting disclosure to assisting personnel under the old rule themselves dealt with this same concern over possible agency misuse of information received from a grand jury investigation. See, e.g., In re Grand Jury Investigation, William H. Pflaumer & Sons, Inc., 53 F.R.D. 464 (E.D.Pa. 1971). The government here contends that the instant disclosure to a non-government assistant was possible under the old rule upon court order, prior to the adoption of the amended (2)(A) and without regard to that subsection's intended breadth. It is difficult to imagine that Congress and the judiciary would labor this intensely over the proposed amendment's details if the old rule already provided for broader disclosure on court order with whatever conditions the court chose in the exercise of its discretion to impose. A review of both Congressional and judicial concern with the (2)(A) language is illuminating.

The original Supreme Court proposal before the House Subcommittee on Criminal Justice did not include any conditions on the disclosure of information to "assisting personnel," as noted above.⁵ Professor LaFave, the Advisory Committee Reporter, assured Congress that the amended rule

only contemplated use of this information by agency personnel as would be necessary for the government attorneys' work. Professor LaFave stated that the rule did not contemplate further disclosure for use by the administrative agency for its own purposes. Further protection against that possibility was written into the second sentence of Rule 6(e). Agency access to the material could only be gained through a court order "in connection with a judicial proceeding." Because an administrative proceeding was not a judicial proceeding, the rule as proposed would foreclose that possibility. Hearings on Proposed Amendments, supra, at 85-86 (statement of Wayne LaFave); see also, Federal Grand Jury, Hearings on Related Bills, supra, at 56 (statement of Edward Levi, Attorney General). Others were less certain that the rule was so clearly restricted. See, e.g., Hearings on Proposed Amendments, supra, at 204, 229 (statements of Professor Friedman and Lewis).

Also concerned with the proper restrictions on disclosures to "assisting personnel" under (2)(A), federal courts imposed judicial limitations on that provision during the pendency of the proposed rule before Congress. The Ninth Circuit decided J. R. Simplot Co. v. United States, No. 76-1893 (9th Cir. Nov. 12, 1976) (vacated and withdrawn, June 28, 1977), and held that agency access should not be permitted unless the government demonstrated a compelling need and explained the reasons why Justice Department personnel could not be used. Id., slip op., at 8. The Court in Robert Hawthorne, Inc. v. Director of Internal Revenue, supra, held that under some circumstances, a prior order might be necessary even before disclosure to certain assisting personnel would be proper. Additionally, the court prohibited disclosures by the assisting personnel, required that the assistants work under the aegis of the United States

Attorney in charge, and further required notification to the court of the identity of the assisting personnel.

The Advisory Committee took exception to the imposition of a "need" requirement for disclosures under this provision and felt that the court in J. R. Simplot Co., supra, misread the rule. Hearings on Proposed Amendments, supra, at 94 (statement of Professor LaFave). Congress apparently agreed. See S. Rep. No. 95-354, supra, at 7, [1977] U.S. Code Cong. & Ad. News at 530; Note, United States Courts of Appeals: 1976-1977 Term, Criminal Law and Procedure, 66 Georgetown L.J. 245, 367 p. 770 (1977). Judge Becker, however, successfully advocated the adoption of his views on the "aegis" and "housekeeping" restrictions on disclosures that he first framed in Hawthorne. Hearings on Proposed Amendments, supra, at 42. The new Rule 6(e) enacted by Congress contained a similar "housekeeping" criterion and a flat prohibition against further disclosure. Rule 6(e) (2)(B), Federal Rules of Criminal Procedure. This was apparently added as a compromise to "allay the concerns of those who fear that such prosecutorial power will lead to misuse of the grand jury to enforce non-criminal Federal laws." S. Rep. No. 95-354, supra, at 8, [1977] U. S. Code Cong. & Ad. News at 531.

During the entire discussions on the proposals for amendments to Rule 6(e), it was never mentioned in the Congressional hearings, reports, on the floor of either house in Congress, or in judicial comment that disclosures to "assisting personnel" sought for inclusion in (2)(A) were already provided for on court order under (2)(C). Nor is there anything to indicate that this practice constituted a part of the "traditional practice of secrecy" codified in the older rule and expressly continued without change under (2)(C). This omission of reference or comparison leads this Court to believe that no such authority was felt by those bodies to exist.

The further difficulty of internal inconsistency within the rule is created if (2)(C) is interpreted as the government here proposes. So read, (2)(C) overlaps the other secrecy exceptions in the rule and provides for disclosures under different circumstances. For example, subsection (2)(B) requires that a list of "assisting personnel" to whom disclosures are made under (2)(A) be provided the court. That subsection also prohibits any further disclosures by those persons. No similar restrictions are placed on disclosures under (2)(C). The government's argument therefore implies that a court might properly order such disclosure without these restrictions under the latter subsection. The importance of imposing these restrictions on subsection (2)(A) disclosures, which is illustrated by the Congressional treatment of the subject and is noted above, would thus seem misplaced if the government's contention were adopted.

Further, subsection (2)(C)(ii) provides that a defendant is entitled to seek disclosure "upon a showing that grounds may exist for a motion to dismiss the indictment." If subsection (2)(C)(i) authorizes disclosures "in connection with" the very grand jury whose materials are sought for disclosure, then a defendant might be entitled to seek disclosure thereunder on different grounds as well. As noted above, Chief Judge Daugherty implicitly resisted this overlapping of secrecy exceptions and foreclosed this interpretation in In re Grand Jury 1974, 377 F.Supp. 1282 (W.D.Okla. 1974).

By creating this overlap, the government's contention raises another issue that the courts have yet ultimately to settle. The general rule of secrecy in Rule 6(e)(1) provides that "assisting personnel" to whom disclosure is made under subsection (2)(A) shall not disclose the matters occurring before the grand jury. No obligation of secrecy may be imposed on any person except in accordance with the rule. Rule 6(e)(1). There is, however, no express provision in the rule for imposing secrecy on a person to whom disclosure is

made under subsection (2)(C). Although the Court did so order House in the instant case, its authority to do so is at least open to some question. Compare Illinois v. Sarbaugh, 552 F.2d 768, 775 n.10 (7th Cir. 1977) (Court may order secrecy in connection with (2)(C) disclosures), with In re Grand Jury Proceedings, 445 F.Supp. 349, 350 (D.R.I. 1978) (court may not order secrecy). Cf., Douglas Oil Co. v. Petrol Stops Northwest, supra, 99 S.Ct. at 1675 ("if disclosure is ordered, the court may include protective limitations on the use of the disclosed material").⁶

The government, however, is not without some recent authority for its position. In United States v. Stanford, 589 F.2d 285 (7th Cir. 1978), United States attorneys were presenting a complicated welfare fraud case before a grand jury. The government attorneys obtained a court order authorizing disclosure of grand jury materials to employees of the defrauded state welfare agency whose assistance was needed in the investigation. There, as here, the non-government "assisting personnel" were employees of the victim of the crime under investigation by the grand jury. The facts of Stanford unquestionably parallel those of the instant case.

Defendants in Stanford challenged the disclosure to non-governmental "assisting personnel" as beyond the scope of disclosure authorized by rule. Defendants apparently argued only that a grand jury investigation was not a "judicial proceeding" within the meaning of the old Rule 6(e) second sentence provision for disclosures on court order.

The Seventh Circuit held, 589 F.2d at 292:

"Rule 6(e) permits disclosure orders not only 'in connection with' but also 'preliminarily to' a judicial proceeding. . . . itself be 'determinable by a court,' Special February 1971 Grand Jury v. Conlisk, 490 F.2d 894, 897 (7th Cir. 1973), quoting Doe v. Rosenberry, 255 F.2d 118, 120 (2d Cir. 1958), it is nevertheless preliminary to such proceedings. See United States v. Universal Mfg. Co., 525 F.2d 808 (8th Cir.

1975); In re Special February 1971 Grand Jury v. Conlisk, supra. Furthermore, we cannot say that the decision to grant these assistants access to the grand jury materials was an abuse of discretion by the district court." In re April 1956 Term Grand Jury [239 F.2d 263 (7th Cir. 1956)].

Although dispositive of the sole argument apparently raised by defendants there, the authority relied upon by the Seventh Circuit does not address the issue here. The cases cited by the Stanford court only address the existence of discretion to order disclosure that is admittedly within the parameters of the rule. They do not establish the parameters of disclosure under the rule so broadly as to embrace the disclosure granted here. An examination of those cases is helpful.

The Stanford court first found disclosures to "assisting personnel" within the rule's provision for disclosures ordered "preliminarily to" a subsequent criminal trial. As noted above, courts had previously found grand jury proceedings themselves to be "judicial proceedings" within the ambit of the second sentence of the old Rule 6(e). United States v. Malatesta, 583 F.2d 748 (5th Cir. 1978); In re Minkoff, supra; In re Grand Jury Investigation of Banana Industry, supra. These previous holdings were therefore not dependent upon a finding that the grand jury investigation was ordered "preliminarily to" a subsequent proceeding, nor did they turn on a distinction between the "preliminarily to" and the "in connection with" language. The court's citation to In re Special February 1971 Grand Jury v. Conlisk, supra, illustrates the broader interpretation of "judicial proceedings" in conformity with the majority trend in case law noted above. None of those cases, however, involved disclosure in connection with the very grand jury whose materials were sought for disclosure.

The other authority relied upon by the Stanford court addresses a different proposition. The opinion in

United States v. Universal Mfg. Co., supra, ordered disclosure pursuant to the first sentence of the old Rule 6(e), and found F.B.I. investigative personnel among the "attorneys for the government" to whom disclosure might be made for assistance in connection with an ongoing grand jury investigation. The case only stands for the propriety of disclosure to assisting governmental personnel under a standard that was established by a long line of cases noted above and was codified in the new (2)(A) subsection. The case does not interpret the proper scope of disclosures authorized under the second sentence of the old Rule 6(e) that controlled the Stanford decision.

Similarly, the court in In re April 1956 Term Grand Jury, supra, authorized disclosures to I.R.S. agents assisting the government lawyers under the first sentence of the rule as "government attorneys." Having found disclosure proper to these agents under the "government attorney" exception, as read to include assisting personnel, the opinion cannot instruct whether disclosure might be proper to "assisting personnel" who are admittedly not included in that provision, like House here. The ultimate question of the basis for that authority within the rule remains.

As indicated by the opinion in Stanford, that authority is apparently based upon the idea that grand jury disclosures on court order lie totally within the discretion of the court before which the grand jury was empaneled. The government has relied on the inference raised by the language quoted from Stanford, supra, and by the decision in In re Grand Jury Proceedings, 580 F.2d 13 (1st Cir. 1978), which dismissed the government's appeal from Chief Judge Pettine's holding that Rule 6(e) precluded this type of disclosure. The court held that the order was not appealable. In its discussion of the availability of mandamus as a sufficient avenue for appellate review, the court stated, 580 F.2d at 18:

"Were a district court clearly to misinterpret the limitations of Rule 6(e) or plainly abuse its discretion thereunder either in ordering or denying disclosure (a showing that manifestly cannot be made in this case), mandamus is likely to lie. . . . [citations omitted]. In light of these alternatives, and given the discretion invested in the district court by Rule 6(e)(2)(C)(i), we think it would not substantially add to the protection afforded the interests asserted by the Government were appeals as of right to be recognized from refusals by district courts to allow disclosure under that provision." (Emphasis added.)

The court further characterized the determination of the degree of particular need necessary to obtain a (2)(C) order as a "discretionary balancing process that turns on the facts of the particular case." Id., at 17.

The cases on which the government might rely all deal with the standards, or the degree of need required, for disclosure admittedly within that contemplated by (2)(C) or its predecessor, the second sentence of the old Rule 6(e). The Supreme Court cases most frequently cited for the "discretionary" proposition deal with disclosures specifically codified in the rule. The Court in United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 233 (1940), focused on disclosure of grand jury testimony to a witness in a criminal trial to refresh his recollection. The grand jury proceedings had there been concluded. Similarly, the Court in Pittsburgh Plate Glass Co. v. United States, 360 U.S. 395 (1959), focused on disclosures during a criminal trial, as the Court in United States v. Proctor & Gamble Co., 356 U.S. 677 (1958), discussed disclosures for use in a civil anti-trust trial. See also, Douglas Oil Co. v. Petrol Stops Northwest, supra, 99 S.Ct. 1667, 1675. Cases reciting the proposition that disclosure is within the discretion of the district court, where the government has challenged his indictment, and the applicability of the rule's secrecy exception is unquestioned. See, e.g., Dennis v. United States, 384 U.S. 855 (1966); Hensley v. United States,

406 F.2d 481 (10th Cir. 1968) (disclosure denied); Cargill v. United States, 381 F.2d 849 (10th Cir. 1967) (failure to disclose to defendant after grand jury discharged held abuse of discretion); United States v. Youngblood, 379 F.2d 365 (2d Cir. 1967) (disclosure denied); In re Bonanno, 344 F.2d 830 (2d Cir. 1965) (denial of disclosure to defendant while grand jury investigation in progress held proper); United States v. Holovachka, 314 F.2d 345 (7th Cir. 1962); United States v. McGinnis, 344 F.Supp. 89, 91 (S.D.Tex. 1972); United States v. Leichtfuss, 331 F.Supp. 723 (N.D.Ill. 1971) (denial of disclosure prior to trial held proper); United States v. Geller, 154 F.Supp. 727 (S.D.N.Y. 1957); Note, Grand Jury Secrecy, 75 Colum.L.Rev. 162, 165, 169-70 (1975).

None of these cases support the contention that a court might exercise its discretion to authorize disclosure in the interest of justice in situations not embraced by the rules. In re Biaggi, 478 F.2d 489, 492 (2d Cir. 1973); see also In re Grand Jury Proceedings, 309 F.2d 440, 443-44 (3rd Cir. 1962); In re Grand Jury Investigation, William H. Pflaumer & Sons, Inc., supra. Nor do any of these cases offer insight into the parameters of disclosure under (2)(C)(i). Further, the discretionary standard in these situations differs from that which must be applied to disclosures authorized prior to the completion of the grand jury's function. See United States v. Socony-Vacuum Oil Co., supra, at 233-34; Douglas Oil Co. v. Petrol Stops Northwest, supra, 99 S.Ct. at 1675 (interests in grand jury secrecy reduced, but not eliminated after grand jury ends activities).

This Court is inclined to conclude that Rule 6(e) was not intended to grant authority for the disclosure the government here obtained. Rule 6(e)(2)(C) disclosure does indeed come within the discretion of the trial court, but only within the parameters of that rule. Accepting the

government's position that any disclosure might be authorized thereunder, this Court would be casting aside the limiting language of that rule so recently reenacted by Congress.

The law in this area may be characterized as troublesome at the very best. Some courts have felt it sufficient to authorize disclosure if the policies underlying the need for secrecy are not violated, whether or not the rule expressly provides for it. See In re Biaggi, supra, at 493 (grand jury witness waives secrecy of his testimony when he seeks disclosure); In re Report and Recommendation of June 5, 1972 Grand Jury, 370 F.Supp. 1219, 1229 (D.D.C. 1974); see also United States v. Stanford, supra, at 293. There is also frequent indication, as the government contends, that disclosures might be made when the need therefor outweighs the policy considerations for maintaining secrecy. See, e.g., United States v. Proctor & Gamble Co., supra, 356 U.S. at 682; Douglas Oil Co. v. Petrol Stops Northwest, supra, 99 S.Ct. at 1674-75. None of these cases, however, advocate disregard for the limiting language placed by Congress in the rule. With a prior order from my respected and learned colleague, Judge Richard Rogers, of this district, already entered in this same matter, however, and with some judicial authority to support it, this Court feels constrained to deny defendant's motion to dismiss the indictment. In sustaining Judge Rogers' prior ex parte order, Judge Rogers was not requested to consider the question here presented in a judicial framework of adversary contention as is squarely raised here by defendant's astute counsel. As is often the case, Judge Rogers was presented an order for approval by the Strike Force attorneys with assurances it was a routine matter supported by their research and experience. Further, without the question being raised on an adversary basis, the entry of the order would appear to have been most reasonable and valid under the then existing circumstances.

This Court so acts not without great hesitation. The government's actions here apparently represent a new policy adopted by the Department of Justice to utilize non-governmental personnel in complicated cases. This Court is not unsympathetic to the potential need for that assistance in difficult cases. Nor is this Court unmindful of the potential difficulties that the constraints of Rule 6(e) may create in those cases. As the Seventh Circuit stated in United States v. Stanford, *supra*, 589 F.2d at 293:

"[O]ur acceptance of [defendants' contentions] could substantially nullify, particularly in a case of any complexity, one of the basic purposes of this [grand jury] body, that of thorough, knowledgeable investigation of the matters before it. This group of lay persons should not be locked into a position which lacks full comprehension of the factual situations as to which they are inquiring."

This Court is left troubled that the Department of Justice, dissatisfied with the provision for "assisting personnel" granted it by Congress, now seeks to circumvent that limitation through application to the courts. The Advisory Committee drafted the new Rule 6(e) in order to provide for this very type of disclosure. It did so only after consideration of this problem in light of comments from the bench and bar and, not insignificantly, after apparent consultation with Department of Justice sources. Congress gave great thought to this matter and was informed of the positions of both the Advisory Committee and the Department of Justice. If Congress has so recently considered this very situation and has chosen not to provide for the requested disclosure, this Court should be most reluctant to do so. Legislating a new exception to the requirement of grand jury secrecy so recently following the Congressional treatment of the subject should require some degree of judicial trepidation. The House Committee's foreboding that the new rule might lead to further unclarity on the subject has perhaps become a reality.

This Court is further concerned with the obvious implications of this apparently new policy of the Department of Justice. Permitting the victim of a crime, or his agent, to participate in, coordinate and potentially direct a grand jury investigation into that crime raises serious problems. The policy could significantly impair the independence and impartiality required of the grand jury in the performance of its function. The late Chief Justice Warren described one aspect of that body's role as:

"The invaluable function in our society of staying between the accuser and the accused, whether the latter be an individual, minority group, or other, to determine whether a charge is founded upon reason or is dictated by an intimidating power or by malice and personal ill will."

Wood v. Georgia, 370 U.S. 375, 390 (1962). Compare In re April 1977 Grand Jury Subpoenas, 573 F.2d 936 (6th Cir.) (participation by I.R.S. attorney in grand jury produced appearance of impropriety), vacated, 584 F.2d 1366 (6th Cir. 1978) (en banc) (appeal dismissed for lack of appealable order). But see In re Grand Jury Subpoenas, April 1978 Grand Jury, 581 F.2d 1103, 1109 n.13 (4th Cir. 1978) (dictum). If non-governmental "assisting personnel" are indeed to be given access to grand jury materials under the rule, it would seem a better practice for the government to seek out persons without any potential interest in the outcome of the investigation. This matter should be one for close consideration and scrutiny by the Court of Appeals for the future guidance of judges on this sensitive area of grand jury procedures.

2. OTHER CONTENTIONS OF GRAND JURY ABUSE

Defendant's other complaints regarding grand jury abuse are not persuasive. The transfer of grand jury material from one grand jury to another in the same district

without court order is insufficient to support a motion to dismiss the indictment in the instant case. In camera inspection of grand jury testimony submitted by the government convinces this Court that the government attorney competently acted in the performance of his duties. When the government attorney learned of certain information, it became incumbent upon him to remove the investigation to another grand jury. The government informed the judge before whom the grand jury was impaneled regarding what action would be taken and why.

Some courts have found an intra-district transfer of grand jury proceedings within the exception of Rule 6(e) (2)(A) as a disclosure in the performance of the attorney's duties. This disclosure would therefore be proper without court order. See United States v. Garcia, 420 F.2d 309 (2d Cir. 1970); In re Grand Jury, Miscellaneous No. 979, 47 U.S.L.W. 2303 (5th Cir. Nov. 14, 1978) (government use of grand jury matters for civil purposes held within his duties). The Court need not so hold, however. Even if a court order is required, a failure to obtain the order does not require dismissal of the indictment unless a defendant can demonstrate prejudice. United States v. Malatesta, 583 F.2d 748 (5th Cir. 1978). Prejudice has not been demonstrated here. Especially in light of the sensitive nature of the material before the government, the Court cannot conclude that the failure to obtain a court order on the given facts should warrant the requested relief.

This Court also fails to find great significance in the government attorney's interviewing subpoenaed witnesses and excusing them prior to their appearance before the grand jury. United States v. International Paper Co., 457 F.Supp. 571, 574 (S.D.Tex. 1978). There may be circumstances in which these interviews may be objectionable.

See, e.g., United States v. Phillips Petroleum Co., 435 F. Supp. 610 (N.D.Okla.1977). Those circumstances are not present here.

Defendant's argument that dismissal is warranted because of pre-indictment publicity is also unpersuasive. In this case disclosures were made to the press by someone within the Department of Justice that permitted a newspaper account of the indictment to appear prior to the grand jury's returning the indictment to court. This conduct is regrettable and must not be tolerated. After polling the grand jury, however, this Court is confident that the article in question was not read by any grand juror investigating this case. Defendant has failed to show any prejudice related to the news leak, and the requested relief is inappropriate. Defendant's other arguments are equally unpersuasive and his motion to dismiss the indictment must be denied.

3. MOTION TO SUPPRESS

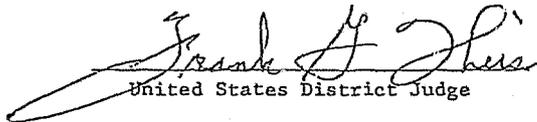
Defendant has moved to suppress the case files seized from the law offices of a codefendant. This Court finds that defendant lacks standing to challenge the search. His motion to suppress must therefore be denied.

The files in this case were taken from the office of codefendant Arthur Katz pursuant to a search warrant obtained after Katz showed a few of the files to a United States Postal Inspector. Defendant had previously been a law partner of Katz, but Katz had bought out his share of the partnership when Tager surrendered his license to practice after a felony conviction. Katz retained all of the files and subsequently moved them to new offices. Defendant Tager had neither an ownership interest nor a possessory interest in the premises searched or in the seized office files of a partnership which no longer existed. Tager most

certainly did not retain an expectation of privacy in an office where he had not practiced and to which he no longer had legal access. Under the recent decision of Rakas v. Illinois, ___ U.S. ___, 99 S.Ct. 421 (1978), defendant lacks standing to raise objections to the search under these circumstances. His motion to suppress must therefore be denied.

IT IS THEREFORE ORDERED that the motions of defendant Tager to dismiss the indictment and to suppress evidence are hereby denied.

At Wichita, Kansas, this 18th day of June, 1979.


United States District Judge

FOOTNOTES

¹ The Order reads as follows:

"Upon consideration of the ex parte motion of the United States, pursuant to Rule 6(e)(2)(C)(i) of the Federal Rules of Criminal Procedure:

It is hereby Ordered that Investigator Edward Thomas House of the Insurance Crime Prevention Institute may be allowed access to such records subpoenaed before and testimony given to the grand jury for the District of Kansas investigating frauds upon insurance carriers, as is deemed necessary by the attorneys for the Government to assist in the presentation of those matters to the grand jury and at trial.

It is further Ordered that such access be upon the following terms and conditions:

- 1) Prior to such access, Investigator House shall be furnished a copy of this Order and of Rule 6(e)(i), Federal Rules of Criminal Procedure, relating to the punishment of contempt for unauthorized disclosure.
- 2) No further disclosure of Grand Jury materials may be made by Investigator House to his superiors or to any person other than to attorneys for the Government and Government personnel, assisting them in the conduct of these investigations.
- 3) Absent further Order of this Court, no use may be made by Investigator House of any Grand Jury materials for presentation to state authorities, professional licensing boards, or for any purpose other than to assist Government attorneys in the Grand Jury presentation and trial of the instant matters.
- 4) This Order and the Government's Motion and Suggestions shall be sealed by the Clerk until further Order of this Court."

² Rule 6(e) provides in pertinent part:

"1) General Rule. -- A grand juror . . . an attorney for the Government, or any person to whom disclosure is made under paragraph (2)(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. No obligation of secrecy may be imposed on any person except in accordance with this rule. A knowing violation of rule 6 may be punished as a contempt of court.

2) Exceptions --

(A) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to --

(i) an attorney for the government for use in the performance of such attorney's duty; and

(ii) such government personnel as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce Federal criminal law.

- (B) Any person to whom matters are disclosed under subparagraph (A)(ii) of this paragraph shall not utilize that grand jury material for any purpose other than assisting the attorney for the government in their performance of such attorney's duty to enforce federal criminal law. An attorney for the government shall promptly provide the district court, before which was impaneled the grand jury whose material has been so disclosed, with the names of the persons to whom such disclosure has been made.
- (C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made - -
- (i) when so directed by a court preliminarily to or in connection with a judicial proceeding; or
 - (ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury."

³ The Supreme Court proposed that Rule 6(e) be amended to read in pertinent part as follows:

"(e) Secrecy of Proceedings and Disclosure. Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the attorneys for the government for use in the performance of their duties. For purposes of this subdivision, 'attorneys for the government' includes those enumerated in rule 54(c); it also includes such other government personnel as are necessary to assist the attorneys for the government in the performance of their duties. Otherwise a juror, attorney, interpreter, stenographer, operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court preliminarily to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No obligation of secrecy may be imposed upon any person except in accordance with this rule."

Rules of Procedure, Communication from the Chief Justice, supra, at 7.

⁴ The proposal of Rep. Wiggins read as follows:

"Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the

attorneys for the government for use in the performance of their duties, and to such other government personnel as are necessary to assist attorneys for the government in the performance of such duties. For the purposes of this subdivision, 'other government personnel' means employees of the Department of Justice, or employees of other governmental agencies, who, by law, investigate violations of the Federal criminal law."

See H.R.Rep. No. 95-195, *supra*, at 15 (additional views of Rep. Wiggins).

⁵ See note 3, *supra*.

⁶ The United States Supreme Court has recently promulgated an amendment to Rule 6(e) that would resolve this difficulty. The new Rule 6(e)(3)(C) incorporates verbatim the language of the present subsection (2)(C)(i) and (ii) found in footnote 2, *supra*, but adds the following language:

"If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct."
(Emphasis added.)

Thus the new Rule 6(e) would expressly recognize that if the court ordered disclosure of grand jury proceedings under the 'judicial proceeding' exception, it could require secrecy as a condition for that disclosure. See Reports and Proposals, 25 Crim.L.Rep. (BNA) 2255, 2256 (June 13, 1979).

The new amendment was promulgated by the Court on April 30, 1979. See 25 Crim.L.Rep. (BNA) 3048 (May 2, 1979). It will take effect on August 1, 1979, unless Congress acts before then to delay its effective date. 18 U.S.C. §3771. The amendment will govern "all criminal proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending." Order of April 30, 1979, ___ U.S. ___, 25 Crim.L.Rep. (BNA) 3048 (May 2, 1979). The amendment does not control the grand jury proceedings challenged in this case. Nor does it appear that the new amendment resolves the instant problem of permissible disclosures under 6(e)(2)(C), to be codified as 6(e)(3)(C) in the new proposal. The Advisory Committee has emphasized that the amendment would "in no way expand the circumstances in which disclosure of the grand jury proceedings is permitted or required." Reports and Proposals, 25 Crim.L.Rep. (BNA) 2255, 2256 (June 13, 1979).

The following sworn affidavit represents the commentary of Mr. Joseph E. Losavio, Jr., District Attorney for Pueblo, Colorado, regarding organized crime activities within the Pueblo area during the past eight years. Its contents have not been confirmed through independent investigation by the staff of the Senate Permanent Subcommittee on Investigations.

J. E. LOSAVIO, JR.
 DISTRICT ATTORNEY
 TENTH JUDICIAL DISTRICT
 PUEBLO COUNTY COURT HOUSE
 10th & Main St.
 Pueblo, Colorado 81003
 Phone 544-0075

TO: Senate Permanent Subcommittee on Investigations

FROM: J. E. Losavio, Jr., District Attorney
 Pueblo County, Colorado

RE: Report: Organized Crime in Pueblo, Colorado

STATE OF COLORADO)
) SS REPORT AND AFFIDAVIT
 COUNTY OF PUEBLO)

J. E. Losavio, Jr., of lawful age, being first duly sworn, states as follows:

That I was admitted to the practice of law in the State of Colorado in 1961.

That I was employed as a deputy and assistant in the office of the district attorney from November 1962 to November 1969. That in 1970 I headed the public defender's office for Pueblo, and later for southern Colorado until June 1972.

In January 1973, I commenced my first term as District Attorney for the Tenth Judicial District of the State of Colorado, and have held that position ever since.

It is against this professional background that this report is given. Further, the statements contained here are based on a record of aggressive prosecution of many organized crime figures over the past eight years, extensive discussions with many life-time citizens and residents of the Pueblo and southern Colorado area, and information obtained from local, state and federal law enforcement officials who carefully and scrupulously monitor the activities of organized crime figures in Colorado, and specifically in Pueblo.

This report and affidavit is being prepared pursuant to the request of Marty Steinberg, Chief Counsel of the Senate Permanent Subcommittee on Investigations. Mr. Steinberg asked me to detail what efforts had been made to combat organized crime in the Pueblo area, what success had been achieved, and what the current status of the situation was. In particular, I was asked to detail how utilization of grand jury procedures, witness immunity, witness protection services and wiretaps had facilitated our efforts.

I further state the following:

In recent months the F.B.I. released a map purporting to identify major organized crime centers in the United States. Among those communities so identified was the city of Pueblo, Colorado. The reason for listing Pueblo is not clear since there was no documentary information provided. Nor have we been able to find through a review of the transcripts of the hearings available to us any testimony which describes Pueblo, Colorado as an active organized crime center.

It is the contention of this office that although "organized crime", or the Mafia, did at one time wield considerable influence in the community of Pueblo, there is no evidence that that influence is still dominant today. In fact, we are convinced, based on our considerable knowledge of the facts, that Mafia influence in Pueblo is practically non-existent, and that what little activity can be traced to the very few active organized crime figures present in the community is closely watched.

At a time when the nation and many local communities are grappling with the insidious contagion of organized crime, I believe it is important to tell the story of Pueblo so as to assure other communities that given the proper tools and determination of both citizens and law enforcement, organized crime can be rooted out and its effect on public and private life substantially diminished.

It seems to me further, that once a community has succeeded in the herculean job of rooting out organized crime, national law enforcement agencies should acknowledge that achievement and not burden the people of that community with an unwarranted and demeaning reputation based on outdated information.

I will now briefly recount the history of organized crime in Pueblo, the tactics, techniques and tools used to prosecute the various influence centers of organized crime, and some new techniques that are currently being used as well as recommendations for new directions Pueblo and other cities might consider in the never-ending fight against this sinister criminal conspiracy that threatens our nation.

BACKGROUND

Pueblo, Colorado is a community of some 124,000 people in southern Colorado located forty miles south of Colorado Springs and 110 miles south of the state capitol of

Denver. It is one of the major cities running along the Front range of the Rockies in Eastern Colorado.

It is an industrialized community with similarities to other communities in the heavily industrialized eastern states. The principal employer is C F&I Steel Corporation which employs some 5,500 workers.

In common with other industrialized centers, Pueblo's residents are descendants of European immigrants who came here to work at the smelters and in the steel mill. These ethnic groups included a variety of western Europeans but were principally Yugoslavian and Italians.

During the twenties and thirties, Pueblo experienced the reign of lawlessness that was typical of the prohibition and depression eras with criminal elements exerting strong influence on the political, law enforcement and public affairs of the community. This influence continued through the post war years and climaxed with the appearance of a prominent Pueblo crime figure at the Appalachian meeting in 1957 from which Pueblo was identified as a major center for organized crime. It should be made clear that there was adequate basis for such a characterization in the fifties and indeed through the sixties, but that condition changed radically in the early years of the 1970's, and it is to that transformation that I would like to direct this subcommittee's attention.

ORGANIZED CRIME INFLUENCE IN PUEBLO IN 1972

In bringing the record up to date, the year 1972 is a critical year since it represented the start of an intensive attack upon this criminal conspiracy which culminated in purging the last remnants of the Mafia organization from influence in the subsequent years.

In 1972, the Mafia had achieved the prime prerequisites for domination of a community--these included corruption of the judiciary, the police department and other government agencies. There was ample evidence to show that such control was exerted, and that only an aroused public coupled with determined and aggressive prosecution could root out this corrupting influence.

Colorado was fortunate in enacting laws relating to wire-tapping, continuing grand juries and witness immunity. In addition, we had available witness protection services through the federal government. These tools were essential in the battles that ensued.

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But of prime importance to this record of success was the decision of the people of Pueblo to stand up and fight this evil tyranny and to exhibit the courage to serve on juries and return convictions, to cooperate with the police and prosecutor and to refuse to submit to the intimidation and threats that are the hallmark of Mafia operations.

It was because we who had to prosecute these organized crime figures and their henchman could count on this citizen support that our goals were achieved. It was because we used the legal weapons noted above that we were able to attack the heart of the criminal combine that once held sway in Pueblo. Paranthetically, it is my considered opinion that given the right weapons and laws permitting vigorous prosecution, and supported by an aroused citizenry determined to reclaim their community from the scourge of organized crime, any local community can wage a successful effort towards destroying Mafia influence.

HOW IT WAS DONE

Political Action - (1972) - Removing a Judge

The first major battle by Pueblo citizens in what was to become an all-out assault on organized crime, was the mobilization of public sentiment to remove from office a District Judge, S. Phillip Cabibi. Cabibi had been charged with bribery in a Colorado Springs court but was acquitted at trial. However, there was substantial information from various sources that he had indeed cooperated with known organized crime figures in arranging satisfactory dispositions of criminal cases. As head of the Public Defender's office at that time, I, along with many others, helped mount a public campaign which resulted in Cabibi's removal from the bench in the 1972 election.

This was a significant victory because it vividly demonstrated that such figures were not immune from public control.

Police Department Scandal - 1973

Upon taking office as district attorney in 1973, I conducted a successful investigation into corruption in the Pueblo City Police Department. This investigation, aided by the use of the grand jury and witness immunity provisions, showed extensive control of the department by individuals associated with organized crime. They influenced the hiring and firing of officers as well as promotions, through the

Pueblo Civil Service Commission, where they had inside control through a close relative of a local organized crime figure.

As a result of this domination of the personnel of the police department, the gambling and burglary activities of this criminal organization were not only protected, but there was evidence that police officers themselves actually participated in some of these crimes. Through the use of the grand jury, and by providing immunity to officers willing to cooperate, we were successful in obtaining twelve felony indictments which resulted in nine convictions. One major target of this investigation, Scotty Spinuzzi, a top chieftain of the Mafia, escaped prosecution having died while charges were pending. But the convictions which included several police officers, succeeded in purging the local Police Department of mob infiltration and control. Subsequent reorganization of the department, coupled with greater controls on the selection process resulted in a highly competent police force of high integrity. This vastly improved situation exists to this day. It is perhaps obvious to the members of this subcommittee but nevertheless worth stating, that Mafia influence in a community cannot be pervasive without the tacit or overt cooperation of law enforcement. Breaking the mob influence of Pueblo's police department was a singular victory in the long battle against these criminals.

It is worth noting that the intense efforts of organized crime to infiltrate the police department never cease. As recently as 1979, the city of Pueblo was recruiting a new police chief and a prominent Pueblo businessman served as go-between in bringing individuals from St. Louis to Pueblo for interviews. Subsequent investigation by this office, which is still underway, revealed that the person recruiting the candidates in St. Louis was closely connected with organized crime figures in that city. The St. Louis applicants did not get the job.

Smashing the Drug Traffic in Pueblo

Of major significance in disrupting the criminal conspiracies in Pueblo was the strike against a major organization distributing heroin in the Rocky Mountain area located in Pueblo. This achievement was brought about by the combined efforts of the Colorado Organized Crime Strike Force and other state and local law enforcement agencies.

While this major criminal apparatus was composed principally of persons of Mexican origin, it is significant because it points up the new and shifting composition of

"Organized Crime" in this nation which is currently breaking out of the traditional Italian managed Mafia operations. However, it is my contention also that such large scale criminal endeavors are linked in some ways to Mafia figures. I suggest that wherever criminal activity on a massive scale and requiring large investments exists, there is a recognition and agreement by the select criminal moguls to organize, condone, and participate in such activities and to escape prosecution. "Organized Crime" in the 1980's must receive a new definition which expands the older concept from that of being a highly centralized criminal conspiracy dominated by a small band of Italian "Dons".

Of particular significance in the breaking up of the Pueblo heroin operation was the use of wire-tapping, which was approved by state judges. This enabled law enforcement to penetrate the heart of the operation. Without the use of this important tool for crime fighting, it is extremely doubtful whether this huge drug operation would have ever been destroyed. Today hard drugs are almost impossible to buy in Pueblo because there is no sales organization.

Major Fencing Operations Smashed

Fencing is an indispensable part of criminal activity and certainly essential to the operation of organized crime. Again, using the the grand jury and witness immunity we were successful in attacking two major fencing operations operated by individuals with ties to organized crime. One product of these successful investigations was a noticeable decline in burglaries in the Pueblo area and a re-location of professional burglars and thieves to other areas of operation in the state.

Bookmakers Convicted

Gambling is another omnipresent source of illicit funds to the coffers of organized crime and through persistent investigation and prosecution we were able to severely curtail these operations which once thrived relatively unmolested in Pueblo.

Following many months of investigation covering the period October, 1975 through December, 1975, Pueblo police arrested one Sam Foderaro, known organized crime figure and principal accomplice in the conduct of bookmaking operations in Pueblo. Foderaro was receiving line information and laying off bets through the Smaldone group in Denver. This operation originating in Denver violated interstate gambling laws and became a subject for federal prosecution. Foderaro was sentenced to six months in jail

on the local prosecution and one year in the federal case, and Clarence Smaldone and his co-defendants were convicted and sentenced to a federal penitentiary.

This was the most important gambling operation destroyed by local law enforcement agencies. Since that time there have been numerous arrests for minor bookmaking operations, but none that suggest the infiltration of organized crime in any significant degree.

Prostitution Activities Successfully Checked

Prostitution is one of the "bread and butter" crimes that furnishes organized crime with considerable income, and also functions as a spawning ground for other criminal activities. The Pete Ganatta case was a recent example of how combined efforts by police and prosecutors can successfully eradicate this problem. Organized prostitution in Pueblo today is virtually non-existent.

By utilizing undercover agents, and through the use of the grand jury, witness immunity and witness protection service for one of the prostitutes involved, we were successful in breaking this operation run by known organized crime figures. Of significance in this case as another indicator of the new interlocking conspiracy of today's organized crime is the alliance between the old Mafia-style hoodlums and the newer so-called "Texas Syndicate" of organized crime who supplied the girls for the Pueblo operation.

Pornography Crackdown

Pornography, one of the so-called victimless crimes, nevertheless provides a small fortune to organized crime. It was the decision of this office to keep pressure on these outlets at all times despite the lack of a clear-cut ruling on obscenity from the United States Supreme Court.

Porno operations mainly surfaced in Pueblo in 1976 with the opening of three theaters exhibiting feature length triple X-rated films. These theaters were Las Vegas Cinema, Maya Theatre and Movie City. The district attorney's office, using legal means, seized the films at all three theaters, arrested the principals involved in the theaters' operation and identified the patrons present at the time of the arrest.

The first two theaters ceased operation as a result, and charges are pending against Movie City which is still operating.

We have cases pending against two adult bookstores as well. It is our intent to continue to press these operations by every legal process until we receive a clear-cut ruling from the Supreme Court which will hopefully provide guide lines necessary to carry out a total eradication of this organized crime operation.

Recent Conviction of Organized Crime Figure

In April of this year, we succeeded in convicting John Foderaro of Conspiracy and Attempted Assault against a Pueblo County Commissioner. The assault on the commissioner was in retribution for his failure to vote the way Foderaro wanted on a zoning matter. Testimony in the trial clearly associated Foderaro with Eugene "Checkers" Smaldone and Thomas "Whiskers" Incerto, two prominent organized crime figures. Smaldone is part of the infamous Smaldone family of Denver. This group is identified by the FBI, CBI and other local police sources as the major controller of organized crime in the Denver metropolitan area. Incerto is a known Pueblo criminal with a record of longtime organized crime connections. Both Incerto and Smaldone were alleged to have participated in Foderaro's dealings with the Wirtz gang. The Wirtz gang was a group of professional criminals allied with the Smaldone family who provided the hit men for the attempted assault of the Pueblo County Commissioner for which Foderaro was convicted. This conviction for a crime that strikes at the very heart of democratic government is particularly important.

One of the most helpful processes used in this successful prosecution was the witness protection system which assisted us in obtaining the cooperation of a co-conspirator to the criminal activity by assuring him and his wife of federal protection. As a direct result of this cooperation, we were able to inform Denver officials of an hitherto unsolved slaying which was committed by members of the same gang of criminals involved in the Pueblo crime. Information was also obtained which led to prosecution of various individuals for burglaries and robberies in several different cities in Colorado.

Continued Vigilance Against Organized Crime

It might appear to be a contradiction for us to claim that organized crime is an impotent force in Pueblo, while reporting recent activities of known organized crime figures in this community. The difference is one of degree.

It is doubtful that law enforcement will ever completely purge this nation or any community of organized criminal activity. Certainly, in this mobile age when crimes are frequently interstate, no local community is immune from an occasional foray from this highly sophisticated crime syndicate. Pueblo police officers and my office maintain continued surveillance on suspected members of organized crime who visit our community. These outsiders are mainly persons connected with the Smaldone family in Denver.

The ambitions of some of the younger hoodlums, is also a constant in this area of crime, and only relentless and aggressive investigation and prosecution of these types whenever they violate the law can keep them from reasserting control.

But there are recognized standards for judging the intrusion of organized crime in a community well-known to all experienced law enforcement officials. These include conditions to which I have already referred in this report such as corruption of police agencies, control of key judicial and governmental offices, and a supine public willing to accept these depravations of their community. The crimes generally identified with sophisticated criminal operations are large scale public crimes requiring cooperation with law enforcement agencies and include gambling, labor racketeering, prostitution, loan sharking, drug sales and protection rackets. With thousands of individuals who work at the steel mill and other industries in Pueblo belonging to unions, the labor movement in this community is impressively free of any organized crime influence or crime. By these standards, Pueblo can lay valid claim to being purged of its former sordid reputation as a center for organized crime. It is the fervent hope of this public official that the federal agencies will acknowledge this fact and restore to Pueblo citizens the honor which they have so courageously earned and so rightfully deserve.

CONCLUSIONS AND RECOMMENDATIONS

After experiencing nearly a decade of active and, on the whole, successful investigation and prosecution of organized crime in Pueblo, Colorado, the following conclusions seem inescapable:

1. That given the necessary weapons including a continuing grand jury, witness immunity, wiretapping and witness protection a local community has the ability to rid itself of organized crime.

2. That an aroused and determined public is necessary to accomplish this task.

3. That the integrity of all law enforcement agencies is indispensable for a campaign against the elimination of organized crime in the governmental and social framework of a community.

4. The battle plan for attacking organized crime must continually be re-evaluated since technology and the changing conditions that breed crime continue to change. Specifically, new definitions of organized crime must be explored to include the new breed of criminals from other ethnic groups and the attractiveness of the new drug culture that is endemic to America.

Colorado's district attorneys are utilizing one such new technique called PROMIS (Prosecutors Office Management Information System) which provides instant communication between nine separate prosecutor's offices along the front range for tracking criminal operations. Similar uses of new technology are and should be explored.

It is further recommended that a systematic procedure be established for prosecutors and other law enforcement agencies to exchange information on a regular basis regarding organized crime activities.

J. E. Losavio Jr.

J. E. LOSAVIO, JR.

STATE OF COLORADO)
) ss.
COUNTY OF PUEBLO)

The above and foregoing Report and Affidavit was acknowledged before me this 15th day of July, A.D., 1980 by J. E. Losavio, Jr, District Attorney within and for the Tenth Judicial District of the State of Colorado.

WITNESS MY HAND AND OFFICIAL SEAL.
My Commission expires: December 16, 1980.

Thelma G. Leonardelli
THELMA G. LEONARDELLI,
Notary Public

[Additional information furnished by the FBI.]

OFFICE OF THE DIRECTOR



UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

July 30, 1980

BY LIAISON

Honorable Sam Nunn
Chairman
Permanent Subcommittee
on Investigations
Committee on Governmental
Affairs
United States Senate
Washington, D. C.

SENATE PERMANENT
SUBCOMM ON INVESTIGATIONS

REC'D AUG 1 1980

REFERRED _____

INITIAL _____ FILE NO. _____

Dear Mr. Chairman:

On April 29, 1980, representatives of the Federal Bureau of Investigation (FBI) testified before your Subcommittee on the subject of organized crime. At that time Senator Cohen requested that we furnish for the record a list of investigations conducted by the FBI involving infiltration by organized crime into unions that control or have an impact on local law enforcement. The answer is as follows:

A review of active police corruption investigations reflects that some of those law enforcement personnel targeted are also members of various police unions. However, it has not been established in any of these investigations that the police union has influenced the targeted law enforcement officer regarding his corrupt behavior, nor has it been determined that any of the police unions to which the targeted officers belong have been infiltrated by organized crime.

Thank you for your patience in this matter.

Sincerely yours,

William H. Webster
Director

1 - Senator William S. Cohen

Lee Colwell
By Lee Colwell, Acting Director

END