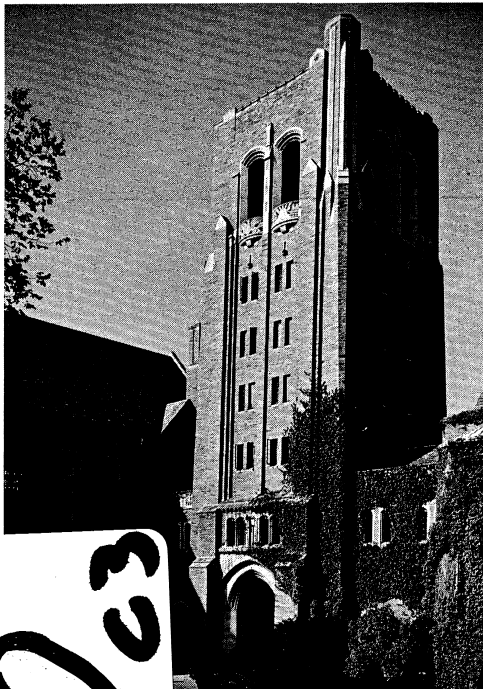


Cornell Institute on Organized Crime
1980 Summer Seminar Program



The Investigation and Prosecution of Organized Crime and Labor Racketeering

Labor Racketeering: Background Materials

**Simulated Investigation
with Teacher's Guide**

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ALBERT BLAKEY • RONALD GOLDSTOCK • GERARD V. BRADLEY



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Edited by

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I

**LABOR RACKETEERING:
BACKGROUND**

by

G. Robert Blakey
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Labor Racketeering

A. The Challenge of Labor Racketeering

[Frank Costello's] habit was . . . to enjoy the steam baths at a Manhattan hotel in the late afternoon whenever he could. The night manager approached him on one occasion and explained that other clients were expressing some dismay at his presence.

"You mean you don't want me to come here anymore?" Costello said.

"If it were up to me," the night manager said, "you could come all you want. But we have been getting these complaints. You know how some people are."

The next morning none of the hotel's employees—chambermaids, waiters, elevator boys, maintenance men, kitchen help, and so on—reported for work. Eventually the frantic general manager discovered what had happened and immediately telephoned Costello.

"What are you telling me for?" Costello replied. "I don't have anything to do with the unions."

"I know that, Mr. Costello. I was really calling you to say that an unfortunate error was made last night."

"You mean I can use the baths?"

"Anytime you wish, sir."

Within hours the missing employees were back on the job.¹

Labor racketeering, the use of union power for personal benefit,² was aptly characterized by David Dubinsky as a pervasive

¹P. Maas, The Valachi Papers, 153 (1968).

²See P. Taft, Corruption and Racketeering in the Labor Movement, 1 (1958); D. Bell, The End of Ideology, 160 (1960); J. Hutchinson, "The Anatomy of Corruption in Trade Unions," 8 Industrial Relations, 136 (1969). The core idea is that while the union is basically an economic institution, it is organized for the economic benefit of its membership, not of its leaders. The Costello episode is unusual only in that the personal benefit derived was not economic.

and dread disease, a "cancer that almost destroyed the American trade union movement."³ The McClellan Committee uncovered systematic racketeering in the Butchers, Bakers, Distillery Workers, Operating Engineers, Carpenters, Textile Workers, Hotel and Restaurant Employees, and Teamsters unions, among others.⁴ Of the fifty-eight persons arrested at the 1957 Apalachin conference, twenty-two were involved in "labor or labor-management relations."⁵ Representing labor were officers of the hod carriers, Teamsters, mine workers, jewelry workers, and hotel and restaurant workers unions.⁶ "Labor-management" personnel included Carlo Gambino, who told the State Police that he was a "labor relations consultant."⁷ And, law enforcement officials report that, at least in some localities, organized crime's misuse of union power has multiplied since the Apalachin meeting.⁸ Benjamin Civiletti estimated that

³ D. Dubinsky, A. Raskin, David Dubinsky: A Life With Labor, 145 (1977).

⁴ J. Hutchinson, supra note 2, at 137.

⁵ R. Kennedy, The Enemy Within, 228 (Popular Library edition, 1960).

⁶ J. Kwitny, Vicious Circles, 54 (1979).

⁷ D. Hanna, Carlo Gambino: King of the Mafia, 105 (1974). Gambino was in fact a principal in SGS Associates, a consulting firm which numbered among its clients Wellington Associates (a major real estate concern), Howard Clothes Stores, and the Concord Hotel in the Catskills of New York. Id.

⁸ See, e.g., IIT Research Institute, A Study of Organized Crime in Illinois, 220 (1971) (labor racketeering now "the prime activity" of organized crime in East St. Louis) [hereinafter Illinois]; Labor Management Racketeering: Hearings Before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, 95th Cong., 2nd Sess. 9 (1978), p. 77

300 union locals "are severely influenced by racketeers."⁹

Even these observations are not a true measure of the significance of labor racketeering; the power of even a single racketeer can be formidable. One Teamster official, described in a Congressional report as "a gangster who gravitated to the labor movement for no other reason than to steal from it,"¹⁰ might well be able to shut down John F. Kennedy Airport as easily as Frank Costello could his favorite hotel.¹¹ The business agent of a boilermakers local extorted \$1.2 million between 1965 and 1977 from major construction companies.¹² Another racketeer and part-time labor lawyer reportedly ordered the Las Vegas culinary workers walkout in 1976, costing casino operators millions in lost revenues.¹³

(statement of Thomas Puccio) (more allegations of "illegal labor related activities" received by Strike Force in Eastern District of New York than "any other organized crime matter.") [hereinafter Hearings].

⁹Hearings, supra note 8, at 9. Since we can never know if the data base is complete, or representative, 300 is necessarily a guess. The true figure is certainly higher.

¹⁰New York Times, May 30, 1979, § B, at 1, col. 5.

¹¹New York State Commission of Investigation, "An Investigation of Racketeer Activity in the Air Freight Industry," Tenth Annual Report, 38 (1968) [hereinafter Tenth Annual Report]; New York Times, May 30, 1979, § B, at 1, col. 5.

¹²New York Times, June 8, 1979, § B, at 2, col. 4.

¹³New York Times, June 28, 1976, at 1, col. 4. The hotels of the well-connected Allen Glick were not struck. Los Angeles Times, April 20, 1977, § 7, at 3, col. 1. At the 1961 Teamsters convention held in the Riviera Hotel, this same individual unexpectedly arrived in need of accommodations. He was promptly escorted to the Presidential suite, while its occupant, Jimmy Hoffa, was moved to smaller quarters across the hall. Id.

The tribute exacted by labor racketeers is clearly significant to the consuming public. Racketeering in the New York City meat industry, for instance, added one cent to the retail price of each pound of beef sold.¹⁴ But the cost of union corruption cannot be counted solely in dollars and cents. As a result of labor-management collusion, ten thousand supermarket workers lost five hours of leisure time a week.¹⁵ The public inconvenience occasioned by illicit strikes and work slowdowns, the violence that frequently punctuates the operation of labor rackets, especially where organized crime is involved,¹⁶ and the loss of union democracy as a treasured value, must also be recognized.

Most important, however, are the long term effects of labor racketeering on the nation's overall well-being. Reputable firms may be completely driven from racket infested industries;¹⁷ those that stay necessarily compromise their business ethics. Racketeering undermines public confidence in the collective bargaining system, and jeopardizes the reputations of all honest trade unionists. The persistence of racketeering in certain segments of the economy (transportation and construction, for instance) advertises an apparent

¹⁴Wall Street Journal, Sept. 10, 1974, at 1, col 1.

¹⁵2nd Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, 86th Cong., 1st Sess., 303 (1959) [hereinafter 2nd Interim Report].

¹⁶See, e.g., N. Gage, Mafia, U.S.A., 329-330 (1972) (two A&P store managers killed, and several A&P outlets burned, when company resisted racketeers' demands to market their detergent soap).

¹⁷See, e.g., Illinois, supra note 8, at 221; New York Times, Feb. 9, 1975, at 29, col. 1.

structural flaw in our political institutions.¹⁸ Labor racketeering is, then, a threat to the whole of the body politic, in Civiletti's words, "a serious national problem."¹⁹

B. The Course of Labor Racketeering

1. Overview

The history of labor racketeering is one of opportunistic exploitation. It recounts the activity of those who perceived the racketeering potential of our political economy, and whose peculiar needs, ambitions, and capabilities complemented these inherent weaknesses in the system. Every instance of labor racketeering is thus a combination of the enduring and the contingent. Contemporary racketeering is simply the most recent expression of this historical process, the current state of the art. It is distinctive only for its complexity, the product of a century's experimentation and the sophistication of modern practitioners.

Because there is a great deal of available information on labor racketeering (though little systematic or theoretical knowledge), a descriptive presentation is inevitably eclectic. The chief criterion for inclusion in parts 2 to 4 is significance to an understanding of the material on modern labor

¹⁸An Assistant District Attorney concluded his summation in a recent racketeering prosecution by asking for a verdict "that lets the [victims] of this world know that it is America, a verdict which lets the [defendant Teamster officials] know that they are not a government unto themselves," New York Times, May 20, 1979, § A, at 37, col. 5.

¹⁹Hearings, supra note 8, at 9.

racketeering, and the basic theory developed in Section C. Additional facts are intended to provide continuity, and color, to the narrative. This section is subdivided chronologically, with the information in each centered around the salient emphases of racketeering during that period. The history of labor racketeering is, in fact, less tidy than the organization suggests.

2. 1880-1920: The Era of the Flamboyant Amateur

Labor racketeering began around 1880 with the peddling of "strike insurance" by officers of the building trades unions, primarily in the larger cities.²⁰ The union official threatened or suggested the possibility of disabling strikes; the employer paid to assure an uninterrupted supply of labor.

The construction industry was (and is) highly susceptible to this form of extortion. John Hutchinson described the turn-of-the-century building industry as "highly speculative, rigorous in competition between small local firms, easy to enter and heavy in business casualties."²¹ The overriding factor, however, was time: contractors incurred heavy penalties unless work was completed on schedule.²² Hence the potency of

²⁰ See J. Hutchinson, supra note 2, at 135; R. Christie, Empire in Wood, 202 (1956). Carpenters' trade unions began in Philadelphia in 1791, and existed in most major cities by 1840. Before the Civil War, however, these were little more than vague associations, with no clear purpose or program. Carpenters formed the first continuous modern trade union, in New York City, between 1868 and 1971. Id. at 21, 202.

²¹ J. Hutchinson, The Imperfect Union, 25 (1970).

²² O. Demaris, Captive City, 22 (1969). Besides the contractual penalty endemic to the construction industry, employers were subject to the normal economic incentive to keep labor and capital productive, i.e., working.

the strike threat: work stoppages contained potentially fatal economic consequences for the employers.

For many of the same reasons the business agent of the union local was ideally situated to exploit this vulnerability. Because work sites were scattered and the projects ordinarily of short duration, the union membership was "migrant and foot loose."²³ Worker grievances thus posed a special problem. Lengthy arbitration procedures were useless (neither the employer nor the worker would necessarily be around that long); strike votes by the general membership were impractical. A full time union official, called the "walking delegate" or business agent, was therefore given peremptory authority—unheard of in more stable, concentrated industries—to enter the work site and call an immediate strike.²⁴

The racketeering potential was literally scandalous. One Chicago contractor paid the business agent of the Carpenters Union \$1,200 to assure labor peace; a strike would have cost the contractor ten to fifteen thousand dollars per day.²⁵ At about the same time, the legendary Sam Parks demanded \$1,000 in strike insurance from the Hecla Iron Works. Hecla declined the offer, and the resulting walkout cost the company fifty times that amount.²⁶ But the scandal lay not in the fact that

²³P. Taft, supra note 2, at 6.

²⁴See J. Hutchinson, supra note 2, at 135-136; J. Hutchinson, supra note 21, at 26.

²⁵R. Christie, supra note 20, at 234.

²⁶J. Hutchinson, supra note 21, at 33.

so many business agents turned to extortion (the temptation was virtually overwhelming), but that they did so openly, and with such abundant style.

Parks epitomized this breed of labor leader cum extortionist. Chief business agent of the New York City Iron Workers' Union in the years around 1900, Parks was tough and pugnacious—and therefore a proficient organizer. "Some riveters did not believe unions would be good for them," he once said, "and I gave them a belt on the jaw. That changed their minds."²⁷ But Parks was more than a simple bully. The District Attorney who eventually prosecuted him observed: "He has personal magnetism and power to convince others that his word was law. He has physical bravery, daring and a dashing style of leadership . . . his shrewdness is beyond question."²⁸ The rank and file were not disillusioned by Park's extortion conviction. They re-elected him while he languished in SingSing.²⁹

Parks had his share of imitators. In Chicago, Martin "Skinny" Maddin ruled the construction industry from his post in the Steamfitters' Union; the "handsome, fluent, and astute" Patrick "Pin Head" McCarthy was czar of the building trades in San Francisco.³⁰ The most successful of the early extortionists,

²⁷Id. at 31.

²⁸Id.

²⁹P. Taft, supra note 2, at 6.

³⁰R. Christie, supra note 20, at 157.

though, was Parks' successor in New York, Robert P. Brindell. Brindell was a Canadian who worked as a longshoreman and dock builder's apprentice before taking charge of the Carpenters Union on the eve of World War I. He derived a salary of \$30,000 (astronomical in those times, competitive even by today's standards) from dues of fifty cents per man, per month. Brindell did even better with the employers. In the course of his brief career—he was jailed in 1921—he extorted close to a million dollars, including \$50,000 from a single job, the construction of the multi-million dollar Cunard docks.³¹

Brindell's success was his undoing. So pervasive was his grip on the construction industry that the state legislature appointed Senator Charles Lockwood to investigate.³² The Lockwood Committee's finding led to extortion and conspiracy indictments not only of Brindell, but also of eighty other union officers and 448 employers and public officials.³³ Similar investigations in other cities during the early twenties ended (at least for the time being) the most brazen forms of corruption in the building trades.³⁴

The distinctive features of early labor racketeering were the predominance of unadorned "strike insurance," and the very character of the racketeers. The practitioners were

³¹Id. at 215.

³²J. Hutchinson, supra note 21, at 38-39.

³³Id. at 41.

³⁴J. Hutchinson, supra note 2, at 136.

amateurs, "men who originated in the industry and could at least claim to be trade unionists, and who could often point away from their failings to genuine services rendered to their members;"³⁵ that is, the legitimate union leader gone bad. While the amateur insurance salesman would prove a perennial figure in labor racketeering,³⁶ he would never again be the epitome of an era.

3. Prohibition: "A Real Wild West Show"

The effective date of the Eighteenth Amendment—January 16, 1920—does not mark the debut of the "professional"³⁷ racketeer, but prior to the twenties, he was an obscure and unambitious feature of the labor scene.³⁸ Prohibition was partly responsible for his rise to prominence. Since the traffic in illicit alcohol comprised separate manufacturing, transportation, and distribution functions, infiltration of related union locals (the teamsters and the hotel and restaurant workers) assured bootleggers of loyal workers at affordable prices.³⁹ In time,

³⁵ Id; See also, P. Taft, supra note 2, at 6. One early amateur, Lawrence Murphy of the Stonecutters Union, admitted taking \$10,000 from employers, but steadfastly maintained that the membership had no claim to it because he got it by extortion. J. Hutchinson, supra note 21, at 34.

³⁶ See, e.g., text accompanying note 186 infra.

³⁷ The "professional" racketeer is distinguished for a background in varied criminal activities, no discernible commitment to the cause of labor, and for his ties to organized crime. The labels "amateur" and "professional" suggest, but do not precisely delineate, categories of labor racketeers. An "amateur" who develops substantial connections to organized crime (e.g., Jimmy Hoffa), thereby becomes a "professional".

³⁸ J. Hutchinson, supra note 2, at 136.

³⁹ Id. See J. Landesco, Organized Crime in Chicago, 154 (1929, 1968); 2nd Interim Report, supra note 15, at 595.

the Capone syndicate and other bootlegging organizations penetrated unions in industries "ancillary" to the liquor trade: laundry, restaurant supplies, and assorted light foods.⁴⁰

Although booze was the major preoccupation of organized crime during Prohibition, union corruption was generally a more significant factor in another established operation, the "protection" racket. Little more than systematized extortion, protection operated in a variety of forms, the following possibly the simplest. "Tradesmen in a market or neighborhood are given 'protection' against violence to person and property in return for the payment of 'dues' to an association organized by the racket. Failure to pay dues results in visitation by a henchman of the rejected 'protector'."⁴¹ Disciplinary "visits" were liable to include broken windows, "accidental" murder, a stink bomb during business hours, or "other indignities."⁴²

Perhaps alerted by its effectiveness in the pre-War building industry,⁴³ protection racketeers during the twenties began supplementing their strong-arm tactics with the more subtle and tidier strike threat.⁴⁴ Dutch Schultz, for instance,

⁴⁰J. Hutchinson, supra note 21, at 67. See J. Landesco, supra note 39, at 149.

⁴¹G. Tyler, Organized Crime in America, 182-83 (1962).

⁴²J. Landesco, supra note 39, at 149, 155.

⁴³See 2nd Interim Report, supra note 15, at 595.

⁴⁴H. Nelli, The Business of Crime, 244 (1976). The shakedown

organized an "immensely profitable" racket among New York City restaurateurs with threats of a strike and a lunch hour stink bomb.⁴⁵ Other bombs were even more persuasive. The prospect of a walkout and an accompanying "incendiary fire" encouraged Bronx building contractors to pay racketeers a half-million dollars in 1929 alone.⁴⁶

Since the strike threat could not be used on labor, control of the relevant unions was frequently accomplished at gunpoint. Schultz sent his ace organizer, Julie Martin, to take over local 302 of the Cafeteria Workers Union. Martin inquired of Irving Epstein, a recalcitrant business agent, "How do you think you'd look without any ears?"⁴⁷ Asked for his qualifications as business agent of the Chicago Retail Cleaners' and Dyers' Association, Sam Rubin responded, "I'm a good convincer."⁴⁸ Even so, many unionists resisted. From 1923 to 1929, Chicago gangsters assassinated twenty-five union officials.⁴⁹

of businessmen through threats of violence and union pressure was ordinarily called "industrial" racketeering, or simply, "racketeering." See, e.g., J. Landesco, supra note 39, at 149.

⁴⁵P. Maas, supra note 1, at 141.

⁴⁶H. Nelli, supra note 44, at 245.

⁴⁷M. Johnson, Crime on the Labor Front, 7 (1950). Martin was murdered after a dispute with Schultz over the proceeds of the restaurant racket, and Schultz was thereafter killed by rival gang leaders for being generally uncooperative. Id.

⁴⁸J. Landesco, supra note 39, at 157.

⁴⁹J. Hutchinson, supra note 21, at 112.

A much more momentous and sophisticated use of violence by gangsters in New York City's garment district produced enormous revenues, and introduced a racketeering factor to the garment trades that has never been eliminated. The key was the structure of the clothing industry. It was, in a word, chaotic. "For sheer cutthroat competition" Fortune said in 1936, "the ladies' millinery manufacturers almost make the automobile dealers look like a pack of Quakers."⁵⁰ With thousands of small employers, little capital investment, and low overhead, competition tended to be at the expense of wages. "[A] few pennies difference in the labor cost of a garment," David Dubinsky recalled, "may represent the difference between a successful business and bankruptcy."⁵¹

Predictably, then, the modicum of violence which ordinarily attends labor disputes exploded into open warfare in the mid-twenties when the needle trades unions organized the garment workers. Employers regarded union scale wages as a ticket to bankruptcy, and hired (not for the first time)⁵² professional thugs to intimidate pickets and protect strike breakers. The

⁵⁰J. Hutchinson, supra note 21, at 75.

⁵¹D. Dubinsky, supra note 3, at 145. The average annual profit of 200 women's headwear firms, for example, was \$534 in 1935, and \$149 in 1936. J. Hutchinson, supra note 21, at 84.

⁵²Since the use of force by both sides in the "Molly Maguire" disputes of the 1870's in Pennsylvania's anthracite fields, employers and unions have hired professional gangsters. G. Tyler, supra note 41, at 183. Hired muscle first appeared in the garment district in the 1890's, most notably in the person of Monk Eastman, but the scale was insignificant compared to the battles of the 1920's. J. Hutchinson, supra note 2, at 136.

unions responded with their own hired gorillas.⁵³ The principal profiteers were members of the "Jewish Mob", headed by Arnold Rothstein and subsequently by Louis "Lepke" Buchalter. The process reached a sort of tragi-comic peak in the Communist-led cloak strike of 1926. The employers hired the "Legs" Diamond gang, and the union brought in "Little Augie" Orgen; the total paid to the two gangs reportedly approached a million dollars. It was later discovered that both Diamond and Orgen worked for Rothstein.⁵⁴

The undisputed king of the early industrial racketeers, however, was Louis Buchalter, whom Andrew Tully described as "a tycoon who bossed a veritable General Motors of crime."⁵⁵ Born on the lower East Side and raised by Russian Jewish parents, Buchalter was perhaps the fiercest of all Prohibition gangsters. He and his henchman, Jacob "Gurrah" Shapiro, extorted a reported \$15 million from garment manufacturers and related businesses.⁵⁶ Lepke was, of course, far from a labor idealist.

⁵³M. Danish, The World of David Dubinsky, 189 (1957).

⁵⁴D. Bell, supra note 2, at 118-119. Son of a respected garment manufacturer and a sort of early day Meyer Lansky, Rothstein was the model for Wolfsheim the gambler in F. Scott Fitzgerald's The Great Gatsby. Rothstein, whose major interest was industrial racketeering, was murdered in 1928. Id.

⁵⁵G. Tyler, supra note 41, at 205. Joseph Valachi remembered Buchalter as "the absolute ruler of labor and management extortion in trucking, in restaurants, in movie theaters, and in the baking, garment and fur industries." P. Maas, supra note 1, at 171.

⁵⁶H. Nelli, supra note 44, at 243. Another market for the underworld's services developed in the internecine struggles between Communists and "conservatives" for union leadership, especially in the furriers union. J. Hutchinson, supra note 21, at 79.

Employers with unionized workers could safely bring in unorganized workers after Lepke had the union inspectors beaten up.⁵⁷ Having done a favor for the employer, Buchalter tended to overstay his welcome; manufacturers frequently found that he had voted himself a full partnership in their business. Similarly, union officials who relied on Lepke to rescue the union found that they were required to pledge their support to their one-time "benefactor."⁵⁸ Racketeering eventually became so prevalent in the garment unions that David Dubinsky made each of his subordinates sign an undated letter of resignation. During his thirty-six years as head of the I.L.G.W.U.⁵⁹ he was compelled to date ninety-three of them.

The industrial rackets were the major theaters of union corruption, and they flourished during Prohibition. The State's Attorney in Chicago identified 107 separate rackets in twenty-three industries.⁶⁰ By 1932, fully two-thirds of the city's unions were influenced by the Capone organization.⁶¹ In 1930,

⁵⁷M. Josephson, Sidney Hillman, 328 (1952).

⁵⁸G. Tyler, supra note 41, at 207; See D. Dubinsky, supra note 3, at 145-53. Buchalter and Shapiro were repeatedly tried during the thirties for a variety of offenses, but to little avail. Shapiro finally went to jail in 1940, for life, on an extortion charge. Buchalter was executed in 1944 for the murder of a minor garment industry employer. J. Hutchinson, supra note 21, at 73.

⁵⁹Id. at 147.

⁶⁰See H. Nelli, supra note 44, at 242; J. Landesco, supra note 39, at 149.

⁶¹J. Hutchinson, supra note 21, at 116.

the New York World counted twenty-five industries influenced by racketeers.⁶² The syndicates' take ranged from an estimated \$600 million in New York to \$100 million in Philadelphia, \$75 million in Detroit, \$50 million in Los Angeles, and \$25 million each in Cleveland and Pittsburgh.⁶³

The explanation, again, is a mix of the chronic and the transitory. The magnitude of the rackets was no doubt a product of the unique urban "ecology" of the Prohibition era. Business competition was excessive and commercialism rampant, the drinking public (at least) was accustomed to lawlessness. More significant was the unprecedented alliance between gangsters, businessmen, and politicians wrought by the "Great Experiment." One Chicago businessman explained it this way: "You'd go into the State's Attorney's Office to complain and they'd [the gangsters] come in the same office while you were going out, and they'd pay even more. The only protection you had was to hire your own guards. It was a real Wild West Show."⁶⁴

It was more than just happenstance that the most successful rackets appeared in small unit, unstable, disorganized industries,⁶⁵ (most notably clothing, but also candy jobbery,

⁶²Id. at 72.

⁶³H. Nelli, supra note 44, at 243.

⁶⁴New York Times, June 28, 1976, at 20, col. 2. See also, D. Dubinsky, supra note 3, at 157. Between 1920 and 1929, there were 2,722 murders and manslaughters in Chicago, including an estimated 257 gang murders. Not one of the gang killings resulted in a conviction. J. Hutchinson, supra note 21, at 112.

⁶⁵D. Bell, supra note 2, at 119; H. Nelli, supra note 44, at 243.

laundries, restaurants and the like). Here, the discipline of the racketeer was perceived as an alternative to life at the edge of bankruptcy. The racketeer restricted entry and regulated prices,⁶⁶ and he frequently devised a scheme of territorial jurisdiction. Sometimes employers actively schemed with the racketeers,⁶⁷ other times they were truly unwilling victims. In either event, the use of the strike threat in what Walter Lippmann called "a perverse effort to overcome the insecurity of highly competitive capitalism"⁶⁸ is a recurring theme in the course of labor racketeering.

4. 1933-1957: Extending the Sphere

By the time of the McClellan Committee Investigation in 1957-59, the essential building blocks of modern labor racketeering were assembled. After Repeal, racketeers made initial appearances in several important unions and, for the first time, controlled an important union at the International level. In addition, this era saw the emergence of the "sweetheart" contract and treasury looting as formidable complements to the basic strike threat.

a. The Nitti Putsch

The combined effects of Repeal and Depression on syndicate profits prompted the remnants of the Capone mob to

⁶⁶J. Hutchinson, supra note 21, at 115; H. Nelli, supra note 44, at 243.

⁶⁷J. Landesco, supra note 39, at 161.

⁶⁸H. Nelli, supra note 44, at 243.

seek out new sources of income.⁶⁹ Eager for access to labor's solvent treasuries and shakedown potential, the gangsters took aim at three major international unions.⁷⁰ Evidently unsatisfied with its increasing domination of the Chicago locals,⁷¹ the syndicate, now headed by Frank "the Enforcer" Nitti, with Murray Humphreys as chief labor lieutenant, waged a lavish but unsuccessful campaign for the presidency of the Hotel and Restaurant Employees at the union's 1938 convention. Nitti's man - Henry McLane - faltered only in the face of "determined resistance by the incumbent officers, the local police, and the San Francisco labor council."⁷²

The returns were better in the other two attempts. With assistance from Louis Buchalter and Lucky Luciano, Nitti installed George Scalise, a former pimp and small-time labor racketeer, as Vice-President of the Building Service Employees Union in 1934, and promoted him to the presidency (by means of a rigged executive board election) in 1937.⁷³ Splitting fifty-

⁶⁹ See D. Saposs, "Labor Racketeering: Evolution and Solutions," 25 Soc. Rev. 253 (1958); Illinois, supra note 8, at 38; J. Hutchinson, supra note 21, at 68. Repeal introduced legitimate competition to syndicate bootleggers; the Depression cut into profits on the gangs' "consumer" services like gambling and prostitution.

⁷⁰ G. Tyler, supra note 41, at 193-195.

⁷¹ See 2nd Interim Report, supra note 15, at 595-600.

⁷² J. Hutchinson, supra note 2, at 137. McLane was an International Vice-President when he became, somewhat unwillingly, the syndicate's man. At a 1935 meeting in Chicago's Capri Restaurant, Nitti advised McLane, "If you don't do what we say, you will get shot in the head. How would your wife look in black?" 2nd Interim Report, supra note 15, at 599. See generally, M. Josephson, Union House - Union Bar, 211-14 (1956).

⁷³ J. Hutchinson, supra note 21, at 124-25.

fifty with his principals, Scalise extorted "huge sums" from building owners with strike threats,⁷⁴ and lifted a reported \$200,000 from the union treasury⁷⁵—in addition to drawing the highest salary of any union officer in the country. The good times ended (temporarily) for Scalise in 1941 with convictions for theft, forgery, and tax evasion.⁷⁶

The most celebrated of the trilogy began in 1933 with the highly successful shakedown of Chicago theater owners by George Browne, business agent of Stagehands local 2, and petty hoodlum, Willie Bioff. Attracted by their success, Nitti offered Browne the presidency of the International Alliance of Theatrical, Stage Employees and Motion Picture Operators in return for 50 percent of the take. A consortium of syndicate powers⁷⁷ made good Nitti's promise at the 1934 convention, and the racket went to Hollywood. Browne and Bioff demanded \$2 million from major film studios with a threat to "close every theater in the country."⁷⁸ They collected \$1.1 million between 1936 and 1940. The payoffs became so onerous, though,

⁷⁴M. Johnson, supra note 47, at 54. The BSEU included "thousands" of Chicago elevator attendants. "By calling these operators out on strike the union could stifle operations in every office building in Chicago." Id. at 10.

⁷⁵J. Hutchinson, supra note 21, at 127.

⁷⁶Id. at 129. Scalise spent ten years in prison, but emerged unrepentant. See text accompanying notes 118 and 133 infra.

⁷⁷See H. Nelli, supra note 44, at 249. Sharing the profits (in addition to Nitti and his Chicago associates) were Buchalter, Luciano, Abner "Longie" Zwillman, Louis Kaufman, "and other Eastern and Midwestern syndicate powers." Id.

⁷⁸Id. at 250.

that the victims complained to a New York grand jury, and a flurry of indictments and convictions halted the racket in the early forties.⁷⁹

b. The International Longshoremen's Association

The I.L.A. is virtually a synonym for corruption in the labor movement. David Dubinsky called it a "nest for waterfront pirates—a racket, not a union."⁸⁰ Daniel Bell wrote that the I.L.A. was "less a trade union than a collection of Chinese warlords, each ruling a great or small province."⁸¹ In 1954 Elia Kazan brought to the screen, in the persons of Rod Steiger and Marlon Brando, what is still the classic and haunting portrayal of injustice on the waterfront.

The reputation is well-deserved, and, in retrospect, susceptible to analysis and explanation. Excluding labor related rackets, a host of ordinary criminal activities prospered on the docks. The necessity for speed, plus the dearth of rail connections to the piers, begat the coveted "loading" racket, which involved no more than moving cargo from the pier floor to waiting trucks. Because demand was inelastic, however, loading

⁷⁹Id. at 250-51. Nitti, who had been troubled by stomach ailments for years, committed suicide when informed of his indictment. Id. Projectionists locals remained under mob domination for some time. In 1965, a Justice Department official reported that local 110 was a kind of "hiring hall" for relatives of important mobsters. "When they're not doing anything else, that is, out on jobs for the Mob, there's work for them through the union as a movie projectionist. It's easy and it pays well." O. Demaris, supra note 22, at 35.

⁸⁰D. Dubinsky, supra note 3, at 164.

⁸¹D. Bell, supra note 2, at 165.

generated extraordinary profits.⁸² John Hutchinson concluded that loading was the principal incentive of organized crime infiltration,⁸³ and during the twenties, gangs fought pitched battles for control of loading on New York's West Side docks.⁸⁴ Pilferage was virtually impossible to prevent; shippers eventually accepted it as a cost of doing business. The waterfront work force—casual, unskilled, demoralized and insecure due to hiring practices, frequently immigrant—was fertile territory for gamblers and loansharks.⁸⁵

To those who wanted a piece of the action, one principle was clear—"control of the local [was] a prerequisite to conducting racket operations on the piers."⁸⁶ Gangsters had therefore long been a factor in the union,⁸⁷ and by 1950 thirty percent of the union's officers had police records.⁸⁸

Once in control of the union, the underworld found the shipping industry a congenial market for the more traditional

⁸²See D. Bell, supra note 2, at 167.

⁸³J. Hutchinson, supra note 21, at 98.

⁸⁴D. Bell, supra note 2, at 168. Bell noted that peace among loading bosses was established in the thirties with the formation of Varick Enterprises, Inc., a sort of mob cooperative from which the gangs derived a percentage of the total profit on all the piers.

⁸⁵For background information on the waterfront work force, see H. Nelli, supra note 44, at 109-110.

⁸⁶V. Jensen, Strife on the Waterfront, 100 (1974).

⁸⁷See H. Nelli, supra note 44, at 245.

⁸⁸V. Jensen, supra note 86, at 100.

types of racketeering, like strike insurance. When a ship docks, it must be emptied quickly. The cargo may include perishable foodstuffs, and in any event, the owner gathers no return on his capital investment—the ship—while it is in port. Ship "turnaround" time is thus a crucial key to profitability. Besides direct evidence that individual pier bosses regularly shookdown shippers by threatening walkouts,⁸⁹ that the International sanctioned a strike for the first time in 1948 suggests a pattern of payoffs at higher levels.

Time pressures also encouraged owners to maintain an oversupply of labor, (so that all ships, even on the busiest days, could be unloaded at once), and ultimately explain the lucrative, and commonly used, "kick-back" racket.⁹⁰ Because the number of ship arrivals fluctuated, the hiring boss (usually a union officer) selected the necessary workers from the surplus of men at the daily "shape-up." The criterion for selection on many piers was a willingness, evidenced by a pre-arranged signal, (such as a toothpick in the ear)⁹¹ to "kick-back" a part of the day's wages to the boss.

Racketeers prospered during the twenty-five year term of Joseph P. Ryan as president of the I.L.A. Ryan pursued a laissez-faire policy toward the locals, and spent most of

⁸⁹Id.

⁹⁰The "kick-back" is arguably an instance of labor racketeering. Though practiced by union officers, the racket stemmed from the union's almost complete control—perhaps unique to the waterfront—over hiring. That is, the misuse of "union" power here was in the role of employer.

⁹¹New York Times, May 27, 1979, § 4, at 7, col. 1.

his time chumming with shippers and Tammany politicians.⁹² Meanwhile, in 1937, Albert Anastasia muscled into the six "Camarda" locals, (named after the influence of International Vice President, Emil Camarda) and was soon, in Valachi's recollection, "absolute ruler of the Brooklyn waterfront."⁹³ Under Anastasia, organized pilferage, strike insurance, kick-backs and loan-sharking on the piers reached unprecedented levels.⁹⁴ A grand jury investigation in 1940 also revealed that several hundred thousand dollars was missing from the treasuries of the six locals.

Anastasia subsequently put his brother, Anthony "Tough Tony" Anastasia in charge of the consolidated local 1814,⁹⁵ presently the largest in the I.L.A., and the power base of Anastasio's son-in-law, I.L.A. Vice-President Anthony Scotto. But perhaps the chief legacy of the early gangster years is a tradition of crime on the waterfront, and its acceptance as a fact of life by longshoremen, union officials, shipowners, and government personnel.

c. The Teamsters and the Rise of the Welfare Fund

Corruption first appeared in the Teamsters organization in Chicago around 1900 when Albert Young and John Driscoll

⁹²See J. Hutchinson, supra note 21, at 99-104. Ryan's political connections shielded the waterfront from government scrutiny, and contributed to the lawlessness, or "warlord" atmosphere, reported by Bell.

⁹³P. Maas, supra note 1, at 201.

⁹⁴H. Nelli, supra note 44, at 247.

⁹⁵P. Maas, supra note 1, at 244.

engineered a collusive bidding arrangement among owner-operator union members.⁹⁶ During the twenties Chicago mobsters competed feverishly for control of the Teamsters locals, and the general situation got so bad that unionists paid Al Capone to keep the other gangs off their backs.⁹⁷ The winners of the underworld competition included such notables as William J. "Three Fingered Jack" White, and Capone's cousin, Charles Fischetti.⁹⁸

The attraction is not difficult to explain: the Teamster strike threat was the single most potent instrument of coercion available to the labor racketeer. Almost every business involved trucking, and therefore the Teamsters union, either in delivery of supplies and raw materials, or in removal of finished goods or waste material. A cut-off in any of these services might cripple a firm; in addition, unionized employees would be reluctant to cross Teamster picket lines.⁹⁹ The boss could then find himself without a work force.

Landesco provided an early insight into Teamster power. By organizing the Chicago junk dealers, the union could control the rag supply to the paper companies "and put any company out

⁹⁶P. Taft, supra note 2, at 10. At about the same time, Teamsters International head Cornelius Shea was indicted for shaking down trucking companies, but the charges were never proved. Id. at 11.

⁹⁷See J. Hutchinson, supra note 21, at 116.

⁹⁸Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, 85th Cong., 2d Sess., 374 (1958) [hereinafter 1st Interim Report].

⁹⁹M. Johnson, supra note 47, at 83.

of business it wanted out. It could ruin any firm."¹⁰⁰ This tool was most frequently used to fashion an industrial racket. Philadelphia local 929, for instance, dominated the Dock Street produce market during the 1940's with it. "Not so much as a head of lettuce or an ear of corn can be moved without the Union's consent."¹⁰¹ Local 202 of the Teamsters "had absolute control" over produce distribution in New York City.¹⁰² A congressional committee found similar conditions in Chicago, San Francisco, Pittsburgh and Detroit.¹⁰³ Lester Velie reported a later, more exotic application of the Teamster strike threat. When major Eastern distillers refused to bargain with the Distillery Workers, the union persuaded Jimmy Hoffa to make a call to New York. "Distillery executives, fearing their liquor wouldn't move, signed."¹⁰⁴

During Dan Tobin's forty-five years as chief, (1907-1952), the Teamsters International, at least, was free from corruption.¹⁰⁵ This was significant for it meant that Teamster racketeers were confined to local markets, and because, despite its traditional policy of non-intervention in union locals, there was still the possibility of an International house cleaning.

¹⁰⁰J. Landesco, supra note 39, at 164.

¹⁰¹M. Johnson, supra note 47, at 68.

¹⁰²Id. at 74.

¹⁰³Id. at 72.

¹⁰⁴L. Velie, Labor U.S.A., 179 (1959).

¹⁰⁵P. Taft, supra note 2, at 11.

These constraints were remote during the stewardship of Dave Beck, and were extinguished by Jimmy Hoffa's succession in 1957. The details of Hoffa's relationship with organized crime, beginning with the Santo Perrone entente, in 1937, to drive C.I.O. organizers from Detroit,¹⁰⁶ and progressing through the infamous "paper locals" exchange with John Dioguardi of New York City,¹⁰⁷ are well-told elsewhere.¹⁰⁸ The episode with the most representative significance, however, is Hoffa's entry into the greater Midwest, through the good offices of Paul "Red" Dorfman.

By 1949 Hoffa controlled the Michigan Teamsters, but was still relatively unknown outside his home state. According to Robert Kennedy, "the key to the entire Midwest was Chicago,"¹⁰⁹ and the key to Chicago evidently was the Chicago mob. Dorfman, who took over the Waste Handler's Union in 1939 when the incumbent was murdered,¹¹⁰ persuaded his underworld friends, notably Tony Accardo and "Longie" Zwillman, to back the rising young Hoffa. The price was the Central Conference

¹⁰⁶D. Moldea, The Hoffa Wars, 37-38 (1978).

¹⁰⁷See, e.g., R. Kennedy, supra note 5, at 136-138.

¹⁰⁸See, e.g., S. Brill, The Teamsters (1978); J. Kwitny, supra note 6, at 141-49; W. Sheridan, The Fall and Rise of Jimmy Hoffa (1977); L. Velie, A Desperate Bargain (1977); D. Moldea, supra note 106.

¹⁰⁹R. Kennedy, supra note 5, at 87.

¹¹⁰Another figure in the Waste Handlers at this time was Jack Rubenstein, subsequently known as Jack Ruby. Although Ruby reportedly wanted to "take over" when the boss was killed, the Warren Report found no evidence of activity directed toward that goal. Report of the Warren Commission on the Assassination of President Kennedy, 695 (1964).

of Teamsters Welfare Fund insurance contract, from which Dorfman eventually garnered \$1.6 million in excessive commissions.¹¹¹

The union "welfare" fund, and the sometimes distinct "pension" fund, were of comparatively recent origin. They first appeared in significant numbers during World War II, when government wage regulations obliged workers to accept pay increases in the form of fringe benefits.¹¹² The "landmark" however, was the United Mine Workers strike of 1946 to compel mine operators to underwrite a welfare fund.¹¹³ A welfare fund might comprise "sickness, old age, vacation, disability, life insurance and retirement benefits," (or any combination), "secured by labor agreement provisions and contributed by employers."¹¹⁴ It was administered by union officers, distinct from, and larger than, the union treasury, and (until 1976),¹¹⁵ almost completely unfettered by government regulations.

Dorfman was thus one of the first to cash in this new opportunity. But he was not alone. Dave Beck was already (by 1953) knee deep in the financial manipulations that would

¹¹¹R. Kennedy, supra note 5, at 87-89. The Teamsters are organized into four "conferences" for administrative and bargaining purposes - the Western, Central States, Eastern and Southern. J. Hutchinson, supra note 21, at 229.

¹¹²M. Danish, supra note 53, at 191.

¹¹³J. Hutchinson, supra note 21, at 150.

¹¹⁴M. Danish, supra note 53, at 192.

¹¹⁵The Employee Retirement Income Security Act (ERISA) passed Congress in 1974, and took effect in 1976.

drive him from office.¹¹⁶ In 1955, a New York grand jury indicted Distillery Workers head Sol Cilento for receiving "kick-backs" on loans from the union's welfare fund.¹¹⁷ Cilento's co-defendants were George Scalise and Anthony "Little Augie" Carfano, a former bootlegger in the Capone syndicate.¹¹⁸

The benefit fund racket was a significant departure in the course of labor racketeering, quite distinguishable from the embezzlements of earlier racketeers, and even from the peculations of modern amateurs. Previously, embezzlers were limited by the size of union treasuries, then funded solely by members' dues. Because it was not the practice to "invest", or loan, treasury funds, conversions were easier to detect. The amateur, moreover, has at all times been inclined to spend his loot on the accouterments of high living. James Cross of the Bakers Union, for example, was prone to expensive women, luxurious vacations, long poker games, and lavish birthday parties.¹¹⁹ The "professional" fund administrator, on the other hand, functions as source of capital for the speculative ventures of organized crime figures. He is an economic powerhouse — just like any other banker. In the case of the Teamsters, however, he is bigger than most banks.

¹¹⁶ See generally, R. Kennedy, supra note 5.

¹¹⁷ See J. Hutchinson, supra note 21, 230-33.

¹¹⁸ Id. at 306-307. Cilento was indicted for theft from local 2 of the Distillery Workers in 1956. The proceeds represented wages paid to a female employee, whose only appearances were at the annual Christmas party.

¹¹⁹ 1st Interim Report, supra note 98, at 129.

d. The Butchers, The Builders, and The "Sweetheart" Contract

The McClellan Committee concluded that of all the unions investigated during its first year, none was "more backward, more indifferent to changing times, more incredibly feudal" than the International Union of Operating Engineers (IOE).¹²⁰ The lord of the manor (the membership handled heavy construction equipment) was the tolerant William Maloney. Asked once for his position on racketeers in the union, he replied, "It's true they bring the union into disrepute, but that's no reason for throwing them out."¹²¹ Such tolerance may well be explained by Maloney's own ascent to power. After arriving in Chicago in 1918, Maloney found work as a mechanic, then joined local 569 of the IOE, and in 1924 became its business agent. When further advancement appeared unlikely, (the membership voted 400 to 1 to expel him), he secured a charter for a new local, 150, from International President Arthur Huddell. Then with the aid of "gangland celebrities" he began wooing the membership of 569. "Big" Mike Carrozzo, boss of the Hod Carriers, lent a hand, and members who still "tarried" about transferring were threatened (appropriately enough) with a loss of death benefits. After Huddell's murder the following year, John Possehl was named union president (Maloney and Possehl reportedly ordered the execution). When Maloney got the head job after Possehl died (of natural causes) in 1940, the racketeering began in earnest.¹²²

¹²⁰1st Interim Report, supra note 98, at 371.

¹²¹L. Velie, supra note 104, at 182.

¹²²1st Interim Report, supra note 98, at 372-375.

Maloney was surrounded in the I.O.E. by a host of like-minded regional potentates,¹²³ most notably Joey Fay of New Jersey.¹²⁴ Together they expanded the "sweetheart" contract—a form of labor management collusion in which the employer pays the union representative to sell labor for less than the market or specified rate—to unprecedented dimensions. Though sometimes difficult to distinguish from strike insurance,¹²⁵ the clearest cases of sweetheart deals involve payments to overlook deviations from a master contract or an otherwise binding labor agreement. This constitutes a tremendous saving for the employer,¹²⁶ to the very distinct detriment of the rank and file. One of the country's largest construction outfits paid Maloney, for

¹²³Id. at 438-441.

¹²⁴Fay was business agent for local 825 in Newark from 1919 to 1947, when he began a 9 year stretch in SingSing for extorting \$62,000 from contractors. He was also supervisor of Philadelphia local 542 and 6th Vice-President of the I.O.E. According to David Dubinsky (whom Fay once assaulted at an A.F.of L. convention) "it was an open secret that [Fay] was exacting tribute on a wholesale scale on every big construction job in the metropolitan area, public or private." Fay continued to run the union while he was in prison; in fact, so many deals were arranged from his cell that Governor Dewey transferred him to a remote upstate prison. 1st Interim Report, supra note 98, at 412; Dubinsky, supra note 3, at 159, 164.

¹²⁵A blurring of the two rackets occurs where a union officer with a reputation for extortion makes an outrageous wage demand, ostensibly on behalf of his employees, and threatens a walkout if his demands are not met. Then the employer pays him to significantly reduce the demand, and to forget the strike. See, e.g., M. Johnson, supra note 47, at 4; M. Josephson, supra note 72, at 237.

¹²⁶It is also, ironically, a saving to the consumer, at least if the price is reduced according to the decrease in labor costs.

instance, to ignore its nonpayment of overtime wages;¹²⁷ other IOE officials were bribed by contractors who proceeded to pay union members one dollar less than the prescribed contract rate.¹²⁸ In a case involving another union, employers were allowed to skip payments into the union pension fund.¹²⁹ In Joey Fay's eastern redoubt, "sweetheart contracts were the rule."¹³⁰ In fact, when Fay went to SingSing for extortion in 1947, builders complained to Maloney that one local now expected them to abide by their contracts. Maloney promptly slapped the local into trusteeship.¹³¹

What may be the all-time blockbuster sweetheart contract did not involve the IOE, or even the construction industry, but two New York City locals of the Amalgamated Meat Cutters and Butcher Workmen of North America. Gangsters first penetrated the Butchers union during the thirties.¹³² The locals in question—342 and 640—were headed by Max and Louis Block, whose sponsors in the union business included the ubiquitous George Scalise and Augie Pisano.¹³³

¹²⁷L. Velie, supra note 104, at 183.

¹²⁸1st Interim Report, supra note 98, at 372.

¹²⁹2nd Interim Report, supra note 15, at 371.

¹³⁰R. Kennedy, supra note 5, at 189.

¹³¹Id. See also Investigation of Racketeering in the Washington, D.C. Area—Hearings Before A Special Subcommittee on the Committee on Government Operations, 83rd Cong., 2nd Sess., (1954) (Officers of Painters local 368 accepted payments from contractors to overlook violations of master contract).

¹³²See New York Times, May 20, 1969, at 28, col. 1.

¹³³L. Velie, supra note 104, at 196.

The payor was A&P. In 1952, its eastern district employees were almost completely non-union. As the result of an "elaborate conspiracy" by A&P executives and the Blocks, carried out, according to the McClellan Committee report, "in ruthless and calculated disregard of [the workers'] rights to be represented by a collective bargaining agent of their own choice,"¹³⁴ ten thousand soon found themselves in the Meat Cutters union. The conspirators had staged a phony representation election, and then failed to tell the new "members" about it.

The Blocks gained the dues of ten thousand fresh recruits, about \$500,000 a year. The quid pro quo was buried in the contract, which guaranteed A&P the existing 45 hour work week for the next five years. A&P thereby saved a total of \$23 million in prospective overtime.

5. Modern Labor Racketeering

Despite the revelations of the McClellan Committee,¹³⁵ the cardinal labor rackets—fund misuse, strike insurance, and sweetheart deals—continue to operate. The chief developments of the last twenty years involve increased sophistication in the conduct of the rackets and a recognition that union power can serve to promote a variety of licit and illicit syndicate activities.

a. Welfare Funds

Georgia's Senator Sam Nunn opened a 1978 Congressional inquiry into labor racketeering with the caveat, "The protection

¹³⁴2nd Interim Report, supra note 15, at 303.

¹³⁵L. Velie, supra note 104, at 198.

of our labor unions and their pension and health and welfare trust funds against corruption by organized crime is one of our highest law enforcement priorities."¹³⁶ Considering the great increase in fringe benefit remuneration in the last twenty years, the racketeering potential is impressive. There are approximately 75,000 union locals in the United States,¹³⁷ and a local frequently maintains more than a single benefit fund. The Teamsters organization controls more than a thousand funds, with total assets of \$9 billion.¹³⁸ Its Central States pension fund, which investigations have shown to be the favorite bank of organized crime, alone contains more than a billion dollars.¹³⁹ Thus, although some corrupt unionists still steal members' dues,¹⁴⁰ it is, as a practical matter, unnecessary; the opportunities are greater, and the risks slighter, in manipulating the welfare and pension funds.

Benefit funds derive their assets primarily from employers, in amounts determined by the collective bargaining agreement. Las Vegas casino operators, for instance, contribute thirty-five cents per man-hour worked to culinary workers local 226, or \$15 million a year.¹⁴¹ Even a relatively small union, like

¹³⁶Hearings, supra note 8, at 4.

¹³⁷Id., at 9 (statement of Benjamin Civiletti).

¹³⁸J. Kwitny, supra note 6, at 159.

¹³⁹D. Moldea, supra note 106, at 289.

¹⁴⁰See Hearings, supra note 8, at 95.

¹⁴¹New York Times, March 4, 1977, at 10, col. 1.

New York's Amalgamated local 355, collects \$1.5 million a year for its pension fund.¹⁴² In principle, income is invested, and the total assets are used to benefit the membership. This is not always the case. Corrupt trustees may draft the governing by-laws to keep legitimate pay-out well below income. In the area of pension funds, it is a common practice to keep the number of pensions that "vest" at around ten percent.¹⁴³ Racketeers in a New York mason tenders union found a better way: they took the checks earmarked for the welfare fund and cashed them.¹⁴⁴ The rank and file was too intimidated to complain.

Disposition of the accumulated surplus is accomplished through a variety of devices. Payments may be made to lawyers, accountants, or "consultants" for fictitious services, or for the purchase of goods intended for the exclusive use of fund racketeers.¹⁴⁵ More elaborate schemes are common. When

¹⁴²New York State Commission of Investigation, "Report of an Investigation Concerning the Infiltration and Financial Investments by Organized Crime Elements in Legitimate Businesses and the Improper Use of Union Welfare Funds," Seventeenth Annual Report, 340 (1975) [hereinafter Seventeenth Annual Report]. Local 355 "consisted primarily of unskilled and semi-skilled laborers, the majority of whom were employed in various capacities in the fuel oil delivery industry and with automobile dealerships." Id.

¹⁴³Illinois, supra note 8, at 181. See L. Velie, supra note 108, at 202-04; J. Kwitny, supra note 6, at 161-65.

¹⁴⁴New York State Commission of Investigation, "An Investigation of Racketeer Activities in Mason Tenders' Union Locals in the New York Metropolitan Area," Eleventh Annual Report, 233-40 (1970) [hereinafter Eleventh Annual Report]. Mason tenders, or hod carriers, do the heavy manual labor on construction sites, supplying bricks and mortar to the more skilled craftsmen.

¹⁴⁵See Hearings, supra note 8, at 94.

officials of the previously noted local 355 wrote the membership out of its pension plan (through a forfeiture provision), they wrote themselves in. Members with "vested" pensions, suspiciously concentrated on the union staff, shared the forfeited accounts.¹⁴⁶ With accomplices in the medical profession, racketeers drain dental, medical, and disability funds with remarkable ease.¹⁴⁷ In one case, the fund contracted with an insurer who was charged \$43 per pair of eyeglasses when the average cost under comparable plans was \$6.19. The doctors kicked-back part of the mark-up to the unionists.¹⁴⁸

Investment discretion is, however, the major conduit for diverting union funds into racketeer pockets. Illicit loans are of two types. First are those intended primarily as income for the racketeers. Sometimes these loans are just circuitous ways of distributing spending money to fund insiders, in a word, embezzlement. The borrower functions as a "bag man," and the loan is never repaid.¹⁴⁹ More commonly, the borrower is at least arguably solvent and well-intentioned, but the racketeer exacts a commission, or kick-back, for arranging the deal.¹⁵⁰ The second type of loan is designed primarily

¹⁴⁶Seventeenth Annual Report, supra note 142, at 341.

¹⁴⁷See, e.g., Eleventh Annual Report, supra note 144, at 241-60; Hearings, supra note 8, at 42.

¹⁴⁸Jack McCarthy's Labor Consultants Ltd: Hearings Before the Committee on Small Business, 88th Cong., 2nd Sess., 93 (1964) [hereinafter McCarthy].

¹⁴⁹See, e.g., Seventeenth Annual Report, supra note 142, at 353-73.

¹⁵⁰Anthony "Tony Pro" Provenzano, who took over New Jersey Teamsters local 560 in 1961 after the murder of incumbent

to underwrite the speculations of the borrower. While the fund racketeer may demand a kick-back, the transaction is better understood as a contribution to capital, or even as a gift. The borrower may be a syndicate member and the dollar amounts are, generally, significant.

Favored insiders, moreover, tend to have little difficulty in securing the desired loan. Allen Glick received \$62.7 million from the Central States fund within nine days of his application— without submitting a personal financial statement.¹⁵¹ Hyman Green has received several loans totalling \$40 million from the same source "despite a default record that would discourage a loanshark."¹⁵² A 1977 audit of the culinary workers pension fund (occasioned by the murder of the union's boss, Al Bramlet¹⁵³) revealed that over 60 percent of the fund's \$43 million was lent to Morris Shenker. (Shenker also owed the

Tony Castellito, was sentenced to four years in prison "for conspiring to split a \$230,000 kickback on a \$2.3 million dollar loan from his local's pension funds." Provenzano's co-defendant was Anthony Bentro, the principal in a Wall Street investment firm. Wall Street Journal, July 12, 1978, at 45, col. 2.

¹⁵¹ Washington Post, Oct. 12, 1978, § DC, at 9, col. 4.

¹⁵² Id. The Labor Department recently blocked a loan from Long Island Teamsters local 282 to Green for \$20 million, or 36 per cent of the local's pension fund. Green intended to build a hotel-casino in Las Vegas. Wall Street Journal, March 27, 1976, at 14, col. 1.

¹⁵³ Bramlet evidently was killed by creditors for a debt stemming from the bombing of two clubs where the culinary workers faced decertification elections. Los Angeles Times, April 20, 1977, at 3, col. 1. Bramlet came up through the union's ranks, and built local 226, which had 1,500 members when he took over in 1953, into a well-financed organization of 23,000. New York Times, April 16, 1977, at 12, col. 6.

Teamsters \$164 million at mid-1976, and \$23.5 million to pipe-fitters local 562.)¹⁵⁴

These major borrowers, and hence the funds, have invested heavily in real estate, particularly resorts, casinos, and health spas, with Las Vegas being probably the greatest repository. Glick runs the Stardust and Tremont Hotels, and is reputedly the frontman for Anthony "Tony the Ant" Spilotro, whom the Washington Post called "the most feared gangster in Glitter City."¹⁵⁵ Union money also financed the purchase (in anticipation of legalized gambling) of several run-down upstate New York hotels.¹⁵⁶ Morris Shenker sunk most of his loan money into a failing southern California resort, Murietta Hot Springs,¹⁵⁷ and Teamster money (via Caesar's World, Inc.) underwrote organized crime's acquisition of vacation properties in the Pocono Mountains of northeast Pennsylvania.¹⁵⁸

b. The "Sweetheart" Contract

Transactions in black-market labor permeate the modern economy, and are conducted through a variety of technical arrangements. While the underlying crime varies in specific

¹⁵⁴New York Times, March 4, 1977, at 10, col. 1; Shenker operates the Dunes Hotel and Casino, and was also attorney and confidant of Jimmy Hoffa. Los Angeles Times, April 20, 1977, at 22, col. 1.

¹⁵⁵Washington Post, Oct. 12, 1978, § DC, at 9, col. 4.

¹⁵⁶Seventeenth Annual Report, supra note 142, at 311-18.

¹⁵⁷New York Times, Oct. 14, 1977, § D, at 1, col. 2.

¹⁵⁸New York Times, April 17, 1978, at 1, col. 1.

cases from bribery to extortion, the economic nexus in all these "sweetheart" deals is the price, (not the supply), of labor.

Although massive deviations from the standard agreement in the entertainment industry were uncovered by a Congressional investigation in 1962,¹⁵⁹ the "clear" case of labor-management collusion is still most characteristic of construction,¹⁶⁰ with trucking a close second.¹⁶¹ Other illicit payments may be made to union representatives for the privilege of using non-union labor,¹⁶² and for not organizing workers within the union's jurisdiction.¹⁶³

A more sophisticated use of the sweetheart arrangement enables the employer to choose with whom he will negotiate, rather than dealing with the officials his employees select.

¹⁵⁹American Guild of Variety Artists - Hearings Before Permanent Subcommittee of the Committee on Government Operations, 87th Cong., 2nd Sess., Pt. 1, (1962).

¹⁶⁰See, e.g., Washington Post, May 13, 1978, at 1, col. 1 (builders paid \$4.50 per hour to truckers on the job site where prevailing rate was \$7.00 per hour); Eleventh Annual Report, supra note 144, at 224-25. (Contractors skip benefit payments to members by paying off union officers.)

¹⁶¹See J. Kwitny, supra note 6, at 174. ("Trucking executives estimate that 80 percent of the truckers in the New York metropolitan area "are receiving pay and benefits below the National Marker Freight Standard.")

¹⁶²See, e.g., New York Times, Nov. 25, 1969, at 34, col. 4. (by paying to use non-union help, builders saved \$1.3 million); Wall Street Journal, March 28, 1973, at 12, col. 3, (furriers' union officers received \$35,000 to allow unionized manufacturers to sub-contract with non-union shops).

¹⁶³New York Times, Sept. 24, 1970, at 54, col. 1 (Laborers Union business manager accepted \$16,500 "loan" from employer in return for not organizing employer's workers).

Clearly, as A&P and the Block brothers proved, the consequences are beneficial to both. The lesson was not lost on organized crime:

Corky:¹⁶⁴ Well I'm going to make the score this way. When I sit down with the Boss, I tell him how much it's going to cost him in welfare, hospitalization,—and all that. Say a plant with two hundred and sixty people will cost them \$4,000 a month just for hospitalization. So all together I make a package out of it. I'll say, "It's going to cost a hundred thousand dollars a year. Let's cut it in half and forget about it," and walk away. I show them first what it's going to cost then how much I'm going to save him by his walking away.

Sam:¹⁶⁵ Well you'll have to organize the plant so nobody else walks in there—then you wind up with the dues every month. That's \$3,000 a month. You could do that?

Joe:¹⁶⁶ Sure he could give a solid contract for three years where he won't get hurt.

Sam:¹⁶⁷ Then you get a pay every year.

Here is highlighted the advantage of using the "racket" unionist: once contractual relations are established between the employer

¹⁶⁴ Gaetano "Corky" Vastola was a member Sam De Calvacante's organized crime family.

¹⁶⁵ Sam "the Plumber" De Calvacante succeeded Nick Delmore in 1964 as boss of a relatively small New Jersey organized crime family. The F.B.I. intercepted conversations at De Calvacante's place of business in Kenilworth, New Jersey, from August 1964 until July 1965.

¹⁶⁶ Joseph "Whitey" Danzo, another member of the De Calvacante family.

¹⁶⁷ Hearings Before the National Commission for the Review of Federal and State Laws relating to Wiretapping and Electronic Surveillance, vol. 2., 1612 (1976) (testimony of John P. Linehan).

and the union, rival legitimate unions are ordinarily barred from organizing activity for three years.¹⁶⁸ Labor law is thus more effective than an army of professional sluggers.

Increasingly these techniques have been utilized to "bust" an unwanted union.¹⁶⁹ During an organizational drive an employer may "arrange" for a rival union to be brought in, one which can be expected to be more understanding of the employer's problems. Similarly, companies faced with undesirable contracts and intransigent unions have found it advantageous to reorganize, and, thus released from their obligations, seek to sign with a different and more flexible bargaining representative.¹⁷⁰

c. Strike Insurance

While the strike threat has increasingly been used by organized crime as a means to advance licit and illicit syndicate enterprises (discussed in the following section), both professionals and amateurs, in a number of industries, continue to profit from the "monetary" sale of labor peace; that is,

¹⁶⁸C. Morris, The Developing Labor Law, 167-69 (1971).

¹⁶⁹L. Velie, supra note 104, at 199.

¹⁷⁰See J. Kwitny, supra note 6, at 178-85. The most "flexible" is undoubtedly Eugene Boffa, proprietor of Country Wide Personnel, who negotiates Teamster contracts for employers throughout the United States. His clients include Avon Products, J.C. Penney Company, and GAF, Corp.

Where the racket unionist enthusiastically solicits customers, the "union" may really be a conduit for the collection of protection money. Initiation fees and "dues" are the extortionists take, and the employer is more victim than active schemer. Joey Gallo achieved notable success in the jukebox and small restaurant fields with such "pistol" locals, but he did, at least, give his victims a union contract. R. Kennedy, supra note 5, at 237-40; New York State Commission of Investigation, "Racketeer Infiltration into Legitimate Business," Twelfth Annual Report, 79-89 (1970) [hereinafter Twelfth Annual Report].

with transactions completed by the contemporaneous payment of money.

In an early fruit of a continuing Justice Department investigation into "all aspects of illegal activity" on the docks, Fred Field, general organizer for the I.L.A. and president of the New York District Council, was convicted in 1977 of extorting \$124,500 from the United Brands company.¹⁷¹ Witnesses testified that Field received \$500 for each shipload of bananas unloaded during walkouts, and \$35,000 for insuring labor peace in 1974.¹⁷² Among the union leaders and shipping executives indicted as a result of that probe are Anthony Scotto (President of I.L.A. local 1814 and reputed Gambino lieutenant) and Anthony Anastasia (Vice President of 1814 and nephew of his namesake, "Tough Tony").¹⁷³

Thus, long after the initial reasons for the mob's infiltration of the I.L.A. and control of the docks disappeared, (containerization has controlled pilferage, regularized hiring has replaced the shape-up, and a guaranteed and respectable minimum wage has reduced loansharking),¹⁷⁴ the racketeers remained. The industry structure guaranteed its vulnerability to the strike threat. As Leonard Newman, executive director of the New York-New Jersey Waterfront Commission, recently

¹⁷¹Wall Street Journal, Dec. 5, 1977, at 19, col. 1.

¹⁷²New York Times, Sept. 24, 1977, at 24, col. 2.

¹⁷³New York Times, Jan. 18, 1979, at 1, col. 2. He was subsequently convicted. Id. Jan. 10, 1980, at B2, col. 4.

¹⁷⁴New York Times, Jan. 18, 1979, § D, at 15, col. 3.

put it, "If you don't move cargo fast, it can cost you thousands of dollars a day."¹⁷⁵

A similar vulnerability¹⁷⁶ among meat retailers resulted in payments to three officers of Meat Cutters local 174.¹⁷⁷ Strike insurance has also surfaced since the McClellan hearings in the building services,¹⁷⁸ the garment trades,¹⁷⁹ and, of course, trucking.¹⁸⁰

While payments for labor peace are a factor in many industries, they are a nation-wide institution in construction. Investigations during the last year have uncovered systematic

¹⁷⁵New York Times, May 27, 1979, § 4, at 7, col. 1.

¹⁷⁶Meat processing companies typically have storage facilities which will keep inventory fresh for a few weeks, but after that, according to Congressional testimony "there would be excessive spoilage, there would be tremendous damage." Consequently, "there was a history of many years of payments, not only at contract time but throughout the years. If you want anything done with the meat unions, you have to pay to have them done..." Hearings Before the Sub-Committee on Livestock and Grains of the Committee on Agriculture, 92nd Cong., 2nd Sess., 353 (1970) (statement of Nicholas Scopetta).

¹⁷⁷New York Times, March 25, 1969, at 38, col. 2.

¹⁷⁸New York Times, July 28, 1977, § B, at 5, col. 3 (John Priore, linked by a Senate Committee to John Dioguardi and Anthony "Tony Ducks" Corallo, indicted for extorting \$35,000 from maintenance firms servicing commercial buildings. Priore was head of Amalgamated local 690, an independent union of maintenance workers.)

¹⁷⁹Wall Street Journal, Oct. 16, 1975, at 12, col. 1 (business agent of I.L.G.W.U. truckers local 102 indicted with five others for shaking down an undercover garment trucking concern).

¹⁸⁰New York Times, Feb. 23, 1979, § B, at 2, col. 1 (Tony Provenzano and four others indicted for receiving \$76,000 from New Jersey trucking companies in exchange for "labor peace").

extortion of building contractors in (for example) Florida,¹⁸¹ Chicago,¹⁸² Buffalo,¹⁸³ and Long Island.¹⁸⁴ In fact, the only relevant structural development in the industry since the days of Parks and Brindell has been an increase in contractor vulnerability due to the cost inflation of walk-outs.¹⁸⁵ No matter how outrageous the extortionist's demands, they still constitute the lesser of two evils. Utility plant builders paid George Boylan, business manager of Boilermakers local 5, \$1.2 million for "labor peace," which, according to a Justice Department spokesman, was "the biggest single amount of labor payoffs" ever in New York, "and possibly in the entire country."¹⁸⁶ Exhibitors in Chicago's McCormick Place have complained for years that they have to pay officers of the Machinery Movers and Teamsters to get any work done.¹⁸⁷ Nick Stirone, boss of Pittsburgh Hod Carriers local 1058, pushed a good thing

¹⁸¹See Hearings, supra note 8, at 97 (statement of Martin Steinberg)

¹⁸²Chicago Tribune, July 13, 1978, at 3, col. 3.

¹⁸³Hearings, supra note 8, at 47 (statement of Robert Stewart); Washington Post, May 15, 1978, § D, at 13, col. 4.

¹⁸⁴Village Voice, Nov. 6, 1978, at 1, col. 4.

¹⁸⁵See Hearings, supra note 8, at 47 (statement of Robert Stewart).

¹⁸⁶New York Times, June 8, 1979, § B, at 2, col. 4.

¹⁸⁷Chicago Tribune, Aug. 1, 1974, at 1, col. 3.

too far. A ready-mix concrete company went bankrupt meeting his demands and Nick got ten years for extortion.¹⁸⁸

An important development in the "monetary" sale of strike insurance, particularly significant to investigators, is the increasingly sophisticated method of payment. When Willie Schardt shook down the Liquid Carbonic Company of Chicago in the early 1900's,¹⁸⁹ he received cash in the booth of a hotel bar.¹⁹⁰ Today, with varying degrees of expertise, payments are camouflaged among the countless checkbook transactions of the victim's business. A common device is the "phantom" employee.¹⁹¹ Although frequently effective, careless racketeers may render this technique no more secure than Schardt's booth. The head of a mason tender's local was paid for 111 hours in a single week;¹⁹² David Kaye, chief steward of the McCormick Place Teamsters, was on 15 payrolls simultaneously, and one day was paid for 66 hours of work.¹⁹³

More imaginative techniques abound. Racketeers have asked for checks payable to their "Labor Relations"

¹⁸⁸ Pennsylvania Crime Commission, Report on Organized Crime, 57 (1970).

¹⁸⁹ See text accompanying note 25, supra.

¹⁹⁰ R. Christie, supra note 20, at 234.

¹⁹¹ See e.g., New York Times, Feb. 23, 1979, §B, at 2, col. 1 (the Provenzano shake-down of truckers).

¹⁹² Eleventh Annual Report, supra note 144, at 223.

¹⁹³ Wall Street Journal, June 30, 1976, at 5, col. 1.

firms.¹⁹⁴ Employer's tribute may bloat the advertising revenues of the union's journal, (most have one).¹⁹⁵ Teamsters local 805, in New York City, runs an "annual affair," to which employers of the membership are invited. One year the profit on the affair was \$97,000. Head man Abe Gordon, whose past associates in the labor movement include John Dioguardi and "Lepke" Buchalter, also stages an annual birthday party for himself. The employers just as regularly send gifts.¹⁹⁶ The Block brothers believed in celebrating with their victims too; they owned a country club in Connecticut, and employers were obliged to join.¹⁹⁷ Joe Ryan of the I.L.A. evidently scorned frivolity. He required shippers to contribute to the union's "anti-Communist" fund.¹⁹⁸

d. Potpourri: The Mob in the Marketplace

Peter Maas described Joseph Valachi's takeover of a dress manufacturing concern¹⁹⁹ as penetration of "legitimate business."²⁰⁰ Valachi was candid about the manner in which

¹⁹⁴ See, e.g., L. Velie, supra note 104, at 156; text accompanying note 209 infra.

¹⁹⁵ See McCarthy, supra note 148, at 139; New York Daily News, May 20, 1979, at 2, col. 1.

¹⁹⁶ Id.

¹⁹⁷ R. Kennedy, supra note 5, at 203.

¹⁹⁸ V. Jensen, supra note 86, at 100.

¹⁹⁹ P. Maas, supra note 1, at 175.

²⁰⁰ Observers of organized crime - Ovid Demaris, Ralph Salerno, and Alfred Scotti among them - have argued that the object

his new company was run: "[i]f any union organizer came around, all I had to do was call up Johnny Dio or Tommy Dio and all my troubles were over."²⁰¹

This is a major characteristic of the modern racketeer—the edge, or competitive advantage, he enjoys in licit businesses through illicit practices, including the misuse of union power. Control of a union and its assets allows the new mobster to manipulate the supply and cost of labor to his own businesses, and more importantly, to those of his competitors.

(i) Capital

Mob-controlled businesses have used mob-dominated unions to secure needed capital at favorable rates, unavailable to others in similar business situations. This has been accomplished directly through benefit-fund loans²⁰² or indirectly through legitimate lending institutions. The President of the United Paperworkers International, Joseph Tonelli, was indicted in 1978 for "depositing union pension funds in various

of the professional racketeer, whatever the era, has been "legitimate business." They are, of course, quite right, but then, "legitimate business" can be a term of art. Demaris meant that the intended victim of early building trades racketeers was the legitimate contractor (and not, primarily, the rank and file), O. Demaris, supra note 22, at 22. Salerno emphasized the entry of racketeers into legitimate business in the thirties through the sale of violence during organizing disputes, R. Salerno, J. Tompkins, The Crime Confederation, 283 (1969). Scotti saw entry during the 1950's (however accomplished) as a means of turning legitimate businesses into "rackets". L. Velie, supra note 104, at 168.

²⁰¹P. Maas, supra note 1, at 175.

²⁰²See notes 151-58 and accompanying text, supra.

banks to induce those banks to lend money to various customers."²⁰³ Leaders of the New Jersey Teamsters and Retail Store Employees unions "busted," or bankrupted, four banks by arranging loans to a "parade of characters whose names read like the index to the Valachi hearings."²⁰⁴ One borrower, twice convicted armed robber Patrick Pizuto, got his loan while serving seven to ten years in Trenton State Prison. He applied one day while he was on work release.²⁰⁵

Union funds have also been used to generate excessive commissions for favored money-manager and service enterprises. Wall Street brokerage firms have rolled up huge profits through "churning," or the needless buying and selling of stocks. While the beneficiaries are primarily mob-connected, also involved are several of the "biggest and most respected brokerage houses" on the Street, including Bear Stearns and Drexel Burnham Lambert.²⁰⁶ The Internal Revenue Service uncovered a novel attempt by organized crime figures to set up a national prepaid legal plan for Teamsters union members. Of the \$4 monthly premium, \$1 would have gone to organized crime, \$1 to the union leaders, and \$2 for insurance coverage. Lloyds of London was to have been the insurer.²⁰⁷

²⁰³Wall Street Journal, July 20, 1978, at 16, col. 1.

²⁰⁴Wall Street Journal, Sept. 14, 1977, at 1, col. 6.

²⁰⁵Id.

²⁰⁶Village Voice, Nov. 13, 1978, at 17, col. 1. Churning is "a great scheme," said a Brooklyn Strike Force attorney. "Who knows? It might even be legal."

²⁰⁷Wall Street Journal, Sept. 26, 1977, at 15, col. 6.

(ii) Retail Markets

"A racketeer who can threaten strikes and offer labor peace or a sweetheart contract to a merchant," says Nicholas Gage, "has a pronounced advantage in selling a product."²⁰⁸ Nowhere has this been demonstrated more forcefully than in a case involving one Joseph Gulmi, a salesman for Carlo Gambino's SGS Associates, and a successful Brooklyn night club proprietor, Ben Maksik. Gulmi approached Maksik with an offer to "assist" with any labor union trouble. Before long, Maksik was paying SGS \$2,500 a month. But that was just the beginning. In short order, Gulmi induced Maksik to revise his list of suppliers to include:

- 1) Carmella Mia Packing, Co., owned by Brooklyn crime boss, Joseph Profaci;
- 2) Alpine Wine & Liquor Distributors, in which Joseph Maglioco, Profaci's successor, was a stockholder;
- 3) Arrow Linen Supply Co., headed by Ambrosio Maglioco, Joseph's brother;
- 4) Bell Fuel Oil Co., owned principally by Peter "Petey Pumps" Ferrara, a captain in the Gambino family, and a major figure in the corrupt mason tenders' local 47; and,
- 5) Emcee Meat Co., owned by Paul Castellano, another captain in the Gambino family, and Gambino's brother-in-law.

Gulmi also suggested that he could overcome Maksik's "problem of obtaining star performers." According to Maksik, "Every

²⁰⁸ N. Gage, supra note 16, at 331-32.

day he had another suggestion as to who I should do business with."²⁰⁹

There is a growing list of such payments "in-kind" for labor peace. Sam DeCalvacante regularly shook down builders through his control of various construction unions. His pay-off was the heating and plumbing subcontracts for the projects on which he arranged labor peace.²¹⁰ In another case, racketeers in the building services "referred" victims to their cleaning and waxing company.²¹¹

As a general observation, however, organized crime's major attempt at business integration has come at the expense of the supermarkets. When a Yonkers Safeway store brought in a waste hauler unacceptable to racketeers in Teamsters local 27, the local picketed all the Safeway markets. Safeway's public relations chief explained to the McClellan Committee:

After several days we had a rather serious problem with both the quantity of the refuse in the stores and the condition of the smell, and therefore, the concern of whether the board of health might, possibly, close the stores. . . . After exploring all possibilities, it was decided that we had nothing to do but to try to make a deal with these people . . . "212

Although racketeers continue to influence carting in the

²⁰⁹Twelfth Annual Report, supra note 170, at 64-73; New York Times, March 5, 1969, at 32, col. 1.

²¹⁰Hearings, supra note 167, at 1613.

²¹¹McCarthy, supra note 148, at 187.

²¹²R. Kennedy, supra note 5, at 231.

New York area,²¹³ they exercise greater control over the stores through the Meat Cutters union. When Hills supermarkets dropped the mob-approved meat wholesaler, Moe Steinman told their chief buyer, George Gamaldi, that he had made " a big mistake." The "mistake" was manifest when butchers struck the chain.²¹⁴

A Senate investigator summed it up. "To get goods into a store, the first guy you'd go see isn't the purchasing agent, but the labor representative."²¹⁵ With this power, racketeers have marketed such disparate commodities as soap, bagels, clams, bread, carting services,²¹⁶ sausages,²¹⁷ and beef. The list is limited only by the current extent of the mob's "legitimate" businesses. The products are frequently inferior, and usually overpriced. In a now infamous episode, the public feasted on diseased meat intended for consumption by minks.²¹⁸ Another salesman reported meat that was "light in color, sometimes green, and at all times sweaty."²¹⁹ The consumer also loses

²¹³See New York Times, Nov. 21, 1974, at 38, col. 3, and July 22, 1977, at 19, col. 2.

²¹⁴J. Kwitny, supra note 6, at 271.

²¹⁵Id., at 274.

²¹⁶Id., at 267, 278.

²¹⁷New York Times, Sept. 8, 1971, at 38, col. 4.

²¹⁸Twelfth Annual Report, supra note 170, at 49.

²¹⁹Id., at 48.

when the racketeer insists that competitors' products be taken off the shelves,²²⁰ or where competitors must pay the racketeer to market their products. This was the situation of Iowa Beef Processors, the largest beef packer in the world, which paid Moe Steinman (and through Steinman a collection of butchers union officers, and supermarket buyers) a million dollars annually to sell "boxed" beef in New York City.²²¹ The tariff was reflected in higher retail prices.

(iii) Monopolistic Practices

Ever since Young and Driscoll organized the Chicago truckers in 1900,²²² labor racketeers have periodically, and for diverse reasons, attempted to reduce or eliminate competition within their industry. By threatening to strike recalcitrant employers, the union "enforces" a price-fixing scheme or an anti-competitive allocation of work, thus selling labor peace for the ability to dictate the victim-firm's business practices.

One such reason stems from the fact that particular companies will pay to secure work they might not otherwise obtain in the competitive market. The recent waterfront indictments, for instance, charge that labor leaders and reputed mobsters were so powerful they could "distribute work and contracts to selected companies" in exchange for payoffs.²²³ In one case,

²²⁰See J. Kwitny, supra note 6, at 264.

²²¹Id., at 288-313.

²²²See text accompanying note 96, supra.

²²³New York Times, May 27, 1979, § 4, at 7, col. 1.

the proprietors of a ship servicing concern reportedly paid union officials \$40,000 to obtain contracts. The unionists apparently delivered ship owners to the company by threatening work slowdowns.²²⁴ Anthony Scotto allegedly received \$300,000 in illegal payments from employers to prevent losses of waterfront business, and to obtain additional business.²²⁵ In another facet of the federal investigation, twenty-two persons were indicted in June, 1978 for conspiracy to "control business activity" in such southern and Gulf Coast ports as Miami, Jacksonville, Charleston, and Mobile.²²⁶

A similar pattern occasionally plagues the construction industry, where union officials allocate work to contractors within their jurisdictions.²²⁷ Their methods need not involve an elaborate bid-rigging operation; instead, they simply remove firms they do not like. Racketeers in East St. Louis, Illinois for example, have driven all the reputable builders from their domain. "No contractor from outside the area has ever made a profit" on a job in East St. Louis "due to the prevailing labor racketeering practices."²²⁸

²²⁴New York Times, March 7, 1979, § B, at 1, col. 1.

²²⁵New York Times, Jan. 18, 1979, at 1, col. 2. Scotto also reportedly agreed to reduce the number of fraudulent accident claims filed by longshoremen.

²²⁶New York Times, Jan. 17, 1979, at 38, col. 1.

²²⁷L. Velie, supra note 104, at 183.

²²⁸Illinois, supra note 8, at 221.

A slightly different use of union pressure wrought a "virtual monopoly" in the Los Angeles meat-loading industry.²²⁹ Pronto Loading and Unloading Co. paid five Teamsters officials \$600 a week to threaten meat packers with labor trouble if they failed to take advantage of Pronto's services. Pronto itself had a Teamster contract, but hired mostly illegal aliens, and was not required to pay any fringe benefits.²³⁰

This combination of Teamster strike threat and sweetheart deal has been used extensively to establish monopolies for mob-controlled companies. The payoff in these cases is primarily the privilege of dominating an industry. In carting the monopoly may be established by the use of a "whip" company, which, because it is permitted to use non-union help, can underbid competitors for contracts.²³¹ If that is ineffective, pressure may be applied directly to the customer. The regnant monopolists can then "name their own price, provide bad to indifferent service, and otherwise put a squeeze on the customers in their control."²³²

Teamster monopoly power is exercised every day at JFK airport. The local is 295, the power is Harry Davidoff.²³³

²²⁹Hearings, supra note 8, at 147 (statement of Thomas E. Kotoske).

²³⁰Los Angeles Times, April 13, 1973, § 2, at 2, col. 1.

²³¹L. Velie, supra note 104, at 171.

²³²1st Interim Report, supra note 98, at 330.

²³³Davidoff, whose criminal record dates to 1933, was a close associate of Meyer Lansky and members of the Lucchese crime family. New York Times, May 30, 1979, § B, at 1, col. 5. See also text accompanying note 10, supra.

When Davidoff decided during the mid-60's to "organize" (i.e., shakedown) the firms that carry freight to the airport, he threatened to picket any airline that used a trucker outside his association. The State Commission of Investigation concluded that "[t]his would have halted all shipments of any nature to these airlines."²³⁴ Members of the association paid a \$500 initiation fee, and handed in a list of their customers. "[N]o other association member could take them from him. Conversely, he could not take any of the accounts of other members."²³⁵ Members of the Bonanno crime family who own airport trucking companies receive an even greater break; Davidoff reduces their operating costs by authorizing the use of non-union drivers.²³⁶

A 1979 New York case suggests that labor racketeers, through the network of contacts characteristic of organized crime, can dictate almost any decision in the marketplace. When Phil Doran and Joseph Danetra, officers of Teamsters local 814, wanted to sign up new members, they went to work on the customers of the prospects' employers. First, they induced public television station WNET to break a \$10,000 contract with Bay Shore Storage Warehouse by arranging for a construction union to refuse delivery of materials for the station's renovations. The station's director of labor relations explained, "Every day that went by cost thousands of dollars." Then

²³⁴Tenth Annual Report, supra note 11, at 60.

²³⁵Id., at 74.

²³⁶New York Times, May 20, 1979, § B, at 1, col. 5.

Doran pressured Citicorp, the parent corporation of Citibank, to persuade two of its tenants to break contracts with Time Moving and Storage Company. Doran threatened to hold up construction of the new Citicorp Center; Citicorp complied by invoking provisions in the tenants' leases forbidding activity that would cause "labor unrest." The tenants were the law firm of Wilkie, Farr, & Gallagher and Price, Waterhouse, the national accounting firm. Time had given the latter an estimate of \$70,000; it eventually paid \$300,000 for the job.²³⁷

C. A basic Analysis of Labor Racketeering

Calculating the likelihood that a specific union will be the subject of racketeering activity involves two separate issues: are there characteristics of the subject union that render it particularly susceptible to racketeer manipulation, and, is there sufficient racketeering potential associated with the union to make control of it desirable to racketeers?

1. Susceptibility

A union is most susceptible to manipulation when the only effective barrier to abuse is the conscience of the union's officers. Several factors contribute to this potential institutional void, beginning with the law. The philosophy of the national labor relations acts, and the premise of labor department practice, is that protecting the democratic rights of workers insures the integrity of the collective bargaining process. The history of labor racketeering belies this con-

²³⁷ New York Times, June 2, 1979, § A at 22, col. 1, and May 20, 1979, § A, at 37, col. 5.

fidence in labor's capacity to clean its own house. The sovereign authority in the labor movement normally is the national union, or the international if the national has one or more Canadian locals. The AFL-CIO has never considered itself the policeman of its affiliates' internal affairs. The Federation's function is primarily to resolve political or jurisdictional conflicts among its constituents. The key distinction then is between unions like the UAW, the steelworkers, and the rubberworkers which operate in a national market where bargaining is highly visible and on a vast scale, and unions that operate in local products markets. Here, where each local's business agent deals with an array of smaller employers in an insulated bargaining environment, is the starting point of most union corruption. The national legitimately permits "local autonomy" in contract negotiation, and in the administration of union funds, due to the diverse local circumstances negotiations. This laissez-faire policy is accentuated where the national officers are also corrupt (the Teamsters, for example). In these situations, there is literally nothing in the structure of the labor movement to curtail racketeering by local officers.

The local membership may resist, but insurgency is always difficult and frequently impossible. A small number of reformers can be bought off, intimidated, or otherwise nullified by corrupt leaders. Large scale organization is problematic. A common feature of unions severely influenced by racketeers is a membership comprised of unskilled or semi-skilled workers, (e.g., the early building trades unions, the I.L.A., the mason tenders,

and Amalgamated local 355). Corruption has also tended to appear among unions where the membership is transient, frequently due to the irregular schedule of work, (e.g., the early building trades unions, I.L.A.); geographically scattered, due to the dispersion of job sites, (e.g., Teamsters, I.L.A., building trades); immigrant; or where the membership is made insecure by intense competition for jobs. The effect of these factors is a rank and file which is reluctant, if not unable, to organize against mob or corrupt domination. The epitome of susceptibility in this regard was the I.L.A. of the 30's and 40's; the mason tenders, or hod carriers, are probably the best current example. For comparison's sake it is worthwhile to consider the United Auto Workers, with a relatively few, concentrated, stable work places, and a more established and confident membership.

A vulnerable membership may nevertheless be protected by a tradition of idealism in the union leadership, what Dubinsky called a belief that unionism was "a cause, not a business."²³⁸ This historical factor, often associated with the old C.I.O. unions like the U.A.W., and the U.M.W.,²³⁹ is apparent in the I.L.G.W.U. Needlework was seasonal and scattered among thousands of small contractors, the workers (mostly young women) were primarily Jewish immigrants, and

²³⁸D. Dubinsky, supra note 3, at 144.

²³⁹See, e.g., J. Hutchinson, supra note 21, at 372; J. Kwitny, supra note 6, at 53.

job security and wages were extremely low. Predictably, racketeering became a problem. Yet, with the notable exception of its truckers' local,²⁴⁰ the I.L.G.W.U. has corruption under control and Dubinsky's hard-nosed dedication to the ideal of labor is probably the single most important reason for the union's present status.²⁴¹ Historical conditions may, on the other hand, contribute to the existence of organized crime infiltration. The reliance on underworld sluggers by certain unions during their formative periods rendered them highly susceptible to later domination.

A final indicium of susceptibility is the type of work customarily performed by the membership. Where the daily routine involves contact with underworld figures and criminal activity, (on the waterfront or among truckers, for instance), an expectation or acceptance of racketeering in the union is fostered. This historical factor is essentially the converse of the I.L.G.W.U. — the tradition of working on the fringes of the law makes the rank and file unlikely to object when lawlessness enters the union itself.

2. Desirability

The susceptibility factor is related primarily to the union and its membership. The desirability factor

²⁴⁰D. Dubinsky, supra note 3, at 143.

²⁴¹This is not to say that racketeering is no longer a serious problem in the garment industry as a whole, because it is.

is in many ways dependent upon the nature and structure of the industry in which the subject union operates; is it an industry in which employers will succumb to strike threats? Is it an industry in which sweetheart deals provide a substantial competitive advantage? Is it an industry which provides opportunities for the enhancement of other criminal activities? Also relevant to this portion of the inquiry is the organization and size of the benefit funds.

While a strike is unwelcome in any industry, the potential for strike insurance is greatest where delay is unusually costly—the employer is typically in the position of the Liquid Carbonic Company, where the racketeers' demands constitute the lesser of two evils. This time element, most characteristic of construction, shipping, and meat processing, is aggravated where business units are small and competition intense. There, the union's power vis-a-vis the individual employer is maximized, and the employer's ability to survive a strike in such circumstances may be almost nil. In contrast, the U.A.W., the rubber workers, even the various railroad brotherhoods, all deal with employers that have a great capacity to withstand work stoppages.

Since cheap labor is a universal desideratum in a market economy, "sweetheart" deals may appear anywhere. Still, they appear to be concentrated where labor costs are a significant competitive factor. This is most descriptive of the garment trades, where the finished product is now frequently produced by trucking fabric to non-union shops in New Jersey, Pennsylvania, Delaware and Virginia.²⁴² On the other hand, the prevalence

Footnote 242 on Page 60

of "sweetheart" arrangements in construction probably owes more to the great difference between union scale and the market rate, than to the relation of labor costs to overall expenses.

The industry variable in fund misuse, in addition to sheer size, is the relative bargaining power of union and employer. Where the union dominates, the employer often relinquishes control of the fund. The best example here is the Teamsters, where although four of the eight administrators of the Central States Fund have been picked by the employer-contributors, the fund is run completely by the union trustees.

The final consideration is applicable only to the professional or syndicate-connected racketeer. For the amateur, desirability is equivalent to the sum of the labor-racketeering potential in the industry, and the susceptibility of the union to his control. On the other hand, the professional must consider the needs of his other licit and illicit enterprises, especially those within the industry. To highlight this distinction, consider a hypothetical Wall Street office workers' union. The value of control would lie not in the standard racketeering activities, but instead, in the way union power could be used to facilitate the theft and manipulation of securities. For a not-so hypothetical situation consider recent reports of syndicate acquisition of coal companies, and the implication that it holds for the United Mine Workers. The pattern of integration, which began with the bootleggers'

²⁴²See J. Hutchinson, supra note 21, at 91-92; J. Kwitny, supra note 6, at 236.

entry into the Teamsters and culinary workers, is perhaps the sine qua non of mob operated business: success means paying less than the premium for labor.

3. A Test Case: the California Farm Workers

This section of the monograph began with the premise that the likelihood of underworld or corrupt influence in a particular union is a function of a number of factors which relate, primarily, to the nature, structure, and history of the union and industry. An initial effort was then made to isolate those factors which enhanced or diminished the potential for mob domination. It is, we think, appropriate to end the monograph with a test case—one in which there are distinct parallelisms with unions and industries so far considered.

The work force on the California farms is similar in relevant characteristics to the old I.L.A.—immigrant, underpaid, transient, dispersed, un/semi-skilled, powerless, and accustomed to difficult working conditions. The employer/growers are highly vulnerable to the strike threat; crops must be harvested within a relatively brief period of time. Idealism is present in some of the organization movements; violence is available to others.

What is the likely result?

II

LABOR RACKETEERING:
A SIMULATED INVESTIGATION
WITH TEACHER'S GUIDE

Workshop #1 - Investigative Planning

Premise: During the summer of 1978 Ithaca prosecutors and detectives conducted an investigation relating to extortionate and usurious credit transactions. Although the major focus of the investigation ultimately centered on a series of bankruptcy frauds engineered by one Joseph Grimaldi, a soldier in the Bustamonte crime family, numerous leads were developed concerning a wide range of other criminal activities. One such lead prompted recent physical surveillance, reports of which are attached.

The investigative predicate resulted from certain disclosures made by a loanshark borrower identified in the course of the Grimaldi investigation. This individual has been assured anonymity. He advised that prior to his association with Grimaldi, which began in the spring of 1978, he had obtained vig loans from a loanshark known to him only as Vinny "the Fist." Vinny "the Fist," now deceased, had arranged for repayments of the loan interest by securing for the borrower a membership card in the Tropical Fruit Processors Union, local 904. The borrower was not, nor had he ever been, a tropical fruit processor. The borrower was instructed to see a certain doctor, whose name he no longer remembers, and to complain of chest pains. The doctor, after a cursory two-minute examination,

or no examination at all, signed a disability claim which was then immediately mailed to the union. The borrower received a disability check several weeks later which he endorsed to cash and gave to Vinny. This procedure was followed on a bi-weekly basis. When the borrower complained to Vinny that the amount of the checks exceeded the interest which was due - and therefore the loan principal should be reduced - he was told that Vinny didn't get the whole amount - that it was "whacked up with the Union boys." Vinny also stated that the boys were "into a lot of other stuff" and that it wasn't "smart to try and mess with them."

The student is an Assistant Prosecutor assigned to the Ithaca District Attorney's Office Rackets Bureau, the principal functions of which are the investigation and prosecution of organized crime, official corruption, and labor racketeering. The investigating officers have provided the assistant with the attached reports.

Problem: Develop an Investigative Plan.

U.S. Department of Labor
Office of Labor-Management
Standards Enforcement
Washington, D.C. 20216

LABOR ORGANIZATION INFORMATION REPORT FORM LM-1

Form approved
Office of Management & Budget
No. 44-R1124

Labor-Management Reporting and Disclosure Act of 1959, as amended
and
Executive Order 11491, as amended

READ INSTRUCTIONS CAREFULLY BEFORE PREPARING REPORT. SUBMIT THIS REPORT IN DUPLICATE.

1. IS THE MEMBERSHIP OF YOUR LABOR ORGANIZATION COMPOSED OF (CHECK AS MANY BOXES AS ARE APPLICABLE): (A) <input type="checkbox"/> Postal Service Employees. (B) <input type="checkbox"/> Federal Government Employees Subject to Executive Order 11491. (C) <input checked="" type="checkbox"/> Employees in Private Industry.			
2. NAME OF LABOR ORGANIZATION (As shown on charter, constitution, etc.) Local Union 904		3. ORGANIZATION FISCAL YEAR ENDS ON: Month Day June 30	4. FILE NUMBER 052140
5. AFFILIATION Tropical Fruit Processors International		8. CITY, COUNTY AND STATE WHERE CHARTERED TO OPERATE: City County State	
6. DESIGNATION (Local, Lodge, etc.) Local Union	7. DESIGNATION NUMBER 904	Ithaca	Ithaca Ithaca
9. MAILING ADDRESS (For official mail to the organization) →	(In care of) NAME OF PERSON Stuart Harper		
	NUMBER AND STREET 111 Exeter Street		
	BUILDING AND ROOM NUMBER (if any)		
	CITY Ithaca	STATE Ithaca	ZIP CODE 10000
10. RECORDS TO VERIFY THIS REPORT ARE KEPT AT: (A) <input checked="" type="checkbox"/> Address in Item 9. (B) <input type="checkbox"/> Other (Show address with ZIP Code).		11. IS YOUR LABOR ORGANIZATION: (A) <input checked="" type="checkbox"/> A Local, Lodge, Branch, etc. (B) <input type="checkbox"/> An intermediate (e.g. conference, general committee, joint board, system board, joint council, district, etc.) (C) <input type="checkbox"/> A National or International.	
12. EXPECTED ANNUAL RECEIPTS. (A) <input type="checkbox"/> Less than \$30,000. (B) <input checked="" type="checkbox"/> \$30,000 or more.			
13. LIST THE NAMES AND TITLES OF ALL YOUR PRESENT OFFICERS: Percy Jordan, President Stuart Harper, Secretary-Treasurer Bruno Martino, Business Agent			

14. ENTER THE DATE OF YOUR ORGANIZATION'S NEXT REGULAR ELECTION OF OFFICERS:
Month June Year 1981

15. ADDITIONAL INFORMATION

ITEM NUMBER

(If more space is needed, attach additional sheets with further statements, properly identified.)

Each of the undersigned, duly authorized officers of the above labor organization, declares, under the applicable penalties of law,* that all of the information submitted herewith (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete.

19. SIGNED: Percy Jordan PRESIDENT
(If other title, cross out and write in correct title above.)
at: Ithaca Ithaca on: 7/9/79
City State Date Explain in Item 15.)
607/256-4505

20. SIGNED: Stuart Harper SECRETARY
(If other title, cross out and write in correct title above.)
at: Ithaca Ithaca on: 7/9/79
City State Date Explain in Item 15.)
607/256-4505

TELEPHONE NO. (Include Area Code)

TELEPHONE NO. (Include Area Code)

* See section on "Penalties" in accompanying instructions.

16. LIST FEES AND DUES REQUIRED. (Complete each line. Enter "None" or "Not applicable" as appropriate.)	(A) If one rate applies, enter here	(B) If more than one rate applies, enter here	
		Minimum	Maximum
(1) Initiation fee or fees required from new members	\$ _____	\$ 25.00	\$ 200.00
(2) Fees other than dues required from transfer members	\$ _____	\$ _____	\$ _____
(3) Are work permits issued? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes," give fees required	\$ _____ per _____	\$ _____ per _____	\$ _____ per _____
(4) Regular dues or fees or other periodic payments required to remain a member of the reporting labor organization (per year, mo., etc.) ..	\$ 13.00 per mo.	\$ _____ per _____	\$ _____ per _____

17. TWO COPIES OF YOUR LABOR ORGANIZATION'S CURRENT CONSTITUTION AND BYLAWS MUST BE FILED WITH THIS REPORT. UNDER CERTAIN CIRCUMSTANCES (SEE INSTRUCTIONS FOR THIS ITEM) YOUR PARENT NATIONAL OR INTERNATIONAL MAY FILE COPIES ON YOUR BEHALF.

Is your parent national or international submitting copies on your behalf? ☒ Yes ☐ No

List below each document filed with this report.

FEDERAL-EMPLOYEE LABOR ORGANIZATIONS SUBJECT SOLELY TO EXECUTIVE ORDER 11491, AS AMENDED,
ARE NOT REQUIRED TO COMPLETE ITEM 18.

18. INDICATE THE PROVISIONS MADE OR PROCEDURES FOLLOWED BY YOUR ORGANIZATION CONCERNING THE FOLLOWING MATTERS:

Please either (1) show in the proper column where a detailed statement on the particular item can be found in the documents submitted under Item 17, or (2) give such a detailed statement in Item 15 or if there is not enough space in Item 15, submit the detailed statement on a separate sheet attached to this form and identify the detailed statement in the proper column below.

Item	Page and section or paragraph number of constitution or bylaws	Identification of other detailed statement
(A) Qualifications for or restrictions on membership	¶ 2	
(B) Levying of assessments	¶ 4	
(C) Participation in insurance or other benefit plans	¶ 12	
(D) Authorization for disbursement of labor organization funds	¶ 15	
(E) Audit of labor organization financial transactions	¶ 20	
(F) The calling of regular and special meetings	¶ 23	
(G) (1) The selection of officers and stewards and of any representatives to other bodies composed of labor organizations' representatives	¶ 24	
(2) If any officer was not elected in accordance with the provisions of the constitution and bylaws which you have identified in Item 18(G)(1) above, give a detailed statement in Item 15 explaining the manner in which such officer was selected.		
(3) All procedures which a member must follow to protest a defect in the election of officers (including not only all procedures for initiating an election protest but also all procedures for subsequently appealing an adverse decision; e.g., procedures for appeals to superior or parent bodies, if any.)	¶ 26	
(H) Discipline or removal of officers or agents for breaches of their trust	¶ 30	
(I) Imposition of fines, suspensions, and expulsions of members including the grounds for such action and any provisions made for notice, hearing, judgment on the evidence, and appeal procedures	¶ 29	
(J) Authorization for bargaining demands	¶ 31	
(K) Ratification of contract terms	¶ 32	
(L) Authorization for strikes	¶ 33	
(M) Issuance of work permits	N/A	



POLICE DEPARTMENT
Ithaca.

-68-

DATE OF THIS REPORT DATE REPORTING

5/9/79

CASE STATUS:

☒ ACTIVE

☐ CLOSED

☐ UNFOUNDED

ALARM NO

DATE TRANSMITTED

COMPLAINT FOLLOW-UP

*FOR OFFICE USE ONLY
(Do Not Fold This Report)

OFFICER'S NAME (Printed) RANK FIRST LAST

COM

Det. John Montell

DAOS

10:10 A.M. Percy Jordan enters 111 Exeter Street [The headquarters of the Tropical Fruit Processors Local 904]. Jordan exited the building after 10 minutes and proceeded to the Royal Ithacan Restaurant located at 248 Market Street (a 15 block walk), where he engaged in conversation with a number of unidentified males who were seated at a table inside said establishment.

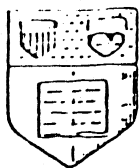
11:15 A.M. Jordan left the restaurant and was met by a male in front of the Turkish Baths next door (also named Royal Ithacan). This individual was referred to as "Stu" by an individual who advised him to put a dime in the parking meter across the street in front of Ithaca General Hospital. Vehicle at meter is a 1979 Thunderbird, grey, license # 806 NWQ, registered to Tropical Fruit Processors, 111 Exeter Street.

11:30 A.M. Jordan and Stu were approached by two unidentified individuals (male #1 6'0", 180 lbs.. conservatively dressed; male #2 short, balding, with glasses). Male #1 spoke to Jordan. Jordan turned to "Stu" and stated that it was time for a bath. He (Jordan) and the man he was talking to entered the Royal Ithacan Turkish Baths.

12:00 P.M. "Stu" entered 111 Exeter Street.

12:45 P.M. Jordan and male #1 exit bath and enter Thunderbird at parking meter. Jordan drives to Commercial Candies Inc. Warehouse, 1919 Old View Way and male #1 exits auto and enters building. Jordan returned to 111 Exeter Street.

6:30 P.M. Jordan and "Stu" emerge from 111 Exeter Street and enter the automobile which was parked in a parking lot two blocks away. Surveillance terminated.



POLICE DEPARTMENT
Ithaca.

-70-

DATE OF THIS REPORT 5/10/79

5/10/79

CASE STATUS:

☒ ACTIVE

☐ CLOSED

☐ UNFOUNDED

ALARM NO

DATE TRANSMITTED

COMPLAINT FOLLOW-UP

*FOR OFFICE USE ONLY
(Do Not Fold This Report)

OFFICER'S NAME (Printed) RANK FIRST LAST

COM

Det. Oliver Murray

DAOS

Observation of Bruno Martino CR # 582561

1. At about 3:25 P.M., on the above date, the assigned officer entered the Royal Ithacan Restaurant through the main entrance. The restaurant is really a catering hall and all the rooms were vacant except the bar or cocktail lounge which is located to the rear of the building. The lounge had a large oval bar which was empty except for the subject and four males who were sitting with him. They were located at the part of the bar that was next to the entrance leading to the parking lot. All of the males looked out of the glass doors leading to the lot at one time or another, during the entire meeting.

2. The subject was talking primarily to a male who was referred to as Jimmy during the first fifteen or twenty minutes of the meeting. The other males were a little away from them to allow them some privacy. After a while they all talked together, but Martino was the center of attention. He was called to the telephone at least twice by his name and they all were well cared for and friendly with the help of the restaurant.

3. At about 4:10 P.M., Martino left the restaurant without his coat with one of the males who was referred to as Jim and drove away in Martino's car (he had taken his car keys out of his coat pocket and left the coat on the chair). He said "I'll see you later," when he left. The other males remained at the bar.

4. At 4:30 Martino and Jim returned to the restaurant. Martino picked up his coat, and left.

5. At about 5:30 P.M., the males at the bar greeted a male entering the premises and called him Frank. They all engaged in conversation with him, but Jim seemed to be a little aloof. The male Frank took a piece of paper out of a billfold and showed it to the others. It was passed around and returned to Frank.

6. Descriptions of males present:

Jim - M/W/47, 5'9", 185 lbs., thinning straight brown hair combed back, fair complexion, looks like Rocco Antonini the wrestler, bored expression, wore turtleneck sweater, either black or navy, and a checked overcoat that he never removed.

Larry - M/W/36, 5'10", 200 lbs., black hair, long and styled, long sideburns, nice looking, bedroom eyes, olive complexion, wore dark blue sport coat.

Frank - M/W/32, 5'8", 200 lbs., paunch, bushy sideburns, cleft in chin, receding hair line, full face, wore gold sport shirt.

Male #1 - M/W/39, 5'9", 145 lbs., black thinning hair, narrow face, sallow complexion, large nose, wore green work jacket.

Male #2 - M/W/40, 5'6", 155 lbs., thin hair combed forward, looked like it was dyed, reddish in color, small nose, looks pale. Wore checked sport shirt, tan safari jacket.

7. The following plates were taken from cars in the parking lot just outside:

VHX 349 - Cad.
UZX 868 - Chevrolet
VZW 461 - Cad.
LRN 940 - Cad.
RLV 961 - Cad.
VVE 281 - Cad.
UIV 980 - Cad.
UUS 293 - Cad.

8. License Plate VVE 281 is listed to James Bradson, Reyes Hotel, Ithaca. Bradson is known to the police department as Jimmy "the flea" through technical informant information obtained in 1965. According to reliable informants, "the flea" is reputed to be an expert arsonist who has torched a number of buildings for insurance purposes. He has never been arrested. Identification by assigned officers of "Jim" above as James Bradson was made through 1965 surveillance photo.



-72-

POLICE DEPARTMENT
Ithaca.

DATE OF THIS REPORT DATE REPORTING

5/11/79

CASE STATUS:

☒ ACTIVE

☐ CLOSED

☐ UNFOUNDED

ALARM NO

DATE TRANSMITTED

COMPLAINT FOLLOW-UP

*FOR OFFICE USE ONLY
(Do Not Fold This Report)

OFFICER'S NAME (Printed) RANK FIRST LAST

COMI

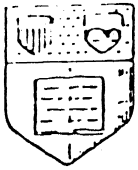
Det. John Montell

DAOS

10:00 A.M. Percy Jordan double parked his car in front of 248 Market Street, Ithaca, and walked to the Royal Ithacan Turkish baths, 250 Market Street.

10:20 A.M. Jordan emerged from the Royal Ithacan and entered the adjoining restaurant where he was observed placing a telephone call over the public telephone located therein. Detective Montell positioned himself next to Jordan and was able to overhear Jordan state into the telephone: "I just went to the Baths to see that guy ... He wasn't there ... so I left word for him to call me at my office. As soon as he calls I'll tell him what you want and call you back. Okay, so long."

10:30 A.M. Jordan drove to the vicinity of 111 Exeter Street, parked his car and entered the building.



POLICE DEPARTMENT
Ithaca.

-73-

DATE OF THIS REPORT UNIT REPORTING

5/14/79

CASE STATUS:

☒ ACTIVE

☐ CLOSED

☐ UNFOUNDED

ALARM NO

DATE TRANSMITTED

COMPLAINT FOLLOW-UP

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OFFICER'S NAME (Printed) RANK FIRST LAST

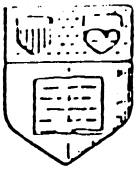
COM

Det. John Montell

DAOS

1:45 P.M. Stuart Harper ("Stu" in report of 3/5/79) and Percy Jordan drive into the parking lot located on Exeter Street between 12th and 13th Avenues. After emerging from the automobile they enter 111 Exeter Street.

4:15 P.M. Stuart Harper and Percy Jordan emerge from 111 Exeter Street and walked to the aforementioned parking lot. Harper stated to Jordan - "I'm beat - catch you at the restaurant in the morning." Harper then hailed a taxi, and Jordan entered his vehicle (1978 Oldsmobile, blue, license # 908 SA2, registered to Percy Jordan, 112 Algonquin Way, Ithaca) and drove to said address.



POLICE DEPARTMENT
Ithaca.

-74-

DATE OF THIS REPORT UNIT REPORTING

5/15/79

CASE STATUS:

☒ ACTIVE

☐ CLOSED

☐ UNFOUNDED

ALARM NO

DATE TRANSMITTED

COMPLAINT FOLLOW-UP

*FOR OFFICE USE ONLY
(Do Not Fold This Report)

OFFICER'S NAME (Printed) RANK, FIRST, LAST

COM

Det. John Montell

DAOS

10:30 A.M. Jordan enters Royal Ithacan Restaurant and joins Harper who was already seated at a table. Detective Montell seated himself at a table adjacent to the table occupied by Jordan and Harper and overheard them having a discussion regarding welfare fund contributions. Jordan stated that Bruno would see to the recruiting after their meeting.

12:00 noon Jordan emerged from the restaurant and entered the Baths. Five minutes later Bruno Martino entered that location.

12:45 P.M. Martino exited the Baths with Jordan. Jordan proceeded to 111 Exeter Street and entered. Martino proceeded to the Two Hundred Restaurant (200 North Belt Ave.) and sat at a table next to an unknown male [W, 32 Yrs., 5'7", black hair, blue jacket and open collared shirt with tie open and hanging straight.] The following are excerpts of their conversation:

Martino: He got everybody to sign, even the Spanish people were signing and they didn't even know what they were signing. So you got no problem at all.

Male: What are you worrying about?

Martino: Nothing, just get it down.

Male: (Inaudible)

Martino: He gave us \$500.00 for his sister to work in the shop, but that was a special deal.

Male: I'm not going to save that much.

Martino: You'll save plenty.

Male: You can guarantee that?

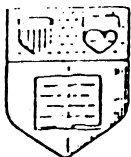
Martino: I'll call the man himself -- He's waiting to hear from me. I just left him.

1:05 P.M. Martino left the table and proceeded to a pay telephone in the rear of the restaurant. He made one call which lasted approximately 5 minutes and returned. As he was approaching the table, Martino stated that "It's all set -- forget the night differential."

The unknown male then glanced in the officer's direction and motioned for Martino to keep his voice down.

1:10 P.M. Martino and the unknown male exited the restaurant, entered the Martino vehicle, and drove over the National Bridge. Martino, who was driving the automobile, drove into a bus depot located at the foot of the bridge and remained there for a short period of time. Neither Martino nor the unidentified individual emerged from the automobile. Martino then drove the automobile from the depot area and proceeded west on Metropolitan Avenue. Due to these evasive manoeuvres, the assigned officers were unable to follow the automobile.

2:00 Martino entered 111 Exeter Boulevard.



POLICE DEPARTMENT
Ithaca.

-76-

DATE OF THIS REPORT UNIT REPORTING

5/16/79

CASE STATUS:

☒ ACTIVE

☐ CLOSED

☐ UNFOUNDED

ALARM NO

DATE TRANSMITTED

COMPLAINT FOLLOW-UP

*FOR OFFICE USE ONLY
(Do Not Fold This Report)

OFFICER'S NAME (Printed) RANK, FIRST, LAST

COM'D.

Detective John Montell

DAOS

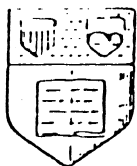
11:00 A.M. Officers arrive at Ithacan Restaurant and enter same. While sitting at the bar in this location the officers observed the bartender give one of the patrons a line on the Knick basketball game for this evening. He gives the customer 6 1/2 points and the customer agreed to the bet. About one hour after this incident Jordan entered the restaurant. He motioned to the bartender and seemed to be inquiring as to who the officers were. The officers were unable to hear the reply. Fifteen minutes later the officers left the restaurant and Detective Margaret Seeper entered. As she entered, Harper also entered and held the door for her.

12:30 Harper and Jordan left the restaurant and entered the baths.

12:45 Undercover officer J. Teague entered the baths (see separate report).

1:45 Harper and Jordan exited the baths and entered the restaurant. Harper immediately went to the telephone and made a call. Detective Seeper overheard Harper state that he was in a conference and could not get back to the other party earlier, but that they would straighten it out in 20 minutes.

1:50 Harper and Jordan exited the restaurant and proceeded to 111 Exeter Street, parked and entered.



POLICE DEPARTMENT
Ithaca.

-77-

DATE OF THIS REPORT UNIT REPORTING

5/16/79

CASE STATUS:

☒ ACTIVE

☐ CLOSED

☐ UNFOLDED

ALARM NO

DATE TRANSMITTED

COMPLAINT FOLLOW-UP

*FOR OFFICE USE ONLY
(Do Not Fold This Report)

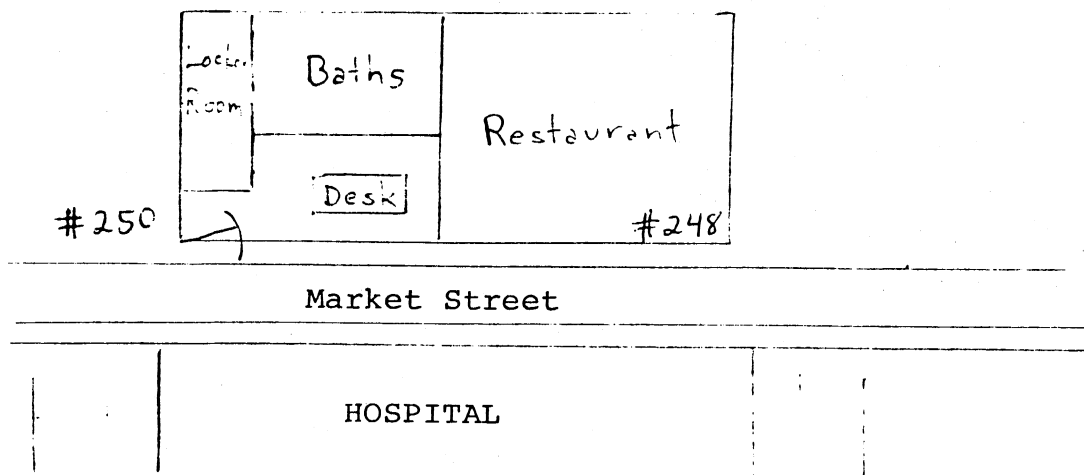
OFFICER'S NAME (Printed) RANK FIRST LAST

Detective J. Teague

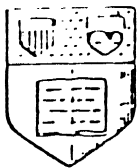
COM

DAOS

At this date and time the undersigned entered the Royal Ithacan baths, 250 Market Street, Ithaca. From what the officer could see, the bath layout was as follows:



The undersigned advised the attendant at the desk that he was interested in a steam bath. The attendant did state that the club had a sponsored membership and that it would be necessary for the undersigned to join the club. The undersigned asked about facilities, and the attendant stated that there was a locker room and three steam rooms.



POLICE DEPARTMENT
Ithaca.

-78-

DATE OF THIS REPORT UNIT REPORTING

5/18/79

CASE STATUS:

☒ ACTIVE

☐ CLOSED

☐ UNFOUNDED

ALARM NO

DATE TRANSMITTED

COMPLAINT FOLLOW-UP

*FOR OFFICE USE ONLY
(Do Not Fold This Report)

OFFICER'S NAME (Printed) RANK FIRST LAST

COM

Detective John Montell

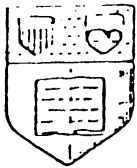
DAO

The following listing was received from Ms. Sulkin of the
Ithaca Telephone Company Security Office.

Tropical Fruit Processors, Local 904 256-4505
111 Exeter Street

Royal Ithacan Restaurant 259-0232
948 Market Street pay phone 259-9733

Royal Ithacan Baths 259-0070
250 Market Street



POLICE DEPARTMENT
Ithaca.

-79-

DATE OF THIS REPORT UNIT REPORTING

5/21/79

CASE STATUS:

☒ ACTIVE

☐ CLOSED

☐ UNFOUNDED

ALARM NO

DATE TRANSMITTED

COMPLAINT FOLLOW-UP

*FOR OFFICE USE ONLY
(Do Not Fold This Report)

OFFICER'S NAME (Printed) RANK FIRST LAST

CO

Detective John Montell

DA

1730 HRS - Officers at location, observation commenced

1800 HRS - Percy Jordan exits 111 Exeter Street and enters his auto and proceeds south.

1815 HRS - Percy Jordan arrives at Royal Ithacan Restaurant and enters same. Detectives also enter the restaurant. Subject goes to the bar and orders a drink after greeting several people.

1830 HRS - Subject gets up from the table and goes to the men's room. Detective Thomas also adjourns to the men's room and enters one of the stalls. While therein Detective Thomas was able to hear subject using one of the pay phones in the men's room. The following conversation is what transpired:

- I was told by those guys at the club that's the way they want it handled, and it's up to you, I can't keep going back and forth to those other people.

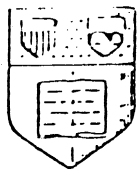
- Bruno actually does the right thing. More than 12 guys. He's got the right idea, gets a little hot sometimes, but there's where you come in, as the safety valve.

- No, but Bruno called me just about an hour ago and says that that guy didn't want to go along so that he mentioned that carelessness could lead to a tragedy. I mean I really can't talk here, you know what I mean -- but I mean that overall he is real good -- I mean anybody can handle one

Page 2 - Observation Report 5/21/79
Detective John Montell

situation -- but he's real good with all the others
we're having trouble with.

(Due to drilling on the street the rest of the conversation could
not be overheard.)



POLICE DEPARTMENT
Ithaca.

-81-

DATE OF THIS REPORT UNIT REPORTING

5/22/79

CASE STATUS:

☒ ACTIVE

☐ CLOSED

☐ UNFOUNDED

ALARM NO

DATE TRANSMITTED

COMPLAINT FOLLOW-UP

*FOR OFFICE USE ONLY
(Do Not Fold This Report)

OFFICER'S NAME (Printed) RANK FIRST LAST

COI

Detective John Montell

DAO

10:30 A.M. Harper exits 111 Exeter Street and walks to Ithaca Dime Bank on corner of Hall and 13th.

Officers secreted themselves within the bank and observed subject go from teller to teller apparently cashing one or more checks at each position.

10:55 Harper exited bank and proceeded to Manfred Hill Professional Building. Assigned Officers did observe subject take elevator to 3rd floor. Officers stationed themselves at 1st floor Drugstore.

10:10 Subject was observed leaving Suite 106 on 1st floor and exiting from building. Suite 106 contains offices for three doctors.

10:20 Subject returned to 111 Exeter Street.



POLICE DEPARTMENT
Ithaca.

-82-

DATE OF THIS REPORT UNIT REPORTING

5/24/79

CASE STATUS:

☒ ACTIVE

☐ CLOSED

☐ UNFOUNDED

ALARM NO

DATE TRANSMITTED

COMPLAINT FOLLOW-UP

*FOR OFFICE USE ONLY
(Do Not Fold This Report)

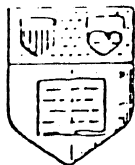
OFFICER'S NAME (Printed) RANK FIRST LAST

COM

Detective John Montell

DAOS

1. At approximately 7:00 P.M. the above named Officers went to the Royal Ithacan Restaurant. The Officers stayed at the bar for approximately 1 and 1/2 hours, with no results, the Officers then went to the dining room, which was crowded mostly with doctors at this time. The Officers stayed at the main dining room and there was no one in the main dining room that is connected with this case.



POLICE DEPARTMENT
Ithaca.

-83-

DATE OF THIS REPORT UNIT REPORTING

5/25/79

CASE STATUS:

☒ ACTIVE

☐ CLOSED

☐ UNFOLN

ALARM NO

DATE TRANSMITTED

COMPLAINT FOLLOW-UP

*FOR OFFICE USE ONLY
(Do Not Fold This Report)

OFFICER'S NAME (Printed) RANK FIRST LAST

CO

Detective John Montell

DAC

1:00 P.M. Detectives entered the Royal Ithacan Restaurant and observed Jordan engaging in social conversation with both patrons and employees of the restaurant.

1:45 P.M. Jordan joined Martino and an unidentified male (50-55, 5'10", 180 lbs., red hair) at a table. Jordan introduced himself and stated that he was "Stu's" "partner". The unknown man got up from the table and went to the bar area. The following portion of the conversation between Jordan and Martino was overheard:

Jordan: It has to be settled this week, we don't need them ... they need us.

Martino: I know that, but Red has no idea what we're running into ... We're out seeing the people and he says relax, it'll be taken care of.

Jordan: Hey look, if he tells me to call, I call or we can meet next door and do it like he says, but I'm only going to move when he says, but I tell you, if this situation comes to pass we will come out smelling like a rose. He needs us, we don't need him and don't forget that.

Martino: Hey, worse come to worse if that guy don't deliver (at this time Martino punches his left hand with his right fist) ... case close.

U/M: What time are those people coming?

Jordan: Whenever ... I'll be here for another hour and then at the office. Did you eat? No, well let's have a couple of drinks then sit down and eat and maybe settle this situation here.

2:30 P.M. Martino, Jordan and the unidentified male who had accompanied Martino to the restaurant took seats at a table approximately twenty feet from the bar. The following was overheard:

U/M: You have to help us out.

Jordan: Don't worry about it, a little time and it'll be fine as soon as I speak to the old man.

2:40 P.M. Jordan received a telephone call over the house telephone. Jordan stated over the telephone, "We had a talk with you know who. Don't worry. I'll be here for a while."

2:42 P.M. Jordan walked out of the restaurant and looked up and down the street.

2:45 P.M. Jordan, who had re-entered the bar, placed a telephone call over the public telephone. After concluding the telephone call, he stated to "Bruno" and "Red" that "It couldn't be better, we can go home now."

2:50 P.M. Jordan and Martino exited the restaurant. "Red" placed a telephone call from the phone booth on the corner of Market and 3rd Street. Detective Seeper moved into the adjoining booth and overheard "Red" state: "It's all over -- I told you they could do anything -- I don't give a damn, the f----- Navy did it during World War II, it's the only way to bring the stuff in."

Page 3 - Observation Report 5/25/79
Detective John Montell

2:55 P.M. "Red" exited the telephone booth, entered a taxicab. Surveillance was discontinued due to traffic congestion near a construction site.

3:15 P.M. Detective Seeper returned to the Royal Ithacan and observed Jordan speaking in a low voice to Katy, the hat check girl. The following was overheard:

Jordan: They were watching me, when I was talking on the phone before?

Katy: (Nods her head in the affirmative)

Jordan: Who?

Katy: Two men, they're gone now.

Jordan: They're gone?

Katy: (Nods her head in the affirmative)



POLICE DEPARTMENT
Ithaca.

-86-

DATE OF THIS REPORT UNIT REPORTING

6/5/79

CASE STATUS:

☒ ACTIVE

☐ CLOSED

☐ UNFOUNDED

ALARM NO

DATE TRANSMITTED

COMPLAINT FOLLOW-UP

*FOR OFFICE USE ONLY
(Do Not Fold This Report)

OFFICER'S NAME (Printed) RANK FIRST LAST

COM'D

Det. John Montell

DAOS

Observation report at Royal Ithacan Baths, 250 Market St., Ithaca, New York

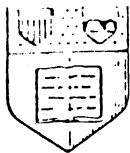
10:15 A.M. Officers stationed themselves at vicinity of the above location.

10:19 A.M. Percy Jordan was observed exiting the baths and standing on the street i/f/o/ said location. He appeared to be nervous and was pacing back and forth.

10:22 A.M. White Cadillac, license plate ITH903 registered to Morgan Blanchard, 2505 Coldspot Ave., Ithaca, double parks at location. Male exits and approaches Jordan. At this point, Det. Seeper walked by and overheard male state, "the cops are probably all over the place." Jordan then did state, "there is nothing they can hear once we're inside." - "park the car."

10:23 A.M. Male parks vehicle and enters location with Jordan.

10:35 A.M. Male exits location; enters vehicle and drives off. Surveillance is terminated due to traffic.



MEMORANDUM

5/28/79

To: District Attorney's Rackets Bureau, Ithaca

From: Patrol Bureau

Re: Defendant Paul Hooke, possible racketeering victim

Arrested and charged at T/P/O in that the defendant did possess one .38 caliber Smith and Wesson revolver serial # G240781 and did not have a valid permit on his person.

Defendant after being advised of his rights stated that he was the president of Candida Fruits. Defendant did further state that he needed said weapon for personal protection in that one week before, he was told by the "business agent for Local 904" that if he didn't cooperate and the other union represented his workers, that the other union members were sometimes sloppy and could drop a match and that the whole place could burn down.

ROUTING AND TRANSMITTAL SLIP

To: File
From: ADA Takell
Date: 5/31/79
Re: People v. Hooke

On this date I was contacted by A. Norgis Hablut, Esq., attorney for the defendant Hooke. He stated that, based on his conversation with the defendant, he would move for suppression of the evidence and dismissal of charges, in that the police officer lacked probable cause to search.

I have reviewed the facts of the case, and agree that there is no possibility of surviving a motion to suppress.

I have further been informed by Mr. Halbut that the statements made by his client were inaccurate and were only made under severe emotional strain; that he has instructed his client to say no more about the matter; and that if his client were called before a grand jury and granted immunity he would deny the truth of the statements he made to the arresting officer.

Mr. Hablut did state off the record that Mr. Hook would rather go to jail than to a cemetery.

OFFICE OF THE
DISTRICT ATTORNEY

INTELLIGENCE UNIT

BIOGRAPHIC KEY DATA

NAME Bruno Martino

ALIAS Bruno Martin

NICKNAME

DESCRIPTION

SEX Male HGT 5'8"
DOB 2/8/33 WGT 180
POB Ithaca EYES Brown
COLOR White HAIR Black
OTHER

PICTURE



IDENTIFICATION NOS

CR 582561
FBI 291870
SOC SEC
LICENSE

RESIDENCE

4849 Schyler Place, Ithaca

BUSINESS INTERESTS

Spectacular Management Corp., 840 127th St., Ithaca
Tropical Fruit Processors Local 904

LOCATIONS FREQUENTED

MOST RECENT PREVIOUS ARRESTS

<u>DATE</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
2/9/77	assault	dismissal
5/16/75	assault	p.g. harrassment, \$250 fin
5/09/74	extortion	dismissed
11/14/69	gambling	conv., \$100 fine

ORGANIZED CRIME POSITION OR AFFILIATION

Associated with Charles Bustamonte family

KNOWN CRIMINAL ACTIVITIES

extortion
assault

SUSPECTED CRIMINAL ACTIVITIES

labor racketeering
arson

ASSOCIATES

<u>NAME</u>	<u>CR#</u>
Thomas DeNoto	583187
Percy Jordan	585939
Vincent Rucci	512589
Roger Stoneton	

BACKGROUND AND MISCELLANEOUS

Subject is believed to be a strong-arm man for Ricardo Barcelona. 1974 arrest with Percy Jordan for extortion resulted from juke-box placements in Ithaca diners. Indictment was dismissed after complainant refused to testify after a suspicious fire in the kitchen of diner. Investigation by police and fire marshalls had negative results.

-91-
ORGANIZED CRIME DIVISION

INTELLIGENCE UNIT

BIOGRAPHIC KEY DATA

NAME Ricardo Barcelona

ALIAS Rick Barcelono

NICKNAME Uncle Ricky

DESCRIPTION

SEX Male HGT 5' 7"
DOB 6/12/28 WGT 160 lbs.
POB Ithaca EYES brown
COLOR white HAIR grey
OTHER

PICTURE



IDENTIFICATION NOS

CR 274189

FBI

SOC SEC

LICENSE

RESIDENCE

11-12 Parkway Court, Ithaca

BUSINESS INTERESTS

Roving Metal Comp., 414 South Main Street
(reputed to be the owner);

TNT Jukeboxes and Entertainment Productions

Commercial Candies Inc. (owner of record)

LOCATIONS FREQUENTED

Lenny's Bar, 83 W. 27th Street;

Manny's Florists, 143 Avenue A.

MOST RECENT PREVIOUS ARRESTS

<u>DATE</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
12/15/63 143 Avenue A	Dis Con.	dism.
2/07/64 143 Avenue A	Dis Con.	\$50/5 days

ORGANIZED CRIME POSITION OR AFFILIATION

Bustamonte family (capo)

KNOWN CRIMINAL ACTIVITIES

hijacking

SUSPECTED CRIMINAL ACTIVITIES

cigarette smuggling

ASSOCIATES

<u>NAME</u>	<u>CR#</u>
Vincent Rucci	512589
Thomas DeNoto	283187
Bruno Martino	582561
Anthony Lombard	423918
Phillip Tarrant	211582
Carl Plant	286219
Yuri Gismondi	(son-in-law)

BACKGROUND AND MISCELLANEOUS

Subject is believed to be extremely influential in Bustamonte family and after the conviction of Vincent Rucci in 1977 is likely to be named consigliere. Sources indicate that like Rucci he is anti-narcotics and urges the infiltration of legitimate business as a way of utilizing gains from hijacking and other traditional organized crime activities.

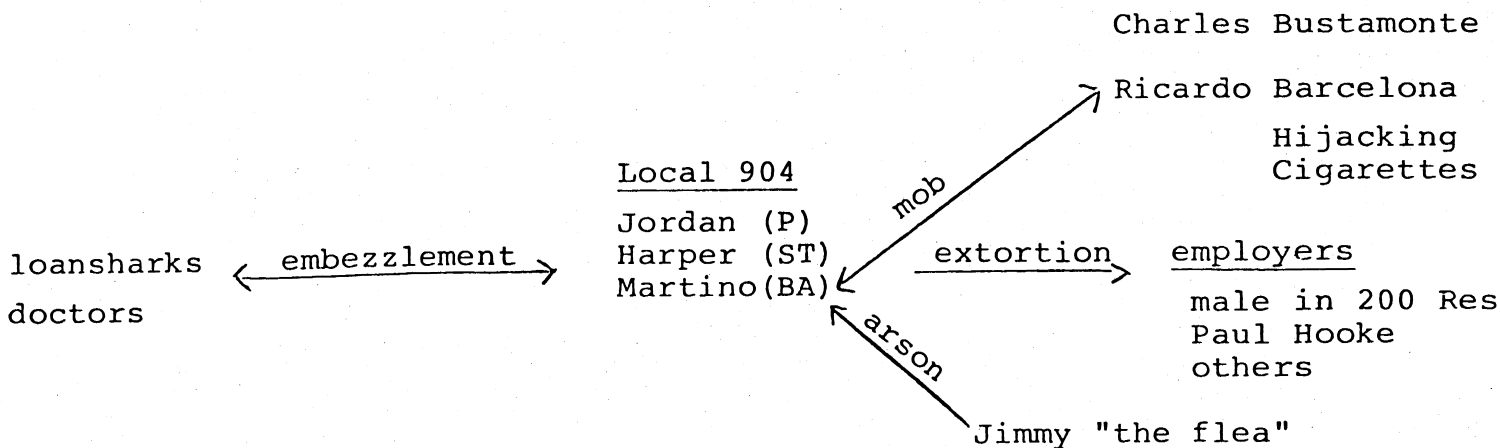
Subject is extremely effective in utilizing layers of insulation to protect himself from prosecution. He successfully avoided indictment in the 1976 DeNoto hijacking case by this technique.

Guide: Workshop #1 - Investigative Planning

I. The instructor should undertake the following analysis in developing an appropriate investigative plan.

- ▶ Identify targets and potential targets by name, position, or function and articulate the goals of the investigation.
- ▶ Suggest alternative means of proceeding and determine potential impact of each on producing the desired result.
- ▶ Identify and resolve legal issues associated with each.

A. Targets



1. What are the relevant factors in identifying the appropriate goals and targets of the investigation?
 - a. most "significant" criminal activity?
 - b. most dangerous individuals?
 - c. highest ranking (most powerful) organized crime figure?
 - d. development of leads for new investigations?
 - e. recruitment of informants?

- f. most likely to be successful with reasonable allocation of resources?
- g. likely to have greatest impact on a specific criminal activity?

B. Would the continued use of conventional means of investigation succeed in achieving those aims?

- 1. Physical surveillance
 - a. experience to date
 - b. use of the baths to avoid surveillance
 - c. driving tactics (obs. report of 5/15)
 - d. don't know where Jimmy "the flea" lives or where he will strike.
- 2. Undercover officer
 - a. traditional organized crime problem
 - b. experience of Det. Teague on 5/16 in Baths
- 3. Informants
 - a. Hooke is apparently scared and has made it clear he will not provide additional information.
 - b. Original informant has been assured anonymity and his information is obviously dated
 - c. What would be the effect of attempting to obtain information from other fruit processors.
- 4. Witnesses
 - a. victims are scared[history of arson]
 - b. generally participants in sweetheart contracts will not come forward
 - c. no others

5. Search warrants—
 - a. agreements and threats are oral
6. Grand jury and compulsion of testimony
 - a. insufficient information with which to effectively question
 - b. roles are not known—problem of who should be granted immunity
 - c. corroboration requirement if accomplice—

II. Electronic Surveillance

A. Is it suitable?

1. Conventional means have not and could not succeed
2. Criminal activity is of serious nature and poses a threat to community
3. Use of telephones and oral conversations
 - a. sufficient for requirements of statute
 - b. would, in fact, produce evidence and investigatory leads
4. Matters which cannot be answered from observation reports
 - a. manpower - quantity and quality
 - b. money resources - equipment
5. Probable cause

Must demonstrate that identifiable persons are using particular phones to conduct designated crimes.

If past years' experiences hold true, there should be a fairly lively discussion as to whether or not probable cause for the warrant exists and if so, for what location(s). Indi-

vidual observation reports should be analyzed for relevant information. Reasonable deductions regarding the observation, overheards, and intelligence should be made and the significance of the deductions made explicit.

e.g. a) report of 5/25 "the . . . Navy did it during World War II" could very well, in the context of the conversation, mean "deal with the Mafia"; see Campbell, The Luciano Project

b) relationship between 5/21 overheard of Jordan re Bruno's report of his conversation about "carelessness" and "tragedy" and Paul Hooker statement of 5/28.

c) during 5/21 conversation, Jordan stated that Bruno called an hour before. At that time Jordan was at the Union headquarters.

Conversations regarding labor racketeering may in many cases appear to be quite innocent. Expert testimony would probably be required to explain the type of crimes being engaged in by the participants, and the significance of the conversations in light of the racketeering activity.

In this type of case, the object appears to be to demonstrate a pattern of crime which is continuing. Note the 5/21 overheard-"all the others were having trouble with."
Problems dealing with Probable Cause

a) identification of the Jimmy "the Flea" probably came from pre-1968 illegal wiretap. To what extent can that identification be used as basis of probable cause?

b) Paul Hooke recanted his initial "statement" to police. Does that increase or decrease its probative value?

Location of tap or bug

There are at least three possibilities to consider:

- 1) tap and/or bug at union headquarters,
- 2) tap at restaurant,
- 3) bug at baths.

In considering the advantages of each, identify potential drawbacks:

- 1) installation problems
- 2) 3 rooms in steam baths (p/c as to all?)
- 3) doctors use of public phone in restaurant
- 4) types of conversation occurring in steam baths

The continuation of the simulation presupposes a decision to install a wiretap at union headquarters. Section leaders should skillfully lead the students to that conclusion.

Workshop #2 - Execution of Eavesdropping Orders

Premise: It has been determined that District Attorney Frank Smith should apply for an eavesdropping warrant addressed to the telephone located in the Union Headquarters. The resulting application was granted and the annexed order issued. The attorney supervising the execution has, of course, provided the officers with a set of minimization instructions which require the maintenance of plant reports or logs of the intercepted conversations.

The eavesdropping warrant designates Jordan and Martino as named parties; the issuing judge is also aware of the likelihood that conversations of Harper may be intercepted as "a person as yet unknown." He specifically declined to issue particular minimization instructions as to the latter.

- Problem:
- I. What criticism, if any, should be directed at the manner in which the order of July 10th was drafted?
 - II. What additional instructions, based on the daily plant reports of conversations thus far intercepted, should be given to the investigating officers?
 - III. What amendments, if any, are required?

TRIAL COURT OF ITHACA
MOTION TERM

	x	
In the Matter	x	
	x	
of	x	
	x	
the interception of certain wire	x	EAVESDROPPING
communications transmitted over	x	
telephone line and instrument	x	WARRANT
presently assigned number 256-4505	x	
located in, and subscribed to by,	x	
Tropical Fruit Processors, Local	x	
904, 111 Exeter Street, County,	x	
City, and State of Ithaca	x	
	x	

It appears from the application and affidavit of District Attorney Frank Smith and affidavit of Police Officer John Montell, said affidavits having been submitted in support of this eavesdropping warrant and incorporated herein as a part hereof, that there is probable cause to believe that evidence of the felonies of Extortion, Assault and Conspiracy to commit said crimes may be obtained by intercepting certain wire communications transmitted over the above-captioned telephone line and instrument, and the Court being satisfied that comparable evidence essential for the prosecution of said crimes could not be obtained by other means, it is hereby

ORDERED, that the said District Attorney or any police officer assigned to the Ithaca Police Department and acting under the direction and supervision of said District Attorney, is hereby authorized to intercept and record the telephonic communications of Percy Jordan, and Bruno Martino as identified herein, their agents and co-conspirators, some of whom are as yet unknown, as those conversations pertain to the compelling or inducement of companies and individuals to make illegal

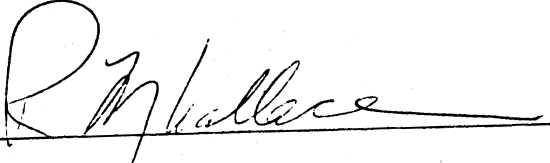
payments to officials of Local 904 or their designees in order that those persons use or abuse their positions as union officials to adversely effect the membership of the unions or favorably affect the business or individual and which are transmitted over the above-captioned telephone line and instrument; and it is further

ORDERED, that this warrant shall be executed in a manner designed to minimize the interception of those conversations not described above and of those which are privileged; and it is further

ORDERED, that the agents and employees of the Ithaca Telephone Company are directly constrained not to divulge the contents of this order nor the existence of electronic eavesdropping over the above-captioned telephone line and instrument to any person including but not limited to the subscribers of the above-captioned telephone instrument whether or not the said subscribers request that the said telephone instrument be checked for the existence of said electronic eavesdropping equipment, and it is further

ORDERED, that this eavesdropping warrant shall be executed as soon as practicable and shall be effective the 4th day of June, 1979 and its authorization shall continue until the evidence described in the aforementioned affidavit of Police Officer John Montell, shall have been obtained, and said authorization shall not automatically terminate when the communications described herein have been first obtained, but in

no event shall said authorization exceed twenty (20) days
from its effective date, to wit, the 23rd day of June, 1979.


Justice of the Trial Court

Dated: *June 1, 1979*

EXECUTION OF ELECTRONIC EAVESDROPPING ORDERS

INTRODUCTION

Before conducting any electronic surveillance read the authorizing Order and Supporting Affidavits especially noting the designated crimes and subjects.

The goal is to execute the Order, recording those conversations which are designated, and minimizing the interception of non-relevant or privileged communications.

No machine is to be left unattended on automatic. "Minimization" requires the police officer to determine whether or not each conversation is relevant and subject to interception.

Anytime a conversation or *any part thereof* is monitored it is to be recorded. If the machine has a separate monitor switch, such switch is not to be activated unless the machine is recording. However, if the machine malfunctions, or a tape has just run out, monitoring is permissible, while the situation is being remedied.

PROCEDURE

Listen to the beginning of each conversation only so long as is necessary to determine the parties thereto and the subjects thereof.

1. If the parties and subjects are covered by the Order, continue to listen and record as long the conversation remains pertinent.

2. If either the parties or subjects are not covered by the Order, turn off the machine. Check periodically by activating the monitor *and record* switches to determine if the parties or subjects have changed and fall within category No. 1 above. Note the length of time occurring between the periodic checks, and the time of each check.

3. If the conversation does not fall within category No. 1, but it is apparent at the outset that a crime is being discussed, record the conversation insofar as it is pertinent to said crime. Immediately notify the supervising ADA of the conversation for instructions.

Generally, the Order will authorize the interception of conversations of certain named persons, as well as the agents, co-conspirators, and accomplices. If a named person is a participant in the conversation, the statements of the other participants may be intercepted if pertinent to the investigation specified in the Order.

In determining the relevancy of the conversation, the executing officers may take into account the coded, guarded and cryptic manner in which persons engaged in criminal activity often converse. It is therefore imperative that the officers be familiar with the background of the investigation and the conversations already intercepted in order to properly evaluate the meaning of the language used by the subjects.

Conversations between a husband and wife, doctor and patient, attorney and client, and an individual and member of the clergy are privileged and are not to be intercepted and recorded. Such conversations lose the privileged status when the participants are co-conspirators in the criminal activity which is the subject of the conversation, but such decision must be made by the supervising ADA.

DAILY PLANT REPORT

Abstracts of each conversation are to be made at the time of interception and are to be included in the DPR (see Appendices H&I). If the conversation was not entirely recorded, an appropriate notation should be made as to why not (e.g., non-pertinent, privileged). Where the exact words used by the participants are important, that portion of the conversation should be transcribed verbatim. The original of the DPR should be delivered to the supervising ADA at the beginning of the following day.

OBSERVATION REPORTS

Electronic surveillance is used as the last resort in any investigation. Conventional means of investigation are preferred and in any event should be used in conjunction with court ordered electronic surveillance. Whenever meaningful observations are feasible, they should be made and should be recorded on OR's, the originals of which should be submitted with the DPR's.

REELS

The intercepted conversations are to be recorded on pre-numbered Investigation Bureau reels. After each reel has been completed, it is to be rerecorded, and the original is to be returned to the Investigation Bureau vault. *Under no circumstances* should any portion of any tape be erased.

Each officer is to read the Order, affidavits and regulations. Since the Order incorporates the supporting affidavits, it is absolutely essential that each officer read the affidavits and pay particular notice to the designated crimes, subjects and described conversations. Thereafter, the Assistant District Attorney should satisfy himself that the Order and regulations are understood by the officers and they have no doubts as to the scope of the Order and the proper manner of execution.

The supervising officer should then designate a member of his team to pick up the pre-numbered Investigation Bureau reels and DPR forms which are to be used on the plant. Each reel is signed out to the officer and when returned is checked back in by an investigator. Tapes are kept in the locked technical room vault of the Investigation Bureau.

DAILY PLANT REPORT -104-

PLANT # 79/16

LINE # _____

INTERCEPTED AND RECORDED BY:

DATE June 4PAGE 1 OF 9Det. John MontellREEL # 7916AP.O. Doris Anderson

Changed to _____ at _____

Speed 3 and 3/4 -- 20 lines/minute

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
10:18 000/025	Incoming	Male (out) to U/F (in) - Male asks for the "big guy"
		U/F (possibly secretary) says "Are you kidding—
		he's not here until after 11:00" Male will call
		back.
10:25 025/093	983-6217	Female (in) to Marvin (out) - discuss trip to
		Bermuda. Apparently female is interested in
		getting half-price tickets but Marvin is not
		sure. Female states that that kind of thing "goes
		on here all the time . . . they would laugh at you."
10:40 093/176	Incoming	Marvin (out) to Cindy (in) [Cindy is U/F in above
		conversations] Marvin states that he still thinks
		that it is a bad idea, and that with his luck they
		would get caught. N/P -- off 30 sec. Discussion
		regarding Sportswear. N/P -- off..
11:08 176/205	271-0656	Stu (in) to Dr. Morton's office. Stu asks for
		"the Doc" and is told to hang on for a few seconds.
		Dr: Hi, how are you.
		Stu: Not bad - just that backache.

of int. calls _____ # of incr. calls _____

of new persons int. _____

PLANT # 79/16 LINE _____ REEL # 7916A & _____

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
		Dr: Relax - it's just tension
		Stu: Everything work out o.k.?
		Dr: Yeah I got it - thanks.
		Stu: Just checking.
11:15 205/382	Incoming	Male (out) to Jordan (in) - Male says that he called earlier but Jordan wasn't in. Jordan says that he was at the restaurant. Male says that he has some problems about a special order that has to be done and that "they want to go non-union with half the shift." Jordan says "no problem if things can be worked out." Male (who Jordan calls Bosco) and Jordan discuss a couple of people who have applied for welfare benefits.
11:24 382/427	278-9196	Jordan (in) to U/F (out). Jordan asks for Mr. Raines. U/F says he is not there and that she is the maid. Jordan asks her to tell Mr. Raines that they probably have another deal and that he should meet him at the restaurant at 2 to discuss it.
11:47 427/457	Incoming	U/M out to Stu (in) - Male wants to know about regulations concerning retirement. Male states that he has had some family problems and will probably have to leave his job. N/P -- off.

PLANT # 79/16 LINE _____ REEL # 7916A & _____

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
11:55 457/618	Incoming	Bruno (out) to Stu (in)
		Bruno: Where is he, Sitting Bull?
		Stu: Getting ready to see the old man
		Bruno: Look, I think I'm going to start on the
		place we were talking about.
		Stu: Do you need Percy's o.k.?
		Bruno: Screw it - this is on our own - it's not
		a processing plant - it just started up -
		we can get those workers to sign quickly,
		even if we have to forget the initiation
		fee.
		Stu: Well how you going to make a score if
		you're cheap?
		Bruno: Will I'm going to make the score this way.
		When I sit down with the Boss, I tell
		him how much it's going to cost him in
		welfare, hospitalization, —and all that.
		Say a plant with two hundred people will
		cost them \$4,000.00 a month just for
		hospitalization. So all together I make
		a package out of it, I'll say, "It's
		going to cost a hundred thousand dollars
		a year. Let's cut it in half and forget
		about it' and walk away. I show them first
		what it's going to cost then how much
		I'm going save him by his walking away."

PLANT # 79/16 LINE _____ REEL # 7916A & _____

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
		Stu: Well you'll have to organize the plant
		so nobody else walks in there - then you
		wind up with the dues every month. That's
		\$300.00 a month. You could do that?
		Bruno: Sure he could give a solid contract for
		three years where he won't get hurt.
		Stu: Then you get a pay every year. Look it's
		okay with me, but remember he thinks I'm
		absolutely clean. He'd go crazy if he
		finds out.
12:17 618/675	Incoming	U/F (out) to Jordan (in) U/F says that he promised
		to take her shopping. Jordan says he can't, he's
		on his way "to see the old man, and then another
		fellow for lunch." U/F states that all she is,
		is a housekeeper and it's not fair.
12:20 675/724	621-3264	Stu (in) to U/F (out)
		Female: Dr. Arnon's office
		Stu: Well, well, well, it's always nice to
		hear that beautiful voice of mine, you
		thought I was out of your life ha?
		Female: Yeah, what are you on vacation or something?
		Stu: Na, everytime I call I get my favorite
		nurse, I get my favorite love, ya know?
		Female: Laugh.

PLANT # 79/16

LINE _____

REEL # 7916A & _____

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
		Stu: You don't pick it up because you know
		when it's me.
		Female: Laugh, that's right.
		Stu: Yeah.
		Female: How you been?
		Stu: All right, fine, what's new?
		Female: Ah, nothing.
		Stu: What else?
		Female: Oh.
		Stu: How's your love life?
		Female: Ah, a little quiet now days.
		Stu: Oh, Yeah?
		Female: Yeah.
		Stu: Oh, I can brush it up.
		Female: Laugh.
		Stu: Look, I'm on my way out for a couple of
		hours, but I want to speak to the Doctor,
		is he around?
		Female: Yeah.
		Stu: Yeah.
		Female: Hold on a second. — Can he please call
		you later today - he's tied up now.
		Stu: Okay. Thanks Honey. I'll be back after
		3:00
12:32 724/747	Incoming	Male (out) to Cindy (in). Cindy says they are all
		out and should be back around 3:00.

PLANT # 79/16 LINE _____ REEL # 7916A & _____

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
12:35 747/801	983-6217	Cindy (in) asks for Marvin (out). Cindy says that she is going to call someone about the tickets. Marvin ways that he is still ready to pay the "legit price." Cindy says that he is sweet but a sucker.
12:40 801/921	671-9282	Cindy (in) to Barnie's Luncheonette - asks for Josie Cindy: My name is Cindy. Did Frank tell you that I would call. Josie: Yeah. Where do you want to go? Cindy: Bermuda. Josie: My favorite place --- (3 minute conversation re Bermuda). Cindy: What can you do for us? Josie: How many? Cindy: Two - round-trip Josie: One-half - do you have the flight numbers? Cindy: I'll call back tomorrow Josie: Okay. Around this time
1:40 to 2:40		No calls - but odd sounds on line.
2:45 921/978	256-9951	Joe (in) to telephone business office. Joe is apparently a repairman verifying certain information regarding installation of an extension. Joe wants to know if they have also ordered another line. Response is in negative.

PLANT # 79/16 LINE _____ REEL # 7916A & _____

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
3:19 978/195	phone off the hook)	Male (apparently Joe above) states that he will finish up in a few minutes, but needs something from his truck outside.
		Jordan: Damn, that was embarrassing. Rocky was right. You just can't do that.
		Martino: Look. I have to take it from him. I don't from you.
		Jordan: (inaudible) My father and the old man go back a long way - and you know it. Don't fight me on this one - you just shouldn't have pulled those workers off without checking with all of us.
		We had that jurisdictional dispute all worked out - and now we go back on our word.
		Martino: Screw them.
		Jordan: Sure, that's okay for us - but Ricky okay'd the deal - and he had to apologize the old man don't like that but it's a question of respect. [noisy - doors banging - Joe says that he will finish up - he's sorry for the delay].
3:30 195/205	411	Jordan (in) to information. # of Coral Club: 681-0808.

PLANT # 79/16 LINE REEL # 7916A &

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
5:31 005/257	681-0808	Jordan (in) to Mr. Barcelona (out)
		Jordan: I took care of the problem.
		Barcelona: Thank you. I wouldn't like to have
		it happen again.
		Jordan: I'm sure it won't.
		Barcelona: Is he there - put him on.
		Martino gets on phone - 5 minute conversation in
		Italian.
5:02 057/ 378	Incoming	Dr. Arnon (out) to Stu Harper (in)
		Doctor says that he is concerned about
		investigation by the insurance people. "They are
		all hot and bothered about these claims." Harper
		says that it is "just a fad and it will pass."
		Doctor says that everytime a doctor gets caught
		the newspapers play it up as if it were a murder -
		"it's a lot of garbage" - if a guy says he's sick
		what can we do." Harper agreed.
		Arnon: I got myself a good lawyer.
		Harper: They're worse than doctors (lawyers)
		Arnon: No, this guy is really good - I told
		him the problem and he came up with a
		great solution.
		Harper: Can I give his name to some other people.
		Arnon: Let me ask him.
		Harper: What did he tell you to do.

REEL # 7916A & _____

[illegible]

-113-
DAILY PLANT REPORT

PLANT # 79/16
DATE June 5
EEL # 7916A

LINE # _____
PAGE 1 OF 3

INTERCEPTED AND RECEIVED BY:
Det. John Montell
P.O. Doris Anderson

Changed to _____ at _____

Speed 3 and 3/4 -- 20 lines/minute

TIME & ETER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
10:05 445/497	983-0600	Jordan (in) asks for Mr. Blanchard.
		Jordan: Bruno said that you wanted to
		speak to me.
		Blanchard: I don't like it - but I have no
		choice, we'll do it your way.
		Jordan: Hey, let's get this straight -
		I've been in business 20 years already,
		and if I didn't go to the can already,
		I hope to God I never go, but what I
		mean is I've never, I never force
		from anybody in my life, no but, I
		never went to a guy and said, this
		is what it is, I'm not that type of
		fellow.
		Blanchard: I know what type of fellow you are.
		Jordan: Look, you're not getting hurt in
		anyway. The workers are going to
		use machines so you might as well
		use dynamite as your company.
		Blanchard: All right. I said I'd do it.
		Jordan: Look - I want you to be happy. I'm

of int. calls _____ # of incr. calls _____

of new persons int. _____

-114-
DAILY PLANT REPORT (CONT'D)

PLANT # 79/16 LINE _____ REEL # 7916A & _____

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
		not like other guys - no cash -
		Look, I, uh, could tell you some
		stories - you're hair, uh, would
		stand on end.
		Blanchard: Your animal told me those already.
		He has a nice way about him - what
		do you do, feed him raw meat?
		Jordan: Look, it's like, uh, you have a worker
		right, and he is a what-do-you-call
		craftsman - alright, and you say, that
		he does stuff well - well, that's
		the way it is with Bruno.
		Blanchard: Yeah, he's good alright - just
		tell him to keep his freaken hands
		off of me from now on.
		Jordan: He only touches when he has to - but
		we've got a deal, right - I mean
		a deal that's good for both of us.
		Blanchard: Yeah, I suppose so - I'll sign the
		contract for the vending.
		Jordan: Wait a second.
		Jordan (off phone): What do you mean - extra
		wires - is that definite (inaudible)
		Jordan: Look we may have a problem with the
		phone. We've got to talk - I'll see
		you in the baths in fifteen minutes -

PLANT # 79/16

LINE _____

REEL # 7916A &

[illegible]

Guide: Workshop #2 - Execution of Eavesdropping Orders

I. The order is technically sufficient, although some modifications may be desirable for either stylistic or legal reasons (e.g. mandated progress reports, time of execution limitations, and descriptions of the conversations sought). Similarly, the execution instructions are sufficient. Note that they are not overly specific or technical in order to avoid motions to suppress based on a failure to comply with internal memoranda. Cf. United States v. Morse 491 F.2d 149, 156 (1st Cir. (1974)); United States v. Caceres, 545 F.2d 1182, 1187 (9th Cir. 1977). Students should be queried as to procedures which are utilized by their individual offices in order to illuminate those practices which have proven particularly valuable.

II. Discuss each entry in chronological order to determine whether or not minimization has been achieved. Note that minimization requirements are less stringent at the inception of the execution (see discussion re: 10:25 a.m. call below). Thus, where appropriate, the instructor should require the students to analyze the interceptions as if they had occurred at a later period in the surveillance.

A. 6/4/79

10:18 AM: In this call an unknown male speaks to an unknown female about an unknown subject matter. The conversation is therefore subject to minimization.

The call was, however, of a short duration,

about 1 minute and 15 seconds (25 lines at 20 lines/minute). Generally speaking, all courts will allow executing officers to listen at the onset of the conversation for a short period of time--usually two minutes. United States v. Armocida 515 F.2d 29, 45 (3d Cir. 1975), cert. denied, 423 U.S. 858 (1975). For example, Mr. Justice Brennan, (Douglas and Marshall concurring) noted in a dissenting opinion opposing the Supreme Court's decision to deny certorari in Bynum v. United States, 423 U.S. 952, 954 (1975), "Necessarily calls of short duration will generally have to be monitored in toto; agents must inevitably listen briefly to all calls in order to determine the parties to and the nature of the conversation."

10:25 AM: In this second call since surveillance was initiated, two unnamed parties engaged in a conversation about "half price tickets" which at best could be termed suspicious. In any event, the conversation (with the possible exception of the last line) does not appear to have anything to do with the investigation.

18 U.S.C. § 2517(5) (1976) provides that intercepted communications relating to offenses other than those specified in the order of authorization may be disclosed or used when inadvertently overheard in the course of an authorized

wiretap. Additionally, it is well settled that, under appropriate circumstances, the police may seize evidence in plain view without a warrant. Coolidge v. New Hampshire, 403 U.S. 443, 465 (1971). A similar statute, N.Y.C.P.L.R. § 700.65 (subd. 4) (McKinney 1971) has been construed as engrafting the "plain view" exception upon the general constitutional requirement that seized evidence must be particularly described in the application for a warrant. People v. DiStefano, 38 N.Y.2d 640, 648, 345 N.E.2d 548, 382 N.Y.S.2d 5, 9 (1976) (eavesdropping warrants based substantially the same principles applicable to search warrants for physical evidence); see Berger v. New York, 388 U.S. 41, 53-60 (1967).

Several district courts have held that the plain view doctrine also applies to electronic searches under § 2517(5). United States v. DePalma, 461 F. Supp. 800, 825 (S.D.N.Y. 1978); United States v. Aloï, 449 F. Supp. 698, 717 (E.D.N.Y. 1977); United States v. Perillo, 33 F. Supp. 914, 920 (D. Del. 1971); United States v. Sklaroff, 323 F. Supp. 296, 307 (S.D.Fla. 1971); United States v. Escandar, 319 F. Supp. 295, 300-01 (S.D.Fla. 1970).

In Cox v. United States, 449 F.2d 679 (10th Cir. 1971) the tenth circuit held § 2517(5) constitutional. It relied upon the fact that § 2517(5) demands an original warrant in accordance with the

highly specific requirements of 18 U.S.C. § 2518(4) (1976). Id. at 687. The court further recognized that the nature and probable consequence of authorized wiretapping is discovery of unanticipated and undescribed communications. The plain view doctrine, however, was declared to be an imperfect analogy because "the search for property is a different and less traumatic invasion than is the quest for private conversations." Id. at 685. Nevertheless, the court stated that it would be the height of unreasonableness to distinguish between information specifically authorized and that which is unanticipated and develops in the course of an authorized search. Id. at 685.

Under the plain view doctrine, seizure may only occur when there is probable cause to believe that the item to be seized (the conversation) constitutes evidence of a crime. United States v. Worthington, 544 F.2d 1275, 1280 (5th Cir. 1977); United States v. Johnson, 541 F.2d 1311, 1316 (8th Cir. 1976); Commonwealth v. Wojcik, 266 N.E.2d 645 (Mass. 1971). It is not enough that the officer merely suspect that what he has in plain view is evidence. United States v. Benn, 441 F. Supp. 1268, 1272 (E.D.N.Y. 1977).

Probable cause is held to exist where the facts and circumstances within the officer's

knowledge and of which he has reasonably trustworthy information are sufficient within themselves to warrant a man of reasonable caution to believe that an offense has been or is being committed. Carrol v. United States, 267 U.S. 132 (1925).

Where probable cause does not exist, seizure of the interception can be justified only if it was incidental to spot-monitoring. In this case, spot-monitoring does not appear to have been employed.

The only argument for interception is that it occurred very early in the surveillance.

During the early stages of surveillance the agents may be forced to intercept all calls to establish categories of nonpertinent calls which will not be intercepted thereafter. Interception of those same types of calls might be unreasonable later on, however, once the nonpertinent categories have been established and it is clear that this particular conversation is of that type.

Scott v. United States 436 U.S. 128, 141 (1978).

10:40 AM: This call is similar to the preceding one, with an increasing suggestion of an unknown type of criminality. Here spot-monitoring was correctly utilized.

11:08 AM: Harper is not a named party. Nevertheless,

"[C]onversations of persons who are not targets of the investigation may be monitored for brief intervals to assure that their use of the phone is not a ruse to mask a suspect's use of

the phone or to convey information regarding the crimes being investigated.

People v. Floyd, 41 N.Y.2d 245, 252, 360 N.E.2d 935, 392 N.Y.S.2d 257 (1977).

Here, however, even though the call lasted only two minutes ("a brief interval") the problem is complicated by the fact that the phrase "Doc" signaled a potential doctor-patient privilege. On the other hand, not all conversations between an individual and a physician are privileged—and until the substance of the conversation is revealed, it is impossible to know whether this particular one is. To be on the safe side, the general rule is that executing officers should turn the conversation off until such time that the supervising attorney makes a legal determination that the privilege does not exist.

In this case the question of privilege is problematic.

- 1) information gleaned from an informant about possible activity by the "union boys" occurring several years before, appears to have involved the use of doctors to facilitate embezzlement from disability funds.
 - a) is such activity continuing?
 - b) are doctors knowingly involved?
 - d) does such activity fall within the scope of the order?

In this regard the observation report of 5/22/79 is significant.

2) the doctor began the conversation with,

"Hi, how are you?"

a) does such a phrase automatically invoke the privilege, or

b) is it such a common greeting that it ought to be disregarded as a professional inquiry?

11:15 AM: This is the first call in which Jordan is a participant. [The officers should be questioned to determine if there was adequate voice, or visual identification, or other means of recognition of Jordan from the context of the conversation. Failure to amend promptly after inadequate and mistaken identification, has led to suppression. United States v. Capra, 501 F.2d 267, 276 (2d Cir. 1974), cert. denied, 420 U.S. 990 (1975). (Dellacava, unnamed, was confused with DellaValle, named, due to a similarity of voice)].

The first part of the conversation may well be pertinent; however, given the nature of labor racketeering, it is difficult to tell. The conversations which may later prove incriminating are not like those involving gambling activity which are immediately identifiable as such.

In considering the reasonableness of the minimization procedures, courts have taken into

account the nature of the criminal enterprise under investigation and have made appropriate allowances. See generally Comment, "Post-Authorization Problems in the Use of Wiretaps, Minimization, Amendment, Sealing, and Inventories," 61 Cornell Law Review 92.

Most courts note that the agents' efforts at minimization must be evaluated by using the agents' own perspective; it is meaningless to argue after the fact that a large percentage of the intercepted conversations were innocent if the agents could not reasonably differentiate between innocent and guilty conversations at the time of interception.

at p. 112.

The second portion of the conversation is not as likely to be pertinent. As the likelihood of pertinency decreases so should the amount overheard. At this stage of the surveillance however, it is probably reasonable to listen.

11:24 AM: While the subject matter of the proposed meeting, and hence the call, is far from clear, it does involve a named party, "another deal", and follows the previous interceptable call. There is no reason, however, to believe Mr. Raines' maid is in anyway connected with any criminal activity. Nevertheless, as a message taker, she is an "agent," and thus, even if she acts without knowledge of the purpose of the messages, to the extent those messages related to Jordan's criminal activities, the conversations are subject to

lawful interception. (See, e.g., United States v. Bynum, 485 F.2d 490), where an unwitting babysitter was used to convey to participants information relating to a large scale narcotics conspiracy). See also United States v. Falcone, 364 F. Supp. 877 (D.N.J. 1973), aff'd 500 F.2d 1401 (3d Cir. 1974) (right to listen, at least to portion of conversations, of "unwitting tool").

11:47 AM: Properly minimized

11:55 AM: The conversation clearly concerns labor racketeering and a named party is a participant. As such it is interceptable.

The only question, albeit a highly technical one, is whether or not, because this is apparently non-904 related, the conversation concerns a crime not named in the order. If it does, a retrospective amendment may be necessary, to preserve the use of the conversation for trial. Compare U.S. v. Marion 535 F.2d, 697 (2nd Cir. 1976) and U.S. v. Brodson, 528 F.2d 214 (7th Cir. 1975) with Moore v. U.S. 513 F.2d 485 (D.C. Cir. 1975) and U.S. v. Daly 535 F.2d 434 (8th Cir. 1976), in light of U.S. v. Capra 501 F.2d 267 (2nd Cir. 1974), cert. denied, 420 U.S. 990 (1975).

Consider a totally unrelated criminal activity with the same name (extortion). Suppose the conversation dealt with the blackmail of a philanthropic husband? Would an amendment be required?

12:17 PM: This conversation might be considered relevant in order to determine where the subject is scheduled to be for the rest of the day, as an aid to physical surveillance. Cf. U.S. v. Falcone, 364 F. Supp. 877, 882 (DNJ 1973), aff'd 500 F.2d 1401 (3d Cir. 1974). From the context of the discussion, however, it appears that Jordan is speaking to his wife. Such conversations are privileged. 18 U.S.C. § 2517(4).

Some investigation should be undertaken to determine the identity of the "U/F" to whom Jordan was speaking (use of a ruse to obtain sample of wife's voice). If there is reason to believe that the person was Jordan's wife, procedures should be established for minimizing-out similar conversations in the future.

12:20 PM: Since Harper was not speaking to the doctor, no privilege existed. However, this was a conversation between two unnamed parties, with no indication of criminal activity. It should have been spot-monitored.

12:32 PM: Conversation was terminated at about 2 minute mark.

12:35 PM: This conversation is similar to the one which occurred at 10:05, and a similar analysis should be used. There is no question however, that there are strong indications that the "tickets" are in some way illegal.

Query: Without knowing what type of tickets are being referred to, or whether they are stolen or forged, can probable cause to satisfy Wojcik, supra exist? Put another way, does the wiretap law require probable cause to exist for a "specific crime" rather than "crime" in general? See Berger v. New York, 388 U.S. 41 (1967). Thus, under ordinary circumstances, this conversation should have been spot-monitored, particularly if the statement about the "legit" price occurred after the initial two minute period. Information obtained from previous conversation does however raise another interesting point. Should the officers spot-monitor when they know that the named parties are not present at the location? Probably yes.

The District Judge specifically found that the wiretap was needed to "reveal the identities of [Irving Kahn's] confederates, their places of operation, and the nature of the conspiracy involved." It is evident that such information might be revealed in conversations to which Irving Kahn was not a party. For example, a confederate might call in Kahn's absence, and leave either a name, a return telephone number, or an incriminating message. Or one of Kahn's associates might himself come to the family home and employ the target telephones to conduct the gambling business.

United States v. Kahn, 415 U.S. 143, 156-57 (1974). And see People v. Floyd, 41 N.Y.2d 241, 252, 360 N.E.2d 935, 941, 392 N.Y.S.2d 257, 263 (1976).

But, where, under these circumstances, there

was no expectation that such information might be revealed by spot-monitoring, the decision to terminate all monitoring of that conversation would be evidence of a good faith effort to minimize. Such evidence is useful at the inevitable pre-trial suppression hearing.

Cf. United States v. Tortorello, 480 F.2d 764, 785 (2d Cir. 1974).

12:40 PM: The same problem still exists. The parties are not named; there is no probable cause to believe that a specified crime is being committed. Thus, the conversation should have been spot-monitored, and incriminating information obtained as a result could be used after an appropriate amendment pursuant to 18 U.S.C. § 2517.

Paragraph (5) [of 18 U.S.C. § 2517 (1976)] provides that if an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized in the chapter, intercepts wire or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1) and (2) of this section, discussed above. Such contents and any evidence derived therefrom may be introduced in evidence under subsection(3) of this section only when authorized or approved by a judge of competent jurisdiction as defined in section 2510(9) where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. They need not be designated "offenses". Such subsequent application would

include a showing that the original order was lawfully obtained, that it was sought in good faith and not as subterfuge search, and that the communication was in fact incidentally intercepted during the course of a lawfully executed order.

S. Rep. No. 1097, 90th Cong. 2d Sess. 100, reprinted in [1968] U.S. Code Cong. & Ad. News 2112, 2178-79.

Could the interception be said to have been "incidental" or "inadvertant" (as required by the Statute and the plain view doctrine Coolidge v. New Hampshire, 403 U.S. 443 (1971), given the previous conversations?

the . . . conversations could not have been foreseen and, thus, were not proscribed anticipated discoveries. While it may be true that . . . the authorities knew of defendant and even may have entertained questionable suspicions as to his plans, nevertheless, . . . the authorities lacked probable cause to seek amendment of the warrant to include either the crimes . . . or to even name the defendant or his cohort. Indeed, the police had no grounds upon which they could reasonably have asserted that defendant would use [that] . . . telephone again. We conclude, therefore, that the . . . conversations were inadvertently overheard and, thus, were discovered in 'plain view.'

People v. DiStefano, 38 N.Y.2d at 649, 345 N.E.2d at 553, 382 N.Y.S.2d at 10 (1976).

2:45 PM: This call between unnamed parties may be interceptible on the theory that it is likely to provide information required to maintain continued effective

surveillance of the subject.

The Government also concedes that 75 calls or 6.3 percent were to the New Jersey Bell Telephone Company. I find that these calls were pertinent to the investigation in that they permitted the monitoring agents to find out if telephone service might be discontinued, thereby ending the electronic surveillance without the agents' knowledge.

United States v. Falcone, 364 F. Supp. 877, 882 (D.N.J. 1973), aff'd, 500 F.2d 1401 (3d Cir. 1974). Changing or adding a telephone is, as a practical matter, little different from discontinuing service. Moreover, the privacy interests of the telephone business office in a commercial transaction would seem to be of substantially less importance than those involved in personal calls. 18 U.S.C. § 2511 (2)(a); Cf. Pittsburgh Com'n on Human Rel., 413 U.S. 376, 384 (1973).

3:19 PM: During the period of time that the telephone was left off the hook, the mouthpiece acted as a bug, a device not authorized in the order.

Where background conversation is intercepted during the course of an ongoing telephone communication, the courts have reached differing conclusions as to admissibility. Two district judges in Michigan, on the basis of the plain view doctrine, would admit the conversations into evidence.

United States v. Luna, 525 F.2d 4 (6th Cir. 1975), cert. denied, 424 U.S. 965 (1976); United States

v. Bourgeois, Crim. No. 48456 at 11-12 (E.D. Mich. Nov., 1973), cited in J.G. Carr, The Law of Electronic Surveillance, p. 296 n.53 (1977).

A different conclusion was reached in United States v. King, 335 F. Supp. 523, 548 (S.D. Cal., 1971), cert. denied, 417 U.S. 420 (1974). Because of the difficulty of minimizing the background conversation, however, the Court will apparently not suppress the subject telephone conversation. United States v. Lanza, 349 F. Supp. 929 (M.D. Fla. 1972); United States v. Leta, 332 F. Supp. 1357 (M.D. Pa. 1971), rev'd on other grounds, 467 F.2d 647 (3d Cir. 1972).

However, here, where there was no telephonic communication at all, the considerations set forth above are not applicable. The interception of the oral communication between Jordan and Martino, no matter how relevant, is not authorized by the order nor permissible under the plain view theory.

3:30 PM: Information calls by named parties are arguably subject to interception in order to determine the identity of the parties with whom the subjects intend to communicate. Cf. United States v. Falcone, 364 F. Supp. 877, 882 (D.N.J. 1973), aff'd 500 F.2d 1401 (3d Cir. 1974).

While it may be interesting to debate the various factors involved in the decision to mini-

mize this particular conversation, it is not likely that the courts will care one way or the other.

Many of the remaining calls were very short, such as wrong number calls, calls to persons who were not available to come to the phone, and calls to the telephone company to hear the recorded weather message which lasts less than 90 seconds.

Scott v. United States, 436 U.S. 128, 141-42 (1978).

Even Mr. Justice Brennan would specifically exclude "calls to such services as information and the weather" as being irrelevant in determining whether minimization was achieved. 423 U.S. at 954 (1975).

3:31 PM: The conversation in Italian presents a problem. Among the executing officers at the plant, there was no qualified language expert to translate and to determine relevance; the meaning of the conversation could only be discovered after the conversation was seized. Of course, the interpreter could "minimize," but "interception" had already occurred.

Given the context in which that portion of the conversation took place, there are reasonable arguments for interception. Nevertheless, if such conversations are to be intercepted in the future, it would be desirable to have an Italian speaking officer at the plant.

The difficulty of identifying what was relevant and what was not was increased by the use of codes and often, by use of colloquial Spanish rather than English. Thus, only after translation could the agents evaluate the conversations. Chief Judge Robson, prior to giving his authorization, was advised of some of these difficulties. He limited the initial tap to 20 rather than the statutory maximum of 30 days. He required, and received, reports from agent Petrossi at five-day intervals throughout the tap.

Under these circumstances we find that the government has made a prima facie showing of reasonableness, and that the burden is shifted to the defendants to suggest what alternative procedure would have better minimized interception of noncriminal conversation while still permitting the government to achieve its legitimate objectives. United States v. Manfredi, 488 F.2d 588, 599-600 (2d Cir. 1973), cert. denied, 417 U.S. 936 (1974); United States v. Quintana, 508 F.2d 867, 875 (7th Cir. 1974).

[Query: What do you do if the conversation is in a North American Indian language which you cannot identify and which is not spoken by any law enforcement officer?]

4:02 PM:

This conversation presents a problem. The order says extortion, assault, and conspiring in the context of labor racketeering at Local 904.

This is -- What? It is not clear that what is being discussed is even illegal, much less related to the order. It probably should not have been listened to.

5:00 PM: Properly minimized

5:30 PM: Interceptible under the plain view theory. Note that a restrospective amendment would be necessary if the conversation is to be used in a court proceeding against the unknown male.

If, however, the conversation is only to be used as the basis of a search warrant for the premises in which telephone assigned number 671-9335 is located, then an amendment is not necessary. 18 U.S.C. § 2517(2).

B. 6/5/79

10:05 AM: Clearly within the order.

10:57 AM: Conversations helpful to the maintenance of effective surveillance are finally within the order. (See A at 2:45 above).

While this broad definition of pertinency has been attacked as of "dubious constitutionality" in that it grants excessive discretion to monitoring officers, J. Carr, *The Law of Electronic Surveillance*, (1977), courts have consistently sustained interception of calls of a "kind that would aid the investigators in perceiving the size, nature, identity, and mode of operation of the criminal enterprise." See generally, Comment, "Post-Authorization Problems in the Use of Wiretaps. Minimization, Amendment, Sealing and Inventories," 61 Cornell L. Rev. 92

Note, however, that the participants in

this conversation were not named parties. Nevertheless, one could argue that Harper was at least knowledgeable about the possibility of police investigation and was acting as an agent of Jordan in warning others.

Moreover, courts have generally permitted interception of guarded and coded conversations, until such time as a pattern of innocence could be discerned. U.S. v. Scott, 436 U.S. 128 (1978); U.S. v. Manfredi, 488 F.2d 588, 592-93 (2d Cir. 1973), cert. denied, 417 U.S. 936 (1974), and see United States v. Cox, 462 F.2d 1293, 1300-01 (8th Cir. 1972), cert. denied, 417 U.S. 918 (1974). But see United States v. Sisca, 361 F. Supp. 735, 744-45 (S.D.N.Y. 1973), aff'd, 503 F.2d 1337 (2d Cir.), cert. denied, 419 U.S. 1008 (1974) (failure to minimize even though code and guarded language was used, and many apparently innocent conversations later were found to be pertinent to the investigation.)

11:20 AM: This communication between Cindy and Josie regarding what was previously identified as a fraudulent airline ticket transaction is not unexpected, i.e. there exists probable cause to believe that they will use the telephone to discuss the commission of that crime [see conversation of 12:45]. If a prospective amendment could have been obtained, and was not, the conversation is

not within the plain view exception and is therefore not subject to interception. United States v. Welsch 446 F.2d 220, 223 (10th Cir. 1971); People v. DiStefano 38 N.Y.2d 640, 345 N.E.2d 548, 382 N.Y.S.2d 5 (1976). Two arguments may be made for the proposition that plain view is still applicable.

(1) The criminal activity may not be an enumerated crime within the wiretap statute. (How do you demonstrate felony amount for larceny, if larceny is the applicable crime?) Thus a prospective amendment could not be obtained. [Query: do you have to demonstrate that conventional means of investigation have not or could not succeed?].

(2) The determination that it was larceny was made the previous afternoon at 12:40. There may have been insufficient time to obtain an amendment which requires an application by the principal prosecuting attorney and authorization by the issuing Judge. See generally 61 Cornell L. Rev. 92, 130-137, supra.

Workshop #3 - Analyzing Corporate Records

Premise: As a result of poor craftsmanship in installing the wiretap, a routine inspection by a union staff member apparently disclosed the existence of the connection to a spare pair. Electronic surveillance thereafter proved fruitless and was therefore terminated.

On July 1st a subpoena duces tecum was issued to Dynamite Inc., for its books and records relating to all business activities "from the month of incorporation (5/79) to the present." On July 10th, Dynamite complied by producing the annexed letter and documents.

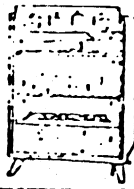
Problem: Conduct an analysis of Dynamite's books and records.

DYNAMITE VENDING, INC.

3861 Governor Dr.

ITHACA

- CIGARETTES
- CANDY • SNACKS
- COFFEES • SODA
- HOT FOODS
- POOL TABLES
- GAMES
- JUKE BOXES



July 16, 1979

District Attorney
Ithaca

Dear Sir:

In response to your subpoena duces tecum I am enclosing the following items:

- 1) Lease agreement for building
- 2) Articles of agreement for vending location
- 3) Promisory notes
- 4) Cash receipts
- 5) Cash disbursement
- 6) Purchase order
- 7) Invoices
- 8) Checks

Sincerely,

Arthur Housman
Arthur Housman
President and
Sole Shareholder

AH:peb
Enclosures

GENERAL CORPORATE RECORDS

\$ 75,000
 To Dynamite Vending, Inc.
 For Equipment Secured
 Date June 30, 1979
 Time 11:00 A.M.
 Date June 30, 1986
 No. 2
 CASCADE - LI-C1120

\$ 200,000
 To Dynamite Vending, Inc.
 For No Security
 Date May 1, 1979
 Time 10:00 A.M.
 Date May 1, 1989
 No. 1
 CASCADE - LI-C1120

\$ 75,000 June 30, 1979
 Six Years after date I promise to pay to
 the order of Commercial Candy, Inc.
 Seventy Five Thousand and no/100 Dollars
 at Commercial Bank
 Value received with interest at the rate of 17 percent per annum.
 Dynamite Vending, Inc.
 Arthur Horvath, President
 No. 2 Date June 30, 1979
 CASCADE - LI-C1120

\$ 200,000 May 1, 1979
 Ten Years after date I promise to pay to
 the order of Local 904
 Two Hundred Thousand and no/100 Dollars
 at Dynamite Vending, Inc.
 Value received with interest at the rate of 5 percent per annum.
 Dynamite Vending, Inc.
 Arthur Horvath, President
 No. 1 Date May 1, 1989
 CASCADE - LI-C1120

-141-
SECURITY AGREEMENT

June 30, 1979

Name: Dynamite Vending Company

☐ Residence: _____
☒ Business Address: 3861 Governor Dr., Ithaca Ithaca Ithaca
(No. and Street) (City) (County) (State)

*If collateral is business equipment, fill in address of chief place of business. If collateral is farm equipment, farm products or consumer goods, fill in residence.
(hereinafter called "Debtor") for valuable consideration, receipt of which is hereby acknowledged, hereby grants to

Commercial Candy, Inc. (hereinafter called "CCI")

a security interest in, and mortgages to CCI, the following described goods and any and all additions and accessions thereto and replacements thereof (hereinafter called the "Collateral"):

- 1) All accounts receivable whether now held or hereafter acquired including, but not limited to, payments receivable on open account and uncashed checks.
- 2) All monies and other property held in trust or as security by others.
- 3) All equipment whether now held or hereafter acquired including, but not limited to, debtor's office furniture and other movable items used in connection with debtor's business.
- 4) All inventory whether now or hereafter acquired, including, but not limited to, machines, candy, and cigarettes.
- 5) All vehicles presently or hereafter registered to the debtor including, but not limited to, 2 vans - serial numbers 8136124 and 9164321
2 automobiles - serial numbers 3126894 and 4216386.

to secure payment of the following obligations of Debtor to CCI (hereinafter called "Obligations"):

- (i) Indebtedness of Debtor to Bank in the sum of Seventy-five Thousand Dollars (\$ 75,000.00) evidenced by the Debtor's promissory note (hereinafter called "Note") of even date herewith in said amount payable to the order of CCI together with interest thereon as provided in the Note and any renewals or extensions thereof, plus all costs of collection, legal expenses, and attorneys' fees incurred or paid by CCI in collecting and/or enforcing such indebtedness after the occurrence of an Event of Default.
 - (ii) Any and all other liabilities of Debtor to CCI under this Agreement; and
 - (iii) Any and all other liabilities of Debtor to CCI, direct or indirect, absolute or contingent, due or to become due, whether now existing or hereafter arising.
- Debtor agrees to promptly pay all Obligations when due.
Debtor hereby warrants and covenants that:

- (a) The Collateral is used or bought for use primarily for
☐ PERSONAL, FAMILY OR HOUSEHOLD USE ☒ BUSINESS OR PROFESSIONAL USE ☐ FARMING OPERATIONS USE N/A
- (b) IF CHECKED HERE ☐, THE COLLATERAL IS BEING ACQUIRED WITH THE PROCEEDS OF THE NOTE, WHICH BANK MAY DISBURSE DIRECTLY TO THE SELLER OF THE COLLATERAL.
- (c) If the Collateral is used or bought for use primarily for personal, family or household purposes, or for farming operations, the Debtor's residence is the address shown above.
- (d) If the Collateral is used or bought for use primarily for business or professional purposes, Debtor's chief place of business is the address shown above, and, in addition, such address is the only place of business of Debtor, unless otherwise indicated below:
Other Places of Business of Debtor

(No. and Street)

(City or Town) (County)

(State)

(No. and Street)

(City or Town)

(County)

(State)

- (e) The Collateral is or is to be located at the address shown above (or at _____).
(Address if Collateral is to be kept elsewhere)

- (f) Unless expressly stated herein the Collateral will not be affixed to any real estate so as to become a fixture or fixtures without the prior written consent of CCI. If the Collateral is or is to be affixed to real estate:
(1) The description of the real estate (by street, number, town or city, county and state) is:

- (2) The names and addresses of the record owner and of all persons having an interest in the real estate (including mortgagees and lessees) are as follows:

Debtor will on demand furnish CCI with a disclaimer or disclaimers, signed by all persons having an interest in the real estate, of any interest in the Collateral which affects or may affect CCI's interest and Debtor will promptly notify CCI in writing of any such persons.

FURTHER WARRANTIES AND COVENANTS OF DEBTOR. Debtor hereby warrants and covenants that:

- (1) Except for the security interest granted hereby Debtor is, or upon purchase with the proceeds of the Note will be, the owner of the Collateral free from any adverse lien, security interest or encumbrance; and Debtor will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.

LEASE AGREEMENT

The Landlord and Tenant agree to lease the Apartment at the Rent and for the Term stated on these terms:

LANDLORD: Spectacular Management Corp. TENANT: Dynamite Vending, Inc.
Address for Notices: 850 127 E St. 3861 Governor Dr.
ITHACA ITHACA
Apartment (and terrace, if any) _____ at _____

Lease date: <u>May 1</u> 19 <u>79</u>	Term <u>2500 sq' @ \$10 per sq'</u> beginning <u>May 1</u> 19 <u>79</u> ending <u>June 30</u> 19 <u>89</u>	Yearly Rent <u>\$ 25,000</u> Monthly Rent <u>\$ 2083</u> Security <u>\$ None</u>
------------------------------------------	------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------

Rider Additional terms on None page(s) initialed at the end by the parties is attached and made a part of this Lease.

1. Use

The Apartment must be used only as a private Apartment to live in and for no other reason. Only a party signing this Lease and the spouse and children of that party may use the Apartment.

2. Failure to give possession

Landlord shall not be liable for failure to give Tenant possession of the Apartment on the beginning date of the Term. Rent shall be payable as of the beginning of the Term unless Landlord is unable to give possession. Rent shall then be payable as of the date possession is available. Landlord will notify Tenant as to the date possession is available. The ending date of the Term will not change.

3. Rent, added rent

The rent payment for each month must be paid on the first day of that month at Landlord's address. Landlord need not give notice to pay the rent. Rent must be paid in full and no amount subtracted from it. The first month's rent is to be paid when Tenant signs this Lease. Tenant may be required to pay other charges to Landlord under the terms of this Lease. They are to be called "added rent." This added rent is payable as rent, together with the next monthly rent due. If Tenant fails to pay the added rent on time, Landlord shall have the same rights against Tenant as if Tenant failed to pay rent. Payment of rent in installments is for Tenant's convenience only. If Tenant defaults, Landlord may give notice to Tenant that Tenant may no longer pay rent in installments. The entire rent for the remaining part of the Term will then be due and payable.

4. Security

Tenant has given Security to Landlord in the amount stated above. If Tenant fully complies with all of the terms of this Lease, Landlord will return the Security after the Term ends. If Tenant does not fully comply with the terms of this Lease, Landlord may use the Security to pay amounts owed by Tenant, including damages. If Landlord sells or leases the Building, Landlord may give the Security to the buyer or lessee. Tenant will look only to the buyer or lessee for the return of the Security.

5. Services

Landlord will supply: (a) heat as required by law, and (b) hot and cold water for bathroom and kitchen sink. Stopping or reducing of service(s) will not be reason for Tenant to stop paying rent, to make a money claim or to claim eviction. Damage to the equipment or appliances supplied by Landlord caused by Tenant's act or neglect, may be repaired by Landlord at Tenant's expense. The repair cost will be added rent.

Tenant must pay for all electric, gas, telephone and other utility services used in the Apartment and arrange for them with the public utility company.

Landlord may stop service of the plumbing, heating, elevator, air cooling or electrical systems, because of accident, emergency, repairs, or changes until the work is complete. If unable to supply any service because of labor trouble, Government order, lack of fuel supply or other cause not controlled by Landlord, Landlord is excused from supplying that service. Service shall resume when Landlord is able to supply it.

6. Repairs

Tenant must take good care of the Apartment and all equipment and fixtures in it. Tenant must, at Tenant's cost, make all repairs and replacements whenever the need results from Tenant's act or neglect. If Tenant fails to make a needed repair or replacement, Landlord may do it. Landlord's expense will be added rent.

7. Alterations

Tenant must obtain Landlord's prior written consent to install any panelling, flooring, "built in" decorations, partitions, railings or make alterations or to paint or wallpaper the apartment. Tenant must not change the plumbing, ventilating, air conditioning, electric or heating systems. If consent is given, the alterations and installations shall become the property of Landlord when completed and paid for, and shall remain with and as part of the Apartment at the end of the Term. Landlord has the right to demand that Tenant remove the alterations and installations before the end of the Term. The demand shall be by notice, given at least 15 days before the end of the Term. Landlord is not required to do or pay for any work unless stated in this Lease.

8. Fire, accident, defects, damage

Tenant must give Landlord prompt notice of fire, accident, damage or dangerous or defective condition. If the Apartment can not be used because of fire or other casualty, Tenant is not required to pay rent for the time the Apartment is unusable. If part of the Apartment can not be used, Tenant must pay rent for the usable part. Landlord shall have the right to decide which part of the Apartment is usable. Landlord need only repair the damaged structural parts of the Apartment. Landlord is not required to repair or replace any equipment, fixtures, furnishings or decorations unless originally installed by Landlord. Landlord is not responsible for delays due to settling insurance claims, obtaining estimates, labor and supply problems or any other cause not fully under Landlord's control.

If the fire or other casualty is caused by an act or neglect of Tenant or guest of Tenant, or at the time of the fire or casualty Tenant is in default in any term of this Lease, then all repairs will be made at Tenant's expense and Tenant must pay the full rent with no adjustment. The cost of the repairs will be added rent.

Landlord has the right to demolish or rebuild the Building if there is substantial damage by fire or other casualty. Even if the Apartment is not damaged, Landlord may cancel this Lease within 30 days after the fire or casualty by giving Tenant notice of Landlord's intention to demolish or rebuild. The Lease will end 30 days after Landlord's cancellation notice to Tenant. Tenant must deliver the Apartment to Landlord on or before the cancellation date in the notice and pay all rent due to the date of the fire or casualty. If the Lease is cancelled Landlord is not required to repair the Apartment or Building.

9. Liability

Landlord is not liable for loss, expense, or damage to any person or property, unless due to Landlord's negligence. Tenant must pay for damages suffered and money spent by Landlord relating to any claim arising from any act or neglect of Tenant. Tenant is responsible for all acts of Tenant's family, employees, guests or invitees.

10. Landlord may enter, signs

Landlord may at reasonable times, enter the Apartment to examine, to make repairs or alterations, and to show it to possible buyers, lenders or tenants.

11. Assignment and sublease

Tenant must not assign this Lease or sublet all or part of the Apartment or permit any other person to use the Apartment. If Tenant does, Landlord has the right to cancel the Lease as stated in the Default section.

12. Subordination

This Lease and Tenant's rights, are subject and subordinate to all present and future: (a) leases for the Building or the land on which it stands, (b) mortgages on the leases or the Building or land, (c) agreements securing money paid or to be paid by a lender, and (d) terms, conditions, renewals, changes of any kind and extensions of the mortgages or leases or lender agreements. Tenant must promptly execute any certificates that Landlord requests to show that this Lease is so subject and subordinate. Tenant authorizes Landlord to sign these certificates for Tenant.

13. Continuation

the notice. If the Lease is cancelled, Tenant must deliver the Apartment to Landlord on the cancellation date together with all rent due to that date. The entire award for any taking belongs to Landlord. Tenant gives Landlord any interest Tenant may have to any part of the award. Tenant shall make no claim for the value of the remaining part of the Term.

14. Tenant's duty to obey laws and regulations

Tenant must, at Tenant's expense, promptly comply with all laws, orders, rules, requests, and directions, of all governmental authorities, Landlord's insurers, Board of Fire Underwriters, or similar groups. Tenant may not do anything which may increase Landlord's insurance premiums. If Tenant does, Tenant must pay the increase as added rent.

15. Tenant's defaults and Landlord's remedies

A. Landlord may give 5 days written notice to Tenant to correct any of the following defaults:

1. Failure to pay rent or added rent on time.
2. Improper assignment of the Lease, improper subletting all or part of the Apartment.
3. Improper conduct by Tenant or other occupant of the Apartment.
4. Failure to fully perform any other term in the Lease.

B. If Tenant fails to correct the defaults in section A. within the 5 days, Landlord may cancel the Lease by giving Tenant a written 3 day notice stating the date the Term will end. On that date the Term and Tenant's rights in this Lease automatically end and Tenant must leave the Apartment and give Landlord the keys. Tenant continues to be responsible for rent, expenses, damages and losses.

C. If the Lease is cancelled, or rent or added rent is not paid on time, or Tenant vacates the Apartment, Landlord may in addition to other remedies take any of the following steps:

1. Enter the Apartment and remove Tenant and any person or property;
2. Use dispossession, eviction or other lawsuit method to take back the Apartment.

D. If the Lease is ended or Landlord takes back the Apartment, rent and added rent for the unexpired Term becomes due and payable. Landlord may re-rent the Apartment and any thing in it for any Term. Landlord may re-rent for a lower rent and give allowances to the new Tenant. Tenant shall be responsible for Landlord's cost of re-renting. Landlord's cost shall include the cost of repairs, decorations, broker's fees, attorney's fees, advertising and preparation for renting. Tenant shall continue to be responsible for rent, expenses, damages and losses. Any rent received from the re-renting shall be applied to the reduction of money Tenant owes. Tenant waives all rights to return to the Apartment after possession is given to the Landlord by a Court.

16. Waiver of jury, counterclaim, set off

Landlord and Tenant waive trial by a jury in any matter which comes up between the parties under or because of this Lease (except for a personal injury or property damage claim). In a proceeding to get possession of the Apartment, Tenant shall not have the right to make a counterclaim or set off.

17. Notices

Any bill, statement or notice must be in writing. If to Tenant, it must be delivered or mailed to the Tenant at the Apartment. If to Landlord it must be mailed to Landlord's address. It will be considered delivered on the day mailed or if not mailed, when left at the proper address. A notice must be sent by certified mail. Landlord must send a written notice to Tenant if Landlord's address is changed.

18. No waiver, illegality

Landlord's acceptance of rent or failure to enforce any term in this Lease is not a waiver of any of Landlord's rights. If a term in this Lease is illegal, the rest of this lease remains in full force.

19. Bankruptcy, insolvency

If (1) Tenant assigns property for the benefit of creditors, (2) Tenant files a voluntary petition or an involuntary petition is filed against Tenant under any bankruptcy or insolvency law, or (3) a trustee or receiver of Tenant or Tenant's property is appointed, Landlord may give Tenant 30 days notice of cancellation of the Term of this Lease. If any of the above is not fully dismissed within the 30 days, the Term shall end as of the date stated in the notice. Tenant must continue to pay rent, damages, losses and expenses without offset.

20. Rules

Tenant must comply with Landlord's Rules. Notice of Rules will be posted or given to Tenant. Landlord need not enforce Rules against other Tenants. Landlord is not liable to Tenant if another tenant violates the Rules. Tenant receives no rights under the Rules.

21. Representations

Tenant has read this Lease. All promises made by the Landlord are in this Lease. There are no others.

22. Landlord unable to perform

If due to labor trouble, government order, lack of supply, Tenant's act or neglect, or any other cause not fully within Landlord's reasonable control Landlord is delayed or unable to: (a) carry out any of the Landlord's promises or agreements, (b) supply any service to be supplied, (c) make any required repair or change in the Apartment or Building, or (d) supply any equipment or appliances, this Lease shall not be ended or Tenant's obligations affected.

23. End of term

At the end of the Term, Tenant must: leave the Apartment clean and in good condition, subject to ordinary wear and tear; remove all of Tenant's property and all Tenant's installations and decorations; repair all damages to the Apartment and Building caused by moving; and restore the Apartment to its condition at the beginning of the Term.

24. Space "as is"

Tenant has inspected the Apartment and Building. Tenant states they are in good order and repair and takes the Apartment "as is."

25. Quiet enjoyment and habitability

Subject to the terms of this Lease, as long as Tenant is not in default Tenant may peaceably and quietly have, hold, and enjoy the Apartment for the Term. Landlord states that the Apartment and Building are fit for human living and there is no condition dangerous to health, life or safety.

26. Landlord's consent

If Tenant requires Landlord's consent to any act and such consent is not given, Tenant's only right is to ask the Court to force Landlord to give consent. Tenant agrees not to make any claim against Landlord for money or subtract any sum from the rent because such consent was not given.

27. Lease binding on

This Lease is binding on Landlord and Tenant and those that lawfully succeed to their rights or take their place.

28. Landlord

Landlord means the owner, or the lessee of the Building, or a lender in possession. Landlord's obligations end when Landlord's interest in the Building is transferred. Any acts Landlord may do may be performed by Landlord's agent or employees.

29. Paragraph headings The Paragraph headings are for convenience only.

30. Changes This Lease may be changed only by an agreement in writing signed by and delivered to each party.

31. Effective date This Lease is effective when Landlord delivers to Tenant a copy signed by all parties.

Signatures Landlord and Tenant have signed this Lease as of the date at the top.

LANDLORD:

Bruno Martino

TENANT:

Richard H. Hines

Articles of Agreement,

Date May 24, 1979

Between

Tollgate Fruit Processors of the first part,

and

Dynamite Vending, Inc. of the second part.

The party of the first part, in consideration of the payment of ten thousand dollars (\$10,000.00) by the party of the second part and other conditions as set forth below

covenants and agrees to permit the placement of no less than six (6) coin machines, used for the sale of cigarettes and candy, on the premises known as Tollgate Fruit Processors, 101 Bland Ave., Ithaca for a term of thirty-six (36) months beginning the 24th day of May 1979 and continuing up to and including the 23rd day of May 1982. It is further agreed that the machines shall be placed on a portion of the premises convenient to the employees. No similar machines of any other company will be permitted on said premises.

The party of the second part, in consideration of the foregoing

covenants and agrees to maintain the said machines in satisfactory working order and to charge reasonable and customary prices for the sale of said products.

Articles of Agreement,

Date May 21, 1979

Between

Tropical Fruit Processors of the first part,

and

Dynamite Vending, Inc. of the second part.

The party of the first part, in consideration of the payment of ten thousand dollars (\$10,000.00) by the party of the second part and other conditions as set forth below

covenant s and agree s to permit the placement of no less than six (6) coin machines, used for the sale of cigarettes and candy, on the premises known as Tropical Fruit Processors, 3191 Sports Arena Blvd., Ithaca for a term of thirty-six (36) months beginning the 21st day of May 1979 and continuing up to and including the 20th day of May 1982. It is further agreed that the machines shall be placed on a portion of the premises convenient to the employees. No similar machines of any other company will be permitted on said premises.

The party of the second part, in consideration of the foregoing

covenant s and agrees to maintain the said machines in satisfactory working order and to charge reasonable and customary prices for the sale of said products.

Articles of Agreement,

Date May 22, 1979

Between

Simplicity Steel of the first part,

and

Dynamite Vending, Inc. of the second part.

The party of the first part, in consideration of the payment of three thousand dollars (\$3,000.00) by the party of the second part and other conditions as set forth below

covenant s and agrees to permit the placement of no less than six (6) coin machines, used for the sale of cigarettes and candy, on the premises known as Simplicity Steel, 913 Harold Ave., Ithaca for a term of thirty-six (36) months beginning the 22nd day of May 1979 and continuing up to and including the 21st day of May 1982. It is further agreed that the machines shall be placed on a portion of the premises convenient to the employees. No similar machines of any other company will be permitted on said premises.

The party of the second part, in consideration of the foregoing

covenant s and agrees to maintain the said machines in satisfactory working order, to charge reasonable and customary prices for the sale of said products and to pay to the party of the first part an amount equal to twenty-five percent (25%) of the gross revenues of each machine so located.

Articles of Agreement,

Date May 28, 1979

Between

B & W Building Products *of the first part,*

and

Dynamite Vending, Inc. *of the second part.*

The party *of the first part, in consideration of* the payment of three thousand dollars (\$3,000.00) by the party of the second part and other conditions as set forth below

covenantS and agreeS to permit the placement of no less than six (6) coin machines, used for the sale of cigarettes and candy, on the premises known as B & W Building Products, 727 Albany Rd., Ithaca, for a term of thirty-six (36) months beginning the 28th day of May 1979 and continuing up to and including the 27th day of May 1982. It is further agreed that the machines shall be placed on a portion of the premises convenient to the employees. No similar machines of any other company will be permitted on said premises.

The party *of the second part, in consideration of* the foregoing

covenantS and agreeS to maintain the said machines in satisfactory working order, to charge reasonable and customary prices for the sale of said products and to pay to the party of the first part an amount equal to twenty-five percent (25%) of the gross revenues of each machine so located.

Articles of Agreement,

Date May 28, 1979

Between

Hudson Products of the first part,

and

Dynamite Vending, Inc. of the second part.

The party of the first part, in consideration of the payment of three thousand dollars (\$3,000.00) by the party of the second part and other conditions as set forth below

covenants and agrees to permit the placement of no less than six (6) coin machines, used for the sale of cigarettes and candy, on the premises known as Hudson Products, 528 Paper Mill Lane, Ithaca for a term of thirty-six (36) months beginning the 28th day of May 1979 and continuing up to and including the 27th day of May 1982. It is further agreed that the machines shall be placed on a portion of the premises convenient to the employees. No similar machines of any other company will be permitted on said premises.

The party of the second part, in consideration of the foregoing

covenants and agrees to maintain the said machines in satisfactory working order, to charge reasonable and customary prices for the sale of said products and to pay to the party of the first part an amount equal to twenty-five percent (25%) of the gross revenues of each machine so located.

CASH RECEIPTS

CASH DISBURSEMENTS

RECORD OF CASH RECEIVED

MONTH OF

June

1st 79 NO. 2

STANDARD POST BINDER 925 912

CASH		Cigarettes		NET AMOUNT RECEIVED	DAY	RECEIVED FROM	AMOUNTS FORWARDED		DATE	AMOUNT
200	175	375	6-1	Tropical Fruit Processors	301	375				
225	200	425	6-1	Tollgate Fruit Processors	302	425				
580	525	1105	6-1	Simplicity Steel Co.	303	1105				
610	528	1138	6-1	B & W Building Products	304	1138				
575	340	1115	6-1	Hudson Products	305	1115				
215	225	440	6-5	Tropical Fruit Processors	301	440				
200	175	375	6-5	Tollgate Fruit Processors	302	375				
610	675	1285	6-5	Simplicity Steel Co.	303	1285				
581	651	1232	6-5	B & W Building Products	304	1232				
615	687	1302	6-5	Hudson Products	305	1302				
220	275	495	6-11	Tropical Fruit Processors	301	495				
400	275	675	6-11	Tollgate Fruit Processors	302	675				
890	825	1715	6-11	Simplicity Steel Co.	303	1715				
912	795	1707	6-11	B & W Building Products	304	1707				
905	789	1694	6-11	Hudson Products	305	1694				
205	175	380	6-15	Tropical Fruit Processors	301	380				
250	200	450	6-15	Tollgate Fruit Processors	302	450				
650	525	1175	6-15	Simplicity Steel Co.	303	1175				
625	537	1162	6-15	B & W Building Products	304	1162				
613	525	1138	6-15	Hudson Products	305	1138				
210	200	410	6-19	Tropical Fruit Processors	301	410				
225	175	400	6-19	Tollgate Fruit Processors	302	400				
577	600	1197	6-19	Simplicity Steel Co.	303	1197				
583	612	1195	6-19	B & W Building Products	304	1195				
620	636	1256	6-19	Hudson Products	305	1256				

1979 NO. 3

MONTH OF June

RECORD OF CASH RECEIVED

STANDARD POST BINDER BPS 912
GENERAL RECEIPT

Candy		Cigarettes		NET AMOUNT RECEIVED	DAY	RECEIVED FROM	AMOUNTS FORWARDED	DATE	AMOUNT
225	250	475	6-25	Tropical Fruit Processors	301	475			
200	275	475	6-25	Tollgate Fruit Processors	302	475			
903	750	1653	6-25	Simplicity Steel Co	303	1653			
945	726	1671	6-25	B+W Building Products	304	1671			
933	702	1635	6-25	Hudson Products	305	1635			
215	225	440	6-29	Tropical Fruit Processors	301	440			
225	225	450	6-29	Tollgate Fruit Processors	302	450			
526	675	1201	6-29	Simplicity Steel Co	303	1201			
620	687	1307	6-29	B+W Building Products	304	1307			
585	645	1230	6-29	Hudson Products	305	1230			
		75000	6-30	Commencement Candy, Inc.	250	75000			
17693	16685	109378		Recay		109378			
				Sales - Tropical	301	3015			
				Sales - Tollgate	302	3250			
				Sales - Simplicity	303	9331			
				Sales - B+W	304	9412			
				Sales - Hudson	305	7370			
				Notes Payable	250	75000			
						109378			

WILMER ★ SERVICE UNIT		STANDARD CHECK LEDGER FORM		ACCOUNTS PAYABLE		SUNDRY ITEMS	
AMOUNT	ACCT.	FEDERAL WITH. DISCOUNT	CHECK AMOUNT	CHECK NUMBER	IN FAVOR OF	ACCT.	AMOUNT
					AMOUNTS FORWARDED		
1			110	127	5-29 Wilson Company	120	110
2							
3			2000	128	5-29 ALLEN CIGARETTE Co	120	2000
4							
5							
6							
7	1600	1215	325				
8			150103				
9					Recap		
10							
11					Inventory		
12					FIXED ASSETS - other	120	15020
13							-154-
14					FIXED ASSETS - Equip	130	4500
15					FIXED ASSETS - Furn.	140	41500
16					FIXED ASSETS - Autos	145	7000
17					Prepaid Expenses	146	45000
18							
19					SALARY EXPENSE	150	30000
20					Auto & Truck Expense	500	6200
21							
22					OFFICE EXPENSE	510	250
23							
24							
25							
26							
27						530	2233
28							
							151703

NO.	RECORD OF CHECKS DRAWN				MONTH OF		19 79		BA			
	WILMER				STANDARD CHECK LEDGER FORM							
	SERVICE LINE											
AMOUNT		FEDERAL		WITH- HOLDING	DISCOUNT	CHECK AMOUNT	✓	CHECK NUMBER	IN FAVOR OF	ACCOUNTS PAYABLE	SUNDRY ITEMS	
ACCT.									AMOUNTS FORWARDED		ACCT.	AMOUNT
1						150		129	6-1 Ray's Janitorial		530	150
2						400		130	6-1 Pacific Telephone		530	400
3						250		131	6-1 General Gas and Elec.		530	250
4						2083		132	6-1 Spectacular Management Corp.		530	2083
5												
6												
7												
8												
9												
10						1000		133	6-1 LOCAL 904		580	1000
11												
12	500	220	400	100		1500		134	6-4 Arthur Hourman		500	2000
13												
14	250	220	200	50		750		135	6-4 Edward Rennison		500	1000
15												
16	200	220	175	25		600		136	6-4 Ramon Vasquez		500	800
17												
18	325	220	250	75		875		137	6-4 Phillip Navarro		500	1200
19												
20	325	220	250	75		875		138	6-4 Pete Harden		500	1200
21												
22						450		139	6-5 Royal Cars and Trucks		510	450
23												
24						300		140	6-6 Charley's Repair Servi		560	300
25												
26						1025		141	6-7 Simplicity steel co		550	1025
27												
28						593		142	6-7 B & W Building Products		550	593

-155-

[illegible]

[illegible]

CHECKS

DYNAMITE VENDING COMPANY
ITHACA

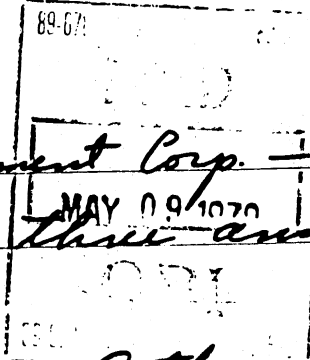
PAY TO THE
ORDER OF

Spectacular Management Corp.

\$ *2,083.00*

Two thousand and Eighty three and 00/100 — DOLLARS

Commercial Bank
of ITHACA



May 3, 1979

89-670
283

Arthur Hausman

0000208300

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

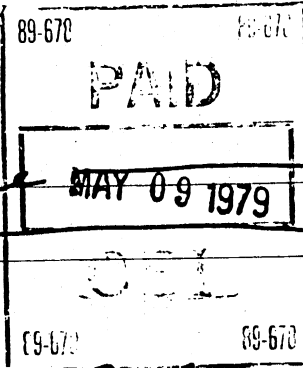
PAY TO THE
ORDER OF

ART'S Furniture

\$ *7,000.00*

Seven thousand — DOLLARS

Commercial Bank
of ITHACA



May 3, 1979

89-670
283

Arthur Hausman

0000700000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

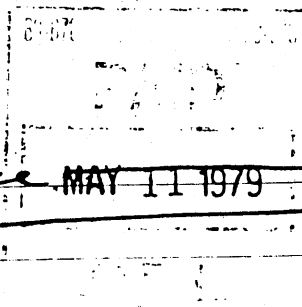
PAY TO THE
ORDER OF

Ithaca Insurance

\$ *500.00*

Five hundred — DOLLARS

Commercial Bank
of ITHACA



May 7, 1979

89-670
283

Arthur Hausman

0000050000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

OFFICE ACCOUNTS
MGMT CORP

ART'S FURNITURE

ITHACA INSURANCE

DYNAMITE VENDING COMPANY
ITHACA

104

PAY
TO THE
ORDER OF

May 7, 19 79
TNT jukeboxes and Entertainment \$ *37,500.00*

89-670
283

MAY 11 1979

CBI

Arthur Housman

0003750000

Commercial Bank
of ITHACA

Thirty Seven thousand and five hundred — DOLLARS

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

105

PAY
TO THE
ORDER OF

May 8, 19 79
Schmitt's Vending Equipment \$ *4,000.00*

89-670
283

MAY 11 1979

Arthur Housman

0000400000

Commercial Bank
of ITHACA

Four thousand — DOLLARS

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

106

PAY
TO THE
ORDER OF

May 11, 19 79
Commercial Candy, Inc. \$ *6,460.00*

89-670
283

MAY 17 1979

Arthur Housman

0000646000

Commercial Bank
of ITHACA

Sixty four and Sixty — DOLLARS

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

TNT JUKEBOXES AND
ENTERTAINMENT

SCHMITT'S VENDING
EQUIPMENT

COMMERCIAL CANDY, INC.

DYNAMITE VENDING COMPANY
ITHACA

107

PAY
TO THE
ORDER OF

Wilson Company

May 14, 19 79

89-670
283

\$ 220.00

Two hundred and twenty

MAY 18 1979

DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

0000022000

DYNAMITE VENDING COMPANY
ITHACA

108

PAY
TO THE
ORDER OF

Allen Cigarette Co.

May 14, 19 79

89-670
283

\$ 3,000.00

MAY 18 1979

Three thousand

DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

0000300000

DYNAMITE VENDING COMPANY
ITHACA

109

PAY
TO THE
ORDER OF

Rays Janitorial

May 15, 19 79

89-670
283

\$ 150.00

MAY 20 1979

One hundred and fifty

DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

0000015000

WILSON COMPANY

ALLEN CIGARETTE CO.

RAY'S JANITORIAL

DYNAMITE VENDING COMPANY
ITHACA

110

PAY
TO THE
ORDER OF

Pacific Telephone

May 15, 1979

89-670
233

\$ 200.00

Two hundred and 00/100

MAY 29 1979

DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000020000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

111

PAY
TO THE
ORDER OF

General Gas & Electric

May 18, 1979

89-670
233

\$ 300.00

Three hundred

MAY 27 1979

DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000030000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

112

PAY
TO THE
ORDER OF

Royal Cars & Trucks

May 18, 1979

89-670
233

\$ 22,000.00

Twenty two thousand

MAY 24 1979

DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0002200000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

PACIFIC TELEPHONE

GENERAL GAS AND
ELECTRIC

ROYAL CARS & TRUCKS

DYNAMITE VENDING COMPANY
ITHACA

113

PAY TO THE ORDER OF Tropical Fruit Processors May 21, 1979 \$ 10,000.00
Ten thousand MAY 25 1979 DOLLARS

Commercial Bank
of ITHACA

Arthur Horvath

0001000000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

114

PAY TO THE ORDER OF Arthur Horvath May 21, 1979 \$ 1,500.00
Fifteen hundred MAY 21 1979 DOLLARS

Commercial Bank
of ITHACA

Arthur Horvath

0000150000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

115

PAY TO THE ORDER OF Edward Remison May 21, 1979 \$ 750.00
Seven hundred and fifty MAY 21 1979 DOLLARS

Commercial Bank
of ITHACA

Arthur Horvath

0000075000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

TROPICAL FRUIT
PROCESSORS

William H. H. H.

Edmund Remmick

DYNAMITE VENDING COMPANY
ITHACA

116

PAY TO THE ORDER OF Ramon Vasquez MAY 21 1979 May 21, 1979 \$ 600.00
Six Hundred and no DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000060000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

117

PAY TO THE ORDER OF Phillip Navaro MAY 21 1979 May 21, 1979 \$ 875.00
Eight Hundred and Seventy five DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000087500

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

118

PAY TO THE ORDER OF Pete Holden MAY 29 1979 May 21, 1979 \$ 875.00
Eight hundred and Seventy five DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000087500

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

Ramon Vasquez

Phillip Marnon

Pay to the order of cash
Pete Harden

4E

IMPERIAL BANK

ITHACA

DYNAMITE VENDING COMPANY
ITHACA

119

PAY TO THE ORDER OF Simplicity Steel Co. May 22, 1979 \$ 3000.00
Three thousand MAY 29 1979 DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000300000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

120

PAY TO THE ORDER OF Quality Construction May 23, 1979 \$ 4500.00
Four thousand and five hundred MAY 29 1979 DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000450000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

121

PAY TO THE ORDER OF Tollgate Fruit Processors May 24, 1979 \$ 10,000.00
Ten thousand MAY 29 1979 DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0001000000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

SIMPLICITY STEEL CO.

QUALITY CONSTRUCTION

TOLLGATE FRUIT
PROCESSORS

DYNAMITE VENDING COMPANY
ITHACA

122

PAY
TO THE
ORDER OF

Royal Cars and Trucks

May 25, 1979

89-670
283

\$ 250.00

Two hundred and fifty

JUN 04 1979

DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000025000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

123

PAY
TO THE
ORDER OF

Royal Cars and Trucks

May 25, 1979

89-670
283

\$ 23,000.00

Twenty three thousand

MAY 31 1979

DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0002300000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

124

PAY
TO THE
ORDER OF

B + W Building Products

May 28, 1979

89-670
283

\$ 3,000.00

Three thousand

JUN 04 1979

DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000300000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

ROYAL CARS & TRUCKS

ROYAL CARS & TRUCKS

B & W BUILDING PRODUCTS

DYNAMITE VENDING COMPANY
ITHACA

121

May 28, 19 79 ⁸⁹⁻⁶⁷⁰₂₈₃
PAY TO THE ORDER OF Hudson Products \$ 3,000.00
JUN 04 1979
Three thousand DOLLARS

Commercial Bank
of ITHACA

Arthur Horner

0000300000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

126

May 29, 19 79 ⁸⁹⁻⁶⁷⁰₂₈₃
PAY TO THE ORDER OF Commercial Candy Inc \$ 3,230.00
JUN 04 1979
Three thousand, two hundred and thirty DOLLARS

Commercial Bank
of ITHACA

Arthur Horner

0000323000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

127

May 29, 19 79 ⁸⁹⁻⁶⁷⁰₂₈₃
PAY TO THE ORDER OF Wilson Company \$ 110.00
JUN 04 1979
One hundred and ten DOLLARS

Commercial Bank
of ITHACA

Arthur Horner

0000011000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

HUDSON PRODUCTS

COMMERCIAL CANDY, INC.

WILSON COMPANY

DYNAMITE VENDING COMPANY
ITHACA

128

PAY
TO THE
ORDER OF

Allen Cigarette Co.

May 29 19 *79*

89-670
233

JUN 05 1979

\$ *2000.00*

Two thousand

DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000200000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

129

PAY
TO THE
ORDER OF

Ray's Janitorial

June 1, 19 *79*

89-670
233

JUN 05 1979

\$ *150.00*

One hundred and fifty

DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000015000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

130

PAY
TO THE
ORDER OF

Pacific Telephone

JUN 08 1979

June 1, 19 *79*

89-670
233

\$ *400.00*

Four hundred

DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000040000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

ALLEN CIGARETTE CO.

RAY'S JANITORIAL

PACIFIC TELEPHONE

DYNAMITE VENDING COMPANY
ITHACA

131

PAY TO THE ORDER OF General Gas and Electric June 1, 1979 ⁸⁹⁻⁶⁷⁰ ₂₈₃
\$ 250.00
Two hundred and fifty JUN 08 1979 _____ DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

⑆0233⑉0670⑆0030⑆⑆42097⑆⑈

0000025000

DYNAMITE VENDING COMPANY
ITHACA

132

PAY TO THE ORDER OF Spectacular Management Corp June 1, 1979 ⁸⁹⁻⁶⁷⁰ ₂₈₃
\$ 2,083.00
Two thousand and Eighty Three JUN 07 1979 _____ DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

⑆0233⑉0670⑆0030⑆⑆42097⑆⑈

0000208300

DYNAMITE VENDING COMPANY
ITHACA

133

PAY TO THE ORDER OF Local 904 June 1, 1979 ⁸⁹⁻⁶⁷⁰ ₂₈₃
\$ 1,000.00
One thousand JUN 07 1979 _____ DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

⑆0233⑉0670⑆0030⑆⑆42097⑆⑈

0000100000

GENERAL GAS & ELECTRIC

SPECTACULAR
MUMI CURR

*Stuart Harper
for deposit to the
account of local*

DYNAMITE VENDING COMPANY
ITHACA

134

PAY
TO THE
ORDER OF

Arthur Hausman

June 4, 19 *79*

89-670
233

\$ *1,500.00*

JUN 04 1979

Fifteen hundred

DOLLARS

Commercial Bank
of ITHACA

Arthur Hausman

0000150000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

135

PAY
TO THE
ORDER OF

Edward Remison

June 4, 19 *79*

89-670
233

\$ *750.00*

JUN 04 1979

Seven hundred and fifty and 00/100

DOLLARS

Commercial Bank
of ITHACA

Arthur Hausman

0000075000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

136

PAY
TO THE
ORDER OF

Ramon Vasquez

June 4, 19 *79*

89-670
233

\$ *600.00*

JUN 04 1979

Six hundred

DOLLARS

Commercial Bank
of ITHACA

Arthur Hausman

0000060000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

Arthur Henson

Edward Henson

Reuben Henson

DYNAMITE VENDING COMPANY
ITHACA

137

PAY
TO THE
ORDER OF

Phillip Marano

June 4, 1979

89-670
233

\$ *875.00*

Eight hundred and seventy five

JUN 04 1979

DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000087500

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

138

PAY
TO THE
ORDER OF

Pete Warden

June 4, 1979

89-670
233

\$ *875.00*

Eight hundred and seventy five

JUN 12 1979

DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000087500

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

139

PAY
TO THE
ORDER OF

Royal Cars and Trucks

JUN 12 1979

June 5, 1979

89-670
233

\$ *450.00*

Four hundred and fifty and 00/100

DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000045000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

Phillip Marano

Pete Harden

ye

IMPERIAL BANK

ITIHACA

ROYAL CARS AND TRUCKS

DYNAMITE VENDING COMPANY
ITHACA

140

PAY
TO THE
ORDER OF

Charley's Repair Service

June 6, 19 *79*

89-670
233

\$ *300.00*

JUN 12 1979

Three hundred

DOLLARS

Commercial Bank
of ITHACA

Arthur Homan

0000030000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

141

PAY
TO THE
ORDER OF

Simplicity Steel Co.

June 7, 19 *79*

89-670
233

\$ *1,025.00*

JUN 14 1979

One thousand and twenty five

DOLLARS

Commercial Bank
of ITHACA

Arthur Homan

0000102500

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

142

PAY
TO THE
ORDER OF

B&W Building Products

June 7, 19 *79*

89-670
233

\$ *1,185.00*

JUN 14 1979

One thousand, one hundred and Eighty five

DOLLARS

Commercial Bank
of ITHACA

Arthur Homan

0000118500

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

CHARLEY'S REPAIR SERVICE

SIMPLICITY STEEL CO.

B & W BUILDING
PRODUCTS

DYNAMITE VENDING COMPANY
ITHACA

143

PAY TO THE ORDER OF Hudson Products June 7, 19 79 ⁸⁹⁻⁶⁷⁰
\$ 604.00 ²⁸³
Six hundred and four JUN 14 1979 _____ DOLLARS

Commercial Bank
of ITHACA

Arthur Hausman

0000060400

⑆0233⑈0670⑆0030⑆⑆42097⑆⑈

DYNAMITE VENDING COMPANY
ITHACA

144

PAY TO THE ORDER OF Commercial Candy, Inc June 11, 19 79 ⁸⁹⁻⁶⁷⁰
\$ 3,230.00 ²⁸³
Thirty two hundred and thirty JUN 19 1979 _____ DOLLARS

Commercial Bank
of ITHACA

Arthur Hausman

0000323000

⑆0233⑈0670⑆0030⑆⑆42097⑆⑈

DYNAMITE VENDING COMPANY
ITHACA

145

PAY TO THE ORDER OF Wilson Company June 11, 19 79 ⁸⁹⁻⁶⁷⁰
\$ 110.00 ²⁸³
One hundred and ten JUN 19 1979 _____ DOLLARS

Commercial Bank
of ITHACA

Arthur Hausman

0000011000

⑆0233⑈0670⑆0030⑆⑆42097⑆⑈

HUDSON PRODUCTS

COMMERCIAL CANDY, INC.

WILSON COMPANY

DYNAMITE VENDING COMPANY
ITHACA

146

89-670
233

PAY
TO THE
ORDER OF

Allen Cigarette Co.

June 11, 1979

JUN 19 1979

\$ *2,000.00*

Two thousand

DOLLARS

Commercial Bank
of ITHACA

Arthur Hanson

0000200000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

147

89-670
233

PAY
TO THE
ORDER OF

Yuri Bismondi

June 11, 1979

JUN 19 1979

\$ *2,500.00*

Twenty five hundred

DOLLARS

Commercial Bank
of ITHACA

Arthur Hanson

0000250000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

148

89-670
233

PAY
TO THE
ORDER OF

Stevens Office Supply

June 12 1979

JUN 19 1979

\$ *75.00*

Seventy five and 00/100

DOLLARS

Commercial Bank
of ITHACA

Arthur Hanson

0000007500

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

ALLEN CIGARETTE COMPANY

*When known
Deposit to account
no 0761*

NATIONAL BANK

ITHACA

STEVENS OFFICE SUPPLY

DYNAMITE VENDING COMPANY
ITHACA

141

PAY
TO THE
ORDER OF

Ithaca County

June 12, 1979

89-670
283

JUN 20 1979

\$ *250.00*

Two hundred and fifty

DOLLARS

Commercial Bank
of ITHACA

Arthur Hausman

⑆0233⑈0670⑆0030⑆⑆42097⑆⑈

0000025000

DYNAMITE VENDING COMPANY
ITHACA

151

PAY
TO THE
ORDER OF

Marty's Legins

June 13, 1979

89-670
283

JUN 20 1979

\$ *900.00*

Nine hundred

DOLLARS

Commercial Bank
of ITHACA

Arthur Hausman

⑆0233⑈0670⑆0030⑆⑆42097⑆⑈

0000090000

DYNAMITE VENDING COMPANY
ITHACA

151

PAY
TO THE
ORDER OF

Art's furniture

JUN 22 1979

June 15, 1979

89-670
283

\$ *1,400.00*

One thousand and four hundred

DOLLARS

Commercial Bank
of ITHACA

Arthur Hausman

⑆0233⑈0670⑆0030⑆⑆42097⑆⑈

0000140000

ITHACA COUNTY

MARTY'S SIGNS

ART'S FURNITURE

DYNAMITE VENDING COMPANY
ITHACA

89-670
283

June 18, 1979
JUN 18 1979
\$ 1,500.00
Fifty hundred
DOLLARS

Commercial Bank
of ITHACA

Arthur Housman
0000150000

⑆0233⑈0670⑆0030⑆⑆42097⑆⑈

DYNAMITE VENDING COMPANY
ITHACA

89-670
283

June 18, 1979
JUN 18 1979
\$ 750.00
Seven hundred and fifty
DOLLARS

Commercial Bank
of ITHACA

Arthur Housman
0000075000

⑆0233⑈0670⑆0030⑆⑆42097⑆⑈

DYNAMITE VENDING COMPANY
ITHACA

89-670
283

June 18, 1979
JUN 18 1979
\$ 600.00
Six hundred
DOLLARS

Commercial Bank
of ITHACA

Arthur Housman
0000060000

⑆0233⑈0670⑆0030⑆⑆42097⑆⑈

Arthur Hecaman

Edvard Hennison

Herman Hoagland

DYNAMITE VENDING COMPANY
ITHACA

155

PAY TO THE ORDER OF Phillip Navano June 18, 19 79 89-670
233
Eight hundred and seventy five JUN 18 1979 \$ 875.00
DOLLARS

Commercial Bank
of ITHACA

Arthur Hausman

0000087500

⑆0233⑉0670⑆0030⑆⑆42097⑆⑈

DYNAMITE VENDING COMPANY
ITHACA

156

PAY TO THE ORDER OF Pete Horden June 18, 19 79 89-670
233
Eight hundred and seventy five JUN 27 1979 \$ 875.00
DOLLARS

Commercial Bank
of ITHACA

Arthur Hausman

0000087500

⑆0233⑉0670⑆0030⑆⑆42097⑆⑈

DYNAMITE VENDING COMPANY
ITHACA

157

PAY TO THE ORDER OF Lane Scif Catering June 19, 19 79 89-670
233
Three thousand JUN 25 1979 \$ 3,000.00
DOLLARS

Commercial Bank
of ITHACA

Arthur Hausman

0000300000

⑆0233⑉0670⑆0030⑆⑆42097⑆⑈

McClary/Hawman

Pete Howard

4/8

IMPERIAL BANK

ITHACA

SANS SERIF CATERING

DYNAMITE VENDING COMPANY
ITHACA

158

PAY TO THE ORDER OF Simplicity Steel Co. June 21, 19 79 ⁸⁹⁻⁶⁷⁰₂₈₃
JUN 26 1979 \$ 1,022.00
One thousand and twenty two DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000102200

⑆0233⑉0670⑆0030⑆⑆42097⑆⑈

DYNAMITE VENDING COMPANY
ITHACA

159

PAY TO THE ORDER OF B & W Building Products June 21, 19 79 ⁸⁹⁻⁶⁷⁰₂₈₃
JUN 26 1979 \$ 1,016.00
One thousand and sixteen DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000101600

⑆0233⑉0670⑆0030⑆⑆42097⑆⑈

DYNAMITE VENDING COMPANY
ITHACA

160

PAY TO THE ORDER OF Hudson Products June 21, 19 79 ⁸⁹⁻⁶⁷⁰₂₈₃
JUN 26 1979 \$ 1,022.00
One thousand and twenty two DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000102200

⑆0233⑉0670⑆0030⑆⑆42097⑆⑈

SIMPLICITY STEEL CO.

B & W BUILDING PRODUCTS

HUDSON PRODUCTS

DYNAMITE VENDING COMPANY
ITHACA

161

PAY
TO THE
ORDER OF

Royal Cars and Trucks
JUN 29 1979

June 22, 19 79
\$ *600.00*

89-670
283

Six hundred DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000060000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

162

PAY
TO THE
ORDER OF

Stevens Office Supply
JUN 29 1979

June 22, 19 79
\$ *150.00*

89-670
283

One hundred and fifty DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000015000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

DYNAMITE VENDING COMPANY
ITHACA

163

PAY
TO THE
ORDER OF

Commercial Candy, Inc
JUL 02 1979

June 25, 19 79
\$ *3,230.00*

89-670
283

Three thousand, two hundred and thirty DOLLARS

Commercial Bank
of ITHACA

Arthur Housman

0000323000

⑆0233⑆0670⑆0030⑆⑆42097⑆⑆

ROYAL CARS AND TRUCKS

STEVENS OFFICE SUPPLY

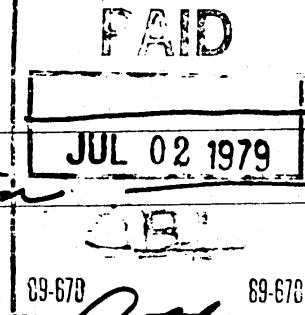
COMMERCIAL CANDY, INC.

DYNAMITE VENDING COMPANY
ITHACA

164

PAY TO THE ORDER OF Wilson Company
One hundred and ten

Commercial Bank
of ITHACA



June 25, 19 79
\$ 110.00
DOLLARS

Arthur Housman

0000011000

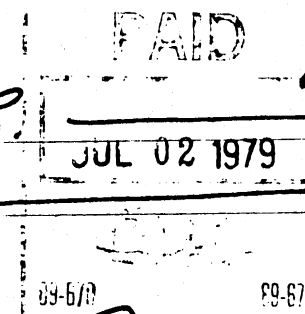
⑆0233⑉0670⑆0030⑆⑆42097⑆⑈

DYNAMITE VENDING COMPANY
ITHACA

165

PAY TO THE ORDER OF Allen Agnette Co.
Two thousand

Commercial Bank
of ITHACA



June 25, 19 79
\$ 2,000.00
DOLLARS

Arthur Housman

0000200000

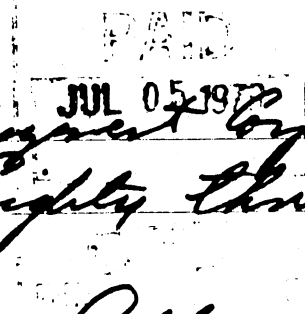
⑆0233⑉0670⑆0030⑆⑆42097⑆⑈

DYNAMITE VENDING COMPANY
ITHACA

161

PAY TO THE ORDER OF Spectacular Management Co.
Two thousand and Eighty three

Commercial Bank
of ITHACA



June 29, 19 79
\$ 2,083.00
DOLLARS

Arthur Housman

0000208300

⑆0233⑉0670⑆0030⑆⑆42097⑆⑈

WILSON COMPANY

ALLEN CIGARETTE CO.

SPECTACULAR MANAGEMENT
CORP.

DOCUMENTATION

MACHINE LOCATION CARD

Location : Hudson Products
 No. of mach: 6
 Type of mach: Cigarette ; Candy

Serial Nos :	1	20
✓ ✓	2	21
✓ ✓	3	22

MACHINE LOCATION CARD

Location : Tropical Fruit Processors, Inc
 No. of mach: 4
 Type of mach: CIGARETTE . Candy.

Serial Nos:	9	26
✓ ✓		27
✓ ✓		28

MACHINE LOCATION CARD

Location : Simplicity Steel
 No. of mach: 6
 Type of mach: CIGARETTE . Candy

Serial Nos:	4	23
✓ ✓	5	24
✓ ✓	6	25

MACHINE LOCATION CARD

Location : B & W Building Products
 No. of mach: 6
 Type of mach: CIGARETT , Candy

Serial Nos.	10	29
	11	30
	12	31

MACHINE LOCATION CARD

Location : TOLLGATE Fruit Processors, Inc
 No. of mach: 4
 Type of mach: Cigarette , Candy

Serial Nos.	28	32
✓ ✓		88
✓ ✓		89

PURCHASE ORDER

ORDER NO

DYNAMITE VENDING, INC.

009852

TO	TNT JUKEBOXES & ENTERTAINMENT PRODUCTIONS
ADDRESS	1626 BUSINESS WAY, ITHACA
SHIP TO	DYNAMITE VENDING, INC.
ADDRESS	3861 GOVERNOR DRIVE, ITHACA

REQ. NO.		DATE	
NONE		MAY 3, 1979	
FOR	DATE REQUIRED	HOW SHIP	TERMS
	MAY 7, 79	TRUCK	NET 30
QUANTITY	PLEASE SUPPLY ITEMS LISTED BELOW	PRICE	UNIT
1 12 EA	CIGARETTE MACHINES		
2	MODEL H 725	\$16800	- 1400
3 13 EA	CANDY MACHINES		
4	MODEL X 1-25	20700	1592
5			
6			
7			
8			
9	TOTAL COST	\$37500	-
10			
11			

<p>IMPORTANT</p> <p>OUR ORDER NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES, ETC</p> <p>PLEASE NOTIFY US IMMEDIATELY IF YOU ARE UNABLE TO SHIP COMPLETE ORDER BY DATE SPECIFIED</p>	<p>PLEASE SEND COPIES OF YOUR INVOICE.</p> <p><i>Ramon Vasquez</i></p> <p>PURCHASING AGENT</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------

Rediform®

15 141

POLY PAK (50 SETS) (P118)

ORIGINAL

T N T
JUKEBOX

INVOICE

INVOICE NO.

0909

SOLD TO

DYNAMITE VENDING, INC.

SHIP TO

SAME

3861 GOVERNOR DRIVE

ITHACA

CUSTOMER'S ORDER		SALESMAN	TERMS	SHIPPED VIA	F.O.B.	DATE
009852		PQS	ON DELIVERY	TRUCK	DELIVERY	MAY 7, 1979
12	EA	CIGARETTE MACHINES MODEL H 725 NOS. 1-12			\$16800 -	\$1400 EA
13	EA	CANDY MACHINES MODEL X 1-25 NOS. 20-32			20,700 -	1592 EA
		TOTAL AMOUNT DUE			37,500 -	

REDIFORM 75724

PCT PAK ISO 34133 77724

INVOICE

INVOICE NO.

7098

SANS SERIF

CATERING

SOLD TO

SHIP TO

DYNAMITE VENDING, INC.

3861 GOVERNOR DRIVE

N/A

ITHACA

CUSTOMER'S ORDER TELEPHONE	SALESMAN N/A	TERMS 15 DAS	SHIPPED VIA N/A	F.O.B. N/A	DATE 6-19-79
FOR CATERING SERVICES PROVIDED					
ON JUNE 16, 1979 AT					
11-12 PARKWAY COURT, ITHACA				\$3000	-
TOTAL AMOUNT DUE				\$3000	

REDIFORM 75724

POY PAR (50 5475) 79724

WILSON
CO.

INVOICE

INVOICE NO.

6070

SOLD TO

SHIP TO

DYNAMITE VENDING, INC.

3861 GOVERNOR DRIVE

SAME

ITHACA

CUSTOMER'S ORDER	SALESMAN	TERMS	SHIPPED VIA	F.O.B.	DATE
TELEPHONE	JK	DELIVERY	TRUCK	DELIVERY	5-14-79
200	BOXES (10 PER BOX) OF VARIOUS ASSORTED CANDIES			\$220. -	\$1.10
	TOTAL AMOUNT DUE			\$220. -	

REDIFORM 75724

NOT FOR ISO 5115 79724

WILSON
CO.

INVOICE

6077

SOLD TO

SHIP TO

DYNAMITE VENDING, INC.

3861 GOVERNOR DRIVE

SAME

ITHACA

CUSTOMER'S ORDER TELEPHONE	SALESMAN JK	TERMS DELIVERY	SHIPPED VIA TRUCK	F.O.B. DELIVERY	DATE 5-29
100		BOXES (10 PER BOX) OF VARIOUS		\$110	-
		ASSORTED CANDIES			
		TOTAL AMOUNT DUE		\$110	-

REDIFORM 75724

PGY PAT (50 5115) 77724

ПІАСА

INVOICE

INVOICE NO.

000712

SOLD TO

DYNAMITE VENDING, INC.

SHIP TO

SAME

3861 GOVERNOR DRIVE

ITHACA

CUSTOMER'S ORDER TELEPHONE		SALESMAN TJ	TERMS DELIVERY	SHIPPED VIA TRUCK	F.O.B. DELIVERY	DATE 5-11-79	
3800	BOXES (10 PER BOX) OF VARIOUS BRAND NAME CANDIES			\$6460	-	\$1.70	PER BOX
	TOTAL AMOUNT DUE			\$6460	-		

REDIFORM. 75724

POLY PAR. (50 SETS) 7F724

ART'S

FURNITURE SINCE 1952

INVOICE

INVOICE NO.

029908

SOLD TO Dynamite Vending, Inc.

SHIP TO

3861 Governor Drive

Same

Ithaca

CUSTOMER'S ORDER		SALESMAN	TERMS	SHIPPED VIA	F.O.B.	DATE
N/A		WGR	Net 30	Truck	Delivery	5-3-79
4 EA	Office Desks and Chairs				\$3200.00	\$800. EA
1 EA	Conference Table				700.00	700. EA
8 EA	Conference Chairs				400.00	50. EA
1 EA	Typewriter SL 100 Model				1200.00	1200. EA
1 EA	Couch				900.00	900. EA
2 EA	Chairs				600.00	300. EA
TOTAL AMOUNT DUE					\$7000.00	

REDIFORM 75724

POLY PAT (50 3415) 79724

ART'S

FURNITURE SINCE 1952

INVOICE

INVOICE NO.

029890

SOLD TO

Dynamite Vending Co.

SHIP TO

3861 Governor Drive

11-12 Parkway Court

Ithaca

Ithaca

CUSTOMER'S ORDER		SALESMAN	TERMS	SHIPPED VIA	F.O.B.	DATE
N/A		JB.	Net 30	Truck	Delivery	6-15
1 EA	Couch				\$800.	- \$800 EA
1 EA	Chair				460.	- 460 EA
4 EA	Bar Stools				140.	- 35 EA
TOTAL AMOUNT DUE					\$1400.	-

REDIFORM 75724

POLY FAX (503) 5115 77724

INVOICE NO.

000719

SHIP TO

3861 GOVERNOR DRIVE

SAME

ITHACA

CUSTOMER'S ORDER TELEPHONE	SALESMAN BR	TERMS DELIVERY	SHIPPED VIA TRUCK	F.O.B. DELIVERY	DATE 5-29-79
				\$ 249.	- \$3.50 EA
				87.	- 3.50 EA
				1664.	- 3.50 EA
			TOTAL AMOUNT DUE	\$2000.	-

INVOICE**INVOICE NO.**

000710

SHIP TO SAME

3861 GOVERNOR DRIVE

ITHACA

REDIFORM 75724

PURCHASE ORDER

ORDER NO.
009851

TO	Allen Cigarette Co.
ADDRESS	1560 Clark Drive, Ithaca
SHIP TO	DYNAMITE VENDING, INC.
ADDRESS	3861 GOVERNOR DRIVE, ITHACA

REQ. NO. None		DATE May 3, 1979	
FOR	DATE REQUIRED ASAP	HOW SHIP Truck	TERMS Net 30
QUANTITY	PLEASE SUPPLY ITEMS LISTED BELOW		PRICE
1	857	Cartons of Cigarettes	
2			
3		157 Cartons of Kent	\$550. - \$3.50
4			
5		700 Cartons - 70 Each	
6		of Major Brands	2450. - 3.50
7			
8			
9		857	\$ 3000. -
10			
11			

DISPOSITION OF MATERIAL	RECEIVING CLERK
	<i>Ramon Vasquez</i>
	PURCHASING AGENT

Rediform®

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POLY PAT (50 SETS, 1P141)

RECEIVING DEPT. COPY

312 COLLEGE AV.
ITHACA

INVOICE NO.

000706

SHIP TO N/A

Ithaca

CUSTOMER'S ORDER Telephone	SALESMAN JR	TERMS On completion	SHIPPED VIA N/A	F.O.B. N/A	DATE 5-23-79
For Home Improvement at					
11-12 Parkway Court, Ithaca					
100% Complete at Fixed					
Fee Price of \$4,500.00			\$4500.	00	
AMOUNT DUE			\$4500.	00	

PURCHASE ORDER

ORDER NO.

009853

DYNAMITE VENDING, INC.

TO	Schmitt's Vending Equipment
ADDRESS	1711 Highway Drive, Ithaca
SHIP TO	DYNAMITE VENDING, INC.
ADDRESS	3861 GOVERNOR DRIVE, ITHACA

REQ. NO.		DATE May 3, 1979	
FOR	DATE REQUIRED May 8, 1979	HOW SHIP Truck	TERMS on Delivery
QUANTITY	PLEASE SUPPLY ITEMS LISTED BELOW		PRICE
1	3 EA	Cigarette Machines	
2		Model H 725	\$2400. - \$800EA
3			
4	2 EA	Candy Machines	
5		Model X 1-25	1600. - \$800EA
6			
7			
8			
9		TOTAL COST	\$4000. -
10			
11			

INVOICES PASSED FOR PAYMENT		PLEASE SEND	COPIES OF YOUR INVOICE
		Ramon Vasquez	
		PURCHASING AGENT	

Rediform®

15 141

POLY PAK (50 SETS) 1P141

OFFICE COPY

Schmitt's

VENDING

EQUIPMENT

INVOICE

INVOICE NO.

000711

OLD TO

SHIP TO

Dynamite Vending, Inc.

3861 Governor Drive.

SAME

Ithaca

CUSTOMER'S ORDER	SALESMAN	TERMS	SHIPPED VIA	F.O.B.	DATE
009853	JP	Delivery	Truck	Delivery	May 8, 1979
3 EA	Cigarette Machines Model H 725				
	Serial Nos. 26, 27 & 28			\$2400. -	\$800. EA
2 EA	Candy Machines Mode X 1-25				
	Serial Nos. 88 & 89			\$1600. -	\$800. EA
TOTAL				\$4000. -	

REDIFORM 75724

PCRY PAR (50 5115) 77724

Guide: Workshop #3 - Analyzing Corporate Records

There are obviously several places to begin, the appropriateness of each being determined in large measure by the sophistication of the students and the particular insights of the first student to volunteer. The following observations about Dynamite's corporate activity are therefore not set out in any specific order. Each should be checked off as the point is made, and then reviewed to insure that none were overlooked.

While it is clear that Dynamite sought to hide its true ownership and to disguise certain payments, some of its attempts were transparent. The students should discuss alternative methods by which the transactions could have been accomplished, and what, if any, leads those methods would have left for investigators to pursue.

1. Spectacular Management Corp.

The Company leases the building from Spectacular at \$10 per square foot as indicated in the attached lease agreement. Spectacular Management Corp. is connected to Bruno Martino as shown by the biographic data sheet. The space of 2500 sq. ft. is too large for a four man operation and the cost per sq. ft. is excessive for that type of building.

2. TNT Jukeboxes and Entertainment Production

TNT Jukeboxes is a business interest of Ricardo Barcelona as shown on the biographic data sheet. On May 3, 1979 a purchase order no. 009852 from Dynamite Vending, Inc. to TNT Jukeboxes indicated a purchase of equipment at \$1400 and \$1592 per unit. The equipment was received, invoiced and paid on check no. 104.

It should be noted that Dynamite received equipment and paid for same (check no. 105) from Schmitt's Vending equipment, at a unit price of \$800.

3. Commercial Candy Inc.

Commercial Candy Inc. is owned by Ricardo Barcelona as shown by the biographic data sheet. Invoices and paid checks to Commercial Candy Inc. show the cost per box to be \$1.70. However in comparing the same information with Wilson, the cost per box from that company is only \$1.10.

On June 30, 1979 a \$75,000 loan was made to Dynamite Vending, Inc. by Commercial Candy Inc. (see cash receipt Journal). In examining the note it should be observed that (i) interest rate is 17% and (ii) the loan is secured by the assets of Dynamite Vending, Inc.

4. Royal Cars and Trucks

The purchase of two vans and two cars are legitimate transactions with Royal cars and trucks. However, the need for four vehicles should raise a question. It would appear that the president of the company is using the cars primarily for personal use.

5. Local 904

Local 904 loaned \$200,000 to Dynamite Vending, Inc. (see cash receipts journal). In examining the promisory note it can be determined that (i) it is for 10 years at 5% interest, (ii) non-secured and (iii) signed by Mr. Housman as president of Dynamite Vending, Inc.

On June 1, 1978 \$1000 was paid by check no. 133 for interest against the note. The check was endorsed by Stuart

Harper, apparently the brother-in-law of Housman.

6. Tropical and Tollgate Fruit Processors

The Fruit Processors are customers of Dynamite Vending, Inc. In addition, a sweetheart contract exists between the Fruit Processors and Local 904. Evidence of this relationship can be established by reviewing the following documents.

a) Articles of Agreement

The Articles of Agreement indicate that a \$10,000 payment is due and they do not share in the revenue generated by the machines. All other agreements indicate a \$3,000 payment and 25% commission of the gross revenues. A question as to why the Agreements are different and the possibility of a kickback should be raised. Note the \$10,000 could be kicked back—an examination would have to be made of the Processors' books. Furthermore, with no gross receipts to account for, cash could be skimmed by Dynamite.

b) Cash Receipts Journal.

By reviewing the cash receipts Journal it will be noted that the revenue is considerably lower from the Fruit Processors. This is an indication that cash, is in fact, taken out of the machines and not recorded.

c) Equipment

1. Per the Purchase Order nos. 009852 and 009853 a total of 15 cigarette machines and 15 candy machines were purchased.
2. Per the location cards 15 candy machines and 11 cigarette machines were placed in locations. The Fruit Processors were 4 machines short
3. Articles of agreement state that at least 6 machines will be placed at each location.

Based on the review of the above documentation it can be determined that 4 cigarettemachines are missing. An actual inspection at the Fruit Processors' site would be necessary to see if unrecorded machines have been placed, and to determine whether the machines contained bootleg cigarettes.

7. Pete Harden

Pete Harden is a fictitious employee. This is indicated by a review of the check endorsement and the date the check clears. Review of endorsement would show (i) printed name (ii) initials of YG and (iii) clears through Imperial Bank of Ithaca. The student should also review check no. 147 to Yuri Gismondi (initials YG); his check also clears through Imperial Bank. Although there is not absolute evidence that a fictitious employee does exist suspicion can be raised.

8. Quality Construction

Check no. 120 was paid under invoice no. 000706. As indicated on the invoice the services were for Home Improvement at 11-12 Parkway Court, Ithaca. The biographic data sheet indicates that this is the home of Ricardo Barcelona.

9. Yuri Gismondi

Check no. 147 to Yuri Gismondi for \$2,500 was charged to promotion. There is no supporting documentation that services had been performed. In addition, it has already been established that Yuri is the son-in-law of Ricardo Barcelona.

10. Art's Furniture

Art's Furniture was paid \$1400 on check no. 151 for invoice no. 029890. The invoice indicates ship to 11-12 Parkway Court, Ithaca. This is the home of Ricardo Barcelona as shown by the biographic data sheet.

11. Sans Serif Catcring

Sans Serif Catering was paid \$3000 on check no. 157 for invoice no. 7098. The invoice indicates services rendered at 11-12 Parkway Court, Ithaca. This is the home of Ricardo Barcelona as shown by the biographic data sheet.

Contents of Workshop #3

Letter to District Attorney

Flow Chart of Organizations and Individuals

Listing of Companies Involved in Transaction

Promisory Notes

Security Agreement

Lease Agreement

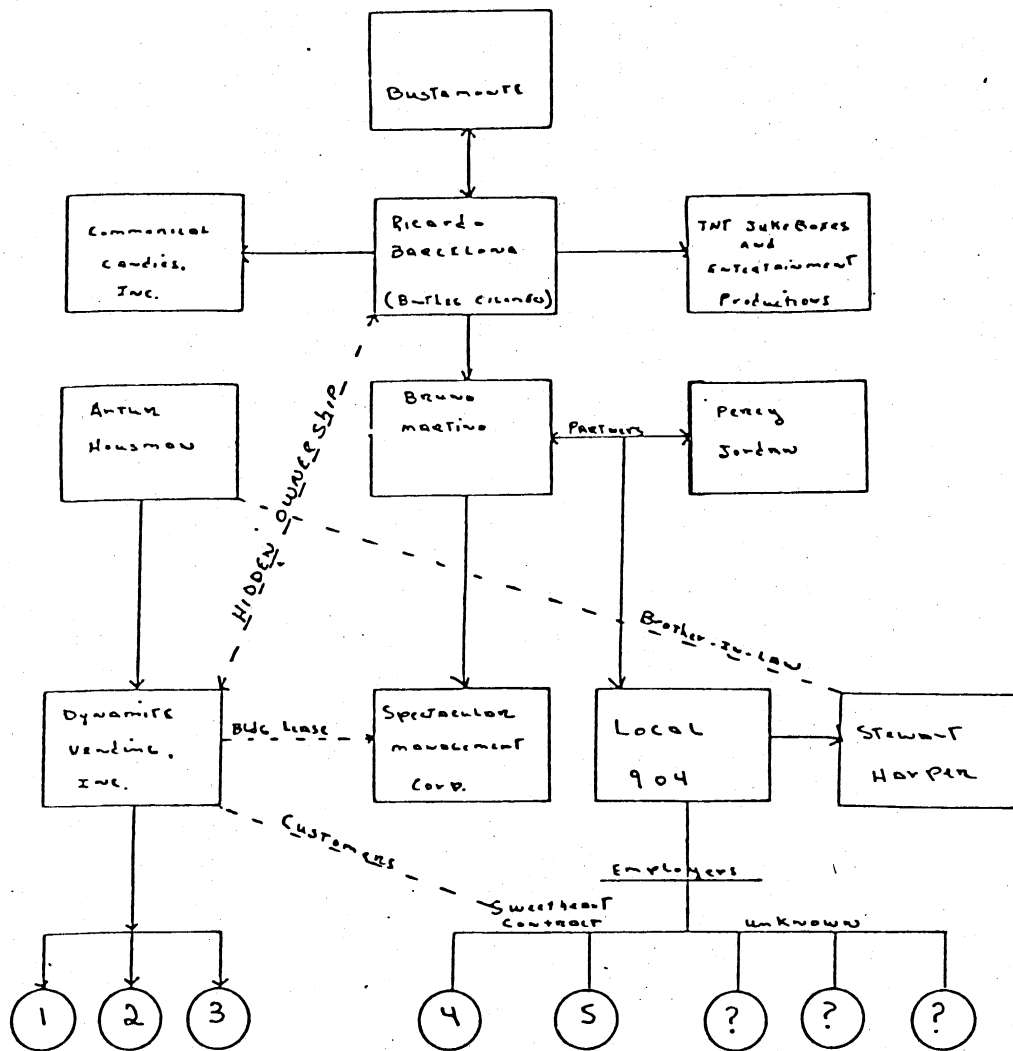
Articles of Agreement

Cash Receipts Journal

Cash Disbursement Journal

Supporting Documentation

1. Cancelled Checks
2. Machine Location Card
3. Purchase Orders & Invoices



LEGITIMATE Customers

1. Simplicity STEEL Co.
2. B&W Building Products
3. Hudson Products

ILLEGITIMATE Customers

4. Tropical Fruit Processors
5. Tollgate Fruit Processors

COMPANIES

A. Dynamite Vending, Inc., 3861 Gouvernor Dr., ITHACA

- | | | | |
|--------------|---|-----------------|------------------|
| 1. President | - | Arthur Housman | |
| 2. Employees | - | Edward RENNISON | - Bookkeeper |
| | | Ramon VASQUEZ | - warehouseman |
| | | Phillip NAVARRO | - Routeman |
| | | PETE HARDEN | - Ghost ROUTEMAN |

B. Locations of machines

- | | |
|------------------------------|---------------|
| 1. Tropical Fruit Processors | Related Party |
| 2. Tollgate Fruit Processors | Related Party |
| 3. Simplicity Steel | |
| 4. B.W. Building Products | |
| 5. Hudson Products | |

C. Purchases From:

- | | |
|------------------------------------|----------------|
| 1. Commercial Candy, Inc. | Related Party. |
| 2. ART's Furniture | |
| 3. TNT Jukeboxes AND Entertainment | Related Party |
| 4. Schmitt's Vending Equipment | |
| 5. Wilson Company | |
| 6. ALLEN Cigarette Co. | |

D. Building Lease

- | | |
|--------------------------------|----------------|
| 1. Spectacular MANAGEMENT Corp | Related Party. |
|--------------------------------|----------------|

E. Loans

- | | |
|------------------------------|----------------|
| 1. SEWANT HARPER - Local 904 | Related Party. |
| 2. Commercial Candy, Inc. | Related Party. |

Workshop #4 - Legal Objections to Testifying

Premise: Based on the evidence obtained to date, a grand jury is considering whether or not criminal charges should be brought against the targets of the investigation. Stuart Harper has been subpoenaed to testify and asserts his privilege against self-incrimination. The decision to grant Harper transactional immunity has been affirmatively made.

Problem: I. Should Harper be granted transactional immunity?
II. How should the prosecutor deal with the various objections that Harper raises to the compulsion of his testimony?

Objections to Testimony

I. (A) My attorney has advised me to refuse to answer all questions based upon self-incrimination grounds as authorized by the 5th Amendment, the cornerstone of the Bill of Rights.

* (after grant of immunity)*

(B) I must still refuse to answer based on the self-incrimination clause of the 5th Amendment, in that my truthful answers would subject me to federal prosecution

* * *

(C) I must still refuse to answer. The Tropical Fruit Processors Union Disability Fund insurers have Canadian offices. I am informed by counsel that Canadian authorities have Criminal Jurisdiction in this matter and my statements could be used against me in a Canadian prosecution. I am thus being compelled to incriminate myself in violation of the 5th Amendment.

* * *

(D) Even if you are able to, and I don't see how you could, prevent my testimony from being used against me, the fact of my testimony is certainly going to subject me to scorn among my friends. Nobody but nobody with whom I associate will have anything to do with a rat. Furthermore, to the extent that I implicate myself in criminal dealings, I will certainly be a figure of ridicule in my community and profession. You cannot immunize from that and thus the immunity which you grant is not coextensive with the Fifth Amendment. Put differently, after I testify I will be in a different position than before I did.

II. (A) I have been advised by my attorney that I may have been the subject of illegal wiretapping and that consequently I cannot be compelled to testify before the Grand Jury. To do so would violate my rights under the Constitution of the United States.

(B) On advice of my attorney, I respectfully request that this grand jury direct the District Attorney to make available for my inspection all applications, orders, intercepted communications and monitors' records relating to any interceptions in which I may have been a participant. If these items are to be denied to me, then I can only assume that the prosecutor is not interested in completely truthful, and factually correct testimony, but wishes only to trick me into unknowing inconsistencies or falsehoods.

* * *

III. I guess that before you called me as a witness you checked my background. If you are as thorough as I think you are, you discovered that I have American Indian blood in me. It should therefore not surprise you to find out that I have recently adopted the Mayan Temple as my religious affiliation. The Mayan Temple is a "restoration of the pristine faith Catholic, practiced by the Mayas in prehistoric America and common to all North and South America, prior to the coming of the white man." The chief administrative body of the temple for both clergy and laity is the ancient and mystical Order of Po-ahtun. Until I receive dispensation from that body I may not testify in a white man's court.

* * *

IV. If these people are as bad as you think they are, and I were to give information which was to be used against them, then obviously I would be in real physical danger. In order to avoid becoming another Arnold Shuster, I'm going to have to refuse to testify. To compel my testimony under these circumstances would be to subject me to cruel and unusual punishment in violation of the 8th Amendment to the United States Constitution.

* * *

V. As I indicated previously I am a descendant of the American Indian Nation. My counsel advises me that since there is an actual exclusion of American Indians from Grand Juries in general, and this one in particular, this Grand Jury is not duly constituted and is therefore not legal. My counsel advises me that under these circumstances where the jury is not of my peers, I should respectfully refuse to answer questions.

* * *

VI. It is my intention to provide to the Grand Jury testimony that is complete and accurate. In order that I be able to do so I respectfully request that as an aid in refreshing my recollection of the relevant facts I be permitted to review

- (a) any written or recorded statements made by me;
- (b) all telephone company toll records reflecting calls which may be the subject of potential questions;

- (c) copies of all still or motion pictures taken of me; and
- (d) copies of reports or memoranda made by lawyers.

* * *

VII. If I were to truthfully answer that question I would reveal information which I honestly believe would incriminate my wife in this matter. I have been advised by my attorney that in view of the sanctity of the institution of marriage and of the legal recognition of that sanctity through the marital privilege I may not so testify.

Guide: Workshop #4 - Legal Objections to Testifying

Objections to giving testimony

Each workshop will be provided with a Stuart Harper. Students should be given the opportunity to question Harper and to respond appropriately to his objections. If necessary, a court can be convened to hear arguments of counsel. (Another student can serve as a defense attorney). The Instructor should act as judge and make appropriate rulings.

- I. (A) This represents a valid objection. Note, however that the privilege against self-incrimination does not confer the right to refuse to answer all questions. The witness may refuse to answer only those questions whose answers he reasonably believes may incriminate him. See, Kastigar v. United States, 406 U.S. 441, 445 (1972).
The grant of immunity

The decision to confer immunity in a particular situation is essentially a question of judgment, one on which reasonable men can differ. In order to maintain a sense of consistency, fairness, and appropriateness, that decision should be arrived at after careful analysis of a number of relevant factors. Some of the issues which ought to be explored in this case, and in this workshop, include:

- a. What is Harper receiving immunity for?
- b. Could he be indicted for those crimes?
- c. What would be the likelihood of conviction?

- d. Would his truthful testimony be of benefit to the grand and petit juries?
- e. How likely is he to tell the truth?
- f. Could he be convicted of contempt or perjury for his failure to testify truthfully?
- g. What would be the likely consequence of such a conviction?
- h. Is Harper an appropriate "target" or a "victim"?

(B) This is not a valid objection. In Murphy v. Waterfront Comm'n, 378 U.S. 52, 79 (1964), the Supreme Court held that the federal government would be prohibited from making use of compelled testimony and its fruits. Consequently, with the fear of federal prosecution removed, a witness granted immunity is compelled to answer. See also Kastigar v. United States, 406 U.S. 441, 453 (1972).

(C) This issue has not been addressed by the Supreme Court, and the lower federal courts appear to be split on the question. It has been held that since criminal laws have no extraterritorial effect, Fifth Amendment "compulsion" (and hence immunity) should only include domestic laws. United States v. Doe, 361 F. Supp. 226, 226 (E.D. Pa.), aff'd, 485 F.2d 678 (3d Cir. 1973), cert. denied, 415 U.S. 989 (1974).

However, the main battleground has usually been the question of whether grand jury secrecy provisions provide sufficient protection from the threat of foreign prosecution. Three circuits have decided that they do. United States v. Armstrong, 476 F.2d 313, 316 (5th Cir. 1973); In re Tierney

465 F.2d 806 (5th Cir. 1972); In re Parker, 411 F.2d 1067, 1070 (10th Cir. 1969); In re Weir, 377 F. Supp. 919, 924 (S.D. Cal.), aff'd, 495 F.2d 879 (9th Cir.), cert. denied, 419 U.S. 1038 (1974); In re Morahan, 359 F. Supp. 858, aff'd, 465 F.2d 806 (5th Cir. 1972).

However, one court, in In re Cardissi, 351 F. Supp. 1080 (D. Conn. 1972), has held otherwise, deciding that the Fifth Amendment privilege can be asserted against a genuine danger of foreign prosecution, and that a witness in such danger may refuse to answer questions despite a grant of immunity.

In this case, there is no specific claim that Canadian law was violated, and therefore there does not appear to be an actual danger of foreign prosecution.

(D) It is well settled that a witness may not refuse to answer on the ground that his testimony might be embarrassing or cause economic or social injury. United States v. Calandra, 414 U.S. 338, 345 (1974).

II: (A) It should be sufficient for the prosecutor to advise the witness that he was not the subject of unlawful electronic surveillance. Organized Crime Control Act, 18 U.S.C. § 3504(a) (1976) provides that:

In any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, or other authority of the United States --

(1) upon a claim by a party aggrieved that evidence is inadmissible because it is the primary product of an unlawful act or because it was obtained by the exploitation of any unlawful act, the opponent of

the claim shall affirm or deny the occurrence of the alleged unlawful act.

Note that this is different from denying that the witness was the subject of electronic surveillance. Although the latter statement is accurate, it tells the witness too much -- he is now free to commit perjury knowing that his conversations will not be used against him.

The integrity of the grand jury's fact-finding process is what is at stake here. Providing an uncooperative or hostile witness with the [knowledge that the questions about to be propounded are the product of electronic surveillance] permits him to tailor his testimony to matters already known to the grand jury, thereby defeating the purpose of calling him. Such disclosure also jeopardizes the secrecy of the investigation and hence its chances of success with respect to the targets thereof.

People v. Breindel, 73 Misc. 2d 734, 739, 342 N.Y.S.2d 428, 434 (N.Y. County 1973), aff'd, 35 N.Y.2d 928, 365 N.Y.S.2d 163 (1974); See generally Aspects of Grand Jury Practice, ¶ 60-75 in the 1979 Manuals of Law and Procedure (B) A grand jury witness seeking to inspect such underlying documents and intercepted communications is highly limited. In re Grand Jury Proceedings (Worobyt), 522 F.2d 196 (5th Cir. 1975), cert. denied, 425 U.S. 911 (1976). Although 18 U.S.C. §§ 2518(9) and 2518(10) provide for limited pretrial disclosure of papers and the product of surveillance, they are generally held inapplicable to a grand jury proceeding. In re Persico, 491 F.2d 1156 (2d Cir.), cert. denied, 419 U.S. 924 (1974).

III. When a freedom of worship claim is made, the first amendment interest of the individual must be balanced against the interest of the State. Sherbert v. Verner, 374 U.S. 398, 403 (1963). In so doing, the courts do not allow this privilege to nullify society's interest in thorough investigations:

Appellant asserts that as an "observant and committed Jew" he must refuse to answer the grand jury questions or else suffer "Divine punishment and ostracism from the Jewish Community" as an "informer". The legal claim is apparently a novel one and its precise religious basis is not clear from the record before us. But even assuming arguendo that there is such a tenet of Jewish law and that appellant devoutly embraces it, this would not be sufficient justification for appellant's conduct. The Supreme Court has . . . emphasized the duty that rests upon every citizen to furnish to a grand jury evidence of crime, even when the claim is made that doing so interferes with the freedom of the press. Branzburg v. Hayes, 408 U.S. 665 . . . (1972).

Smilow v. United States, 465 F.2d 802, 804 (2d Cir.), vacated and remanded on other grounds, 409 U.S. 944 (1972), on remand, 472 F.2d 1193 (2d Cir. 1973).

IV. [Fear for the witness or his family would not] be a legal excuse. Every citizen of course owes to his society the duty of giving testimony to aid in the enforcement of the law. See Brown v. Walker, 161 U.S. 591, 600 (1896). Lord Chancellor Hardwicke's pithy phrase cannot be too often recalled: "[T]he public has a right to every man's evidence." 12 Hansard's Debates 693; 8 Wigmore, Evidence (3rd ed.), p. 64, § 2192.

If two persons witness an offense -- one being an innocent bystander and the

other an accomplice who is there-
after imprisoned for his participa-
tion -- the latter has no more right
to keep silent than the former. The
Government of course has an obliga-
tion to protect its citizens from
harm. But fear of reprisal offers
an immunized prisoner no more dis-
pensation from testifying than does
any innocent bystander without a
record.

Piemonte v. United States, 367 U.S. 556, 559 n.2 (1961).
Accord, Taylor v. United States, 509 F.2d 1349 (5th Cir.
1975). See also In re Kilgo, 484 F.2d 1215 (4th Cir.
1973), and LaTona v. United States, 449 F.2d 121 (8th
Cir. 1971). But see Widger v. United States, 244 F.2d
103, 106 (5th Cir. 1957), and United States v. Leyva,
513 F.2d 77, 774, 780 (5th Cir. 1975). (Note - Arnold
Schuster was, according to Joseph Valachi, murdered by
Albert Anastasia after informing police of the whereabouts
of the legendary bank robber Willie Sutton.)

- V. Whether a witness has standing to raise this issue is
questionable. United States v. Duncan, 456 F.2d 1401
(9th Cir.) (no standing), vacated on other grounds, 409
U.S. 814 (1972); U.S. ex rel Chesnut v. Criminal Court of
New York, 442 F.2d 611 (2d Cir. 1971) (standing). As
to whether the claim is potentially meritorious see
generally The Grand Jury Defense Office of the National
Lawyers Guild, Representation of Witnesses Before the
Grand Jury, Ch. 6 (1976). If these issues need to be
litigated, the proper time to do so is after the Grand
Jury proceedings. Cf. Gelbard v. United States, 408
U.S. 41, 70 (1972) (concurring opinion of White, J.)

VI. There is no statutory authority for the discovery sought by the witness. In fact, it has been repeatedly held that a witness does not have a right to such disclosure.

"There is no duty on the prosecution to tell a Grand Jury witness what evidence it has against him." United States v. Del Toro, 513 F.2d 656, 664 (2d Cir. 1975); United States v. Winter, 348 F.2d 204, 210 (2d Cir.), cert. denied, 328 U.S. 955 (1965).

To grant such disclosure in the guise of helping the witness prepare would permit him to testify as to only so much as the Grand Jury already knew. The proper procedure is for the witness to admit a lack of recollection to a specific question during the examination. At that time, the prosecutor may be able to stimulate the witness's memory.

VII. As a general rule, a grand jury witness may withhold testimony which would incriminate his spouse on the basis of the marital privilege. Blau v. United States, 340 U.S. 332, 335 (1951). See also Hawkins v. United States, 358 U.S. 74, 75 (1958). Testimony may be compelled where both spouses are granted immunity. As neither spouse can be prosecuted for what is then said, the underlying precept of preservation of the family is maintained. United States v. Doe, 478 F.2d 194, 195 (1st Cir. 1973).

A workable solution where, as here, the wife is not a target of the investigation, is having the prosecutor file an affidavit that he will not prosecute the wife. In re Snoonian, 502 F.2d 110, 113 (1st Cir. 1974).

Workshop #5 - Examination of the Recalcitrant Witness

Premise: William Blanchard has been subpoenaed to testify before the Grand Jury and has been granted transactional immunity. He is represented by an attorney.

- Problem:
- I. Prepare an agenda in preparation for Blanchard's Grand Jury appearance.
 - II. Examine Blanchard before the Grand Jury, using the information and evidence obtained during the course of investigation.

Guide: Workshop #5 - Examination of the Recalcitrant Witness

A "Blanchard" will be provided. He will attempt to answer questions in a manner designed to avoid (1) aiding the Grand Jury, and (2) committing provable contempt or perjury.

Students should be selected, either singly or in teams of two, to examine the witness "before the Grand Jury." After five to ten minutes, the observing students should undertake a critical evaluation of the questioner's performance. Thereafter, a second team should be chosen, etc.

Before the first student begins, the section should discuss the possible methods of conducting an effective examination. An agenda should be prepared, based on the tactical considerations involved in demonstrating the failure of a witness to testify truthfully. See generally Grand Jury Examination of the Recalcitrant Witness: Contempt and Perjury, pp. 29ff, Appendix A, Section III.

Workshop #6 - Perjury and Contempt Indictments

Premise: William Blanchard has appeared before the August, 1979 Grand Jury, and a transcript of his testimony has been prepared. Certain sections of his testimony have been singled out as possible bases for contempt or perjury charges.

Problem: I. Which of the selected portions are legally sufficient to support a count in the indictment?

II. How should each be charged?

I.

Q. On June 5, 1979 at 10:05 a.m. did you have a conversation with Percy Jordan?

A. I may have.

Q. And at that date and time did you tell him that you would sign a contract for vending.

A. I don't remember.

Q. Do you deny that you did.

A. No.

Q. Do you affirm that you did.

A. No.

* * *

II.

Q. Didn't Jordan advise you to use Dynamite Vending machines in your processing plant?

A. No.

* * *

III.

Q. Do you know a business agent for local 904, by the name of Bruno Martino?

A. Yes, I do.

Q. Have you ever met him?

A. Yes, on union business.

Q. Did he ever threaten you?

A. No, never.

Q. Isn't it a fact that at that meeting he hit you?

A. I don't remember that.

Q. Do you deny that he did.

A. I don't remember that occurring at all.

Q. Do you deny it?

A. No.

Q. Do you affirm it?

A. No.

Q. Now, Mr. Blanchard, has anybody ever hit you during a business meeting?

A. Of course not.

Q. And if somebody did, that would be the kind of thing you would likely not forget?

A. That's true.

Q. Well, did Martino hit you?

A. I told you, I can't recall.

* * *

IV.

Q. Why did you go to the Royal Ithacan baths?

A. Well I thought it would be a good idea to get some steam.

Q. How long did you stay inside the Royal Ithacan?

A. Only a few minutes - maybe ten.

Q. Did you enter with Percy Jordan?

A. Yes.

Q. Did you have a conversation with him there?

A. Yes, I guess so.

Q. How long did the conversation take?

A. Only a few minutes.

Q. Then, in fact, you didn't have time to have a steam bath.

A. No, I didn't.

Q. Didn't you go there in order to meet with him.

A. Yes, I guess I did.

* * *

V.

Q. After you parked your car, at the baths, did you tell Jordan that "The cops are probably all over the place."

A. No.

* * *

VI.

Q. Did your proposed agreement with Dynamite call for your company to obtain a commission on the vending income.

A. Yes, of course it did.

Q. Isn't it a fact that in view of an agreed upon sweetheart deal that all of the income was to go to Dynamite?

A. There was no sweetheart deal agreed upon.

Q. Well, wasn't all the income from the machines to go to Dynamite?

A. I'm not sure.

Q. How much were you to receive

A. A percentage.

Q. How much?

A. I don't know.

Q. More than 50%?

A. I'm not sure.

Q. More than 30%?

A. I'm not sure.

Q. More than 10%?

A. I'm not sure.

Q. Less than 1%?

A. I don't think so.

Q. Is it possible?

A. Anything's possible.

Q. In fact, you were not to receive any income

A. I just can't recall one way or the other

*

*

*

VII.

Q. During your conversation with Jordan didn't you say quote: The animal told me those stories already.

A. No.

* * *

VIII.

Q. Is it your testimony that you never stated to Jordan "Your animal told me those already."

A. Yes.

* * *

IX.

(1) Q. On June 5, 1979 did you have occasion to meet with Percy Jordan?

A. No, I did not - I spoke with him on the telephone. You apparently heard that conversation.

Q. Did you agree to meet Jordan after that conversation?

A. We may have said something like that if you have that on your tape.

Q. I am asking you for your best recollection.

A. Okay, we did.

* * *

IX.

(2) Q. Are you familiar with an establishment known as the Royal Ithacan Baths?

A. Yes, I am.

Q. When was the last time you were there?

A. June 5.

Q. Were you there with anyone else?

A. Percy Jordan.

* * *

X.

Q. How did you travel from your office to the baths?

A. By car.

Q. Would you please describe the car for the Grand Jury?

A. It is a blue Pontiac convertible - 1974 I think.

Q. To whom is the car registered?

A. My wife.

Q. Isn't it a fact that you drove a white Cadillac license plate no. ITH903 to the baths?

A. Oh, yes, I guess I did.

* * *

XI.

Q. Prior to June 4, 1979 had you ever been to the Royal Ithacan Baths?

A. No.

Q. Isn't it a fact that Jordan advised you of that location by saying "the same place you was last time?"

A. Yes, I remember he said that.

Q. So that you were there on a previous occasion?

A. No, he must have been mistaken.

Q. Did you correct him?

A. No.

Q. Ah, then how did you know which baths to go to?

A. Well, I looked in the yellow pages and saw several health spas and steam room places listed. Now the Royal Ithacan was right across from a hospital, and I figured that if Jordan had a bad heart, then he would want to be near a hospital, so I decided to try that place first.

*

*

*

XII.

Q. Did Jordan tell you that he may have a problem with the phone?

A. Somebody else told me that.

*

*

*

XIII.

Q. Mr. Jordan you have testified now for quite some time before the Grand Jury.

A. Yes.

Q. And you understand your obligation to testify truthfully?

A. Yes, I most certainly do.

Q. And you further understand that this Grand Jury is entitled to your best recollection of the incidents being investigated?

A. I will do my best in helping these people.

Q. Fine, did you consent to entering into a contract with Dynamite Vending?

A. No, most certainly not.

Guide: Workshop #6 - Perjury and Contempt Indictments

Consider each portion of the testimony in order. Attention should be paid to legal sufficiency and probability of success at trial.

- I. It is tempting to base a charge of evasive contempt on this testimony. As Judge Learned Hand stated in United States v. Appel, 211 F. 495, 496 (D.C.N.Y. 1913):

The rule, I think, ought to be this: If the witness' conduct shows beyond any doubt whatever that he is refusing to tell what he knows, he is in contempt of court. That conduct is, of course, beyond question when he flatly refuses to answer, but it may appear in other ways. A court, like any one else who is in earnest, ought not to be put off by transparent sham, and the mere fact that the witness gives some answer cannot be an absolute test. For instance, it could not be enough for a witness to say that he did not remember where he had slept the night before, if he was sane and sober, or that he could not tell whether he had been married more than a week. If a court is to have any power at all to compel an answer, it must surely have power to compel an answer which is not given to fob an inquiry. Nevertheless, this power must not be used to punish perjury, and the only proper test is whether on its mere face, and without inquiry collaterally, the testimony is not a bona fide effort to answer the questions at all.

The conversation in question was alleged to have occurred less than two months prior to the grand jury examination and the subject matter is certainly not trivial. The problem arises from the specificity in the questioning. It is quite

likely that the witness does not remember the exact time and date of the conversation—thus "I may have" and "I don't remember" are truthful and appropriate responses. The questioner should rephrase his questions to be less specific, e.g. "On or about June 5, 1979 did you have a conversation with Percy Jordan?"

- II. Jordan did advise the witness to use Dynamite Vending as his company, but the answer "no" to a negative question "Didn't Jordan . . . ?" while implying an answer in the negative, is a double negative, which literally means "yes." Consequently, the witness' answer will be ambiguous whether it is "yes" or "no."

This is similar to United States v. Cook, 489 F.2d 286, 287 N.2 (9th Cir. 1973):

Q: You don't have any knowledge of anybody currently on the force who participated in shakedowns?

A: I do not.

The Court reversed the conviction.

But see United States v. Andrews, 370 F. Supp. 365, 367 (D. Conn. 1974):

Q: In November of 1972, were you engaged in bookmaking activities involving a numbers operation?

A: I am not engaged in bookmaking period. I mop floors for a living.

Q: Is the answer no?

A: No.

Q: In December of 1972.

A: No.

Here the Court held that the answer "no" to the question "Is the answer no," in the context of the testimony, did not mean "No, the answer is not no." For additional cases, see Annot. 69 A.L.R.2d 993 (1976) (Incomplete, misleading or unresponsive but literally true statements as perjury).

In questioning a witness in preparation for a possible perjury indictment, one should keep in mind the opening words in United States v. Tonelli, 577 F.2d 194 (3d Cir. 1978):

In preparing a true-false test, perceptive teachers, while aware of the possibility of pure chance-guessing, will phrase the false statement to be so close to the truth that students are required to be precise in making their choice. In drafting an indictment for perjury, however, a Grand Jury must take exactly the opposite tack. No guessing is tolerated and the indictment must set out the allegedly perjurious statements and the objective truth in stark contrast so that the claim of falsity is clear to all who read the charge.

III. Good evasive contempt. Note however, a potential problem which has been raised in New York where a denial was followed by equivocation only after further questioning on the same subject.

See People v. Renaghan, 33 N.Y.2d 991, 992, 353; N.Y.S. 2d 962, 963; 309 N.E.2d 425, 425-426 (1974).

Defendant's initial responses to the District Attorney's inquiries expressly denied that he was told by Keeley that Mulligan requested the transfer of Sangiriardi. This explicit testimony was neither incredible as a matter of law nor was patently false and

if later shown to be false, could provide a sufficient basis for a perjury charge. Accordingly, even if perjurious, the subsequent testimony could not properly be deemed a refusal to answer For whatever purpose and however the question was thereafter rephrased by the District Attorney, it had already been answered with firmness and without equivocation. In these circumstances there is no indication that defendant's alleged failure to unequivocally respond to the rephrased questions on the same subject obstructed in any way the Grand Jury's proceedings.

But see People v. Martin, 47 A.D.2d 883, 367 N.Y.S.2d 8 (1st Dep't 1975), (rev'g conviction on other grounds), aff'd, 42 N.Y.2d 882, 366 N.E.2d 881, 397 N.Y.S.2d 794 (1977), where Renaghan was distinguished on the basis that:

1. the record as a whole demonstrated a refusal to answer,
2. the questioning dealt with the "recent past",
3. the circumstances about which the witness was questioned involved "unusual circumstances," and
4. the witness admitted that the events should have left an impression upon him.

Although research has disclosed no parallel cases from other jurisdictions, the Ninth Circuit has stated:

If a court divines that the purpose of repetitious questioning is to coax a witness into the commission of perjury or contempt, such conduct would be an abuse of the grand jury process. (citations omitted).

Bursey v. United States, 466 F.2d 1059, 1080 n.10 (9th Cir. 1972).

- IV. Although the witness' answers appear to be inconsistent, they are not mutually exclusive. The witness could have gone to the baths for a number of reasons.

- V. It must be stressed that compound and complex questions should never be asked. Blanchard made that statement after he double parked but before he subsequently parked elsewhere. Consequently, Blanchard's "no" could be a truthful response.

Cf. U.S. v. Esposito, 358 F. Supp. 1032, 1033 (N.D.

Ill. 1973):

Q: Now, did you ever drive in an automobile from the Hyatt house to the Thirsty Whale accompanied by Edward Speice?

A: No, I haven't.

The Court held that the answer was not perjury, when the testimony disclosed that Esposito left the Hyatt House alone and picked up the passenger on the way to the Thirsty Whale.

- VI. This is another example of evasive contempt. The problem raised by People v. Renaghan, supra, is evident here. It is possible to argue, however, that two distinct subjects are being addressed: (1) whether the agreement called for a commission and (2) what percentage was agreed upon.
- VII. The quoted language here is imprecise. Blanchard did not use the word "stories." He stated only that "Your animal told me those already."

. . . . and his negative answer was literally true. Clearly he cannot be convicted of perjury merely because his literally accurate answer might have been somewhat modified in effect if he had been asked to state all the circumstances. Perhaps, if he had been asked specifically, he would have answered truly.

Galanos v. United States, 49 F.2d 898, 899 (6th Cir. 1931).

VIII. "Q: Is it your testimony . . . A: Yes," is literally true; it cannot form the basis for a perjury indictment. This form of question ought to be avoided.

Cf. U.S. v. Cuevas, 510 F.2d 848, 850 (2d Cir. 1975):

Q: Is it your testimony that you have never given anybody even a small amount of cocaine?

A: No.

This answer was held ambiguous, but it was taken out of case by agreement of counsel at trial that the answer in fact meant that the witness was saying "that he never gave anybody a small amount of cocaine." In addition, the Court found the question and answer not "central to the charge."

IX. Portions (1) and (2) are inconsistent; the issue is whether or not the second is a recantation of the first. The questions to be explored include:

1. Was the first statement (no) knowingly and falsely made or could it have been a mistake?
 - a. Was there a motive for the witness to lie about meeting with Percy Jordan?
 - b. Was there later a motive for the witness to change his story?
2. Was the lie manifest before the recantation?
3. Did the recantation come from the witness or was it prompted by the prosecutor?
4. Was the recantation complete so that the Grand Jury could act on the second statement?
5. If the Grand Jury indicted, could the case be won at trial?

Notice should be taken of the manner in which portion one of the examination was conducted. See United States v. Boberg, 565 F.2d 1059, 1062-63 (8th Cir. 1977):

. . . . The prosecutor's interrogation of Boberg before the grand jury consisted almost entirely of leading questions. The indictments rest upon Boberg's somewhat cryptic responses to those questions. This kind of interrogation always creates a great risk that the witness will misunderstand the questions or that the prosecutor will put words in the witness' mouth. We think that a grand jury witness, particularly one who may be the target of a prosecution, ought to be given a fair opportunity to respond fully to questions and not be limited to the "yes" or "no" that typifies answers to leading questions. We intend this comment as a fair warning to prosecutors that we shall strictly scrutinize for fairness any indictment and conviction for perjury before a grand jury that rests upon a witness' responses to leading questions.

- X. This is a clear example of recantation. Moreover, the subject matter in dispute is not material. For a false statement to be perjurious, it must be material to the investigative proceeding in which it is made. United States v. Freedman, 445 F.2d 1220 (2d Cir. 1971).
- XI. Although the witness' testimony strains the imagination, it could have happened, and hence requires extrinsic proof to demonstrate falsity. This is the "Aesop's Fable" problem. [Matter of Steingut v. Imrie, 270 App. Div. 34, 37, 58 N.Y.S.2d 775, 781 (3rd Dep't 1945)—"The story [given by the witness] . . . relegates the transaction to the age of Aesop rather than to that of Calvin Coolidge."]

Note, however, People v. Titlotta, 84 Misc. 2d 170, 375 N.Y.S.2d 965 (Sup. Ct. Kings Cty. 1975):

While testifying before a Grand Jury, defendant stated that while in a commercial parking lot, he was approached by a total stranger who told him that his car sounded bad. The man offered to repair the car at a low cost and defendant then and there turned the car over to the man with the keys and registration. Defendant never ascertained the man's name or where he could be reached, but merely gave the man his phone number. In view of this testimony and defendant's evident intelligence, it is concluded that his story was a fabrication rendered with intent to impede the Grand Jury's investigation, and defendant is guilty of criminal contempt in the first degree. The nature of the testimony was such that the record itself shows it to be false, incredible and absurd on its face, without the need to resort to extrinsic proof. [Headnote]

XII. This is a classic unresponsive answer. Such an answer cannot form the basis of a perjury indictment. While "Somebody else told me that," implies that Jordan did not, the response is not, in fact, a denial. See Bronston v. United States, 409 U.S. 352, 354 (1973):

Q: Do you have any bank accounts in Swiss banks, Mr. Bronston?

A: No, sir.

Q: Have you ever?

A: The company had an account there for about six months, in Zurich.

The court held that it was undisputed that the defendant's answers were literally true; and then aptly observed:

. . . . It does not matter that the unresponsive answer is stated in the affirmative, thereby implying the negative of the question actually imposed; for again, by hypothesis, the examiner's awareness of unresponsiveness should lead him to press another question or reframe his initial question with greater precision. Precise questioning is imperative as a predicate for the offense of perjury.

It may well be that petitioner's answers were not guileless, but were shrewdly calculated to evade. Nevertheless, . . . any special problems arising from the literally true but unresponsive answer are to be remedied through the "questioner's acuity" and not by a federal perjury prosecution. (emphasis added) Id. at 362. See also Annot. 69 A.L.R.3d 993 (1976).

XIII. The term "consent," which Webster's New World Dictionary defines as: "to agree (to do something); give permission or approval (to something). n.l. permission; approval; assent," implies a state of mind. Since it is impossible to prove whether or not there was "assent" or "approval" by Blanchard,--what he was thinking at the time of agreement,--the term should not be used.

[C]ount 11 in part charges perjury in that defendant said that he did not "vouch" for the Towers Nursing Home whereas, it is alleged, that in truth he did "vouch" for that home. Whether particular statements constitute "vouching" for someone or something obviously is a matter of interpretation both of the statements and of the meaning of the word "vouch."

See, People v. Blumenthal, 55 App. Div.2d 13, 16-17, 389 N.Y.S.2d 579, 581 (1st Dep't 1976); see also United States

v. Rose, 215 F.2d 623 (3rd Cir. 1954). But see United States v. Chapin, 515 F.2d 1274, 1279-81 (D.C. Cir. 1975); United States v. Williams, 536 F.2d 1202, 1205 (7th Cir. 1976)

(when the question and answer may have more than one meaning standing alone, their intended meaning is ordinarily an issue for the jury to determine from their context and other indicia of the witness' intent in giving the answer).

Appendix A

FEDERAL PROSECUTION OF LABOR RACKETEERING:
THE HOBBS ACT, 29 U.S.C. §501(c), 18 U.S.C. § 664,
THE TAFT-HARTLEY ACT, AND 18 U.S.C. §1954

by

Mark E. Greenwald

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INTRODUCTION

¶ 1 Although union corruption and labor racketeering can be contained using local statutes, prosecutors able to understand pertinent federal statutes can more effectively combat this type of crime. The principal federal extortion law is the Hobbs Act; 29 U.S.C. §501(c) and 18 U.S.C. §664 proscribe embezzlement from labor organizations and employee benefit plans; the Taft-Hartley Act and 18 U.S.C. 1954 provide federal sanctions against bribery of union members and employee benefit plan operators. While the Hobbs Act, 29 U.S.C. §501 and 18 U.S.C. §664 combat corruption within the labor organization, the Taft-Hartley Act and 18 U.S.C. §1954 combat corruption by outside influences.

¶ 2 These five federal statutes have gained strength from their incorporation by RICO. Section 1962(c) of RICO states:

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity.

Section 1961(i)'s definition of racketeering activity includes acts indictable under the Hobbs Act, the Taft-Hartley Act, 18 U.S.C. §1954, 18 U.S.C. §501(c), and 18 U.S.C. §664.

I. THE HOBBS ACT

¶ 3 The Hobbs Act is the principal federal extortion law. The Hobbs Act defines extortion as "the obtaining of property from another with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."¹ Prosecutors can most readily and effectively²

¹18 U.S.C. §1951(b) (2) (1976) The Hobbs Act states:

§1951. Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section--

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.

attack corrupt union activities with the clause that criminalizes, in federal courts, the "wrongful use of actual or threatened force, violence, or fear."

A. Elements of the Offense

1. Fear

¶ 4 Although one court has questioned whether fear is an essential element of the offense,³ the dominant view is that the victim's fear must be proved.⁴ Union officials often threaten employers with strikes and work slowdowns.⁵ Contractors for large construction projects and shippers of perishable goods are particularly vulnerable.⁶ The Hobbs Act penalizes the use of these threats because "fear" includes not only fear of violence, but also fear of economic loss.⁷

²The Hobbs Act provides a \$10,000 fine or imprisonment for not more than twenty years, or both, for violations of the Act, 18 U.S.C. 1951 (a) (1976). Also, the Hobbs Act convicts union officials for violence directed at the victim's person or at his property. United States v. Sweeney, 262 F.2d 272, 275 (3d Cir. 1959).

³United States v. Frazier, 560 F.2d 884, 887 (8th Cir. 1977), cert. denied, 435 U.S. 968 (1978).

⁴United States v. Adcock, 558 F.2d 399, 403 (5th Cir.), cert. denied, 434 U.S. 921 (1977); United States v. Biondo, 483 F.2d 635, 643 (8th Cir. 1973), cert. denied, 415 U.S. 947 (1970).

⁵United States v. Palmotti, 254 F.2d 491 (2d Cir. 1958); United States v. Varlack, 225 F.2d 665 (2d Cir. 1955).

⁶See Megargee and Peer, The Anti-Racketeering Act: Labor and Management Weapon Against Labor Racketeering, 32 N.Y.U.L. Rev. 9650967 (1957).

⁷Bianchi v. United States, 219 F.2d 182, 189 (8th Cir.), cert. denied, 349 U.S. 915 (1955). Unless the employer paid them money, union officials said they would prevent workmen from completing the employer's construction project.

2. Reasonableness of the Fears

¶ 5 Whether the victim of an extortionate threat fears physical violence or economic loss, his fear must be reasonable. Direct evidence of violent threats or of the existence of a conspiracy will usually support an inference that the victim's fear was reasonable. In other cases, to establish the reasonableness of the victim's fears, the courts have admitted evidence of the defendant's evil reputation,⁸ of the victim's state of mind,⁹ and of the victim's statements to third parties.¹⁰ The victim need not testify that the defendant put him in fear providing there is independent evidence establishing this element of the offense; the victim's decision whether to testify must be voluntary.¹¹

⁸United States v. Dale, 223 F.2d 181 (7th Cir. 1955). Defendant's references to his gangsterism and facility with a black-jack was evidence supporting a finding that the victim's fear was reasonable. In Carbo v. United States, 314 F.2d 718, 741 (9th Cir. 1963), cert. denied, 377 U.S. 953 (1964), the trial judge admitted testimony that one of the defendants was an "underworld," "strongman" man. The courts generally will not admit evidence of the defendant's evil character. But, since the defendant's reputation was a significant cause of the resulting fear, the court of appeals held the importance of the testimony outweighed any prejudicial impact.

⁹In United States v. Tolub, 309 F.2d 286, 289 (2d Cir. 1962), the victim's testimony that he was "overwrought," "awed and upset," helped establish the reasonableness of his fears.

¹⁰The well-established "state of mind" exception to the hearsay rule admits these statements. E.g., United States v. Stirone, 311 F.2d 277, 281 (3d Cir.), cert. denied, 372 U.S. 935 (1963).

¹¹United States v. DeCutro, 435 F.2d 255, 257 (2d Cir. 1970), cert. denied, 402 U.S. 983 (1971). The court was concerned that defendants would escape conviction using threats to discourage their victims from testifying.

¶ 6 Veiled threats may cause the victim's fear. In Calloman v. United States,¹² a union representative merely asked a contractor for \$28,000 as insurance against labor problems. Although the union representative did not expressly threaten the contractor with violence or a strike, the court held that there was enough evidence for the jury to infer that the contractor reasonably feared reprisals, harassment, and labor difficulties if he did not pay.¹³

¶ 7 Further, the victim's fears can be based upon circumstances with which the defendant was only loosely connected.¹⁴ The controlling consideration is not so much whether the defendant caused the victim's fear of economic loss, but whether he exploited such fear to extort money or other property.

3. Wrongful Use of Actual or Threatened Force, Violence, or Fear

¶ 8 In United States v. Enmons,¹⁵ the Supreme Court set forth a new definition of "wrongful." Four union members had threatened to damage the property of Gulf States Utilities Company. They wanted to force the company to accede to the union's collective bargaining arrangement and to wage increases for their union's members. The district court dismissed the in-

¹²223 F.2d 171 (8th Cir.), cert. denied, 350 U.S. 862 (1955).

¹³Id. at 175.

¹⁴See United States v. Varlack, 225 F.2d 665, 668 (2d Cir. 1955). "Defendants seized upon the opportunity presented by the long-shoremen's hostility to the company's introduction of technological improvements on its pier to line its own pockets . . . ,"
Bianchi v. United States, 219 F.2d 182, 190 (8th Cir.), cert. denied, 349 U.S. 915 (1955) (wide publicity of terroristic tactics in similar matters.)

¹⁵410 U.S. 396 (1973).

dictment¹⁶ and the Supreme Court affirmed the dismissal.

¶ 9 The Supreme Court stated that "wrongful" does not refer to the violent means union officials use to obtain property. "Wrongful" refers to the ends they seek. Therefore, had these union officials used force to enrich themselves with illegal payoffs or to exact wages for "imposed, unwanted, superfluous, and fictitious services,"¹⁷ they would have acted wrongfully: they would have pursued so-called "illegitimate" ends. Since these union officials sought "legitimate" union ends--higher wages and a collective bargaining arrangement--they did not act wrongfully and did not violate the Hobbs Act extortion provisions. The Supreme Court stated, " . . . there has been no 'wrongful' taking of the employer's property; he has paid for the services he bargained for, and the workers receive the wages to which they are entitled in compensation for their services."¹⁸

¶10 Hobbs Act prosecutions for extortion had typically arisen from two basic situations: 1) where union officials sought legitimate labor objectives, but used violence or threats of violence to attain those objectives; 2) where union officials sought illegitimate objectives (e.g., personal enrichment,) but used more lawful means (e.g., peaceful strikes). In short, the Hobbs Act no longer applies to the first situation.

4. Property

¶11 The courts employ a broad definition of "property" in

¹⁶United States v. Emmons, 335 F.Supp. 641 (E.D. La. 1971), aff'd, 410 U.S. 396 (1973).

¹⁷Union States v. Green, 350 U.S. 415 (1956).

¹⁸United States v. Emmons, 410 U.S. 396, 400 (1973).^{*}

extortion prosecutions under the Hobbs Act.¹⁹ Congress adopted the definition of extortion with its judicial gloss from the New York penal law. Property, then, embraces "every species of valuable right and interest" "[W]hatever tends in any degree, no matter how small, to deprive one of that right, or interest, deprives him of his property."²⁰

¶12 Although union officials are typically convicted for the extortion of money, objects will also satisfy the Hobbs Act definition of property.²¹ A recurrent example of extorted property is the right to solicit business opportunities, including private sanitation contracts.²² A recent opinion stated in dictum that the use of money, even for a brief time, was property within the Hobbs Act.²³

¶13 A related question is whether the defendant has "obtained" the property of the victim. When union officials extort property, the courts do not require that the defendant receive the direct

¹⁹If the conviction is for robbery under the Hobbs Act, the property must be tangible and capable of asportation. United States Attorney's Manual Title--Criminal Division, Ch. 131, p. 7 (January 17, 1977).

²⁰Short v. Warden of City Prison, 145 A.D. 861, 863, 130 N.Y.S. 698, 700 (1911).

²¹See United States v. Tropiano, 418 F.2d 1069, 1075 (2d Cir. 1969), cert. denied 397 U.S. 1021 (1970). (The right to solicit business in a particular geographical area is "property" in Hobbs Act prosecutions); People v. Wisch, 58 Misc. 2d 766, 768, 296 N.Y.S. 2d 882, 886 (Sup. Ct. 1969). (A milk route which has a pecuniary value is property and may be the subject of an extortion . . .).

²²United States v. Gambino, 566 F.2d 414, 418 (2d Cir. 1977), cert. denied, 435 U.S. 952 (1978); United States v. Hathaway, 534 F.2d 386, 395 (1st Cir.), cert. denied, 429 U.S. 819 (1976).

²³United States v. Lance, 536 F.2d 1065, 1068 (5th Cir. 1976).

benefit of his extortion;²⁴ a third party may receive the benefit.²⁵

B. Affects Commerce: The Jurisdictional Element

¶14 The Hobbs Act requires two elements: robbery or extortion and interference with interstate commerce.²⁶ Whether the defendant's extortionate activities interfere with interstate commerce is a jurisdictional matter. The jury typically finds the facts that pertain to this element of the offense, and the judge determines the legal sufficiency of those facts.²⁷ Nevertheless, when the defense concedes the alleged facts which support the court's jurisdiction, the judge can determine the sufficiency of the evidence without the jury's aid.²⁸

¶15 The Hobbs Act proscribes robbery or extortion which "in any way or degree obstructs, delays, or affects commerce or the involvement of any article or commodity in commerce."²⁹ This

²⁴United States v. Provenzano, 334 F.2d 678, 685-86 (3d Cir. 1964), cert. denied, 380 U.S. 915 (1965), (Union officer's extortionate demand involved payment of money to a third person).

²⁵The lack of a relationship between the defendant and the recipient of the property might vindicate only the defendant's lack of an extortionate motive.

²⁶18 U.S.C. § 1951(a) (1976).

²⁷The court usually enumerates the Government's factual allegations concerning interstate commerce and instructs the jury that the allegations, if believed, satisfy the commerce element of the Hobbs Act. E.G., United States v. Addonizio, 451 F.2d 49, 74-75, cert. denied, 405 U.S. 936 (1972) (3d Cir. 1971); Compare United States v. Hyde, 448 F.2d 815, 839-41, n.34 (5th Cir.), cert. denied, 404 U.S. 1058 (1972) (at his discretion, the trial judge may omit an enumeration of the facts pertaining to interstate commerce).

²⁸United States v. Compagna, 146 F.2d 524, 527 (2d Cir.), cert. denied, 324 U.S. 867 (1945).

²⁹18 U.S.C. § 1951(a) (1976).

provision has received the broadest possible construction. In Hulahan v. United States,³⁰ the court stated, " . . . it was the intent of Congress to protect interstate commerce against extortion or attempted extortion which in any way or in any degree reasonably could be regarded as affecting such commerce."³¹ The effect need be only a potential one.³²

¶16 Extortion affects commerce when it disrupts the activities of a local company which receives raw materials from out of state³⁴ or when it hinders the production of manufactured articles destined for interstate commerce.³⁵ Finally, the Ninth

³⁰ 214 F.2d 441, (8th Cir.), cert. denied, 348 U.S. 856 (1954).

³¹ Id. at 445. United States v. Malinsky, 19 F.R.D. 426, 428 (S.D.N.Y. 1956) ("The statute provides that effect 'in any way or degree' is sufficient. Congress itself has concluded that any effect upon interstate commerce in any degree caused by extortion or conspiracy contemplating extortion is in itself substantial. The substantiality of the effect is not left to judicial determination.").

³² United States v. Augello, 451 F.2d 1167, 1169-70 (2d Cir. 1971), cert. denied, 405 U.S. 1070 (1972). The Seventh Circuit has demanded only a "realistic probability that [the] extortionate transaction will have some effect on interstate commerce. United States v. Staizcuk, 517 F.2d 53, 60 n. 18 (7th Cir.), cert. denied, 423 U.S. 837 (1975).

³⁴ United States v. Stirone, 262 F.2d 571, 574-75 (3d Cir. 1958), rev'd on other grounds, 361 U.S. 212 (1960) (The court of appeals found a sufficient effect on interstate commerce because the victim of extortionate demands was constructing a steel mill which would produce goods marketed through interstate commerce).

³⁵ In Battaglia v. United States, 384 F.2d 303, 305-06, (9th Cir. 1967), cert. denied 390 U.S. 907 (1968) (quoting United States v. Stirone, 168 F.Supp. 490, 496 (W.D.Pa. 1957)), the court said,

A deliberate act which tends to prevent articles from being used once they have reached their destination after being shipped in interstate commerce dams up the stream of commerce and delays, obstructs and affects interstate commerce as surely as though the same act had cut off the supply at its source.

Circuit held that extortion "affects commerce" even when the stream of commerce has ended. The courts' potential use of the maxim de minimus is the only limitation on the court's interpretation of "affects commerce."³⁶

¶17 The court's construction of the intent requirement also demonstrates the broad scope of the Hobbs Act in interstate commerce. The Government need not show the defendant "actually intended" to delay, obstruct or affect interstate commerce; affecting commerce need not have been the defendant's purpose or motive.³⁷ The Government carries its burden of proof on this issue if it shows that the defendant committed or threatened to commit an act whose natural and probable consequence is to delay, obstruct or affect commerce.³⁸ Similarly, it is inconsequential that the defendant was ignorant of the effect on interstate commerce of his extortionate activities.³⁹

³⁶ See NLRB v. Jainblatt, 306 U.S. 601, 607 (1939).

³⁷ In United States v. Varlack, 225 F.2d 665, 672 (2d Cir. 1955), the court stated, "[I]t is not necessary . . . to find that the defendants, in conspiring, considered that the effect of their conspiracy would be to affect interstate commerce or that one of the purposes of the conspiracy was to affect such commerce." (quoting Nick v. United States, 122 F.2d at 673).

³⁸ United States v. Battaglia, 384 F.2d 304, 312 (7th Cir. 1968), cert. denied, 401 U.S. 924 (1971); see also Nick v. United States, 122 F. 2d 660, 673 (8th Cir. 1941).

³⁹ See United States v. Pranno, 385 F.2d 387, 389-90 (7th Cir. 1967); United States v. Varlack, 225 F.2d 665, 672 (2d Cir. 1955).

II. EMBEZZLEMENT FROM LABOR ORGANIZATIONS
AND EMPLOYEE BENEFIT PLANS:
29 U.S.C. §501(c) and 18 U.S.C. §664

A. Introduction

¶18 The Hobbs Act, 29 U.S.C. §501(c), and 18 U.S.C. §664 provide Federal sanctions against corrupt activities within the labor organization. Specifically, 29 U.S.C. §501(c) proscribes embezzlement from labor organizations and 18 U.S.C. §664 proscribes embezzlement from employee benefit plans. 29 U.S.C. §501(c) states:

Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than \$10,000 or imprisonment for not more than five years, or both.

18 U.S.C. §664 states:

Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use or the use of another, any of the moneys, funds, securities, (premiums, credits), property or other assets of any employee welfare benefit plan or employee pension benefit plan, or any fund connected therewith, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

As used in this Section, the term, "any employee welfare benefit plan or employee pension benefit plan" means any employee benefit plan subject to any provision of Title 1 of the Employee Retirement Income Security Act of 1974.⁴⁰

⁴⁰ The Welfare and Pension Plans Disclosure Act of 1962, 29 U.S.C. § 301 (1976), applies to violations before January 1, 1975. See also, The Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1031 (a) (2) (A) and (B) (1976).

¶19 Since the operative language of Section 664 is identical with two exceptions⁴¹ to the operative language of Section 501(c), and since the courts have delivered only a paucity of decisions under Section 664, the principles developed under Section 501(c) can be applied to future prosecutions under Section 664.

B. Legislative Purposes

¶20 Congress intended that Section 501(c) help protect the union members' money and prevent widespread misuse and misapplication of union funds.⁴² The Senate Select Committee on Improper Activities in the Labor and Management Field (the McClellan Committee) had discovered that union officials, among others, financed illegal enterprises,⁴³ and personal activities, with large sums removed from union funds.⁴⁴

C. Elements of the Offense

1. Labor Organization in section 501(c)

¶21 The prosecution must prove that the defendant embezzled

⁴¹The primary difference between 29 U.S.C. § 501(c) and 18 U.S.C. § 664 is that § 501(c) penalizes taking from a labor organization, and § 664 penalizes taking from an employee welfare benefit plan or employee pension benefit plan. Also, because of the nature of the benefits plans to which § 664 refers, the legislature added premiums and credits in § 664 to the list of items § 501(c) proscribes taking.

⁴²H.R. REP. NO. 741, 86th Cong., 1st Sess. 8 (1959).

⁴³For example, in Spokane, Washington, teamster locals loaned union funds to a notorious West Coast gambler to finance one of his establishments. See, H.R. REP. NO. 741, 86th Cong., 1st Sess., reprinted in [1959] U.S. Code Cong. & Ad. News 2424.

⁴⁴The committee concluded that union officials of the five unions it investigated during a fifteen-year period had stolen, embezzled, or misused over ten million dollars of union funds, S. Rep. NO. 1417, 86th Cong., 1st Sess. 1 (1959).

Frank Brewster, head of the Teamster's Western Conference, spent union funds to operate a large stable of thoroughbred horses and to purchase private residences. Id. at 40-47.

the assets of a "labor organization." The courts adopt a two-part definition of "labor organization" from the Labor Management Reporting and Disclosure Act (LMRDA).⁴⁵ Section 402(i) provides the first part of the definition, and states that labor organizations must be engaged in an industry affecting commerce.⁴⁶ Section 402(i) then divides labor organizations into two categories:

- 1) Organizations in which employees participate and that exist for the purpose of collective bargaining and the administration of a collective agreement.
- 2) Intermediate bodies in which employees do not necessarily participate, but which are subordinated to national or international unions that deal with employers.⁴⁷

In determining whether a labor organization exists for the purpose of collective bargaining and the administration of a collective agreement, "consideration will be given not only to formal documents, such as its constitution or bylaws, but the actual functions and practices of the organization as well."⁴⁸ Regulations, issued by the Secretary of Labor, describe further the "intermediate" groups to which Subsection 402(i) refers.⁴⁹

⁴⁵ 29 U.S.C. § 402 (1976).

⁴⁶ 29 U.S.C. § 402(i) (1976).

⁴⁷ The McClellan Committee had revealed that conferences and joint councils also conducted improper activities and misappropriated union funds. See 105 CONG. REC. 6516 (1959).

⁴⁸ 29 C.F.R. § 451.3(a)(2) (1978) (regulations the Secretary of Labor issued). Thus, informal employee committees that meet regularly with management to discuss employment relations are "labor organizations."

⁴⁹ 29 C.F.R. § 451.4 (1978).

The regulations provide examples of particular intermediate groups, and indicate their functions and the unions with which they are affiliated.⁵⁰

¶22 Subsection 402(j)⁵¹ provides the second part of the definition and states that a labor organization is in an industry affecting commerce if:

- 1) it is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or
- 2) although not certified, it is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or
- 3) it has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or
- 4) it has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or
- 5) it is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection,⁵² other than a State or local central body.

⁵⁰For example, Teamster locals form "conferences" and railway unions usually form "general committees."

⁵¹29 U.S.C. § 402(j) (1976).

⁵²The only exempted trade unions are as follows: state and central bodies (i.e., those organizations the AFL-CIO does

¶23 Subsection 501(c) applies to any person who is an officer of or who is directly or indirectly employed by a labor organization. Subsection 402(n) of the CMRDA defines an "officer" as "any constitutional officer, any person authorized to perform the functions of president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body."⁵³ That the union's constitution treats the defendant as an officer and that his duties are not ministerial impresses the court.⁵⁴

¶24 The CMRDA does not define "employed directly or indirectly." The courts should, then, apply to the phrase the ordinary, everyday definition that best effectuates the leg-

not charter directly); unions composed entirely of governmental employees; independent local unions dealing with employers not engaged in industries affecting interstate commerce. See, 29 C.F.R. §§ 451.5, 451.3(a)(4) (1978).

⁵³ 29 U.S.C. § 402(n) (1976). Congress passed section 402(n) as a reaction to NLRB v. Coca Cola Bottling Co., 350 U.S. 264 (1956). The Court had held that the Taft-Hartley Act's use of the term "officer" referred only to those people the union's constitution designates as officers. Id. at 268-69. The Senate feared that if this interpretation of "union official" governed the coverage of the CMRDA, a union could rewrite its constitution and designate only a single officer. Officials performing the duties of vice-president, secretary, treasurer, business agent, organizer, manager, or member of an executive body would have been able to escape the CMRDA's sanctions. S. REP. NO. 187, 86th Cong., 1st Sess. 95 reprinted in, [1959] U.S. Code Cong. & Ad. News 2318, 2399.

⁵⁴ Wertz v. National Maritime Union of America, 399 F.2d 544 (2d Cir. 1968) ("patrolmen" responsible for the adjustment of grievances and enforcement of collective bargaining agreements are "officers" under the CMRDA.)

is lative purposes of the Act.⁵⁵ Congress intended that subsection 501(c) create "a new federal crime of embezzlement of any funds of a labor organization,"⁵⁶ and that it apply to "any person having any direct or indirect functions in connection with the money or property of a labor organization."⁵⁷

¶25 The courts, then, should adopt a broad definition of "employed." A person who deos not receive any remuneration from the union for his services can still be employed directly or indirectly;⁵⁸ many individuals serve labor organizations and have access to union funds, but do not receive wages. Subsection 501(c) should also govern independent contractors

⁵⁵In NLRB v. Hearst Publications, Inc., 322 U.S. 111 (1944), referring to the meaning of employee under 29 U.S.C. § 152 (1976), the Supreme Court stated,

The word "is not treated by Congress as a word of art having a definite meaning . . . " Rather "it takes color from its surrounding . . . [in] the statute where it appears" and derives meaning from the context of the statute, which "must be read in the light of the mischief to be corrected and the end to be attained," citing United States v. American Trucking Assns., 310 U.S. 534, 545 (1940) and South Chicago Coal & Dock Co. v. Bassett, 309 U.S. 251, 259 (1940).

See generally, Still v. Norfolk and Western Realty Co., 368 U.S. 35, 45 (1961).

⁵⁶S. Rep. No. 187, 86th Cong., 1st Sess., [1955] U.S. Code Cong. & Ad. News 2318, ; H.R. Rep. No. 741, 86th Cong., 1st Sess. [1959] U.S. Code Cong. & Ad. News 2424, .

⁵⁷105 CONG. REC. 1327.

⁵⁸In LutKevicz v. Brennan, 128 Conn. 651, 652-53, 25 A.2d 66, 67 (1942), the court stated that "[e]mploy is used to emphasize the idea of services hindered or to be resolved. The meaning of the word is not limited to services which are hindered for wages . . . "

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⁵⁴ Wertz v. National Maritime Union of America, 399 F.2d 544 (2d Cir. 1968) ("patrolmen" responsible for the adjustment of grievances and enforcement of collective bargaining agreements are "officers" under the CMRDA.)

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See generally, Still v. Norfolk and Western Realty Co., 368 U.S. 35, 45 (1961).

⁵⁶S. Rep. No. 187, 86th Cong., 1st Sess., [1955] U.S. Code Cong. & Ad. News 2318, ; H.R. Rep. No. 741, 86th Cong., 1st Sess. [1959] U.S. Code Cong. & Ad. News 2424, .

⁵⁷105 CONG. REC. 1327,

⁵⁸In LutKevicz v. Brennan, 128 Conn. 651, 652-53, 25 A.2d 66, 67 (1942), the court stated that "[e]mploy is used to emphasize the idea of services hindered or to be resolved. The meaning of the word is not limited to services which are hindered for wages . . . "

hired by labor organizations to perform a particular job.⁵⁹

2. Conduct

¶26 Section 501(c) proscribes embezzling, stealing, or unlawfully and wilfully abstracting the funds of a labor organization. At common law, courts categorized loss of property offenses according to technical and tenuous distinction. Consequently, the prosecution often was unable to charge the defendant with the proper offense and allowed criminals to escape conviction. Section 501(c) attempts to reach all possible methods of committing the larceny-type offense and, thereby, eliminate the common law problems.⁶⁰ The statute retains the common law meaning of these terms,⁶¹ though Congress did not want the courts to apply rigidly the technical common law distinctions among the crimes.⁶²

⁵⁹ In United States v. Morris, 39 U.S. 596, 598-99, 14 Petrus 464, 475-76 (1840), the Court stated,

[t]o be employed in anything, means not only the act of doing it, but also to be engaged to do it, to be under contract or orders to do it . . . Here the persons who have contracted to perform certain duties in the general postoffice are described as "employed" in that department . . .

See also Stephens v. Cotton Producer's Ass'n, 117 F.Supp. 517, 523 (N.D. Ga. 1953), aff'd 218 F.2d 588 ("employed" refers to a person whose services are used in furtherance of another's business, despite the absence of a technical employer-employee relationship).

⁶⁰ See Morisette v. United States, 342 U.S. 246, 268 (1952).

⁶¹ Woxburg v. United States, 329 F.2d 284, 290 (9th Cir. 1964), cert. denied, 379 U.S. 823 (1964). Embezzlement, however, is a statutory offense providing federal sanctions against fraudulent acts that do not contain all the elements of larceny.

⁶² United States v. Harmon, 339 F.2d 354, 357 (6th Cir. 1964), cert. denied, 380 U.S. 944 (1965).

¶27 The prosecution must prove five elements for an embezzlement conviction: 1) that the accused was a fiduciary⁶³ 2) that the defendant embezzled moneys, funds, securities, property, or other union assets⁶⁴ 3) that the defendant lawfully obtained possession of the property, perhaps because of his employment⁶⁵ 4) that the defendant intended to deprive the owner of the use of his property⁶⁶ 5) that the defendant fraudulently converted the property to his own use or the use of another.⁶⁷

¶28 Unlawful and wilfull conversion is also a separate offense under subsection 501(c). There may be few, if any, significant differences between conversion as an element of em-

⁶³ If, however, the Government attempts to prove the defendant violated § 501(c) because the defendant performed one of the other activities § 501(c) proscribes, the Government need not prove the existence of a fiduciary relationship between the union and the defendant. Doyle v. United States, 318 F.2d 419, 422-23 (8th Cir. 1963).

⁶⁴ 29 U.S.C. § 501(c) (1976).

⁶⁵ United States Attorneys' Manual Title 9--Criminal Division, Ch. 133, p. 17 (January 17, 1977).

⁶⁶ United States v. Powell, 294 F.Supp. 1353, 1355 (E.D. Va. 1968) aff'd 413 F.2d 1037 (4th Cir. 1969). The owner need not be permanently deprived of his property. The intention of the accused at the time of the taking to restore the money or other property embezzled will not relieve the act of its criminal nature. Hanely v. United States, 108 F.2d 835, 838 (10th Cir. 1940).

⁶⁷ United States v. Goldsmith, 274 F.Supp. 494, 495 (E.D. Pa. 1967) ("a conversion must be effected to complete the crime of embezzlement"); United States v. Harrelson, 223 F.Supp. 869, 870 (E.D. Mich. 1963) (as long as the appropriation is not for the use of the entruster it need not be for the defendant's personal advantage); United States v. Harmon, 339 F.2d 354, 357 (7th Cir. 1964) (cert. denied, 380 U.S. 944 (1966)).

bezzlement and conversion as a separate offense.⁶⁸ In Hubbard v. United States, the court said wrongful conversion is distinct from embezzlement only when a defendant's original possession of the property was unlawful.⁶⁹

¶29 Conversion requires a fraudulent appropriation of a thing to one's own use and beneficial enjoyment.⁷⁰ A failure to return or account for property entrusted is evidence of a conversion.⁷¹ Where a fraudulent conversion is otherwise established,⁷² where the accused has fled,⁷³ the prosecution need not prove a demand for the property allegedly embezzled. On the other hand, if other proof does not establish a conversion,⁷⁴ or if the time for payment or return of entrusted prop-

⁶⁸ Colella v. United States, 360 F.2d 792, 800 (1st Cir. 1966), cert. denied, 385 U.S. 829 (1966) (The court said it could not "imagine facts constituting embezzlement which would not also absent a fiduciary relationship, make out unlawful or willful conversion." But see, United States v. Harmonn 339 F.2d 354 (6th Cir. 1964), cert. denied, 380 U.S. 944 (1965); in Morissitte v. United States, 342 U.S. 246, 272 (1952), the Court stated:

Conversion may include misuse or abuse of property. It may reach use in an unauthorized manner or to an unauthorized extent of property placed in one's custody for limited use. Money rightfully taken into one's custody without any intent to keep or embezzle it merely by commingling it with the custodian's own, if he was under a duty to keep it separate and intact.

⁶⁹ 79 F.2d 850, 854 (9th Cir. 1935).

⁷⁰ United States v. Goldsmith, 274 F.Supp. 494 (E.D. Pa. 1967)

⁷¹ Villarreal v. State, 385 S.W.2d 248 (Tex. Crim. App. 1964).

⁷² Dobbins v. United States, 157 F.2d 257, 259 (D.C. Cir.), cert. denied, 329 U.S. 734 (1946).

⁷³ Agar v. State, 176 Ind. 234, 94 N.E. 819, 825 (1911).

⁷⁴ Commonwealth v. Stone, 187 Pa.Super.Ct. 225, 228, 144 A.2d 614, 616 (1958), aff'd, 395 Pa. 584, 150 A.2d 871 (1959).

erty is indefinite,⁷⁵ the prosecution must prove that either the owner or someone with his authority⁷⁶ demanded the return of the property.

¶30 Federal statutes and courts often provide "stolen" and "steal" with meanings broader than common law larceny. In United States v. Turley,⁷⁷ the Supreme Court concluded that the term steal in 18 U.S.C. §2312 includes felonious conversion, obtaining money or property under false pretenses, embezzlement, purloining, plundering, and, in general, any felonious taking with intent to deprive the owner of the rights and benefits of ownership.⁷⁸ In United States v. Handler,⁷⁹ the Second Circuit ruled that asportation, an essential element of common law larceny, was not required for "stealing" under 18 U.S.C. §659.⁸⁰

¶31 To abstract is to take and withdraw from the possession and control of the owner.⁸¹ The defendant must "abstract" the property without the owner's knowledge or consent and with the intent to injure, defraud, or deceive the owner.⁸² Whenever the

⁷⁵People v. Ephraim, 77 Cal.App. 29, 245 P. 769, 773 (1926).

⁷⁶People v. Powell, 353 Ill. 582, 594, 187 N.E. 419, 424 (1933).

⁷⁷352 U.S. 407 (1957).

⁷⁸Id. at 413-417

⁷⁹142 F.2d 351 (2d Cir.), cert. denied, 323 U.S. 741 (1944).

⁸⁰Id. at 353.

⁸¹United States v. Northway, 120 U.S. 327, 334 (1887).

⁸²United States v. Breese, 131 F. 915, 921 (W.D.N.C. 1904), rev'd on other grounds, 143 F. 250 (4th Cir. 1906).

defendant commits embezzlement, he also commits an abstraction, but the converse is not always true.⁸³

D. Authorization

¶32 Union officials can defend against a Section 501(c) prosecution by claiming their appropriation was for union purposes, was union authorized, or both. The court can resolve the issue in one of four ways: the court can decide the union official made 1) an authorized appropriation for union purposes 2) an authorized appropriation for non-union purposes 3) an unauthorized appropriation for non-union purposes.

¶33 The court confronts little difficulty with (1). If the union authorizes the appropriation and the appropriation is for a legitimate union purpose, the court will deny a subsection 501(c) conviction.⁸⁴ The court will sustain the conviction if it decides the union official made an unauthorized appropriation for non-union purposes (3) unless the expenditure was for a union purpose and was or would be union authorized.⁸⁵ Personal expenditures, however, render the good faith claim "scarcely credible"⁸⁶; the expenditure must arguably be of benefit to the union.⁸⁷

⁸³Id. at 922.

⁸⁴United States v. Silverman, 430 F.2d 106, 123 (2d Cir. 1970). The court, however, will also consider whether the defendant's control over union affairs supports a finding the authorization was a sham. If the authorization was a sham, the defendant may be convicted.

⁸⁵United States v. Ottley, 509 F.2d 667, 671 (2d Cir. 1975).

⁸⁶Id. at 671-672.

⁸⁷The good faith claim may also involve consideration of the following factors: the nature of the expenditure; the opportunity for prior authorization; the delay in seeking ratification; false entries in the union records as to the expenditure's true purpose; whether expenditures were contrary to specific directions. See Taylor v. United States, 320 F.2d 843, 848 (9th Cir. 1963), cert. denied, 376 U.S. 916 (1964).

¶34 (2) and (4) present the court with the most troublesome problems because they involve the precise effect union authorization and union benefit have on a determination of the defendant's fraudulent intent. In United States v. Dibrizzi,⁸⁸ the Second Circuit indicated union purpose preponderates. Even though the union authorized the expenditure, the court convicted a union official under section 501(c) because the official's expenditure was for personal, non-union purposes.⁸⁹ Collella v. United States⁹⁰ further supports the preponderance of union purpose. The Colella court approved an instruction to the jury directing an acquittal if it found expenditure was for a union purpose, even if it found the expenditure was unauthorized.⁹¹

¶35 On the other hand, other opinions emphasize the importance of union authorization.⁹² In United States v. Goad,⁹³ the court

⁸⁸ 393 F.2d 642 (2d Cir. 1968).

⁸⁹ The court stated that "Section 501(c) is not limited to union officers who engage in stealthy larcenies or devious embezzlement but extends to an officer who 'unlawfully and willfully abstracts or converts to his own use' the funds of a labor organization." Id. at 645.

⁹⁰ 360 F.2d 792, (1st Cir.), cert. denied, 385 U.S. 829 (1966).

⁹¹ Id. at 804.

⁹² In United States v. Silverman, 430 F.2d 106, 115 (2d Cir. 1970), cert. denied, 402 U.S. 953 (1971), the court said that either a lack of union benefit from the expenditure or a lack of proper authorization should establish a § 501(c) violation because,

To hold otherwise would be to encourage the free-wheeling exercise of dictatorial power by labor leaders over the membership of their unions. Lawless transactions would occur which were only arguably or through the use of hindsight for the benefit of the union. Enforcement of "high standards of responsibility and ethical conduct" would be curtailed when the unbridled use of union funds can be immunized from the sanction of criminal liabilities by the fortuitous existence of a collateral union benefit.

⁹³ 490 F.2d 1158 (8th Cir.), cert. denied, 417 U.S. 945 (1974).

said proof of a union purpose would not, as a matter of law, vitiate fraudulent intent.⁹⁴ In United States v. Nell,⁹⁵ the court held the prosecution does not have to prove the expenditure was for a non-union purpose if it can prove it was unauthorized.⁹⁶

III. THE TAFT-HARTLEY ACT

A. Legislative Purposes

¶36 Section 302 of the Taft-Hartley Act is designed to prevent the corruption of labor organizations by outside influences.⁹⁷ In the late 1950's, Congress was concerned generally

⁹⁴Id. at 1165.

⁹⁵526 F.2d 1223 (5th Cir. 1976).

⁹⁶Id. at 1232.

⁹⁷Labor Management Relations (Taft-Hartley) Act § 302, 29 U.S.C. § 186 (1976). The Taft-Hartley Act reads in pertinent part as follows:

(a) Payment or lending, etc. of money by employer or agent to employees, representatives, or labor organizations

It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value--

(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or

with the corruption of the collective bargaining process.⁹⁸ It passed the section 302 of the Taft-Hartley Act⁹⁹ to curb the possible abuse by union officers of the power which they might achieve if welfare funds were left to their sole control,"¹⁰⁰ and to prohibit employer shakedowns. Congress also intended to prevent employer representatives from bribing union officers.

B. The Parties Involved

1. The Payor

¶37 Section 186(a) of the Taft-Hartley Act states,

It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, advisor, or consultant to an employer or who acts in the interest of an employer to pay, lend, or¹⁰¹ deliver, any money or other thing of value.

Subsequent subsections delineate the persons to whom payments are proscribed. The topic here is the courts' construction of

(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

⁹⁸ Arroyo v. United States, 359 U.S. 419, 425-26 (1959).

⁹⁹ Amendment to § 302 of the Labor Management Relations (Taft-Hartley Act), Pub. L. No. 86-257, 73 Stat. 537 (codified at 29 U.S.C. 186 (1976)).

¹⁰⁰ Arroyo v. United States, infra, note 99.

¹⁰¹ 29 U.S.C. § 186(a) (1976).

"employer" and its complements.

¶38 To determine who is an employer under the Act, the courts examine "the actual relations of the parties [and] not the words of their contracts . . .".¹⁰² In Cutler v. American Federation of Musicians,¹⁰³ the Second Circuit held that an orchestra leader was the orchestra's employer even though the union's standard form contract referred to the purchaser of the orchestra as the employer. That the orchestra leader had "effective control" of the orchestra and negotiated its contracts impressed the court.¹⁰⁴

¶39 Taft-Hartley prohibits payments by "any person who acts as a labor relations expert, advisor, or consultant to an employer or who acts in the interest of an employer . . .".¹⁰⁵ This clause facilitates the prosecution of management middlemen for illicit payments because it includes anyone who acts in the interest of an employer whether technically an agent or not.¹⁰⁶ The prosecution need not prove that "the payments were authorized or ratified by the employer or otherwise within the scope of the middleman's employment."¹⁰⁷

¹⁰²Carrol v. Associated Musicians of Greater New York, 183 F. Supp. 636, 641 (S.D.N.Y.), aff'd, 284 F.2d 91 (2d Cir. 1960).

¹⁰³316 F.2d 546 (2d Cir.), cert. denied, 375 U.S. 941 (1963).

¹⁰⁴Id. at 548. The union had imposed a tax on the orchestra leader's wages. Since the orchestra leader was an employer, the union's imposition of the tax violated subsection 186(b)(1); the representatives of an employer had demanded a payment from the employer.

¹⁰⁵29 U.S.C. § 186(a) (1976).

¹⁰⁶The Report of the Senate Committee on Labor and Public Welfare, S. REP. NO. 187, 86th Cong., 1st Sess. 43, reprinted in [1959] U.S. CODE CONG. AD. NEWS. 2318, 2318.

¹⁰⁷The Report of the Senate Committee on Labor and Public Welfare, S. REP. NO. 187, 86th Cong., 1st Sess. 11, reprinted in [1959] U.S. CODE CONG. & AD. NEWS. 2318.

2. The Payee

¶40 Employers may not make payments to those persons subsections 186(a)(1)-(4) delineates: any representative of any of his employees or any labor organization, or any officer or employee thereof. The topic here concerns a description of "representatives" and "officers" in Taft-Hartley labor racketeering prosecutions.

a. Officer

¶41 In N.L.R.B. v. Coca-Cola Bottling Co.,¹⁰⁸ the Supreme Court held that the term "officer" applies only to those persons the union's constitution designates as officers.¹⁰⁹ Persons may perform officerial functions but not be officers in Taft-Hartley prosecutions unless the union's constitution labels them "officers."¹¹⁰

b. Representative

¶42 The scope of section 186 depends primarily upon the content of the term "representative." In Brennan v. United States,¹¹¹ the Eighth Circuit held that the term "representative" included

¹⁰⁸350 U.S. 264 (1956).

¹⁰⁹Id. at 269. The definition of a union's officer contrasts with the Act's definition of an employer. To determine whether an individual is an "employer," the courts examine "the actual relations of the parties [and] not the words of their contracts" (Carrol v. Associated Musicians of Greater New York, 183 F.Supp. 636, 641 (S.D.N.Y.), aff'd, 284 F.2d 91 (2d Cir. 1960).

¹¹⁰The Report of the Senate Subcommittee on Labor and Public Welfare, S. REP. NO. 187, 86th Cong., 1st Sess. 95, reprinted in [1959] U.S. CODE CONG. & AD. NEWS 2318. The Senate realized that this interpretation let the union rewrite its constitution to permit persons who perform "officer's" duties to escape the Taft-Hartley proscriptions.

¹¹¹240 F.2d 253 (8th Cir. 1957), cert. denied, 353 U.S. 931 (1957).

any person who is empowered or authorized in any way to represent employees in their dealings with their employers in matters relating to wages, hours, or working conditions.¹¹² The Brennan test has been interpreted broadly. The test does not require that a "representative" actually represent employees in negotiations or similar activities;¹¹³ a person's mere authority to represent employees impresses the court. Further, a person can be a representative even though his dealings with the employer do not involve wages, hours, and working conditions,¹¹⁴ and even though he represents only some of the employees.¹¹⁵

¶43 Subsection 186(a)(2) proscribes payments by an employer "to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer."¹¹⁶ (emphasis added) The prosecution does not have to show that the officer or employee himself represented or sought to represent the employer's employees. The prosecution has to show only that the defendant is an officer or employee of a labor organization.

¹¹² Id. at 264.

¹¹³ See, United States v. Fisher, 387 F.2d 165, 168 (2d Cir. 1967), cert. denied, 390 U.S. 953 (1968).

¹¹⁴ Mechanical Contractors Ass'n v. Local Union 420, 265 F.2d 607, 611 (3d Cir. 1959).

¹¹⁵ Brennan v. United States, 240 F.2d 253, 264 (8th Cir. 1957), cert. denied, 353 U.S. 931 (1957).

¹¹⁶ 29 U.S.C. § 186 (a) (2) (1976).

subsection 186(a)(2) addresses.¹¹⁷

¶44 Subsection 186(a)(2) provides federal sanctions against union officials who require non-union employees to pay them to work on a union job.¹¹⁸ Subsection 186(a)(1) is inapplicable because, technically, these union officials are not representative of the non-union employees.¹¹⁹ The subsection also forbids payments from employers to labor union officials who attempt to organize the employer's employees, or who represent the same type of workers (e.g., truckers) as the employer's employees.¹²⁰

c. Any Person

¶45 Subsection 186(b)(1) states, "[i]t shall be unlawful for any person to request, demand, receive, or accept any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) of this section."¹²¹ Section 186(b) provides federal sanctions against conduct on the employee side of a 186(a) transaction. Thus, 186(a) delineates the people who can commit the 186(b) violation.

¹¹⁷ See, United States v. Fisher, 387 F.2d 165 (2d Cir. 1967), cert. denied, 390 U.S. 953 (1968).

¹¹⁸ The Report of the Senate Committee on Labor and Public Welfare, S. REP. NO. 187, 86th Cong., 1st Sess. 14, reprinted in [1959] U.S. CODE CONG. & AD. NEWS 2318.

¹¹⁹ Ventimiglia v. United states, 242 F.2d 620, 622 (4th Cir. 1957).

¹²⁰ The Report of the Senate Committee on Labor and Public Welfare S. REP. NO. 187, 86th Cong., 1st Sess. 14, reprinted in [1959] U.S. CODE CONG. & AD. NEWS 2318.

¹²¹ U.S.C. § 186(b)(1) (1976).

C. Conduct Proscribed

1. "Affects Commerce: Jurisdiction"

¶46 If an employer or employee is not associated with an industry that affects commerce, the court lacks jurisdiction to prosecute him under the Taft-Hartley Act. The court decides, as a matter of law, which activities affect commerce. The jury decides, as a fact, whether these employees or employers conducted those activities.¹²²

¶47 The courts have broadly construed "commerce" and "affecting commerce." In N.L.R.B. v. Reliance Fuel Oil Corporation,¹²³ the Court said that, "Congress intended to and did vest in the Board the fullest jurisdictional breadth constitutionally permissible under the commerce clause."¹²⁴ In United States v. Ricciardi,¹²⁵ the court held that the defendant represented employees "employed in an industry affecting commerce" because he was the representative of a union of apartment house owners who purchases heating oil from out of state.¹²⁶ Moreover, even though an employer's business is on a purely local level, an employee is "employed in an industry affecting commerce" if the employer

¹²²Handbook for Prosecution of Racketeers, United States Department of Justice (2d ed., October, 1976).

¹²³371 U.S. 224 (1962) (per curiam).

¹²⁴Id. at 226. In NLRB v. Farnblatt, 306 U.S. 601, 606 (1937), the Supreme Court said that Congress did not intend "to make the operation of the [NLRB] depend on any particular volume of commerce affected more than that to which courts would apply the maxim de minimus."

¹²⁵357 F.2d 91 (2d Cir.), cert. denied, 348 U.S. 942 (1966).

¹²⁶Id. at 95.

bargains with the union through an employer's association whose membership includes interstate employers.¹²⁷

2. Other Thing of Value

¶48 Section 186(a) states that it is unlawful for an employer to "pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value."¹²⁸ The phrase "other thing of value" includes benefits flowing from the use of money.¹²⁹ Whether a thing has an ascertainable market value is not the sole criteria. For example, information concerning one's employers can be a thing of value, and the subject of a transaction violating section 186.¹³⁰ A broad interpretation of the phrase "other thing of value" is understandable in light of the congressional purpose "to prevent tampering by employers with the loyalty of union officials."¹³¹

3. Employer Interference with the Rights of Employees

¶49 Subsection 186(a)(3) prohibits payments to employers "to influence any other employers in the exercise of the right to organize and bargain collectively through representatives of their own choosing . . . "¹³² A congressional investigative

¹²⁷ Sheet Metal Contractor's Ass'n v. Sheet Metal Workers International Ass'n, 248 F.2d 307, 310-11 (9th Cir. 1957).

¹²⁸ 29 U.S.C. § 186(a) (1976).

¹²⁹ Conditioned Air and Refrigeration Co. v. Plumbing and Pipe Fitting Labor-Management Relations Trust, 159 F.Supp. 887, 899 (S.D.Cal. 1956).

¹³⁰ Zentner v. American Federation of Musicians, 237 F.Supp. 457, 463 (S.D.N.Y.), *aff'd*, 343 F.2d 758 (2d Cir. 1965).

¹³¹ Id. at 463.

¹³² 29 U.S.C. § 186(a)(3) (1976).

committee reported that employers collaborated with crooks and labor racketeers to prevent union organization among the employer's employees.¹³³ Congress intended that this subsection help drive such corruption and improper activities from labor management relations, and prevent interference with unionization and collective bargaining.¹³⁴

4. Bribery of Officers or Employees of a Labor Organization

¶50 Subsection 186(a)(4) forbids payments by an employer "to any officer or employee of a labor organization . . . with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization."¹³⁵ The subsection proscribes payments to a broad class of persons. For the payment to be unlawful, subsections (1) and (2) require a significant relationship between the payor and the employer's employees; subsection 186(a)(4), on the other hand, proscribes payments to union officials "even if the employer and the subverted official's union have absolutely no relations with each other."¹³⁶

¹³³ H.R. REP. NO. 741, 86th Cong., 1st Sess. 6 (1959), reprinted in [1959] U.S. CODE CONG. & AD. NEWS 2424, ____.

¹³⁴ Id.

¹³⁵ 29 U.S.C. § 186(a)(4).

¹³⁶ See, S. REP. NO. 187, 86th Cong., 1st Sess. 98, reprinted in [1959] U.S. CODE CONG. & AD. NEWS 2318. The Senate committee on Labor and Public Welfare noted, "If an employer in the steel industry gives something of value to his acquaintance, the head of a textile workers unions, to change its political line, that would be a crime under the bill."

5. Subsection 186(b)(2)

¶51 Subsection 186(b)(2) provides:

It shall be unlawful for any person acting as an officer, agent, representative, or employee of such labor organization, to demand or accept from the operator of any motor vehicle (as defined in Part II of the Interstate Commerce Act) employed in the transportation of property in commerce, or the employer of any such operator, any money or other thing of value payable to such organization or to an officer, agent, representative, or employee thereof as a fee or charge for the unloading, or in connection with the unloading, of the cargo of such vehicle: Provided, that nothing in this paragraph shall be construed to make unlawful any payment by an employer to any of his employees as compensation for their services as employees.¹³⁷

Subsection 186(b)(2) is most notable for the ease with which it may be circumvented.¹³⁸ Unions can still require that, before unloading,¹³⁹ a truck driver or his employer must either join the union, purchase a work permit,¹⁴⁰ or hire a local union member.¹⁴¹

D. Exceptions

¶52 The government has the burden of proving that the defendant violated the Taft-Hartley Act. It, however, need

¹³⁷29 U.S.C. § 186(b)(2) (1976).

¹³⁸There are no reported prosecutions under 186(b)(2).

¹³⁹If the union has violated 186(b)(2), it may have also forced unwanted and unnecessary labor upon the employer and in violation of the Hobbs Act. See, United States v. Green, 350 U.S. 415, 418-19 (1956).

¹⁴⁰105 CONG. REC. 866 (1959).

¹⁴¹Because of the proviso concerning payments to an employee, this is legal. Section 186(c).

not negate the applicability of any of the exceptions in Section 186(c).¹⁴² The defendant has the burden of production that he falls within one of the exceptions to the Act, unless either the government or the defendant presents evidence of the applicability of one of the exceptions.¹⁴³ Where one exception permits a payment, but another forbids it, the court applied the more specific exception and convicted the defendant.¹⁴⁴

¶53 Subsection(c) enumerates six exceptions to the prohibitions in subsections (a) and (b). The topic here is a discussion of the most troublesome exceptions.

1. Exception 1: Payments to Representative of Employees for Services Rendered as an Employee

¶54 The defendant can claim that the payment he gave or received was compensation for employer services. Large industrial enterprises often employ shop stewards who are really employee representatives. The exception applies as long as the employment is in good faith and for actual services.¹⁴⁵

¹⁴²United States v. Waterman Dock Co., 131 F. Supp. 956, 957 (D.P.R. 1955).

¹⁴³United States v. Donovan, 339 F.2d 404, 409 (7th Cir.), cert. denied, 380 U.S. 975 (1964) (once evidence is introduced that seems to bring a defendant within an exception, the prosecution must negative the applicability of the exception); United States v. Fabrizio, 193 F. Supp. 446, 450 (D. Del. 1961) (since the government presented substantial evidence that the defendant did not know the recipient of his payments was an employee, the government had to prove that the 186(c)(1) exception was unapplicable).

¹⁴⁴ILA v. Seatrain, Inc., 326 F.2d 916, 920 (2d Cir. 1964). A payment to a union welfare fund in accordance with a collective bargaining agreement settling a dispute between the parties may be exempt under (c)(2), but violates the Act unless it already meets the requirements of (c)(5).

¹⁴⁵United States v. Motzell, 199 F. Supp., 192, 198-99 (D.N.J. 1961).

The employment must involve definite, ascertainable duties, and the defendant must, in fact, perform those duties.¹⁴⁶

2. Exception 2: Dues Checked Off Under Valid Authorization

¶55 If the employer receives a written assignment from his employees, the employer is allowed to pay the union dues of his employees directly to the union, deducting the proper amount from the employees' pay.¹⁴⁷ The assignment can not exceed the length of the collective bargaining agreement or one year;¹⁴⁸ the dues must be checked off from existing employees;¹⁴⁹ the court will not accept without more proof the mere characterization of the payments as dues;¹⁵⁰ and this exception does not allow the employer to deduct fines.¹⁵¹

¹⁴⁶Where the defendant receives payments from two different employers, the second employer's payments may not be an exception. See, United States v. Donovan, 339 F.2d 414, 410 (7th Cir.), cert. denied, 380 U.S. 975 (1964); United States v. Motzell, 199 F. Supp. 192, 198-99 (D.N.J. 1961).

¹⁴⁷29 U.S.C. § 186(c)(4) 1976.

¹⁴⁸Id.

¹⁴⁹International Longshoremen's Ass'n v. Seatrains Lines, Inc., 326 F.2d 916, 920 (2d Cir. 1964) (Payments to a union in lieu of dues lost by automation did not fall within the exception.)

¹⁵⁰See, United States v. Gibas, 300 F.2d 836, 839 (7th Cir. 1962), cert. denied, 371 U.S. 817 (1962).

¹⁵¹A check-off assignment to pay a fine the union imposed would infringe upon the rights 29 U.S.C. 411(a)(5) provides: no member of a labor union may be fined unless he has been served with written specific charges, given a reasonable time to prepare his defense, and afforded a full and fair hearing. Bay Counties District Council of Carpenters and Joiners, 145 NLRB 1775, 1786 (1964) (A union can not reallocate checked off dues to pay fines imposed on members).

¶156 Otherwise, the courts have interpreted this exception broadly. The deduction need not be labelled "membership" dues,¹⁵² need not be a regular deduction,¹⁵³ and can be an assessment.¹⁵⁴

3. Exception 5: Purpose and Beneficiaries of the Trust

¶157 Subsections (c)(5)(a) and (c)(6) enumerate the permissible purposes of a trust fund.¹⁵⁵ The courts may allow some leeway. In Blassie v. Kroger,¹⁵⁶ the Eighth Circuit held that retired persons, union officers, and trust employees could be beneficiaries of a trust fund, for the term "employee" is not limited to present employees or the employees of the principal contributing employer.¹⁵⁷ Generally, however, this exception is strictly construed, and makes unlawful a trust fund with a non-enumerated purpose.¹⁵⁸

¹⁵²Grajczyk v. Douglas Aircraft Co., 210 F. Supp. 702, 704-05 (S.D. Cal. 1962).

¹⁵³Schwartz v. Associated Musicians of Greater New York, 340 F.2d 228, 233-34 (2d Cir. 1964).

¹⁵⁴International Union of Mine, Mill and Smelter Workers v. American Zinc, Lead and Smelting Co., 311 F.2d 656, 659 (9th Cir. 1963) (Under the dues "check off" exception, the employer could pay a special strike assessment levied by the union.)

¹⁵⁵Infra, note 143.

¹⁵⁶345 F.2d 58 (8th Cir. 1965).

¹⁵⁷Id. at 68.

¹⁵⁸Local No. 2 v. Paramount Plastering Inc., 310 F.2d 179 (9th Cir. 1962), cert. denied 372 U.S. 944 (1963) (The court declared unlawful a trust fund to provide better public relations for the general advancement of the plastering industry, and a trust fund to promote the welfare of the industry and improve labor-management relations.)

¶58 Similarly, subsection (c) (5) (b),¹⁵⁹ which requires a written agreement specifying how payments to a trust fund must be made, has been strictly construed. The court may invalidate a trust agreement or collective bargaining agreement unless the agreement is in writing.¹⁶⁰ The courts, however, may accept an agreement between the union and employer that each would abide by the trustee's subsequent written decision on how the payments are to be made.¹⁶¹

¹⁵⁹29 U.S.C. § 186(c) (5) (B) states:

the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement.

¹⁶⁰Thomas v. Reading Anthracite Co., 264 F. Supp. 339, 343-44 (M.D. Pa. 1966).

¹⁶¹Id. For a further expansion of the literal meaning of this subsection, see Blassie v. Kroger, 345 F.2d 58 (8th Cir. 1965).

IV. EMPLOYEE BENEFIT PLAN KICKBACKS:
18 U.S.C. §1954

¶59 18 U.S.C. §1954 (1976), along with section 302 of the Taft-Hartley Act, combats the corruption of labor organizations by outside influences. Specifically, the statute provides federal sanctions against the bribery of employee benefit plan operators.¹⁶²

¹⁶²18 U.S.C. § 1954 (1976) states:

§ 1954. Offer, acceptance, or solicitation to influence operations of employee benefit plan

Whoever being--

(1) an administrator, officer, trustee, custodian, counsel, agent, or employee of any employee welfare benefit plan or employee pension benefit plan; or
(2) an officer, counsel, agent, or employee of an employer or an employer any of whose employees are covered by such plan; or
(3) an officer, counsel, agent, or employee of an employee organization any of whose members are covered by such plan; or
(4) a person who, or an officer, counsel, agent, or employee of an organization which provides benefit plan services to such plan receives or agrees to receive or solicits any fee, kickback, commission, gift, loan, money, or thing of value because of or with intent to be influenced with respect to, any of the actions, decisions, or other duties relating to any question or matter concerning such plan or any person who directly or indirectly gives or offers, or promises to give or offer, any fee, kickback, commission, gift, loan, money, or thing of value prohibited by this section, shall be fined not more than \$10,000 or imprisoned not more than three years, or both: Provided, That this section shall not prohibit the payment to or acceptance by any person of bona fide salary, compensation, or other payments made for goods or facilities actually furnished or for services actually performed in the regular course of his duties as such person, administrator, officer, trustee, custodian, counsel, agent, or employee of such plan, employer, employee organization, or organization providing benefit plan services to such plan.

A. Legislative Purposes

¶60 Congress designed 18 U.S.C. §1954 to prohibit graft¹⁶³ and bribery¹⁶⁴ of influential welfare and pension plan operators.¹⁶⁵

B. Potential Defendants in a Prosecution
Under 18 U.S.C. §1954

¶61 18 U.S.C. §1954 borrows definitions from the Employee Retirement Income Security Act (ERISA) and the Welfare Pension Plans Disclosure Act (WPPDA).¹⁶⁶

As used in this section, the term (a) "any employee welfare benefit plan" or "employee pension benefit plan" means any employee welfare benefit plan or employee pension benefit plan, respectively, subject to any provision of title I of the Employee Retirement Income Security Act of 1974, and (b) "employee organization" and "administrator" as defined respectively in sections 3(4) and (3)(16) of the Employee Retirement Income Security Act of 1974.

¹⁶³ See, 108 CONG. REC. 1732 (1962) (remarks of Congressman Roosevelt).

¹⁶⁴ G.R. Blakey, Welfare and Pensions Plans Disclosure Act Amendments of 1962, 38 Notre Dame Lawyer 263, 284, n. 167 (1963). Bribery requires a specific intent to influence or be influenced in the performance of welfare and pension plan actions, decisions, or duties. Graft, on the other hand, does not require an intent to influence or be influenced, but encompasses payment to or acceptance by an individual of something of value because of its actions, decisions, or duties. United States v. Cohen, 387 F.2d 803, 806 (2d Cir. 1967), cert. denied, 390 U.S. 996 (1968); Razete v. United States, 199 F.2d 44, 48-49 (6th Cir.), cert. denied, 344 U.S. 904 (1952).

¹⁶⁵ 29 U.S.C. §§ 301-09 (1978).

¹⁶⁶ 18 U.S.C. § 1954 (1976) adopts definitions from the WPPDA when the defendants conduct occurred prior January 1, 1975 or when the Secretary of Labor has postponed ERISA's applicability to the plan. See 29 U.S.C. 1031(a)(1), (a)(2)(c), (b)(1) and (b)(2) (1976) and 29 U.S.C. 1002(1), (2), and 1003 (1976) determine whether a plan is within the scope of § 1954. Otherwise, if the courts have not defined the term, 18 U.S.C. § 1954 adopts ERISA's definition.

1. Welfare and Pension Plans Covered Under §1954

¶62 29 U.S.C. §302(a)(1) of the WPPDA defines employer welfare benefit plan as follows:

. . . any plan fund or program which is communicated or its benefits described in writing¹⁶⁷ to the employees, and which was heretofore or is hereafter established by any employer or by any employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death, or unemployment.¹⁶⁸

29 U.S.C. §302(a)(2) of WPPDA defines "employee pension benefit plan" in the same way except that employee pension benefit plans provide retirement benefits, and funds these benefits through insurance or annuity contracts, and profit sharing.¹⁶⁹ Also, the legislative history indicates that 18 U.S.C. §1954 includes

¹⁶⁷The plan must be in writing to exclude informal or personal arrangements from the scope of the Act. The Act does not cover individual arrangements with executives for benefits. H.R. REP. NO. 2283, 85th Cong., 2d Sess., 12 (1958).

¹⁶⁸29 U.S.C. § 302 (a) (1) (1976).

¹⁶⁹29 U.S.C. § 302(a)(2) states:

(2) The term "employee pension benefit plan" means any plan, fund, or program which is communicated or its benefits described in writing or to the employees, and which was heretofore or is hereafter established by an employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, by the purchase of insurance or annuity contracts or otherwise, retirement benefits, and includes any profit sharing plan which provides benefits at or after retirement.

"insured plans"¹⁷⁰ Jurisdiction of requirements may limit further the definition's scope.¹⁷¹

¶63 ERISA's definition of an employee welfare benefit plan is broader than the WPPDA definition because 29 U.S.C. §1002 of ERISA includes plans providing vacation benefits, apprenticeship or other training programs, day care centers, scholarship funds, prepaid legal services, or any benefit 29 U.S.C. §186(c) of the Labor Management Relations (Taft-Hartley Act) describes other than pension plans, payable on retirement or death.¹⁷²

¹⁷⁰ Under an "insured plan," members pay premiums to an insurance carrier as a group, and the carrier provides the benefits. See, S. REP. NO. 908, 87th Cong., 1st. Sess. 16 (1961) (letter of August 17, 1961 from Assistant Attorney General Miller to Senator McNamara). In Wertz v. Gulf Oil Corp., 239 F. Supp. 483, 485 (E.D. Pa. 1965), the court held that the employer had established a welfare fund even though he merely forwarded his employees premiums to an insurance carrier to qualify for group rates.

¹⁷¹ 29 U.S.C. § 303 (a) (1976) requires the plan to be "established or maintained by an employer or employers engaged in commerce or in any industry affecting commerce or activity affecting commerce or by an employee organization or organizations representing employees engaged in commerce or on any industry or activity affecting commerce or by both." The courts will probably not require more than a de minimis effect on commerce. See NLRB v. Farnblatt, 306 U.S. 601, 606-07 (1939).

¹⁷² 18 U.S.C. § 186(c) (5) (A) (1976) refers to trust funds for the following purposes: "medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance." 18 U.S.C. § 186(c) (6) refers to trust funds "for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs. 18 U.S.C. § 186(c) (7) refers to trusts "for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for pre-school and school age dependents of employees." 18 U.S.C. § 186(c) (7) also refers to trust funds "for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice."

2. Employee Organizations

¶64 The WPPDA's definition of an employee organization encompasses reational and local unions.¹⁷³

The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee welfare or pension benefit plan, or other matters incidental to employment relationships; or any employee's beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.¹⁷⁴

Since unions manage many employee welfare and pension plans, bargain for terms, and conduct quid pro quo transactions,¹⁷⁵ they are highly susceptible to bribery.

¶65 The WPPDA defines an administrator as "the person or persons designated by the terms of the plan or the collective bargaining agreement with responsibility for the ultimate control, disposition, or management of the money received or contributed."¹⁷⁶ Yet, the administrator under

¹⁷³ A board of representatives of several trade unions bargain for and supervise welfare and pension plans in the construction industry. The WPPDA's definition seems broad enough to include such boards.

¹⁷⁴ 29 U.S.C. § 302 (a) (3) (1976).

¹⁷⁵ See Lambos, Policing the Trustee: The Law Governing Labor-Management Employee Benefit Funds, Symposium on Labor Relations Law 611, 623 (1961).

¹⁷⁶ 29 U.S.C. § 304(b) (1) (1976) . 29 U.S.C. § 304 (b) (2) (1976) states that administrator refers "in the absence of such designation [to] the person or persons actually responsible for the control, disposition, or management of the money received or contributed, irrespective of whether such control, disposition, or management is exercised directly or through an agent or trustee designated by such persons or person."

Section 1954 is not necessarily the person the collective bargaining agreement or papers filed with the Secretary of Labor designated.¹⁷⁷ That the defendant is a fiduciary with ultimate control of the funds impresses the court.¹⁷⁸

¶66 ERISA defines administrator as follows:

- (i) the person specifically so designated by the terms of the instrument under which the plan is operated;
- (ii) if an administration is not so designated, the plan sponsor; or
- (iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other persons as the Secretary may by regulation prescribe.¹⁷⁹

3. Officers

¶67 Neither the WPPDA nor its amendments define "officer," but the courts adopt either a functional approach or a constitutional approach. The constitutional approach refers to the labor union's or corporation's constitution, charter, articles of incorporation, or by-laws to determine whether an individual is an officer.¹⁸⁰ The functional approach measures the indi-

¹⁷⁷ Wurtz v. Gulf Oil Corp., 239 F. Supp. 483, 486 (1965). This is the only published decision dealing with the WPDDA's definition of administrator.

¹⁷⁸ Id. (The insurance carrier providing only group policy coverage is not the administration.)

¹⁷⁹ 29 U.S.C. § 1002(16) (1976).

¹⁸⁰ In NLRB v. Coca Cola Bottling Co., 350 U.S. 264 (1956), the court expressed the constitutional approach as follows:

vidual's power against the evil the statute prohibits.¹⁸¹ A precise definition of "official," however, may not be crucial because an individual who does not satisfy a restrictive interpretation of the term will usually qualify as an employee or person providing benefit plan services.

4. Counsel

¶68 Counsel may be defined broadly as "one called in to advise,"¹⁸² or narrowly as "one who has been admitted as an attorney and counsellor at law."¹⁸³ Congress did not indicate whether it intended the narrow or broad definition to apply.

5. Agent

¶69 Courts and other legal authorities define an agent as an individual with the power to affect his principals' legal relationships with third persons and to establish contracts binding

"[o]fficers" normally means those who hold defined officers. It does not mean the boys in the back room or other agencies of invisible government, whether in politics or in the trade-union movement. A definition of officer as "any person occupying a position identified as an office in the constitution of the labor organization" accords with this lay understanding.

Id. at 269, citing 29 CRF, 1955 Supp., § 102.13.

¹⁸¹See, Colby v. Klune, 178 F.2d 872, 873 (2d Cir. 1949).

¹⁸²United States v. Russo, 442 F.2d 498, 502 (2d Cir. 1971) (Counsel in section 1954 means "counsel in the broader sense of an advisor, one who recommends a course of action to the Fund."), cert. denied, 404 U.S. 1023 (1972).

¹⁸³Black's Law Dictionary 418 (4th ed. 1968).

on his principal.¹⁸⁴ The principal must consent to the agent's authority.¹⁸⁵ The court in United States v. Russo,¹⁸⁶ however, diverged from common law agency principles and held that an individual was an agent even though he did not represent the fund in any dealings with third parties.¹⁸⁷

6. Employee

¶70 To determine whether a workman was an employee for whose torts the employer would be vicariously liable, the common law gauged the degree of control the employer exercised over the alleged employee.¹⁸ The courts have rejected this test as a way to determine whether an individual was an employee the National Labor Relations Act protects,¹⁸⁹

¹⁸⁴"The characteristic of the agent is that he is a business representative. His function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between his principal and third persons." F. Mechem, Agency Section 36 (2d ed. 1914); The Restatement (Second) of Agency 12 (1958) states that "[a]n agent or apparent agent holds a power to alter the legal relations between the principal and third persons and between the principal and third persons and between the principal and himself."; United States v. Marroso, 250 F. Supp. 27 (E.D. Mich. 1966).

¹⁸⁵Appleby v. Kewanee Oil Co., 279 F.2d 334, 336 (10th Cir. 1960); United States v. Marroso, 250 F. Supp. 27, 30 (E.D. Mich., 1966).

¹⁸⁶442 F.2d 498 (2d Cir. 1971), cert. denied, 404 U.S. 1023 (1972).

¹⁸⁷Id. at 502. The Russo court may have considered the defendant to be an agent of an employee organization under subsection (3). See Id. at 499, n. 1.

The Second Circuit upheld the jury's determination of Wenger's guilt and stated that "In rendering advice to the Fund on a regular basis, including giving the fund advice regarding the financial status of potential borrowers, Wenger established an agency relationship with the Fund . . . " Id. at 502.

¹⁸⁸See, e.g., Singer Mfg. Co. v. Rahn, 132 U.S. 518, 523 (1889); Restatement (Second) of Agency § 220 (1958).

¹⁸⁹NLRB v. Hearst Publications, Inc., 322 U.S. 11, 124, 129 (1944).

or the Social Security Act protects.¹⁹⁰

C. Conduct

¶71 An individual in the statute's specified categories who "received or agrees to receive or solicits any fee, kickback, commission, gift, loan, money or thing of value"¹⁹¹ as a bribe or in payment of graft is subject to the criminal provisions of section 1954. On the other hand, "any person who directly or indirectly gives or offers or promises to give or offer"¹⁹² such a payment to an individual in the specified categories also violates section 1954. Construing a statute prohibiting the bribery of public officials, the Third Circuit held that "promise" and "offer" have virtually synonymous meanings.¹⁹³ Thus, phrases such as "offers or promises to give or offer" in section 1954 may describe only one act and one crime.¹⁹⁴

D. Intent For Bribery and the Extortion Defense

¶73 For a bribery conviction, section 1954 requires an intent to be influenced or a relationship between the payment and

¹⁹⁰United States v. Silk, 331 U.S. 704 (1947).

¹⁹¹18 U.S.C. § 1954(4) (1976).

¹⁹²Id.

¹⁹³United States v. Kemmel, 188 F. Supp. 736, 741 (M.D. Pa. 1960), aff'd 295 F.2d 712 (3d Cir. 1961) per curiam, cert. denied, 368 U.S. 988 (1962).

¹⁹⁴United States v. Michelson, 165 F.2d 732, 733 (2d Cir.), aff'd, 335 U.S. 469 (1948). The Second Circuit said the test is whether "separate acts have been committed with the requisite criminal intent . . . "

the recipient's duties.¹⁹⁵ Prosecution under analogous bribery statutes require that the offer, acceptance, solicitation, agreement promise, or payment occur before completion of the act;¹⁹⁶ the court will not consider the act completed if one of the parties has "continuing responsibilities."¹⁹⁷ That the defendant reached his decision prior to the solicitation, agreement, or payment is not a defense in state courts.¹⁹⁸ Generally, the courts will admit circumstantial evidence of intent, including evidence of earlier acts of bribery.¹⁹⁹ The Second Circuit, however, will

¹⁹⁵ 18 U.S.C. § 1954(4) (1976). Where the third party is only a conduit, the transaction obviously violates the statute. See S. REP. NO. 908, 87th Cong., 1st Sess. 15 (1961).

See, e.g., United States v. Saylor, 322 U.S. 385 (1944) (by implication); United States v. Mosley, 238 U.S. 383 (1915); But see United States v. Triscaro, Crim. No. 70-390 (N.D. Ohio February 5, 1972) (indictment dismissed on the grounds that section 1954 did not prohibit a plan official from soliciting a loan for a third person.)

¹⁹⁶ See United States v. Cohen, 387 F.2d 803, 805-06 (2d Cir. 1967), cert. denied 390 U.S. 996 (1968); United States v. Barash, 365 F.2d 395 (2d Cir. 1966), cert. denied, 396 U.S. 832 (1969); United States v. Umans, 368 F.2d 725, 730 (2d Cir. 1966), cert. granted, 386 U.S. 940, cert. dismissed as improvidently granted, 389 U.S. 80 (1967). These cases interpreted bribery statutes that had a specific intent requirement.

¹⁹⁷ United States v. Barash, 412 F.2d 26, 33 (2d Cir.), cert. denied, 396 U.S. 832 (1969) (An IRS auditor accepted a bribe after he completed an audit, but the Second Circuit allowed the jury to consider whether the defendant had "continuing responsibilities.")

¹⁹⁸ Sims v. State, 131 Ark. 185, 198 S.W. 883, 885 (1917). See also, R. Perkins, Perkins on Criminal Law 479 (2d ed. 1969). The bribe still influences the recipient because it deters him from changing his decision.

¹⁹⁹ United States v. Barash, 412 F.2d 26, 30-31 (2d Cir.), cert. denied, 396 U.S. 832 (1969); United States v. Umans, 368 F.2d 725, 730 (2d Cir. 1966), cert. granted, 386 U.S. 940, cert. dismissed as improvidently granted, 389 U.S. 80 (1967).

not allow the jury to assume that the defendant intended the natural and probably consequences of his acts.²⁰⁰

¶74 Extortion is a defense in a bribery prosecution because it negates specific intent. The defense excuses bribery acts the defendant commits under economic coercion or under pressure to avoid an unfair economic injury²⁰¹; but the defense does not excuse acts the defendant commits because of fear of losing an unfair or illegal advantage.²⁰²

E. Intent for Graft

¶75 Under section 1954, bribery includes all the elements of graft plus the intent to influence or be influenced.²⁰³ Graft requires only general criminal intent.²⁰⁴ In United States v. Berger²⁰⁵ decided under section 1954, the Second Circuit used the words "knowingly," "unlawfully," "wilfully" to describe the general state of mind requirement. The court stated, "[a]n act is done

²⁰⁰United States v. Barash, 365 F.2d 395, 402 (2d Cir. 1966), cert. denied, 396 U.S. 832 (1969). The court, however, implied that the "natural consequences" instruction might be allowed if the jury instructions, as a whole, protected the defendant.

²⁰¹United States v. Barash, 365 F.2d 395, 401-02 (2d Cir. 1966), cert. denied, 396 U.S. 832 (1969).

²⁰²United States v. Miller, 340 F.2d 421, 425 (4th Cir. 1965).

²⁰³Generally, then, graft is an included offense to bribery. See United States v. Umans, 368 F.2d 725 (2d Cir. 1966), cert. granted, 386 U.S. 940, cert. dismissed as improvidently granted 389 U.S. 80 (1967).

²⁰⁴United States v. Irwin, 354 F.2d 192, 196 (2d Cir. 1965), cert. denied, 383 U.S. 967 (1966); Razete v. United States, 199 F.2d 44, 49 (6th Cir.), cert. denied, 344 U.S. 904 (1952).

²⁰⁵433 F.2d 680 (2d Cir. 1970), cert. denied, 401 U.S. 962 (1971).

knowingly if it is done voluntarily and purposefully and not because of mistake, accident, negligence or other innocent reason. An act is wilfull if it is done knowingly and deliberately."²⁰⁶

¶76 Although the graft section 1954 proscribes does not require an intent to influence or be influenced, it does require a nexus between the offer, agreement or payment prohibited and the "actions, decisions or other duties" of the individual connected with the welfare or pension plan. The payment, however, need not be made for a specific favor.²⁰⁷

F. The Exception to Section 1954

¶77 Section 1954 contains the following clause to insure that welfare and pension plan workers can obtain legal compensation.²⁰⁸

Provided, That this section shall not prohibit the payment to or acceptance by any person of bona fide salary, compensation, or other payments made for goods or facilities actually furnished or services actually performed in the regular course of his duties as such person, administrator, officer, trustee, custodian,

²⁰⁶ Id. at 684. (quoting the trial court charge).

²⁰⁷ In United States v. Irwin, 354 F.2d 192, 196 (2d Cir. 1965), cert. denied, 383 U.S. 967 (1966), the court said:

The awarding of gifts thus related to an employee's official acts . . . tends, subtly or otherwise, to bring about preferential treatment by Government officials or employers, consciously or unconsciously . . . The preference may concern nothing more than fixing the time of a hearing or giving unusually prompt consideration to the application of a donor . . . even though there is no evidence the donor sought the particular preference.

²⁰⁸ One commentator regards the exception as unnecessary. See C. Ruff, Welfare and Pension Plans, 12 Santa Clara Rev. 480, 497 n. 78 (1972).

counsel, agent, or employee of such plan, employer, employee organization, or organization providing benefit plan services to such plan.²⁰⁹

The exception also serves as a gauge to identify illegitimate payments disguised as legal compensation:²¹⁰ the salary must be bona fide and the services must actually be performed. Yet, a fiduciary representing the plan in negotiations with a third party should not be able to claim the benefit of the statute when he receives compensation from the third party for representing the fund "in the regular course of his duties." To permit this argument would vitiate the statute.²¹¹

²⁰⁹18 U.S.C. § 1954(4) (1976).

²¹⁰See 108 CONG. REC. 1943-44 (1962) (remarks of Senator Douglas) The legislative history of 1954 revealed, for example, that fund insurers paid union officials unreasonable fees ostensibly for promoting the fund and handling minor administrative chores.

²¹¹See C. Ruff, Welfare and Pension Plans: The Role of the Federal Prosecutor, 12 Santa Clara Rev. 480, 497 n. 78 (1972).

Appendix B

LABOR RACKETEERING STATUTES
OF THE STATES

The following chart systematically presents state statutes that could be used to prosecute labor racketeering activity.

The statutes fall, with a few exceptions, into four categories--extortion, embezzlement, bribery and infiltration. "Labor racketeering" as a substantive offense does not exist; a prosecutor will have to rely on statutes proscribing the underlying crimes. The statutes in these charts have been separated into elements to facilitate structural comparison. No case law is incorporated into this analysis.

All statutes in this chart are accurate and up-to-date as of July 1, 1979.

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Att'd Circ's	Penalties
ALABAMA						
Extortion Ala. Code tit. 13A §§ 8-13 to 15 (1978)	obtains control by threat ¹	property of another	obtains control	knowingly, intent to deprive	knowledge ²	felony
Embezzlement ³ Ala. Code tit. 13A §§ 8-2 to 8-5 (Supp. 1978)	(1) obtains or exerts unauth- orized control (2) obtains con- trol by deception ⁴	property of another	obtains or exerts control	knowingly, in- tent to deprive	knowledge ²	felony/ misdemeanor
Bribery (Commercial) Ala. Code tit. 13A § 11-120 (1978)	(a) (1) confers or agrees or offers to confer (a) (2) confers, or agrees or offers to confer	any benefit upon any employee or agent without the consent of the latter's em- ployer or principal any benefit upon any fiduciary without the consent of the latter's beneficiary	obtains control	knowingly, intent to deprive	knowledge ²	misdemeanor
Bribery (Receiving Commercial Bribe) Ala. Code tit. 13A § 11-121 (1978)	(a) (1) solicits, accepts, or ag- rees to accept	as employee or agent, without consent of em- ployer or principal, any benefit from another person		agreement or under- standing that the benefit will impro- perly influence his conduct in relation to his employer's or principal's affairs		misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
ALABAMA cont'd (Receiving Commercial Bribe) cont'd	(a) (2) solicits, as hiring agent or official accepts, or agrees to accept employment, any benefit from another person			agreement or understanding that someone will be hired, retained in employment, or discharged or suspended from employment		misdemeanor
	(a) (3) solicits, as a fiduciary, without accepts, or agrees to accept any benefit from another person			agreement or understanding that the benefit will improperly influence his conduct in his fiduciary capacity		misdemeanor
Interference Ala. Code tit. 25 § 7-9 (1975)	prevents or seeks to prevent by force or threats of violence to person or property, or by any means of duress	another from doing work or furnishing materials or from contracting to do work or furnish materials for or to any person engaged in any lawful business				
	or					misdemeanor
	disturbs, interferes with, or prevents or in any manner attempts to prevent	the peaceable exercise of any lawful industry, business, or calling by any other person				
Interference Ala. Code tit. 25 § 7-10 (1975)	hinder, interfere with, or prevent by the use within this state of threats, intimidation, force, coercion, or sabotage	however near to or distant from any place of employment in this state the obtaining, use, or disposition of materials, equipment, or service by the employer or operator of such place of employment	hinder, interfere with, or prevent			unlawful

Statutes	Conduct	Attendant Circumstances	Result	Conduct	State of Mind	Att'd Circ's	Penalties
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ALABAMA cont'd Conspiracy, combination, or agreement to interfere with or hin- der business Ala. Code tit. 13A § 11-122 (1978)	enter	two or more persons without a just cause or legal excuse for doing so into combination, con- spiracy, agreement, ar- rangement, or understanding	entering	for the purpose of hindering, delaying, or preventing any other persons, firms, corpora- tions, or assoc- iation of persons from carrying on any lawful business			misdemeanor
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¹ Defined in Ala. Code tit. 13A § 8-1(13) (1978) to mean, *inter alia*, to "bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor pur-ports to represent."

² Per Ala. Code tit. 13A § 2-4 (1978).

³ Termed "Theft of property" in the statute.

⁴ Defined in Ala. Code tit. 13A § 8-1(1) (1978).

Note: Per Ala. Code tit. 13A § 8-15(b) (1978) honest claim for restitution or indemnification is a defense to extortion.

ALASKA Extortion Alaska Stat. § 11.20.345 (a) (5) (Supp. 1978)	obtains by threatening to or suggest- ing that he or another may bring about or continue a strike, boy- cott, or other collective un- official action	property of a person	obtains	if the property is not demanded or received for the benefit of the group in whose interest the person making the threat or suggestion purports to act			felony
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Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
ALASKA cont'd Embezzlement Alaska Stat. § 11.20.280 (1970) (Em- bezzlement by employee)	embezzles or fraudulently converts to own use or takes or secretates	money, property, or thing of another which may be the subject of larceny, and which has come into his possession or is under his care by virtue of his employment	embezzlement or fraudulent conversion			felony (if value ex- ceeds \$100) misdemeanor
			taking or secretating	intent to em- bezzle or fraud- ulently convert to own use		
Embezzlement Alaska Stat. § 11.20.330 (Supp. 1978) (Embezzlement by trustee)	converts to own use or benefit, or to the use or benefit of another not entitled to it	property for the benefit of another or for a public or charitable use	conversion	intent to defraud		felony (if value ex- ceeds \$100) misdemeanor
Embezzlement Alaska Stat. § 11.20.340 (Supp. 1978) (Embezzlement by fiduciary)	converts to own use or benefit, or to the use or benefit of another not entitled to it	property of another	conversion	intent to defraud		felony (if value ex- ceeds \$100) misdemeanor

Note: See also Alaska Stat. § 11.15.300 (1970) (Blackmail) (threat with intent to extort pecuniary advantage or property or with intent to compel an act against the actor's will a completed offense).
Per Alaska Stat. § 11.20.345(d) (Supp. 1978) honest claim for restitution is a defense to extortion.

Note: Alaska has enacted a new Criminal Code which goes into effect on January 1, 1980. Statutes cited here may be affected.

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Att'd Circ's	Penalties
ARIZONA Extortion Ariz. Rev. Stat. § 13-1804 (1978)	obtaining or seeking to obtain by threat to injure, accuse, expose, etc., or perform any other act which would not in itself materially benefit the defendant, but which is calculated to harm another person materially with respect to his wealth, safety, business, calling, career, financial condition, reputation or personal relationships	property or services		knowingly	knowledge ¹	
Embezzlement Ariz. Rev. Stat. § 13-1802 (1978)	A(1) controls A(2) converts	property of another for an unauthorized term or use, services or property of another entrusted to the defendant or placed in the defendant's possession for a limited, authorized term or use	control conversion	knowingly; intent to deprive owner knowingly	knowledge ¹ knowledge ¹	felony (if value exceeds \$100) misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
ARIZONA cont'd Infiltration Ariz. Rev. Stat. § 13-2312(A) (1978) (illegal control of an enterprise)	acquires or maintains control ² of any enterprise ³	through racketeering ⁴ or its proceeds, by invest- ment or otherwise	acquires or maintains control	knowing	knowledge ¹	felony
Infiltration Ariz. Rev. Stat. § 13-2312(B) (1978) (illegal- ly conducting an enterprise)	conducts or participates in the conduct of an enter- prise's ³ affairs	employed or associated with the enterprise, ⁴ through racketeering	conducts or participates in the conduct	knowing	knowledge ¹	felony

¹Per Ariz. Rev. Stat. § 13-202 (1978).

²Defined in Ariz. Rev. Stat. § 13-2301(D)(1) (1978) to mean "the possession of a sufficient interest to permit substantial direc-
tion over the affairs of an enterprise."

³Defined in Ariz. Rev. Stat. § 13-2301(D)(2) (1978) to mean any corporation, association, labor union, or other legal entity or
any group of individuals associated in fact although not a legal entity.

⁴Defined in Ariz. Rev. Stat. § 13-2301 (D) (4) (1978).

ARKANSAS

Extortion - Embezzlement Ark. Stat. Ann. §§ 41-2202, 2203 (1977)	(a) takes or exercises un- authorized con- trol over or property of another person	taking or exercising of unauth- orized control	knowingly, purpose/knowledge ¹ of depriving owner
	makes an un- authorized transfer of an interest in	making an unauthorized transfer	

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Att'd Circ's	Penalties
ARKANSAS cont'd	(b) obtains by deception or threat ²	property of another person obtaining		knowingly, with the purpose of depriving the owner	knowledge ¹	felony

¹Per Ark. Stat. Ann. § 41-204(1) (1977).

²Defined in Ark. Stat. Ann. § 41-2201(9)(h) to mean a menace, however communicated, to "bring about or continue a strike, boycott, or other collective action if the property or service is not demanded or received for the benefit of the group in whose interest the actor purports to act."

Note: Per Ark. Stat. Ann. § 41-2201(9)(i) (1977) honest claim for restitution or indemnification is a defense to extortion.

CALIFORNIA ¹ Extortion Cal. Penal Code § 518, 519 (West 1970)	obtains by wrongful use of force or fear, induced by threat to injure, accuse, expose	property from another with induced consent	obtaining fear			felony
Embezzlement ² Cal. Penal Code § 506 (West 1970) ³	appropriates or secretetes	property for the use of any other person to any use or purpose not in the due and lawful execution of his trust		fraudulently		felony (if value exceeds \$200) misdemeanor ⁴

with fraudulent intent to appropriate it to such use or purpose

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Att'd Circ's	Penalties
CALIFORNIA cont'd						
Infiltration (Criminal Syndicalism) ⁵ Cal. Penal Code § 11401(1), (4), (5) (West Supp. 1979)	advocates, teaches, or aids and abets crim- inal syndicalism	by spoken or written words or personal conduct				
	or					
	organizes or assists in organizing or is or be- comes a member of	any organization, society, group, or assemblage of persons organized or as- sembled to advocate, teach or aid and abet criminal syndicalism		knowingly become a member		
	or					felony
	practices or commits	by personal act or conduct any act advised, advocated, taught or aided and abetted by the doctrine or precept of criminal syndicalism		willfully with intent to accom- plish a change in industrial ownership or control		
¹ See also Cal. Penal Code § 524 (West Supp. 1979) (attempt to extort) (misdemeanor)						
² Defined in Cal. Penal Code § 503 (West 1970) to mean "the fraudulent appropriation of property by a person to whom it has been entrusted."						
³ See also Cal. Penal Code § 508 (West 1970) (embezzlement by clerk, agent, or servant).						
⁴ Per Cal. Penal Code § 514 (West Supp. 1979) and Cal. Penal Code §§ 487, 488, and 490(a) (West 1970), §§ 489, 490 (West Supp. 1979)						
⁵ Defined in Cal. Penal Code § 11400 (West 1970) to mean "any doctrine or precept advocating, teaching or aiding and abetting the commission of crime, sabotage (which word is hereby defined as meaning willful and malicious physical damage or injury to physical property), or unlawful acts of force and violence or unlawful methods of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change."						

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
COLORADO						
Extortion - Embezzlement Colo. Rev. Stat. § 18-4-401 (1978) (Theft)	obtains or exercises control	over any thing of value of another without authorization or by threat or deception	obtaining or exercising control	knowingly	knowledge ¹	felony (if value ex- ceeds \$200) misdemeanor
Bribery (Commercial) Colo. Rev. Stat. § 18-5-401(1)(e) (1978)	solicits, accepts, or agrees to accept	any benefit as considera- tion for violating or agreeing to violate a duty of fidelity to which he is subject as a duly elected or appointed representative or trustee of a labor organization or employee welfare trust fund		knowingly		felony
Bribery Colo. Rev. Stat. § 18-5-401(3) (1978)	confers or offers or agrees to confer	any benefit the acceptance of which would be a felony under Colo. Rev. Stat. § 18-5-401(1) (1978), <u>above</u>				felony

¹Per Colo. Rev. Stat. § 18-1-503(4) (1978).

¹Per Colo. Rev. Stat. § 18-1-503(4) (1978).

CONNECTICUT						
Extortion Conn. Gen. Stat. Ann. § 53a-119(5) (F) (West Supp. 1979) (Larceny) ¹	compels or induces del- ivery by in- stilling a fear	property of another threat that if the prop- erty is not delivered the actor or another will cause a strike, boycott, or other collective labor group action injurious to some person's business. ²	delivery fear	intent to de- prive another of property	knowledge ³	felony ⁴

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
CONNECTICUT cont'd						
Embezzlement Conn. Gen. Stat. Ann. § 53a-119(1) (West Supp. 1979) (Larceny ¹)	appropriates	to himself or another property of another in his care or custody	appropriation	wrongfully intent to deprive another of property	knowledge ³	felony (if value ex- ceeds \$500) misdemeanor
Bribery Conn. Gen. Stat. Ann. § 53a-158 (West 1972) (Bribery of a labor official)	offers, con- fers, or ag- rees to confer	upon a labor official any benefit		with intent to influence him in respect to any of his acts, decisions, or duties as such labor official	knowledge ³	felony
Bribery Conn. Gen. Stat. Ann. § 53a-159 (West 1972) (Bribe receiving by a labor official)	solicits, ac- cepts, or ag- rees to accept	any benefit from another person	agreement or understanding	upon an agreement or understanding that such benefit will influence him in respect to any of his acts, deci- sions, or duties as such labor official		felony
Bribery Conn. Gen. Stat. Ann. § 53a-160 (West 1972) (Commercial Bribery)	confers or agrees to confer	any benefit upon any em- ployee, agent, or fiduc- iary without the con- sent of the latter's em- ployer or principal		with intent to in- fluence his conduct in relation to his employer's or prin- cipal's affairs		misdemeanor

¹Conn. Gen. Stat. Ann. § 53a-119 (West Supp. 1979) states: "A person commits larceny when, with intent to deprive another of prop-erty or to appropriate the same to himself or a third person, he wrongfully takes, obtains, or withholds such property from an owner. Larceny includes, but is not limited to: (1) Embezzlement ***; (5) Extortion ****."

²"Except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act"

³Per Conn. Gen. Stat. Ann. § 53a-5 (West 1972).

⁴Per Conn. Gen. Stat. Ann. § 53a-122 (West Supp. 1979).

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
CONNECTICUT cont'd						
5	Per Conn. Gen. Stat. Ann. §§ 53a-122 to 124 (West Supp. 1979), § 125 (West 1972).					
Note: See also Conn. Gen. Stat. Ann. § 53a-192 (West 1972) (Coercion) and Conn. Gen. Stat. Ann. §§ 3-129(a) and 3-129(b) (West 1972) (Suppression of criminally operated corporations and criminally operated businesses other than corporations by civil proceeding instituted by the attorney general).						

DELAWARE					
Extortion	compels or	property of another	delivery	intent to deprive knowledge ¹	felony
Del. Code tit.	induces deliv-			or appropriate	
11, § 846 (1975)	ery by fear of	to the actor a third	fear		
	injury to any-	person			
	one, damage to				
	property, in-				
	jury to rep-				
	utation, or				
	the perform-				
	ance of any				
	other act				
	which is cal-				
	culated to				
	harm another				
	person				

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
DELAWARE cont'd Embezzlement Del. Code tit. 11, § 841 (Supp. 1978) (Theft)	takes, exercises control over, or obtains or legally receives, takes, exercises control over, or obtains and converts to own use	property of another property of another which is the subject of theft	taking, exercising of control over, or obtaining receiving, taking, exercising of control over or <u>obtaining</u> conversion	intent to deprive knowledge ¹		felony (if value exceeds \$300)/ misdemeanor
Bribery Del. Code tit. 11, § 881(1) (1975) (Commercial Bribery)	offers, confers, or agrees to confer	any benefit upon any employee, agent, or fiduciary without the consent of the latter's employer or principal	intent to influence him to take some action with regard to his employer's or principal's affairs which would not be warranted upon reasonable consideration of the factors which he should have taken into account	knowledge ¹		misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind	Conduct	Penalties
DELAWARE cont'd						
Bribery Del. Code tit. 11, § 882(1) (1975) (Re- ceiving Com- mercial Bribe)	solicits, ac- cepts, or ag- rees to accept	being an employee, agent, or fiduciary without the consent of his employer or principal any benefit from another person			upon an agree- ment or under- standing that the benefit will in- fluence him to take some action with regard to his employer's or prin- cipal's affairs which would not be warranted upon reasonable con- sideration of the factors which he should have taken into account	misdemeanor
Bribery Del. Code tit. 11, § 881(2) (1975) (Bribing a labor official)	offers, con- fers, or ag- rees to confer	any benefit upon duly ap- pointed representative of a labor organization or duly appointed trustee or representative of an em- ployee welfare trust fund			intent to in- fluence him in res- pect to any of his acts, decisions, or duties as a represen- tative or trustee	misdemeanor
Bribery Del. Code tit. 11, § 882(2) (1975) (Bribe receiving by a labor official)	solicits, ac- cepts, or ag- rees to accept	being a duly appointed representative of a labor organization or a duly appointed trustee or rep- resentative of an employee welfare trust fund / any benefit from another person			upon an agreement or understanding that the benefit will in- fluence him in res- pect to any of his acts, decisions, or duties as representative or trustee	misdemeanor

¹Per Del. Code tit. 11, § 252 (1975).

Note: Per Del. Code tit. 11, § 847(a) (1975) claim of right is a defense to prosecution for extortion. See also Del. Code tit. 11, §§ 791, 792 (1975) (Coercion).

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
DISTRICT OF COLUMBIA						
Extortion D.C. Code Encycl. § 22-2305 (West 1967) (Blackmail)	accuses or threatens to accuse or expose	verbally or in writing		intent to extort thing of value or to compel behavior		felony
Embezzlement D.C. Code Encycl. § 22-1202 (West 1967)	convert to own use or take, make away with or secrete	anything of value which shall come into his possession or under his care by virtue of his employment or office as agent, clerk, or servant of a private person or co-partnership, or of any association or incorporated company; whether the thing so converted be the property of his master or employer or that of anyone else	conversion	wrongfully		felony (if value exceeds \$100)/ misdemeanor

Note: See also D.C. Code Encycl. § 22-2306(3) (West 1967) (Intent to commit extortion by communication of illegal threats and demands), § 22-1210 (West 1967) (Embezzlement by executors and other fiduciaries), and § 22-2203 (West 1967) (Larceny after trust).

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
FLORIDA Extortion Fla. Stat. Ann. § 836.05 (West 1976)	threatens to injure, accuse, or expose	verbally or in writing		maliciously intent to ex- tort money or pecuniary ad- vantage or to coerce behavior		felony
Extortion - Embezzlement Fla. Stat. Ann. § 812.014 (West Supp. 1979) (Theft)	obtains or uses or en- deavors to obtain or use	property of another		with intent to deprive the other person of a right to the property or a benefit therefrom; to appropriate the property to his own use or to the use of any person not entitled thereto		felony (if value ex- ceeds \$100)/ misdemeanor
Infiltration Fla. Stat. Ann. § 943.462 (West Supp. 1979)	(1) use or invest	directly or indirectly any part of proceeds derived, directly or indirectly, from a pat- tern of racketeering ac- tivity ² or through the collection of an unlaw- ful debt or the pro- ceeds derived from the investment or use there- of, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise ³	use or investment		criminal intent in the receipt of the proceeds	felony ⁴

Statutes	Conduct	Attendant Circumstances	Result	Conduct	State of Mind	Penalties
FLORIDA cont'd Infiltration cont'd	(2) acquire or maintain	directly or indirectly, any interest in or con- trol of any enterprise ³ or real property, through a pattern of racketeering activity ² or through the collection of an unlaw- ful debt	acquiring or maintaining			felony ⁴
	(3) conduct or participate	employed by, or associated with, any enterprise; ³ directly or indirectly, in such enterprise through a pattern of ² racketeering activity ² or the collection of an unlawful debt	participating in			felony ⁴
	(4) conspire or endeavor to violate	any of the provisions of subsections (1), (2), or (3) above				felony ⁴

¹Defined by Fla. Stat. Ann. § 812.012(2) (West Supp. 1979) to mean "any manner of: (a) Taking or exercising control over prop-erty. (b) Making any unauthorized use, disposition, or transfer of property.*** (d)(1) Conduct previously known as . . . larceny; . . . embezzlement" Larceny was last defined in Fla. Stat. Ann. § 812.021(1)(e) (4) (West 1976) (now repealed) to include, inter alia, obtaining property of another by threatening to "bring about or continue a strike, boycott, or other col-lective unofficial action if the property is not demanded or received for the benefit of the group in whose interest the defen-dant purports to act."

²Fla. Stat. Ann. § 943.461(1) (West Supp. 1979) defines "racketeering activity" to mean "to commit, to attempt to commit, to con-spire to commit, or to solicit, coerce, or intimidate another person to commit: (a) Any crime which is chargeable by indictment or information under the following [twenty-five] provisions of the Florida Statutes***; (b) Any conduct defined as "racketeering activity" under Title 18, United States Code, § 1961(1)(A), (B), (C), and (D)." Fla. Stat. Ann. § 943.461(4) (West Supp. 1979) defines "pattern of racketeering activity" to mean "engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents"

³Fla. Stat. Ann. § 943.461(3) (West Supp. 1979) defines "enterprise" as "any individual, sole proprietorship, partnership, cor-poration, business, trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, assoc-iation, or group of individuals associated in fact although not a legal entity, and it includes illicit as well as licit enterprises"

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Penalties Att'd Circ's
FLORIDA cont'd					
4 Per Fla. Stat. Ann. § 943.463 (West Supp. 1979).					
GEORGIA					
Extortion Ga. Code Ann. § 26 - 1804 (a) (5) (1978) (Theft by)	obtains by threatening to bring about or continue a strike, boycott, or other collective unofficial action	property of or from another unlawfully if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act	obtaining		felony
Embezzlement Ga. Code Ann. § 26 - 1802 (Supp. 1978) (Theft by taking)	takes or appropriates	being in lawful possession property of another, unlawfully	taking or appropriation	intention of depriving other person of such property, regardless of the manner in which such property is taken or appropriated	felony/1 misdemeanor
Embezzlement Ga. Code Ann. § 26 - 1808 (1978) (Theft by conversion)	converts	lawfully obtained funds or other property of another under an agreement or other known legal obligation to make a specified application of such funds or a specified disposition of such property to own use in violation of such agreement or legal obligation	conversion	knowingly	felony/1 misdemeanor

¹Per Ga. Code Ann. § 26 - 1812 (Supp. 1978) a violation of this section will be punished as a misdemeanor except where the value exceeds \$200 (trial judge still has discretion to punish as a misdemeanor) or where the "property was taken by a fiduciary in breach of a fiduciary obligation" These exceptions are punished as a felony.

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
HAWAII Extortion Haw. Rev. Stat. § 708 - 830(3) (1976) (Theft by) extortion ¹	obtains or exerts con- trol over by extortion ¹	property or service of another	obtaining or exerting control	intent to deprive knowledge ² another of the property	felony ³	
Embezzlement Haw. Rev. Stat. § 708 - 830(7) (a) (1976) (Theft by failure to make required disposition of funds)	obtains	property from anyone upon an agreement, or subject to a known legal obligation, to make spec- ified payment or other disposition, whether from the property or its proceeds or from his own property reserved in equivalent amount	obtaining	intentionally knowledge ²	felony (if value ex- ceeds \$200)/ misdemeanor	
	deals with property as own and fails to make re- quired pay- ment or disposition		dealing with property as own and fail- ure to make required pay- ment or disposition			
Infiltration Haw. Rev. Stat. § 842 - 2 (1976)	(1) use or invest	directly or indirectly, any part of income de- rived, directly or indir- ectly, from a racketeering activity ⁴ or through the collection of an unlaw- ful debt, or the proceeds of such income, in the acquisition of any interest in, or the establishment or ⁵ operation of, any enterprise	use or investment		felony with for- feiture of any inter- est or property acquired	

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
HAWAII cont'd Infiltration cont'd	(2) acquire or maintain	directly or indirectly, any interest in or con- trol of any enterprise ⁵ through a racketeering activity ⁴ or through collection of an unlaw- ful debt	acquiring or maintaining			felony with for- feiture of any inter- est or property acquired
	(3) conduct or participate	employed by or associated with any enterprise, ⁵ in the conduct of the affairs of the enterprise through racketeering activity ⁴ or collection of an unlawful debt				felony

¹ Defined in Haw. Rev. Stat. § 708 - 800(8) (1976) to mean, inter alia, a threat to "bring about or continue a strike, boycott, or other similar collective action, to obtain property which is not demanded or received for the benefit of the group which the defendant purports to represent."

² Per Haw. Rev. Stat. § 702 - 207 (1976).

³ Per Haw. Rev. Stat. § 708 - 831 to 833 (1976).

⁴ Defined in Haw. Rev. Stat. § 842 - 1 (1976) as "any act or threat involving, but not limited to, murder, kidnapping, gambling, arson, robbery, bribery, extortion, larceny or prostitution, or any dealing in narcotic or other dangerous drugs which is chargeable as a crime under state law and punishable by imprisonment for more than one year."

⁵ Defined in Haw. Rev. Stat. § 842 - 1 (1976) as including "any sole proprietorship, partnership, corporation, association, and any union or group of individuals associated for a particular purpose although not a legal entity."

Note: See also Haw. Rev. Stat. §§ 842 - 5 to 10 (1976) (civil proceedings instituted by attorney general against corporations or other business operations whose principals have involvement with organized crime).

IDAHO

Extortion
Idaho Code
§§ 18 - 2801,
2802 (1979)

obtains by
force or fear
induced by
threat to injure,
accuse, expose

property from another
wrongfully

obtains,
fear

felony¹

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Att'd Circ's	Penalties
IDAHO cont'd Embezzlement Idaho Code §§ 18 - 2401, 2402 (1979)	appropriates	any property which an officer, director, trustee, clerk, servant, or agent of any association, society, or corporation (public or private) has in his possession or under his control by virtue of his trust, to any use or purpose not in the due and lawful execution of his trust such property	appropriation fraudulently			
	or					
	secretes		secret	with a fraudulent intent to appropriate it to such use or purpose		felony
Embezzlement Idaho Code § 18 - 2405 (1979)	appropriates	to own use by clerk, agent, or servant, any property of another which has come into his control or care by virtue of his employment as such clerk, agent, or servant such property	appropriation fraudulently			
	or					
	secretes		secret	with a fraudulent intent to appropriate to own use		felony

¹Per Idaho Code § 18 - 2803 (1979).

Note: See also Idaho Code §§ 18 - 2806 (1979) (Extortion not otherwise provided for), 18 - 2808 (1979) (Attempt to Extort), 18 - 2406 (1979) (Embezzlement by trustee, banker, agent, or fiduciary).

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Att'd Circ's	Penalties
ILLINOIS						
Extortion Ill. Rev. Stat. ch. 38, § 16 - 1(c) (1976) (Theft)	obtains con- trol by threat	property of the owner	obtaining control	knowingly	knowledge ²	felony (if value ex- ceeds \$150)/ misdemeanor
Embezzlement Ill. Rev. Stat. ch. 38, § 16 - 1(a) (1976) (Theft)	obtain or exert unauth- orized control	property of the owner	obtaining or exerting control	knowingly	knowledge ²	felony (if value ex- ceeds \$150)/ misdemeanor
Bribery Ill. Rev. Stat. ch. 38, § 29A - 1 (1976) (Com- mercial Bribery)	confers or offers or agrees to confer	any benefit upon any em- ployee, agent, or fiduc- iary without the consent of the latter's employer or principal		intent to in- fluence his conduct in relation to his employer's or principal's affairs	knowledge ²	misdemeanor ³
Bribery Ill. Rev. Stat. ch. 38, § 29A - 2 (1976) (Re- ceiving Com- mercial Bribe)	solicits, accepts, or agrees to accept	any benefit from another person by an employee, agent, or fiduciary with- out the consent of his em- ployer or principal upon an agreement or under- standing that such bene- fit will influence his conduct in relation to his employer's or principal's affairs				misdemeanor ³

¹Defined in Ill. Rev. Stat. ch. 38, § 15 - 5 (1976) to include, inter alia, a menace, however communicated, to "bring about or con-
tinue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the
group which [the actor] purports to represent."

²Per Ill. Rev. Stat. ch. 38, § 4 - 3(b) (1976).

³Per Ill. Rev. Stat. ch. 38, § 29A - 3 (1976).

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Att'd Circ's	Penalties
INDIANA						
Extortion - Embezzlement Ind. Code Ann. \$ 35-43-4-2 (Burns 1979) (Theft)	exerts un- authorized control ¹	property of another	exerts control	knowingly or in- tentiously, in- tent to deprive the other person of any part of its value or use	knowledge ²	felony
¹ Ind. Code Ann. \$ 35-43-4-1(a) (Burns 1979) defines "exert control over property" as "to obtain, take, carry, drive, lead away, conceal, abandon, sell, convey, encumber, or possess property, or to secure, transfer, or extend a right to property." "Unauthorized" is defined by subsection(b) of this section as, <u>inter alia</u> , control exerted "(2) In a manner or to an extent other than that to which the other person has consented; (7) By expressing an intention to damage the property or impair the rights of any other person."						
² Per Ind. Code Ann. \$ 35-41-2-2(d) (Burns 1979).						
IOWA						
Extortion - Iowa Code Ann. \$ 711.4 (West Special Pamphlet 1978)	threatens to injure, accuse, expose, etc.			purpose of ob- taining for one- self or another anything of value		felony
Embezzlement - Iowa Code Ann. \$ 714.1 (1), (2) (West Special Pamphlet 1978) (Theft)	(1) takes pos- session or control (2)misappropri- ates by using or disposing	property of another or property in pos- session of another property which the person has in trust or property of another which the person has in his possession or control; in a manner which is inconsistent with or a denial of the trust or the owner's rights	taking pos- session or control misappropri- ation by using or disposing	intent to deprive the other of property		felony (if value ex- ceeds \$500)/ misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind	
				Conduct	Penalties
IOWA cont'd Bribery Iowa Code Ann. § 722.10 (West Special Pamphlet 1978) (Commercial Bribery and Receiving Com- mercial Bribes)	(1) offer or deliver	directly or indirectly for the personal bene- fit of an employee acting on behalf of his employer in a business transaction with the person a grat- uity in consideration of an act or omission in conflict with the em- ployment relation and duties of the employee to the employer		reason to know is in conflict	felony
	(2) solicit or receive	by an employee acting on behalf of his employer in a business transaction with a person, from the person a gratuity directly or indirectly for the per- sonal benefit of the em- ployee in consideration for an act or omission in conflict with the employ- ment relation and duties of the employee to the employer		reason to know is in conflict	felony

Note: See also Iowa Code Ann. §§ 731.1 to 731.6 (West Special Pamphlet 1978) (Provisions relating to labor union membership); 732.1 to 732.4 (West Special Pamphlet 1978) (Provisions relating to boycotts and strikes).

Statutes	Conduct	Attendant Circumstances	Result	Conduct	State of Mind	Penalties
KANSAS						
Extortion Kan. Stat. Ann. § 21 - 3701(c) (Supp. 1978) (Theft)	obtains control by threat	property of another	obtaining control	intent to deprive the owner permanently of the possession, use, or benefit of the property		felony (if value exceeds \$100)/ misdemeanor
Embezzlement Kan. Stat. Ann. § 21 - 3701(a) (Supp. 1978) (Theft)	obtains or exerts unauthorized control	property of another	obtaining or exercising control	intent to deprive the owner permanently of the possession, use, or benefit of the property		felony (if value exceeds \$100)/ misdemeanor
Bribery Kan. Stat. Ann. § 21 - 4405 (1974) (Commercial Bribery and Receiving a Commercial Bribe)	confer, offer, or agree to confer or solicit, accept, or agree to accept	any benefit as consideration for violating or agreeing to violate a duty of fidelity or trust by an agent or employee of another or a person acting in a fiduciary capacity		knowingly violating or agreeing to violate		felony
Racketeering Kan. Stat. Ann. § 21 - 4401 (1974)	demands, solicits, or receives by means either of a threat or a promise	express or implied, anything of value from the owner, proprietor, or other person having a financial interest in a business				felony

¹A promise that "the person so demanding, soliciting, or receiving such thing of value will: (a) Cause the competition of the person from whom the payment is demanded, solicited, or received to be diminished or eliminated; or (b) Cause the price of goods or services purchased or sold in the business to be increased, decreased, or maintained at a stated level; or (c) Protect the property used in the business or the person or family of the owner, proprietor, or other interested person from injury by violence, or other unlawful means." Kan. Stat. Ann. § 21 - 4401 (1974).

¹ A promise that "the person so demanding, soliciting, or receiving such thing of value will: (a) Cause the competition of the person from whom the payment is demanded, solicited, or received to be diminished or eliminated; or (b) Cause the price of goods or services purchased or sold in the business to be increased, decreased, or maintained at a stated level; or (c) Protect the property used in the business or the person or family of the owner, proprietor, or other interested person from injury by violence, or other unlawful means." Kan. Stat. Ann. § 21 - 4401 (1974).

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
KENTUCKY						
Extortion Ky. Rev. Stat. Ann. § 514.080 (1)(e) (Baldwin 1975) (Theft by)	obtains by threat to bring about or continue a strike, boycott, or other collec- tive, unof- ficial action	property of another if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act	obtaining	intentionally	knowledge ¹	felony (if value ex- ceeds \$100)/ misdemeanor
Embezzlement Ky. Rev. Stat. Ann. § 514.070 (Baldwin 1975) (Theft by fail- ure to make re- quired disposi- tion of property)	obtains and deals with the property as his own and fails to make the required payment or disposition	property upon agreement or subject to a known legal obligation to make specified payment or other disposition whether from such property or its pro- ceeds or from his own property to be reserved in equivalent amount		intentionally	knowledge ¹	felony (if value ex- ceeds \$100)/ misdemeanor
Bribery Ky. Rev. Stat. Ann. § 518.020 (Baldwin 1975) (Commercial Bribery)	offers, con- fers, or ag- rees to confer	any benefit upon any em- ployee or agent without the consent of the latter's employer or principal or any benefit upon any fiduciary without the consent of the latter's beneficiary		intent to influence his conduct contrary to his employer's or principal's best interests	intend to influence him to act or conduct himself contrary to his fiduciary obligation	misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
KENTUCKY cont'd Bribery cont'd Ky. Rev. Stat. Ann. § 518.030 (Baldwin 1975) (Receiving Commercial Bribe)		as an employee or agent, and without the consent of his employer or principal, any benefit from another person upon an agreement or understanding that the benefit will influence his conduct contrary to his employer's or principal's best interest				
	solicits, ac- cepts, or ag- rees to accept	or as a fiduciary, and without the consent of his benefi- ciary, any benefit from another person upon an agreement or understanding that the benefit will influence his conduct contrary to his fiduciary obligation		knowingly	knowledge ¹	misdemeanor

¹Per Ky. Stat. Ann. § 501.040 (Baldwin 1975).

LOUISIANA Extortion La. Rev. Stat. Ann. § 14:66 (West 1974)	communicates a threat to injure, accuse, expose, or to do any other harm			intent to obtain anything of value		felony
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Statutes	Conduct	Attendant Circumstances	Result	Conduct	State of Mind Att'd Circ's	Penalties
LOUISIANA cont'd Embezzlement La. Rev. Stat. Ann. § 14:67 (West 1974) (Theft)	misappropri- ate or take	anything of value which belongs to another either without the consent of the other to the misappropria- tion or taking, or by means of fraudulent conduct, prac- tices, or representations		intent to deprive the other permanently		felony (if value ex- ceeds \$100)/ misdemeanor
Bribery La. Rev. Stat. Ann. § 14:73 (West 1974) (Commercial Bribery and Receiving a Commercial Bribe)	giving or offering to give acceptance or offer to accept	directly or indirectly, any- thing of apparent present or prospective value to any private agent, employee, or fiduciary, without the know- ledge and consent of the principal or employer directly or indirectly, by the agent, employee, or fid- uciary, anything of apparent present or prospective value under such circumstances		intent to influence such agent's, em- ployee's, or fidu- ciary's action in relation to the principal's or em- ployer's affairs		misdemeanor

Note: See also La. Rev. Stat. Ann. § 12:1041 (West Supp. 1979) (civil proceedings instituted by attorney general against corpora-
tion and officers engaged in organized crime).

MAINE

Extortion Me. Rev. Stat. tit. 17A, § 355 (1978 Pamphlet) (Theft by)	obtains or exercises control by threat to injure or to harm in any way	property of another	obtaining or exercising control	intent to deprive knowledge ¹ another of property	felony ²
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Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
MAINE cont'd Embezzlement Me. Rev. Stat. tit. 17A, § 358 (1978 Pamphlet) (Theft by mis- application of property)	obtains	property from anyone or personal services from an employee upon agree- ment, or subject to a known legal obligation, to make a specified pay- ment or other disposition to a third person or to a fund administered by himself, whether from that property or its proceeds or from his own property to be reserved in an equivalent or agreed amount	obtaining			
	fails to make the required payment and deals with the property ob- tained or with- held as his own			intentionally or recklessly		felony (if value ex- ceeds \$1000)/ 2 misdemeanor 2
Bribery Me. Rev. Stat. tit. 17A, § 904 (1978 Pamphlet) (Private brib- ery and Receiv- ing private bribe)	(A) promises, offers, or gives	any pecuniary benefits to (1) an employee or agent		intention to in- fluence his con- duct adversely to the interest of the employer or principal		
	(2) a hiring agent or an official or employee in charge of employment upon agreement or understanding that a par- ticular person, including the actor, shall be hired, re- tained in employment or dis- charged or suspended from employment					misdemeanor 3

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Penalties
MAINE					
Bribery cont'd Me. Rev. Stat. tit. 17A, § 904 (1978 Pamphlet)	(A) promises, offers, or gives cont'd	(3) a fiduciary		intent to influence him to act contrary to his fiduciary duty	misdemeanor ³ (as in (A) (1) and (2))
(Private bribery and receiving private bribe cont'd)	or (B) solicits, accepts, or agrees to accept	any benefit, the giving of which would be criminal under paragraph (A), above		knowingly	knowledge ¹
¹ Per Me. Rev. Stat. tit. 17A, § 11(2) (1978 Pamphlet).					
² Per Me. Rev. Stat. tit. 17A, § 362 (1978 Pamphlet) and § 1252 (1978 Pamphlet).					
³ Per Me. Rev. Stat. tit. 17A, § 1252 (1978 Pamphlet).					
MARYLAND					
Extortion Md. Ann. Code art. 27, § 562B (Supp. 1978)	obtains or attempts to obtain by extortion ¹	real or personal property or any thing of value from any person		obtaining or willfully or knowingly depriving the owner of control	felony (if value exceeds \$300)/ misdemeanor
Embezzlement Md. Ann. Code art. 27, § 342 (Supp. 1978) (effective July 1, 1979) (Theft)	obtains or exerts unauthorized control over	property of the owner		obtaining or willfully or knowingly depriving the owner of control	felony (if value exceeds \$300)/ misdemeanor

¹The statute states that "for the purposes of this section extortion means obtaining property from another, with his consent, induced by wrongful use of actual or threatened force, or violence or by wrongful threat of economic injury. This section does not apply to legitimate efforts by employees or their representatives to obtain certain wages, hours, or working conditions."

Note: See also Md. [Corp. & Ass'ns] Code Ann. § 1 - 405 (1975) (civil proceedings instituted by attorney general against corporations and businesses other than corporations having a connection with organized crime).

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Att'd Circ's	Penalties
MASSACHUSETTS						
Extortion Mass. Ann. Laws ch. 265, \$ 25 (Michie/ Law. Co-op 1968)	threatens to injure person or property or accuse	verbally or in writing		maliciously in- tent to extort money or other pecuniary advan- tage or compel behavior		felony
Embezzlement Mass. Ann. Laws ch. 151 D, \$ 6 (Michie/ Law. Co-op 1976) (Pro- visions rel- ating to Health, Welfare, and Retirement Funds)	embezzle or misappropriate or falsifies or destroys or files	trust funds or funds, securities or other property entrusted to his care or custody records records false statements	embezzlement or misappropriation falsification destruction with intent to defraud filing			felony
MICHIGAN						
Extortion Mich. Stat. Ann. \$ 28.410 (1962)	threatens to injure, accuse	orally or in writing		maliciously in- tent to extort money or other pecuniary advan- tage or compel behavior		felony
Embezzlement Mich. Stat. Ann. \$ 28.371 (1962)	dispose of or convert to own use	as the agent, servant, or employee of another, or as the trustee, bailee, or custodian of the prop- erty of another or	disposing of or converting to own use	fraudulently ¹		felony (if value ex- ceeds \$100)/ misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Penalties
MICHIGAN cont'd Embezzlement cont'd	take or secrete	any money or personal property of his prin- cipal which shall have come to his possession or shall be under his charge or control by virtue of his being such agent, servant, employee, trustee, bailee, or custodian	taking or secreteting	intent to con- vert to his own use without the consent of his principal	felony (if value ex- ceeds \$100)/ misdemeanor
Mich. Stat. Ann. \$ 28.594 (1972) (Larceny by con- version or embezzlement)	embezzle or convert to own use or secrete	goods, money or other property, which may be the subject of larceny	embezzlement or converting to own use secreteting	fraudulently intent to em- bezzle or fraud- ulently use	felony (if value ex- ceeds \$100)/ misdemeanor
Bribery Mich. Stat. Ann. \$ 28.320 (1962) (Commercial Brib- ery and Receiving a Commercial Bribe)	give, offer, or promise	to an agent, employee, or servant of another or any other person, any commis- sion, gift, or gratuity		intent to influence the action of such agent, employee, or servant in relation to his principal's, em- ployer's, or master's business	misdemeanor

or

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
MICHIGAN cont'd Bribery cont'd	request or accept	by an agent, employee, or servant, for himself or another any commission, gift, or gratuity or promise to make any commission, gift, or gratuity to himself or another, or the doing of an act beneficial to himself or another, according to any agreement or understanding between him and any other person to the effect that he shall act in any particular manner in relation to his principal's, employer's, or master's business	requesting or accepting	intent to influence the action of such agent, employee, or servant in relation to his principal's, employer's, or master's business		misdemeanor
Miscellaneous Mich. Stat. Ann. § 17.454(16) (1975) (Taking or withholding possession of property, or interference with use)	enter or take part in entering upon, or take possession or control of or to withhold	any property	entering or taking of possession or control			
	or to interfere with whether the same be accomplished by force or unlawful threats	possession of property against the will of the owner or other person in rightful possession or use	withholding			misdemeanor
	or to interfere with whether the same be accomplished by force or unlawful threats	the free use of property	interfering with			

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	

MICHIGAN cont'd

1. "In any prosecution under this section, the failure, neglect, or refusal of such agent, servant, employee, trustee, bailee, or custodian to pay, deliver, or refund to his principal such money or property entrusted to his care upon demand shall be prima facie proof of intent to embezzle."

MINNESOTA

Extortion
Minn. Stat. Ann. threatens to orally or in writing
\$ 609.27 (West injure, accuse,
1964 and Supp. expose, or to
1979) unlawfully in-
(Coercion) jure a trade,
business, prof-
ession, or calling
and causes another
to act against
his will

causes another
to act against
his will

felony (if
value ex-
ceeds
\$300)/
misdemeanor

Embezzlement
Minn. Stat. Ann. takes, uses, possession of movable
\$ 609.52(2)(1) transfers, property of another
(West Supp. conceals, or without his consent;
1979) retains without claim of
(Theft) right

taking, using, intentionally,
transferring intent to deprive
concealing, or owner permanently
retaining of possession

felony (if
value ex-
ceeds
\$100)/
misdemeanor

1. Per Minn. Stat. Ann. \$ 609.52(2)(5) (West Supp. 1979) a person can commit theft by intentionally committing "any of the acts listed in this subdivision, but with intent to exercise temporary control only and: (a) The control exercised manifests an indifference to the rights of the owner or the restoration of the property to him; or (b) He pledges or otherwise attempts to subject the property to an adverse claim; or (c) He intends to restore the property only on condition that the owner pay a reward to buy back or make other compensation."

Note: See also Minn. Stat. Ann. \$ 609.275 (West 1964) (Attempt to coerce).

Statutes	Conduct	Attendant Circumstances	Result	Conduct	State of Mind Att'd Circ's	Penalties
MISSISSIPPI Extortion Miss. Code Ann. § 97-3-77 (1972) (Robbery)	take through fear induced by threat to injure person, family, or property	property of another, in presence of or from person	takes fear	feloniously		felony ¹
Miss. Code Ann. § 97-23-83 (1972) (Threats or coercion to prevent lawful conduct of business)	in any manner threaten with bodily harm, intimidate or coerce to prevent	another person from lawfully trading or carrying on business, including buying or selling				misdemeanor
Embezzlement Miss. Code Ann. § 97-23-19 (1972)	embezzle or secrete, con- ceal or convert or make away with or secrete	any goods, rights in action, money, or other valuable security, effects, or property of any kind or description which shall have come or been entrusted to the care or possession of any director, agent, clerk, servant, or officer of any incorporated company, or any trustee or factor, or any clerk, agent, or servant of any private person	embezzlement, fraudulently secreting, con- cealing or converting or intent to em- bezzle or con- vert to own use			felony

Statutes	Conduct	Attendant Circumstances	Result	Conduct	State of Mind Att'd Circ's	Penalties
MISSISSIPPI						
cont'd						
Bribery Miss. Code Ann. § 97-11-11 (1972)	promise, offer, or give	to any officer, agent, or trustee, either public or private, while holding such office, agency, or trust, or after he has become a candidate or ap- plicant for the same, or to the wife of such officer, agent, or trustee, any money, goods, chattels, right in action, or other property, real or personal			intent to in- fluence his vote, opinion, action, or judgment on any question, mat- ter, cause, or proceeding which may be then or thereafter pending	felony
Miss. Code Ann. § 97-11-13 (1972) (Ac- cepting bribe)	accept ²	any gift, offer, or promise prohibited by Miss. Code Ann. § 97-11-11 ()	accepting			felony
¹ Per Miss. Code Ann. § 97-3-75 (1972).						
² Or if his wife, with his knowledge and consent, shall accept any gift, offer, or promise"						
Note: See also Miss. Code Ann. §§ 97-23-85 (1972) (Conspiracy to unlawfully restrain trade), 97-25-43 (1972) (Conspiracy to im- pede railroads, public utilities, and carriers), 97-25-45 (1972) (Obstructing or impeding railroads, public utilities, and carriers by intimidation, force, or violence), 97-11-25 (1972) (Embezzlement by officers, trustees, and public employees), 97-23-25 (1972) (Embezzlement of property held in trust or received on contract).						
MISSOURI						
Extortion - Embezzlement Mo. Ann. Stat. § 570.030 (Vernon Special Pamphlet 1979) (Stealing)	appropriate by property or services coercion ¹ or of another without owner's consent		appropriation purpose to deprive			felony (if value ex- ceeds \$150)/ misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	Conduct	State of Mind	Penalties
					Att'd Circ's	
MISSOURI cont'd						
Bribery Mo. Ann. Stat. § 570.150 (Vernon Special Pamphlet 1979) (Com- mercial Brib- ery and Re- ceiving a Commercial Bribe)	solicits, accepts, or agrees to accept or confers, offers, or agrees to confer	any benefit as considera- tion for violating or agreeing to violate a duty of fidelity to which he is subject as agent or employee of another or trustee, guardian, or other fiduciary any benefit the acceptance of which would be crim- inal under the provi- sions above			knowingly violate	misdemeanor
¹ Defined in Mo. Ann. Stat. § 570.010(4) (Vernon Special Pamphlet 1979) as a threat, however communicated, to injure, accuse, expose, or "to harm the credit or business repute of any person" or "to inflict any other harm which would not benefit the actor."						

MONTANA	Extortion Mont. Rev. Codes Ann. \$ 45-6-301 (2) (1978) (Theft)	obtain con- trol by threat ¹	property of the owner	obtains control	purposely or knowingly, purpose to deprive the owner of the property	knowledge ² felony (if value ex- ceeds \$150)/ misdemeanor
Embezzlement Mont. Rev. Codes Ann. \$ 45-6-301 (1) (1978) (Theft)	obtain or exert un- authorized control	property of the owner	obtains or exerts control	purposely or knowingly, purpose to deprive the owner of the property	knowledge ² felony (if value ex- ceeds \$150)/ misdemeanor	

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	

MONTANA cont'd Miscellaneous Mont. Rev. Codes Ann. § 45-6-317 (1978) (Decep- tive practices)	causes execution of a docu- ment by deception ¹ or threat	execution by another of a document disposing of property or a docu- ment by which a pecun- iary obligation is incurred	execution of a document	purposely or knowingly	knowledge ²	felony (if value ex- ceeds \$150 or if the decep- tive prac- tices are part of a common scheme)/ misdemeanor
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¹Defined in Mont. Rev. Codes Ann. § 45-2-101(62) (1978) to include, *inter alia*, a "menace, however communicated to: . . . (i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the group which he purports to represent."

²Per Mont. Rev. Codes Ann. § 45-2-103(2) (1978).

Note: See also Mont. Rev. Codes Ann. § 45-5-203 (1978) (Intimidation).

NEBRASKA Extortion Neb. Rev. Stat. § 23-513(e) (Supp. 1978) (Theft by)	obtain by threatening to bring about or con- tinue a strike, boy- cott, or other collec- tive unoffi- cial action	property of another if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act	obtaining			Class III felony when over \$1000; Class IV felony when over \$300 and less than \$1000; Class I misdemeanor when over \$100 and less than \$300; Class II misdemeanor when less than \$100.
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Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Att'd Circ's	Penalties
NEVADA						
Extortion Nev. Rev. Stat. § 205.320 (1973)	threatens to injure, ac- cuse, expose, or publish libel or secret			intent to extort or gain money or other property or to compel behavior		felony
Embezzlement Nev. Rev. Stat. § 205.300 (1973)	convert use or appropriate	money, goods, or property to own use by bailee money, property, or effects using or or any part which have been appropriation deposited or entrusted to any person or any agent, manager, or clerk or any person, corporation, as- sociation, or partnership; in any manner for any pur- pose other than that for which deposited or entrusted	conversion	intent to steal or to defraud owner		felony (if value is over \$100)/mis- demeanor (if under \$100)
Bribery Nev. Rev. Stat. § 614.140 (1973) (Brib- ery of labor representative)	give, offer, or promise	directly or indirectly, any compensation, gratuity, or reward to any duly constituted representative of a labor organization		intent to influence him in respect to any of his acts, decisions, or other duties as such representative, or to induce him to prevent or cause a strike by the employees of any person or corporation		gross misdemeanor
Bribery Nev. Rev. Stat. § 614.150 (1973) (Labor representative asking for or receiving bribe)	ask for or receive	by duly constituted rep- resentative of a labor organization; directly or indirectly, any com- pensation, gratuity or reward, or any promise thereof		upon any agreement or understanding that any of his acts, decisions, or other duties as rep- resentative, or that any act to prevent or cause a strike of the employees of any person or corpora- tion shall be influenced thereby		gross misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Att'd Circ's	Penalties
NEVADA cont'd						
1 See Nev. Rev. Stat. § 205.305 (1973) (Prima facie evidence of embezzlement).						
Note: See also Nev. Rev. Stat. § 207.180 (1975) (Threatening by letter or writing), 207.190 (1975) (Coercion), 613.110 (1977) (Grafting by employee).						
NEW HAMPSHIRE						
Extortion N.H. Rev. Stat. Ann. § 637:5 (1974) (Theft by)	obtain or exercise control by extortion through threat1	property of another	obtaining or exercising control	intent to deprive another of property		felony (if value ex- ceeds \$500)/ misdemeanor3
Embezzlement N.H. Rev. Stat. Ann. § 637:3 (1974) (Theft by Unauthor- ized Taking or Transfer)	obtains or exercises unauthorized control	property of another	obtaining or exercising unauthorized control	purpose to deprive another of property		felony (if value ex- ceeds \$500)/ misdemeanor3
Embezzlement N.H. Rev. Stat. Ann. § 637:10 (1974) (Theft by Misapplica- tion of Property)	obtains and fails to make and deals	property from anyone or personal services from an employee upon agree- ment, or subject to known legal obligation, to make specified pay- ment or other disposi- tion to a third person required payment or disposition -- -- with the property ob- tained or withheld as his own	obtaining	purposely or recklessly	knowledge2	felony (if value ex- ceeds \$500)/ misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
NEW HAMPSHIRE cont'd						
Embezzlement N.H. Rev. Stat. Ann. § 638:11 (1974) (Mis- application of Property)	deals with	property that has been entrusted to him as a fiduciary in a manner which is a violation of his duty and which in- volves substantial risk or loss to the owner or to a person for whose benefit the property was entrusted			knows is a violation	misdemeanor
Bribery N.H. Rev. Stat. Ann. § 638:7 (1974) (Commercial Bribery and Receiving Commercial Bribe)	confers, offers, or agrees to confer or solicits, accepts, or agrees to accept	upon the employee, agent, or fiduciary, without the consent of the employer or principal, contrary to the best interests of the employer or principal, any benefit as an employee, agent, or fiduciary, without the consent of the employer or principal, contrary to the best interests of the employer or principal, any benefit		purpose of influencing the conduct of the employee, agent, or fiduciary in relation to his employer's or principal's affairs agreement or understanding that such benefit will influence his con- duct in relation to employer's or prin- cipal's affairs		misdemeanor

¹ Includes threat to "bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent." N.H. Rev. Stat. Ann. § 637:5(II)(h) (1974).

² Per N.H. Rev. Stat. Ann. § 626:2(I) (1974).

³ Per N.H. Rev. Stat. Ann. § 637:11 (1974 and Supp. 1977).

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Penalties
NEW JERSEY					
Extortion N.J. Stat. Ann. § 2A: 105-4 (West 1969)	threatens or demands with threat to in- jure, or kill, kidnap, etc.	money or other valuable thing		intent to ex- tort money or other valuable thing	felony
Embezzlement N.J. Stat. Ann. § 2A: 102-2 (West 1969) (Em- bezzlement by trustee)	embezzles or converts, appropriates, takes, makes away with, secretetes, or withholds	any money or property which comes into his possession, care, or control by virtue of his trust, appointment, employment, or office	embezzlement	conversion, appropriation, taking, making away with, secreteting, or withholding	misdemeanor
Embezzlement N.J. Stat. Ann. § 2A: 102-3 (West 1969) (Con- version of property of corporation by director or officer)	takes, mis- applies or misuses	any money or property of a corporation or association by any director, member, or officer of the corpora- tion or association	taking, mis- application, misuse	fraudulently	misdemeanor
Embezzlement N.J. Stat. Ann. § 2A: 102-5 (West 1969) (Embezzlement by employees, agents, etc.)	embezzles or takes or receives or retains or appropriates to own use or the use of another	by any employee, agents, consignee, etc. money, any property or the pro- ceeds of the sale of the same, or any part, be- longing to his employer, principal, consigner, etc.	embezzlement	taking received, re- tained, or appropriated to own use or the use of another etc.	misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
NEW JERSEY cont'd Bribery N.J Stat. Ann. § 2A: 93-7 (West 1969) (Bribery of labor rep- resentative and Receiving bribe by labor representative	gives, offers, or promises value to any duly ap- pointed representative of a labor organization	any money, real estate, service, or thing of value to any duly ap- pointed representative of a labor organization		intent to in- fluence him in respect to any of his acts, decisions, or other duties as such representa- tive, or to in- duce him to pre- vent or cause a strike by the em- ployees of any person		misdemeanor
	accepts or agrees to accept	the same by any such rep- resentative for any such purpose				
Note: See also N.J. Stat. Ann. §§ 2A:105-3 (West 1969) (Sending or delivering threatening letters or letters demanding money), 2A:111-1 (West 1969) (Obtaining money, property, etc. by false pretense), 2A:111-9 (Destruction or alteration of, or false entries in, books or papers of corporation, partnership, or association), 2A:111-10 (West 1969) (Keeping fraudulent accounts by directors, officers, etc., of corporation, partnership, or association), 2A:93-8 (West 1969) (Bribery of foreman for certain purposes), 2A:170-88 (West 1969) (Corruption of agents, employees, or servants).						
Note: [IMPORTANT] New Jersey has proposed a new Criminal Code effective September 1, 1979. This chart is accurate as of August, 1979.						

NEW MEXICO Extortion N.M. Stat. Ann. § 30-16-9 (1978)	communicates or transmits threat to injure, ac- cuse, expose, etc.	to another by any means	intent to wrongfully obtain anything of value or to wrongfully compel the person threatened to do or refrain from doing any act against his will	felony
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Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
NEW MEXICO cont'd Embezzlement N.M. Stat. Ann. § 30- 16-8 (1978)	embezzle or convert	to own use anything of value with which he has been entrusted	embezzlement or conversion	fraudulent intent to deprive the owner		felony (if value ex- ceeds \$100)/ misdemeanor
Bribery N.M. Stat. Ann. § 50- 2-3(1) (1978) (Bribery of labor representative)	give or offer to give	any money, property, or other thing of value to any representative of a labor organization		intent to influence him with respect to any of his acts, decisions, or other duties as such representa- tive, or to induce him to prevent or cause a strike by the employees of any person		misdemeanor
Bribery N.M. Stat. Ann. § 50-2-3 (2) (1978) (Soliciting or accepting bribe by labor representative)	solicit or accept or agree to accept	from any person any money, property, or other thing of value; by any representative of a labor organization		upon any agreement or understanding, express or implied, that he shall be in- fluenced with res- pect to any of his acts, or decisions or other duties as such representative, or upon any agreement or understanding, ex- press or implied, that he shall refrain from causing or shall pre- vent a strike or work stoppage or picket line or any form of injury to any business		misdemeanor

Note: See also N.M. Stat. Ann. § 50-2-2 (1978) (Picketing - Coercion or Intimidation).

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Att'd Circ's	Penalties
NEW YORK Extortion N.Y. Penal Law § 155.05 (2)(e) (McKinney 1975) (Larceny by)	counsels or induces deli- very by fear through threat to cause a strike, boy- cott, or other collective labor group action injur- ious to some person's business ¹	property of another	delivery to other or third person fear	intent to de- prive another of property	knowledge ²	felony ³
Embezzlement N.Y. Penal Law § 155.05 (2)(a) (McKinney 1975) (Larceny)	take, obtain, or withhold	another's property	taking, ob- taining, or withholding	intent to de- prive another of property or to appropriate to himself or to a third person ⁴	knowledge ²	felony (if value ex- ceeds \$250)/ misdemeanor ³
Bribery N.Y. Penal Law § 180.00 and 180.03 (McKinney Supp. 1978) (Commercial Bribery)	confers, of- fers, or ag- rees to confer	any benefit upon any employee, agent, or fiduciary without the consent of the latter's employer or principal		intent to in- fluence his con- duct in relation to his employer's or principal's affairs		misdemeanor
Bribery N.Y. Penal Law § 180.05 and 180.08 (McKinney Supp. 1978) (Receiving Commercial Bribe)	solicits, accepts, or agrees to accept	any benefit from another person by an employee, agent, or fiduciary, without the consent of his employer or principal		upon agreement or understanding that such benefit will in- fluence his conduct in relation to his employer's or prin- cipal's affairs		misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Penalties
NEW YORK cont'd					
Bribery cont'd					
N.Y. Penal Law § 180.15 (McKinney 1975)	confers, offers, or agrees to confer	any benefit upon a labor official ⁵		intent to influence labor official in respect to any of his acts, decisions, or duties as such labor official ⁶	felony
Bribery N.Y. Penal Law § 180.25 (McKinney 1975)	solicits, accepts, or agrees to accept	any benefit from another by labor official ⁵		upon an agreement or understanding that such benefit will influence him in respect to any of his acts, decisions, or duties as such labor official	felony
Bribe receiving by labor official)					
1 "Except that such a threat shall not be deemed extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act."					
2 Per N.Y. Penal Law § 15.15(1) (McKinney 1975).					
3 Per N.Y. Penal Law § 155.30 (McKinney 1975).					
4 Per N.Y. Penal Law § 155.15 (McKinney 1975) it is an affirmative defense that the property was appropriated under a claim of right made in good faith.					
5 Per N.Y. Penal Law § 180.10 (McKinney 1975) "labor official" means "any duly appointed representative of a labor organization or any duly appointed trustee or representative of an employee welfare trust fund."					
6 Per N.Y. Penal Law § 180.20 (McKinney 1975) "it is a defense that the defendant conferred or agreed to confer the benefit involved upon the labor official as a result of conduct of the latter constituting larceny committed by means of extortion, or an attempt to commit the same, or coercion, or an attempt to commit coercion."					
Note: See also N.Y. Penal Law §§ 135.60 and 136.65 (McKinney 1975) (Coercion); N.Y. Labor Law §§ 198-b (McKinney Supp. 1978) ("Kick-back" of wages prohibited), 720 to 732 (McKinney 1977) (Labor and Management Improper Practices Act); N.Y. Bank Law §§ 60 to 75 (McKinney 1971 and Supp. 1978) (Employee Welfare Funds).					

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
NORTH CAROLINA Extortion N.C. Gen. Stat. § 14-118.4 (Supp. 1977)	threatens or communicates a threat	to another		intention thereby wrongfully to obtain anything of value or any acquittance, advantage, or immunity		felony
Embezzlement N.C. Gen. Stat. § 14-90 (1969)	embezzle or misapply or convert to own use or take, make away with or secrete	any money, goods, or other chattels; by any fiduciary, or any officer or agent of a corporation, or any agent, consignee, clerk, bailee, or servant	embezzlement or conversion to own use	fraudulently or knowingly and willfully misapplication with intent to embezzle or fraudulently or to knowingly and willfully misapply or convert to own use		felony
Bribery N.C. Gen. Stat. § 14-353 (1969)	gives, offers, or promises or requests or accepts	any gift or gratuity to an agent, employee, or servant	taking, making away with, or secreting	intent to influence his action in relation to his principal's, employer's, or master's business		misdemeanor
		gift or gratuity or a promise to make a gift or do a beneficial act; by any agent, employee, or servant		under an agreement or with an understanding that he shall act in any particular manner in relation to his principal's, employer's, or master's business		

Note: See also N.C. Gen. Stat. §§ 14-277.1 (Supp. 1977) (Communicating threats), 14-118 (1969) (Blackmailing), 95-101 to 95-104 (1975) (Certain Payments to or for benefit of labor organizations).

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Penalties
NORTH DAKOTA Extortion N.D. Cent. Code § 12.1-23-02 (2) (1976) (Theft)	obtains by threat ¹	property of another	obtaining	knowingly and with intent to deprive owner	felony (if value ex- ceeds \$50)/ ³ misdemeanor
Extortion N.D. Cent. Code § 34-01-05 (1976) (In- timidation, force, and threats against employers)	uses force, threats, or intimidation	to force or induce another to alter his mode of carrying on business			misdemeanor
Embezzlement N.D. Cent. Code § 12.1-23-02 (1) (1976) (Theft)	takes or exercises un- authorized control over, or makes an unauthorized transfer of an interest in	property of another	taking or exercising of unauthorized control or making an un- authorized transfer of an interest	knowingly and with intent to deprive the owner	felony (if value ex- ceeds \$100)/ ³ misdemeanor
Bribery N.D. Cent. Code § 12.1-12-08 (1976) (Com- mercial Brib- ery and Re- ceiving Commercial Bribe)	confers, agrees, or offers to confer	any benefit upon an employee or agent with- out the consent of the latter's employer or principal or upon any fiduciary with- out the consent of the beneficiary		intent to in- fluence his con- duct in relation to his employer's or principal's affairs or intent to in- fluence the fidu- ciary to act or conduct himself contrary to his fiduciary obligations	felony

OR

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Penalties
NORTH DAKOTA cont'd Bribery cont'd	solicits, accepts, or agrees to accept	any benefit the giving of which is prohibited above		knowingly	felony
¹ Defined in N.D. Cent. Code § 12.1-23-10(11) (1976) to include "an expressed purpose, however communicated, to bring about or continue a strike, boycott, or other similar collective action to obtain property or deprive another of his property which is not demanded or received for the benefit of the group which the actor purports to represent."					
² Per N.D. Cent. Code § 12.1-02-02(3)(a) (1976).					
³ Per N.D. Cent. Code §§ 12.1-23-05 (1976)					
Note: See also N.D. Cent. Code §§ 12.1-17-05 (1976) (Menacing) and 12.1-17-06 (1976) (Criminal Coercion).					
OHIO Extortion Ohio Rev. Code Ann. § 2905.11 (Page 1975)	threatens to expose, com- mit a felony; menaces, utter calumny, expose			intent to ob- tain valuable thing or benefit or to induce another to do an unlawful act	felony
Embezzlement Ohio Rev. Code Ann. § 2913.02 (Page 1975) (Theft)	obtain or exert control over	property or services of another without the consent of the owner or person authorized to give consent; beyond the scope of the express or implied consent of the owner or person authorized to give consent	obtaining or exerting control	intent to deprive the owner; knowingly	felony (if value is \$150 or more)/ misdemeanor
Note: See also Ohio Rev. Code Ann. §§ 2905.12 (Page 1975) (Coercion), 2903.21 to 2903.22 (Page 1975) (Menacing), 2913.42 (Page 1975) (Tampering with records), 2923.04 (Page 1975) (Engaging in organized crime).					

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Penalties Att'd Circ's
OKLAHOMA					
Extortion Okla. Stat. Ann. tit. 21, § 1481 - 1482 (West 1958)	obtains by use of force or fear induced by threat to injure, accuse, expose	property of another with his induced consent	obtaining fear		felony
Extortion Okla. Stat. Ann. tit. 21, § 838 (West 1958) (Inti- midating employers)	uses force, threats, or intimidation	to force or induce another to alter his mode of carrying on business			misdemeanor
Embezzlement Okla. Stat. Ann. tit. 21, § 1451 - 1452 (West 1958) (Embezzlement by officer, etc. of corporation, etc.) ¹	appropriates	by an officer, director, trustee, clerk, servant, or agent of any associa- tion, society or corpora- tion, public or private; any property which he has in his possession or under his control by vir- tue of his trust; to any use or purpose not in the due and lawful execution of his trust		fraudulently	
	or secretates	it		fraudulent in- tent to appropriate it to such use or purpose	felony (when value ex- ceeds \$20) otherwise misdemeanor

¹ See also Okla. Stat. Ann. tit. 21, §§ 1454 (West 1958) (Embezzlement by trustee), 1456 (West 1958) (Embezzlement by clerk or servant).

Statutes	Conduct	Attendant Circumstances	Result	State of Mind	Penalties
				Conduct	Att'd Circ's
OKLAHOMA cont'd					
Note: See also Okla. Stat. Ann. tit. 21, §§ 1487 (West 1958) (Attempted Extortion), 1488 (West Supp. 1978) (Blackmail); tit. 45, § 579 (West 1979) (Interference with duties of fire bosses).					
OREGON					
Extortion Or. Rev. Stat. § 164.075(f) (1977) (Theft by)	compels or induces delivery by instilling a fear that the actor or another will cause or continue a strike, boycott, or other col- lective action injurious to some person's business ¹	property of another; delivery fear person	intent to de- prive another of property or to appropriate property to himself or a third person	knowledge ²	felony
Embezzlement Or. Rev. Stat. § 164.015 (1977) (Theft)	takes, approp- riates, ob- tains, or withholds	property from an owner	taking, ap- propriation, obtaining, or withholding	intent to de- prive another of property or to appropriate property to himself or a third person	knowledge ² felony (if value is \$200 or more)/ misdemeanor
¹ "Except that such conduct shall not be considered extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act."					
² Per Or. Rev. Stat. § 161.115 (1977).					
Note: See also Or. Rev. Stat. §§ 163.275 (1977) (Coercion), 165.080 (1977) (Falsifying business records).					

1. "Except that such conduct shall not be considered extortion when the property is demanded or received for the benefit of the group in whose interest the actor purports to act."

²Per Or. Rev. Stat. § 161.115 (1977).

Note: See also Or. Rev. Stat. §§ 163.275 (1977) (Coercion), 165.080 (1977) (Falsifying business records).

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Att'd Circ's	Penalties
PENNSYLVANIA						
Extortion Pa. Cons. Stat. Ann. tit. 18, \$ 3923 (Purdon Supp. 1978) (Theft by)	obtains or withholds by threat to bring about or continue a strike, boycott, or other col- lective un- official action	property of another if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act	obtaining or withholding	intentionally	knowledge ¹	felony (if value ex- ceeds \$200)/ misdemeanor
Embezzlement Pa. Cons. Stat. Ann. tit. 18, \$ 3927 (Purdon 1973) (Theft by failure to make required disposition of funds received	obtains deals with the property obtained as his own and fails to make the re- quired pay- ment or disposition	property upon agreement, or subject to a known legal obligation, to make a spec- ified payment or other disposition		dealing with intentionally property as own and failing to make required payment or disposition	knowledge ¹	felony (if value ex- ceeds \$200)/ misdemeanor
Bribery Pa. Cons. Stat. Ann. tit. 18, \$ 4108 (Purdon 1973) (Commer- cial Bribery and Solicit- ing Commercial Bribe)	solicits, accepts, or agrees to accept or confers, or offers, or agrees to confer	any benefit from another person by an employee, agent, or fiduciary any benefit the acceptance of which would be prohibited above		upon agreement or understanding that such benefit will influence his conduct in rel- ation to the affairs of his employer or principal		misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Penalties
PENNSYLVANIA cont'd				Att'd Circ's	
Infiltration Pa. Cons. Stat. Ann. tit. 18, § 911 (Purdon 1973 and Supp. 1978) (Corrupt Organization)	(1) use or invest	any part of income de- rived, directly or indir- ectly from a pattern of racketeering activity ² in which the actor parti- cipated as a principal, or the proceeds of such in- come, in the acquisition of any interest in, or the establishment or operation of, any enterprise	use or investment		felony
	(2) acquire or maintain	directly or indirectly, any interest in or con- trol of any enterprise through a pattern of racketeering activity ²	acquiring or maintaining		felony
	(3) conduct or partici- pate in	directly or indirectly by any person employed by or associated with any enterprise, the conduct of such enterprise's af- fairs through a pattern of racketeering activity ²	conducting or participating in		felony
	(4) conspire to violate	any of the provisions of subsections (1), (2), or (3) of this subsection			felony

¹Per Pa. Cons. Stat. Ann. tit. 18, § 302 (Purdon 1973).

²Defined in Subsection (h) of the statute.

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Att'd Circ's	Penalties
RHODE ISLAND						
Extortion R.I. Gen. Laws § 11-42-2 (1956) (Extor- tion and blackmail)	threatens to injure person or property or to accuse	verbally or in writing		maliciously, intent to extort money or pecuniary advantage or to compel behavior		felony
Embezzlement R.I. Gen. Laws § 11-41-3 (1956) (Em- bezzlement and fraudu- lent conversion)	embezzle or convert to own use or take or secrete	any money or other property which has come into his possession or under his care by virtue of employment as an of- ficer, agent, clerk, ser- vant, or other person to whom any money or other property has been en- trusted for any specific purpose	embezzlement conversion to own use taking or secreteting			felony (if value ex- ceeds \$500)/ misdemeanor
Bribery R.I. Gen. Laws § 11-7-3 (1956) (Solicitation or acceptance of bribe by agent or employee)	accept, or obtain, or agree to ac- cept or at- tempt to obtain	from any person, for him- self or for any other per- son, any gift or valuable consideration as an induce- ment or reward for doing or forbearing to do, or for having done or for- borne to do, any act in relation to the business of his principal, master, or employer, or for showing or forbearing to show favor or disfavor to any person in relation to the business of his principal, master, or employer		corruptly		misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Penalties
RHODE ISLAND					
Bribery cont'd R.I. Gen. Laws § 11-7-4 (1956) (Bribery of agent or employee)	give or offer	any gift or valuable con- sideration to any agent, employee, or servant as an inducement or reward for doing or forbearing to do, or for having done or for- borne to do, any act in rel- ation to the business of his principal, master, or employer, or for showing or forbearing to show favor or disfavor to any person in relation to the business of his principal, master, or employer		corruptly	misdemeanor
SOUTH CAROLINA					
Extortion S.C. Code § 16-17-640 (1976) (Blackmail)	attempts, threatens, or actually accuses, ex- poses, or com- pels act against another's will	verbally or in writing		intent to extort money or other thing of value	misdemeanor
Embezzlement S.C. Code § 16-13-230 (1976) (Breach of trust with fraudulent intent)	commits or hire or counsel	breach of trust any other person to commit a breach of trust		fraudulent intention fraudulent intention	felony ¹

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Att'd Circ's	Penalties
SOUTH CAROLINA cont'd						
Bribery S.C. Code § 16-17-540 (1976) (Com- mercial Bribery and Receiving a Commercial Bribe)	(1) gives, offers, or promises	to an agent, employee, or servant any gift or gratuity		corruptly; intent to influence action in relation to principal's, em- ployer's, or master's business		misdemeanor
	(2) requests or accepts	gift, gratuity, or promise to make a gift or to do an act bene- ficial to himself; by agent, employee, or servant		corruptly; agreement or under- standing that he shall act in any particular manner in relation to his prin- cipal's, employer's, or master's business		misdemeanor
Miscellaneous S.C. Code § 41-7-70 (1) (1976) (Interference with right to work)	interfere or attempt to in- terfere by force, inti- midation, or violence, or threats there- of, or violent or insulting language	directed against the person or property or any member of the family of any person; in the exercise of such person's right to work, to pursue or engage in any law- ful vocation or business activity; actor acting alone or in concert with one or more persons				misdemeanor ²

¹Per S.C. Code § 16-1-10 (1978).

²Per S.C. Code § 41-7-80 (1976).

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Penalties
SOUTH DAKOTA					
Extortion S.D. Com- piled Laws Ann. § 22- 30A-4(5) (1977 Special Supp.) (Theft by threat)	obtains by threat to bring about or continue a strike, boycott, or other collec- tive unoffi- cial action	property of another; if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act	obtains	intent to deprive another of property ¹	felony (if value ex- ceeds \$200) ² misdemeanor ²
Embezzlement S.D. Com- piled Laws Ann. § 22- 30A-10 (1977 Special Supp.) (Embezzlement of property re- ceived in trust)	appropriate	property of another which has been entrusted to a use or purpose not in the due and lawful ex- ecution of the trust		intent to defraud	felony (if value ex- ceeds \$200) ² misdemeanor ²
Miscellaneous S.D. Compiled Laws Ann. § 60- 8-2 (1978) (Intimidation of employers)	forces or induces by any use of force, threats, or intimidation	another to alter his mode of carrying on business			misdemeanor
Miscellaneous S.D. Compiled Laws Ann. § 60- 10-12 (1978) (Labor dispute - violence and intimidation)	use or engage in, or threat- en to use or engage in violence, in- timidation, or unlawful des- truction or seizure of property	in connection with a labor dispute or as a means of forcing settlement of a labor dispute involving any employer or in connec- tion with any organiza- tional activity of a labor organization among the em- ployees of any employer			misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Penalties Att'd Circ's
SOUTH DAKOTA cont'd					
	¹ Per S.D. Compiled Laws Ann. § 22-30A-1 (Special Supp. 1977).				
	² Per S.D. Compiled Laws Ann. § 22-30A-17 (Special Supp. 1977).				
Note: See also S.D. Compiled Laws Ann. § 60-9-6 (1978) (Statement of income and expenditures by union - filing with secretary of state - violation as misdemeanor)					
TENNESSEE					
Extortion Tenn. Code Ann. § 39-4301 (1975)	threatens to injure person, property, or reputation, or to accuse	verbally or written		maliciously with intent to extort money, property, or pecuniary advantage, or to compel behavior	felony
Embezzlement Tenn. Code Ann. § 39-4232 (1975) (Embezzlement by private officer, clerk, or employee)	embezzles or converts to own use	any money or property of any other, by any officer, agent, employee, or clerk of any incorporated company, or any clerk, employee, or agent of a co-partnership or private person, which has come into his possession or is under his care by virtue of such employment ¹		fraudulently	felony
¹ Tenn. Code Ann. § 39-4233 (1975) sets forth elements constituting prima facie evidence of embezzlement.					
Note: See also Tenn. Code Ann. §§ 39-4226, 39-4228 (1975) (Fraudulent breach of trust), 39-4229 (1975) (Conversion of trust fund).					

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
TEXAS Extortion Tex. Penal Code Ann. tit. 7, §§ 31.01 to 31.03 (Vernon 1974 and Supp. 1978) (Theft)	appropriates by threat to injure, ac- cuse, expose, etc.	property of another unlawfully	appropriation intent to de- prive owner of property			felony (if value is \$200 or more or if the threat was to com- mit, in the future, a felony of- fense against the person or property of the person threatened or another)/ misdemeanor
Embezzlement Tex. Penal Code Ann. tit. 7, §§ 31.01 to 31.03 (Vernon 1974 and Supp. 1978) (Theft)	appropriates	property of another unlawfully	appropriation intent to de- prive owner of property			felony (if value is \$200 or more)/ misdemeanor
Embezzlement Tex. Penal Code Ann. tit. 7, § 32.45 (Vernon 1974) (Misapplication of fiduciary property)	misapplies	property held as a fiduciary in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the property is held	misapplication intentionally, knowingly, or recklessly			felony (if value is \$200 or more)/ misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
TEXAS cont'd Embezzlement Tex. Penal Code Ann. tit. 7, § 32.43 (Vernon 1974) (Commercial Bribery and Receiving a Commercial Bribe)	(1) solicits, accepts, or agrees to accept	by a fiduciary, any benefit as consideration for violating a duty to a beneficiary or other- wise causing harm to a beneficiary by act or omission		intentionally or knowingly		felony
	(2) offers, confers, or agrees to confer	any benefit the acceptance of which is prohibited by (1)				felony

Note: See also Tex. Rev. Civil Stat. Ann. art. 5154a, 5154d, 5154f, 5154g (Vernon 1978) (Provisions relating to labor and labor organizations - some penalties for violation)

UTAH Extortion Utah Code Ann. § 76-6-406 (1978R) (Theft by)	obtains or controls by extortion by threat to bring about or continue a strike, boy- cott, or other similar collec- tive action to obtain property	property of another; not demanded or received for the benefit of the group which the actor pur- ports to represent	obtaining or controlling	purpose to deprive another of property		felony (if value ex- ceeds \$250) / misdemeanor
Embezzlement Utah Code Ann. §§ 76-6-401(4), 76-6-403, 76- 6-404 (1978) (Theft)	obtains or exercises un- authorized control over	property of another	obtaining or exercising/deprive another of unauthorized control	purpose to deprive another of property		felony (if value ex- ceeds \$250) / misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind	
				Conduct	Penalties
<p>UTAH cont'd</p> <p>Embezzlement cont'd</p> <p>Utah Code Ann. § 76-6-513 (1978) (Unlawful dealing with property by fiduciary)</p>	deals	with property that has been entrusted to him as a fiduciary in a manner which is a violation of his duty and which involves substantial risk of loss to the owner or to a person for whose benefit the property was entrusted		knows is a violation of duty	misdemeanor
<p>Bribery</p> <p>Utah Code Ann. § 76-6-508 (1978) (Commercial Bribery and Receiving Commercial Bribe)</p>	<p>(1) confers, offers, or agrees to confer or</p>	<p>upon an employee, agent, or fiduciary of an employer or principal any benefit without the consent of the employer or principal, contrary to the interests of the employer or principal</p>		purpose of influencing the conduct of the employee, agent, or fiduciary in relating to his employer's or principal's affairs	misdemeanor
	<p>(2) solicits, accepts, or agrees to accept</p>	<p>as an employee, agent, or fiduciary of an employer or principal, any benefit from another without the consent of the employer or principal, contrary to the interest(s) of the employer or principal</p>		agreement or understanding that such benefit will influence his conduct in relation to his employer's affairs	misdemeanor
<p>Bribery</p> <p>Utah Code Ann. § 76-6-509 (1978) (Bribery of labor official)</p>	<p>offers, confers, or agrees to confer</p>	<p>any benefit upon a labor official</p>		intent to influence him in respect to any of his acts, decisions, or duties as a labor official	felony

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Att'd Circ's	Penalties
UTAH cont'd						
Bribery cont'd Utah Code Ann. § 76-6-510 (1978) (Bribe receiving by labor official)	solicits, accepts, or agrees to accept	any benefit from another person		agreement or understanding that the benefit will influence him in any of his acts, decisions, or duties as a labor official		felony
¹ Per Utah Code Ann. § 76-6-412 (1978).						
Note: Per Utah Code Ann. § 76-6-402(3) (1978) honest claim of right is an affirmative defense to theft.						
VERMONT						
Extortion Vt. Stat. Ann. tit. 13, § 1701 (1974)	threatens to injure person or property or to accuse			maliciously; intent to extort money or other pecuniary advantage, or to compel behavior		felony
Embezzlement Vt. Stat. Ann. tit. 13, § 2531 (1974)	embezzles or converts to own use or takes or secretes	money or other property which comes into his pos- session or is under his care by virtue of his employment as an officer or servant of a private person, partnership, trades- union, joint stock company, unincorporated association, or fraternal or benevolent association		fraudulently intent to embezzle or fraudulently convert to own use		felony

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Penalties
VIRGINIA Extortion Va. Code § 18.2-59 (1950)	threatens to injure or accuse and thereby extorts	money, property, or pecuniary benefit	threatening and extorting		felony
Embezzlement Va. Code § 18.2-111 (1950) (Em- bezzlement deemed larceny)	use, dispose of, conceal, or embezzle	any valuable thing which the actor re- ceived for another or for his employer or principal or by vir- tue of his office, trust, or employment	using, dis- posing of, concealing, or embezzlement	wrongfully and fraudulently	felony (if value ex- ceeds \$100)/ misdemeanor
Bribery Va. Code § 18.2-444 (1950) (Com- mercial Brib- ery and Re- ceiving a Commercial Bribe)	(1) gives, offers, or promises or (2) requests or accepts	to an agent, employee, or servant any gift or gratuity; without the knowledge of the principal, employer, or master a gift or gratuity or a promise to make a gift or to do an act beneficial to himself, by an agent, employee, or servant; without the knowledge and consent of his principal, em- ployer, or master		intent to in- fluence his action to the prejudice of his principal's, em- ployer's, or master's <u>business</u> agreement or <u>under-</u> standing that he shall act in any particular manner as to his principal's, employers, or master's business	misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind	
				Conduct	Att'd Circ's
VIRGINIA cont'd Miscellaneous Va. Code § 18.2-499 (1950) (Com- binations to injure others in their rep- utation, trade, business, or profession)	(1) two or more persons who shall combine, as- sociate, agree, mutually under- take, or con- cert together			purpose of will- fully and malicious- ly injuring another in his reputation, trade, business, or profession	
	or			or	
	(2) attempts to procure	participation, cooperation, agreement, or other assis- tance of any one or more persons to enter into any combination, association, agreement, mutual under- standing, or concert pro- hibited above in subsection (1)		purpose of willfully and maliciously com- pelling or prevent- ing behavior	misdemeanor
WASHINGTON Extortion Wash. Rev. Code Ann. § 9A.56.110 (1977) (Theft)	obtains or attempts to obtain by threat ¹	property or services of owner		knowingly	felony
	obtain or exert un- authorized (1)(a) (1977) (Theft)	property or services of another or the value thereof		intent to de- prive him of such property or services ²	felony (if value ex- ceeds \$250)/ misdemeanor
	Bribery Wash. Rev. Code Ann. § 49.44.060 (1962) (Corrupt influencing of agent)	directly or indirectly, any compensation, grat- uity, or reward to any agent, employee, or ser- vant of any person or corporation		intent to influence his action in rela- tion to his princi- pal's, employer's, or master's business	misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
WASHINGTON cont'd Bribery cont'd Wash. Rev. Code Ann. § 49.44.070 (1962) (Graft- ing by employee)	ask or receive	directly or indirectly; by agent, employee, or servant of any person or corporation; any compensation, gratuity, or reward or any promise thereof		agreement or understanding that he shall act in any particular manner in connec- tion with his prin- cipal's, employer's, or master's business		misdemeanor
Bribery Wash. Rev. Code Ann. § 49.44.020 (1962) (Bribery of labor representative)	give, of- fer, or promise	directly or indirectly, any compensation, grat- uity, or reward to any duly constituted represen- tative of a labor organization		intent to influence him in respect to any of his acts, decisions, or other duties as such rep- resentative or to induce to prevent or cause a strike by the employees of any person or corporation		misdemeanor
Bribery Wash. Rev. Code Ann. § 49.44.030 (1962) (Bribe receiving by labor representative)	ask or receive	directly or indirectly, any compensation, grat- uity, or reward, or any promise thereof; by duly constituted represen- tative of a labor organization		agreement or under- standing that any of his acts, decisions, or other duties as such representative, or any act to prevent or cause a strike of the employees of any person or corpor- ation will be influenced thereby		misdemeanor

¹ Defined in Wash. Rev. Code Ann. § 9A.04.110(25) (1977) to include "to bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent."

² Per Wash. Rev. Code Ann. § 9A.56.020(2) (1977) it is a defense "that the property or service was appropriated openly and avowedly under a claim of title made in good faith, even though the claim be untenable."

Note: See also Wash. Rev. Code Ann. §§ 48.52.020 to 48.52.080 (1979) (Provisions relating to employee trust funds).

Statutes	Conduct	Attendant Circumstances	Result	State of Mind	
				Conduct	Att'd Circ's
WEST VIRGINIA Extortion W. Va. Code § 61-2-13 (1977)	threatens to injure or accuse and extorts	money, property, or pecuniary benefit	threatening and extorting		felony ¹
Embezzlement W. Va. Code § 61-3-20 (1977)	embezzle or convert to own use	anything of value which shall have come into his possession or been placed under his care or management by virtue of his office, place, or employment as an agent, clerk, or servant of any firm, person, company, or association of persons not incorporated		fraudulently	felony (if value is \$200 or more)/ misdemeanor

¹Making threat, but failing to extort punished as misdemeanor.

Note: See also W. Va. Code § 61-3-22 (1977) (Falsifying accounts).

WISCONSIN Extortion Wis. Stat. Ann. § 934.30(1) (Supp. 1978)	threatens or commits in- jury to the person, prop- erty, business, profession, calling, or trade, or the profits and income of such	verbally or in writing		intent to extort money or pecuniary advantage or to compel behavior	felony
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Statutes	Conduct	Attendant Circumstances	Result	State of Mind		Penalties
				Conduct	Att'd Circ's	
WISCONSIN cont'd Embezzlement Wis. Stat. Ann. § 934.20(1) (a) and (b) (Supp. 1978) (Theft)	(a) takes and carries away, uses, transfers, conceals, or retains	possession of movable property of another without his consent	taking and carrying away, using, transferring, concealing, or retaining	intent to deprive the owner permanently of possession		felony (if value exceeds \$500)/ misdemeanor
	(b) uses, transfers, conceals, or retains	money, security, instrument, etc. in his possession or custody by virtue of his office, business, or employment; without the owner's consent, contrary to his authority	using, transferring, concealing, or retaining	intent to convert to own use		
Embezzlement Wis. Stat. Ann. § 641.19(4) (b) (Special Supp. 1979) (Employee welfare funds)	embezzles or abstracts or converts	to own use or the use of another, any of the monies, funds, securities, etc. of/abstracting any employee welfare fund or converting or any fund connected therewith		unlawfully and willfully		felony
	(1) gives, offers, or promises or (2) requests or accepts or a promise to make	to an agent, employee, or servant, any gift or gratuity gift or gratuity a gift or do an act beneficial to himself; as an agent, employee, or servant		corruptly; intent to influence his action in relation to his principal's, employer's, or master's business corruptly agreement or understanding that he shall act in any particular manner in relation to his principal's, employer's, or master's business		
Bribery Wis. Stat. Ann. § 134.05 (1974) (Commercial Bribery and Receiving a Commercial Bribe)						misdemeanor

Statutes	Conduct	Attendant Circumstances	Result	State of Mind Conduct	Att'd Circ's	Penalties
WISCONSIN cont'd Miscellaneous Wis. Stat. Ann. § 134.01 (1974) (Injury to business)	two or more persons who shall com- bine, assoc- iate, agree, mutually undertake, or concert together			purpose of will- fully or malicious- ly injuring another in his reputation, trade, business, or profession, or for the purpose of mal- iciously compelling behavior		misdemeanor
WYOMING Extortion Wyo. Stat. § 6-7-601 (1977) (Blackmail)	demands with menaces of injury, accusa- tions, or ex- posure or sends or delivers letters con- taining threats	verbally or in writing; chattel, money, or other valuable thing of any person		intent to extort or gain chattel, etc. or to compel behavior letter sent or delivered knowingly		felony
Embezzlement Wyo. Stat. § 6-7-310 (1977) (By employees)	take, purloin, secrete, or appropriate to own use or the use of others or employee, who has access to or control or possession of such thing, to the pos- session of which his employer is entitled	any valuable thing be- longing to or deposited with or held by the em- ployer or such officer, agent, clerk, servant, or employee, who has access to or control or possession of such thing, to the pos- session of which his employer is entitled				felony

Note: See also Wyo. Stat. § 6-7-315 (1977) (Embezzlement by fiduciaries).

Appendix C

EXAMINATION
OF THE
RECALCITRANT WITNESS

by

Kenneth Conboy

DEMONSTRATION:

EXAMINATION OF THE RECALCITRANT WITNESS*

Kenneth Conboy**

Let me, by way of introduction, discuss with you the assumptions with respect to this investigation and th[e] foundation of this witness that are the predicates of how we went about trying to establish certain limited objectives. First of all, let me tell you that this is obviously a method of approaching the problem, it is not the only method. It is not by any measure totally adequate. There are aspects of this investigation which are not, frankly, satisfactory. It nonetheless, I think, presents you with realistic problems that would manifest themselves in an examination of this kind.

Now, let's just briefly, with reference to the handouts

*Edited transcript of a lecture delivered on August 1, 1979, to a seminar offered by the Cornell Institute on Organized Crime on the Techniques in the Investigation and Prosecution of Organized Crime in the area of labor racketeering. Videotapes of the lecture (and grand jury testimony) are available from the Institute.

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that have been distributed, go through these assumptions, or these predicates . . . Number one, I would like you to look at the agenda. Now we have not prepared a synopsis of proof, because frankly, the time didn't allow for it and I don't think in the course of an hour and twenty minutes we are going to be in a position to make a comprehensive study of how to attack this problem and this witness. What will stand in for the synopsis of proof is a diagrammed plant report which you also have. There are three pages. You will see on that diagrammed plant report that certain key words have been bracketed and that these words are identified by a numerical designation in circles to the left. You will then see that those circled designations relate to what I would call the primary questions, listed on a separate sheet. You will also see there are a few ancillary questions. Now, as you look at that sheet of primary questions, you will note that there are asterisks with respect to questions two, four, five, eight, nine, and ten and that therefore, examination in the grand jury with respect to the transcript should focus, in an ultimate sense, upon those areas (two, four, five, eight, nine, and ten).

Now, let's think for a minute as to why of the dozen primary questions, the six that are asterisked, have been selected for emphasis in your strategy in the grand jury. Well, I think if you read the questions, it will be obvious that the six questions with asterisks relate to

elements of the crime of extortion. In other words, they relate to two fundamental elements of this transaction. One is the threat (or the assault) and the words which amount to coercive pressure on the part of the union people. The second is the question of the deal, the quid pro quo, the arrangements re Dynamite Vending. Those are the two areas that you've got to get definitive testimony from Blanchard on, if you are going to be able to proceed against Jordan, and perhaps on an ancillary basis, proceed against Martino. So you've got to bear in mind that the transcript and the plant report (this is the smoking gun) . . . [are] the only evidence you have in the case. I personally don't think that the observation report is very useful, though I think Lorin would disagree with me somewhat on it. I think that this is the dynamite. These are the arrows in your quiver . . . Specifically, what you have to do, as I was describing to you this morning, [is] go painstakingly through this transcript and . . . get down with precision the substance of the remarks made from Jordan to Blanchard and vice versa. You cannot attribute to Jordan words that are made by Blanchard and vice versa. If you do [you] will vitiate the whole effect.

So let's then look at the primary questions. The primary questions are: "Did you tell Jordan you had no choice? Did you accuse Jordan, in substance, of being a strong-arm type?" Note the use [of "in] substance." "Tell us, Mr. Witness, in words or substance, not the

exact words. It's the thought that counts." Now the question may be (if there was an indictable count there): does "strong-arm" type" adequately reflect the text of the proof? I suggest that it does. Some of you may not think so.

The next primary question: "Did you tell Jordan you would use Dynamite as your company?" That is the caving-in the collapse, the sign that the pressure has had its effect. Now, this is important because, as you know, the actual deal never went through because of the discovery of the wire tap. So you don't have, in one sense, a completed package here. You can't show that ABC Vending was thrown out and Dynamite was brought in. You can't show that. So it becomes important [with respect] to whether . . . there was a state-of-mind agreement - a technical contract, if you will. (That is important in terms of the elements of the crime of extortion.) "Did you tell Jordan the two of you had a deal?" Now, note on the transcript that [that] is question ten. It's very tricky in terms of raising that question. Blanchard: "Yeah, I suppose I'll sign the contract for vending." That's what Blanchard says. In response, however, to Jordan's: "We've got a deal, right?" So what that question does is . . . incorporate a statement of Jordan with a statement in affirmation by Blanchard, [the] victim. That is important to understand. You have to ask the question as a single unit. You can't ask it as two separate questions, because separately you don't have the agreement

or the quid pro quo. So you've got to go through the precise words; you've got to track the process of thought between the two parties and adequately reflect it in the questions you . . . ask. Now, for example, "Did you accuse Jordan in substance, of being a strong-arm type?" is not . . . a primary subject for perjury because "in substance" requires an inference to be drawn from the words used. But, "Did you characterize Martino as an 'animal'?" is in fact a primary basis for a possible perjury indictment, because as a practical matter you have categorical proof to show he used the words.

Now . . . before I go [on] to the ancillary questions [let's consider] some other primary questions which are important, but are not really rooted solidly in your proof here. . . . "Did you tell Martino to ask Jordan to call you?" That is important. Why? Because you want to pin the assault [by] Martino on Jordan. You want to anticipate the problem that the witness is going to say: "Sure, I was assaulted by Martino, but it was a private matter." In other words, the key here is Jordan, the big fish, not Martino, the little fish. The only way you can indict Jordan is to have proof in the record that there was an agency relationship . . . between Martino and Jordan. So that becomes a primary question: "Did you tell Martino and ask Jordan to call you?" But it's not that great a topic for perjury because, as you can see, the transcript

allows you to draw the inference that that's what happened, but it doesn't precisely and categorically state as much. For example, it's Jordan who says: "Bruno said that you wanted to speak to me." All right, up there on number one. That's not a very good basis [on which] to indict Blanchard . . . if he denies it, because Bruno would in effect have given an erroneous message. So that is proof of nothing with respect to this question. Why is it useful to have it as a primary question? . . . Because you can then get the witness in the preliminary portion of the examination. You can get the witness to either deny or affirm that he left it with Martino to have Jordan call him. He wasn't anxious for this deal. It was a reluctant dragon, if you will, who was being asked to do this. Of course, if you get him to admit [that] he only met Martino once, which is what he might do, you can show he made this request about the call immediately after the assault. Do you see the inferential nexus there, it's very important.

Another primary question that is useful, but not really pay dirt in terms of indictable charges, [is]: "Did Jordan tell you he had a problem with the phone?" Clearly Jordan told him he had a problem with the phone, but it's a collateral matter. It's useful because it shows guilt and worry and fear and concern [indicating] this is not a conventional deal. But, on the other hand, it doesn't go to the core questions of coercion and the quid pro quo.

"Did Jordan tell you to meet him at a location known to you?" Sure, that's a primary question to explore, to get him to bob and weave, . . . and so forth, as the badge of his reluctance and refusal to proceed and help you, but, on the other hand, it isn't really the key, the substantial part of the examination.

Now those are primary questions. That's what we talked about this morning. What are ancillary questions? Well, there are lots of them in this case. I just list five here so you may think about them and maybe come up with better ones yourself. This is obviously an area where imagination is very useful. [1]"Do you pay employees off the books?" We use that in the tape. Why? Because it's relevant if other payments were made to Jordan that you don't know about or . . . if there's a practice to conceal certain kinds of unlawful payments, it's consistent with fear of police surveillance. It also puts the witness off balance. [2] "Describe the records maintained by your firm." Remember, not only is this an attempt to get the evidence out of his mouth, but it's an attempt to explore other areas of new evidence [as well]. . . . You want to explore what records there are so you can issue a subpoena duces tecum for them as soon as he goes] out of the chamber that afternoon. Make him responsible to bring it back the next day. [3] There's a portion of this tape where we're trying to show [that] the predecessor vending company, [ABC] Vending, had been doing a pretty good job and he says: "Oh, there were complaints." [We said:] "Tell us about these complaints.

What was the character of them?" He g[ot] very, very vague.

"Well, were there any formal records of this? Please tell us who keeps the records?" "Well, gee, I don't think there were any records." "Well, what's the basis of your statements?" and so forth. You want the record to allow the inference to be drawn that [ABC] is being kicked out and Dynamite is being brought in because of the threat and the extort[ionate] behavior, and [for] no other reason. . . .

[4]"What were the roles of your bookkeeper, labor relations man, and lawyer?" Why is that important? Well, the[s]e are . . . potential witnesses. You don't have to rely only upon Blanchard, there might have been a witness to the assault and, indeed, . . . in the tape you'll see we have Hilda Schwartz, who is a wonderful Supreme Court Justice in New York County, the secretary, who is extraordinarily uptight about the assault and whom Blanchard wants to keep out of the case; not [be]cause he's fearful (as with Jordan and Martino), but because he just wants to keep her out of it; he doesn't want to involve her. [5] Finally, "Was there agitation through a labor union in your plants?" That goes to the whole nature of how the discussions for unionization began.

Generally then, these are the questions that are framed in advance. What you try and do is . . . go through your evidence, the basic ammunition if you will, and try and tailor or structure your examination to fit what you can prove and what you may really have to work for in terms of getting disclosure.

Now, a word about the assumptions that went into the agenda. I found it very useful in the workshop that we just completed to review the overall strategy of this witness because this is obviously a critical issue. One of the members of the group said, as the prosecutor in the case was getting aggressive with a witness, "Why are you getting aggressive with this witness? You are, in effect, destroying him. You are rendering his creditability suspect by becoming aggressive. You want him as a witness for you against Jordan, so why, in effect, give him the once-over?" The answer to that is that very often you have no choice. In this case you are particularly on solid ground because if you have to indict him for perjury and he later becomes your witness, you can argue (like the government did with John Dean or as the government does all the time). . . , "Sure, he lied to the grand jury initially. The reason he did was for the same reason he entered into the deal in the first place: he was petrified of these people. Look at these conversations, folks. In fact, the taped conversation which would go in against Jordan clearly supports the inference that this guy was scared for his life; he would be a very appealing witness [to] the jury. So you see that the approach to this witness is initially courteous, but as he begins to refuse to give any testimony which is useful, there is a somewhat more aggressive posture taken with him. Now, remember what many defense lawyers will say to somebody like Blanchard: "Hey,

look, what do you need this aggravation for? Even if you get indicted for perjury no judge is going to send you to jail. It's perfectly clear that you're terrified for your life and besides, even if you did do thirty days, you know what these guys can do to your business? In six months or a year or two years after this thing dies down . . ." . . . Witness protection and relocation? Forget it. This guy doesn't want to leave the McIntosh Cider Company . . . He doesn't want to do that. He's a successful businessman. The general psychology . . . [of] a witness like this [takes the] middle ground: not the arrogant witness and not the ignorant witness, but the accommodating witness. So what you've got to do is you've got to bear in mind you might have to indict him and if he deserves to be indicted, so be it. Remember, you've got to take the point of view that if you can't make the case against Jordan, you've done everything possible to accomplish the end; if it doesn't fall into place, it doesn't fall into place. Sure, these minutes are going to have to be given over to the defense counsel if Jordan is ultimately indicted. Sure, his creditability is going to be an issue, but you're going to have to argue beyond that minimal and admittedly serious impediment.

Now let's look at the agenda and then we'll go [on] to the case. The first area. We had two choices in terms of the hour presentation. We could have focused in on the transcript, say one portion of the transcript, say the assault or the deal. . . . We could have gone painstakingly

over the conversation: how to examine on a transcript. Or, we could have attempted a more comprehensive presentation with respect to a little bit of advice, a little bit of background, a little bit of the various techniques we talked about this morning (the unique event, refreshing of recollection, the playing of the tapes and so forth) and give you the cautionary note at the beginning that there is [a great deal left unsaid]. Obviously, [we] opted for the second course. There are obviously very . . . truncated parts of this one-hour presentation. I don't want to suggest to you that the way to do a complex examination like this, which would take six hours minimum in my opinion . . . is to go off to the races like this tape may indicate in certain areas. What we thought we would do was . . . give you a sense of the overall structure of the examination. That is what this agenda reflects.

The first area is the advice: the various legal requirements. The second is the background: the vending machine operations presently in the place are the key area; also, of course, trying to establish what records are available. Then the relationship with Jordan, then the relationship with Martino, then the assault itself, then the deal, finally the fear of the police. Those are seven areas that we are going to try and cover in admittedly haphazard form. What is important here is the sense of need for preparation. Now, you'll see numerous errors in the presentation. I'm going to be suggesting to the

engineer here that he stop the tape at various points so I can make the observation that this is not the proper way to do it. For example, there's a reference in there to Local 90[1], I think I said, and it's 903. Obviously the point is that you shouldn't examine somebody alone. You can make all sorts of errors and you've got to have another assistant in there, but [obviously] you shouldn't have . . . two people doing the questioning. So there are a lot of what might be considered small points. But . . . these points may stick in your mind more effectively by doing the comprehensive presentation. So with those cautionary comments, I think we can now begin . . .

Tape*: [Witness is sworn in.]

Q**: Please state your name and address.

A: Morgan Blanchard, [address].

Q: Mr. Blanchard, I want to advise [that the] grand jury has given you transactional immunity. [Explains obligation to be frank and forthright; possibility of contempt and perjury; transactional immunity].

Comments: Now, you can tell that there was a mistake in the transactional immunity description. The use of the words "you cannot be indicted" was obviously a diminished description of what consequences could never flow from

*Videotape of grand jury testimony.

**Q indicates prosecutor, A indicates witness.

his making the statements. He can't be prosecuted. The prosecution could have raised a variety of various forms, if you will, of criminal prosecution. A person cannot be prosecuted, that's what the word means there - prosecuted, not merely indicted.

Tape

Q: But I repeat, Mr. Blanchard, that in return for your total and complete insulation from any prosecution for any crime about anything you tell us about that you must give full and complete [and] responsive testimony. Now, are there any questions?

A: If I make a mistake, will I go to jail?

Q: No. No. Mr. Blanchard, you do not go to jail if you make a mistake. You may go to jail if the jury should convict you, if a grand jury should indict you, if it is found as a matter of fact that you have willfully lied, that you have impeded or obstructed the grand jury.

A: I'm not going to do that.

Q: May we begin then?

A: Yes.

Q: What is your occupation, Mr. Blanchard?

A: President of the McIntosh Cider Incorporated, which is a subsidiary of the Major Food Processing Corporation.

Q: And how many employess does McIntosh employ?

A: Do you mean like the laborers or do you mean people that work in the office?

Q: The total payroll, Mr. Blanchard.

A: It varies between 160 and 180, 190 depending on the season of the year.

Q: Now, are these employees unionized?

A: No.

Q: Then how many plants do you run, Mr. Blanchard?

A: That varies too depending on the season, but you could say between four and six.

Q: Now, are any of these plants unionized?

A: No.

Q: And are you a member of any group processors association, in other words a group having common interests in maintaining economic consistency in the industry?

A: Yes.

Q: What group is that, sir?

A: Let's see. The Group Processors Organization.

Q: And approximately how many other companies in the state of New York are members of this organization?

A: Maybe 100, I don't know.

Q: To your knowledge is it the custom in the industry to enter into collective bargaining agreements with authorized, organized unions as these unions relate to the workforce in the industry?

A: Some companies do, some companies don't.

Q: Isn't it a fact, Mr. Blanchard, that indeed virtually all the companies in this association are, in fact, unionized with the single exception of yours?

A: I don't know because I don't know who is a member of the organization.

Q: What are the gross profits of McIntosh for 1978, Mr. Blanchard?

A: I don't have my records here. It's very difficult. Accountants take care of that. I don't know the gross profits.

Q: What office do you hold with McIntosh?

A: I'm the President.

Q: You're the president and you can't tell us what the gross profits were for last year?

A: I'd only be guessing and I'll be in trouble if I give the wrong answer so I'm not going to guess.

Q: Now, with respect to these employees, Mr. Blanchard. Do you have a labor relations man on the staff?

A: Yes.

Q: Who is that?

A: Bob Adams.

Q: Does Mr. Adams maintain records of any kind in respect to his function as a labor relations manager?

A: He would have to.

Q: What kind of records does he maintain?

A: He takes care of deducting for different things. Social-security deductions. He keeps track or the accountants do, I don't know which, but there are records.

Q: With respect to his duties, would he, for instance, be the officer in the company who would receive complaints with respect to working conditions?

A: Yes.

Q: And to your knowledge have any such complaints been made?

A: Oh, yes.

Q: And what character of complaints have been made, Mr. Blanchard?

Q: Oh, you know, the employees, one of them says it's too hot, someone says it's too cold - the regular complaints.

Q: Has there been any agitation, Mr. Blanchard, in any of your plants for a union?

A: Agitation? You've always got people who say we should be getting more money, better vacations . . .

Q: So the answer's yes. There has been agitation for a union.

A: People complain. If that's agitation, then yes.

Q: There have, in fact, been complaints, have there not?

A: Yes.

Q: And these complaints relate to working conditions?

A: Yes.

Q: Now in the course of your discussions with Mr. Adams about these labor problems have there been conversations between you and Adams in which you discussed particular unions potentially bargaining for your employees?

A: No, I never discussed the unions with Mr. Adams.

Comments: O.K. Now, obviously you don't know anything about Adams, we have no evidence about him. That subtle pressure is being placed on him (Blanchard) because you

can logically assume that he has discussed with his labor man this problem. He may not have and if he hasn't, he hasn't. But he may indeed [have], so Adams may indeed be an additional source of proof for you. This is why, for example, there has been an allusion to Adams' role (which is frankly, not adequately followed up) primarily because it is really an ancillary matter. But if this were a full-dress, three-day session, you would really press him on Adams' role, his duties, his relationships, other union delegates he dealt with, and so forth. But this is an area where you are not yet [revealing] the material that you have. He may indeed be fearful [that] you ha[d] a tap on his conversation with Adams. It's not, as you would think, an educated assessment of where additional evidence might be before he goes completely off the reservation with respect to wiretapping. That was really the purpose of this extra little point here about the labor relations man.

Tape

Q: Did you have a conversation with Mr. Adams with respect to the unionizing of your employees?

A: No, I don't remember having a conversation with him.

Q: I would ask you to direct your attention to the 5th June, 1979 and I ask you, did you, subsequent to approximately 10 o'clock in the morning have a conversation with Mr. Adams about a potential contract with a union for representation of your employees?

A: You're asking about something that happened on the 5th June. I don't know what happened at breakfast this morning.

Q: The grand jury is not asking you, Mr. Blanchard, about your morning menu, the grand jury is asking you about the conversation that you may or may not have had. We're asking you to confirm [a conversation] with Mr. Adams at your office with respect to labor problems. Now, you've already told us that there have been labor problems with respect to your workers; you've indicated that complaints have been made. I take it you further indicated that there are leaders in this movement that you refer to as rabble-rousers. Is that correct?

A: Yes.

Q: Now have you had conversations with Mr. Adams . . .

Comments: O.K. He didn't say rabblers, of course, he said agitators. So there was an example of a summary of his prior testimony which is ever so precisely inaccurate. It's not fatal here, of course, since . . . no indictment for perjury [will result], but it is important that when you recapitulate a person's testimony . . . you do it accurately. If he said agitators, don't use the word, rabblers.

Q: Yes or no?

A: Oh, yeah, I've had conversations with him, sure.

Q: Did those conversations include the discussion on a possible contract with a specific union in terms of collective bargaining?

A: I don't remember if we discussed a union.

Q: Now, did you tell Mr. Adams on 5th June, 1979 that you had entered into an agreement with a particular company, a particular union rather, in terms of a collective bargaining agreement?

A: No.

Q: You deny it?

A: I deny telling him that I entered into an agreement. Yes, I deny it.

Q: Do you deny telling him that you had a conversation with a particular officer of the union in respect to a particular company?

A: I don't remember what I told him in our conversations.

Q: Didn't you . . .

A: I don't remember.

Q: Did you mention to Mr. Adams a particular reference?

A: I don't think I did. I don't know if I discussed unions with him. I know I discussed problems; he comes in to tell me that people are complaining. I don't remember discussing specifics.

Q: Mr. Blanchard, are you familiar with a man by the name of Percy Jordan?

A: Yeah. I know Percy Jordan.

Q: Who is he?

A: Let me see, he's an officer with a union, one of the locals.

Q: What union is he a member of?

A: The Food Processors Union.

Q: Is he a member of local 907? [Should be 903].

A: That's probably the number. I'm not sure of the number.

Q: You discussed business with Mr. Jordan?

A: Yes.

Q: Mr. Blanchard, tell us about your conversations with Mr. Jordan as it relates to your business, please.

A: I met him a couple months ago at a cocktail party, one of the organizations [gave] and we got talking. He [told] me he knew what business I was in. And he asked me if I had a union shop and I told him I didn't and he told me who he was and . . . just general conversation.

Q: What was the specific occasion on which you met Mr. Jordan?

A: I remember it was a cocktail party. It was very crowded and I think it was one of the organizations. It could have been a wedding. I remember it was a crowded room and we were talking with difficulty.

Q: I see, was that - there were other people in the room when you were having this conversation?

A: Oh, definitely.

Q: Who else would that be? Who else was in the room?

A: I don't know, there were a lot of people.

Q: You see, Mr. Blanchard, the grand jury has an obligation to seek every sort of evidence with respect to its inquiry. You understand that, do you not?

A: Yes.

Q: We need the names of the other persons so we can call them, so we can get a complete description of this incident. Now please tell the jury, who else was in the room?

A: A couple of other men I met at organization meetings. Kenny Smith. Gee, I don't know, lots of women.

Comments: O.K. Now, obviously this meeting may never have happened. I mean, they may not have met at a social occasion at all. On the other hand, they may have met at a social occasion and there may have been pressure applied to our friend Blanchard, and you may be able to locate all the witnesses who could, in fact, confirm or be enormously valuable in terms of this investigation. In all likelihood, you, at least in this juncture, do not have to opt between the theory that [he's] making the whole story up and making it look innocent or it, in fact, was an originally innocent relationship that deteriorated to a criminal one. So the point here is that . . ., once he says it was a social occasion, you don't want to dismiss it as crap in your own mind and just leave it. What you want to do [is use] the story [beneficially]. The benefit is that he's even bothering [to be evasive] on this. . . . First, he said there were many, many people there, he finally gets to one man; he's not being very definitive about his role. So this is an example of how you can strengthen your records if, indeed, it becomes necessary to indict (by the way

it's not; . . . it's not pay dirt, but, on the other hand, it's helpful).

Tape

Q: Did anybody hear your conversation with Mr. Jordan?

A: No. I don't think anybody could hear what was said. It was crowded. By the way, it was nothing secretive, but it was private.

Q: By the way, you'd never met Mr. Jordan before?

A: That's right.

Q: Who introduced you?

A: I don't know.

Q: Somebody from your company?

A: I don't think so.

Q: Was it Mr. Adams?

A: Adams might have been there. Jordan could have introduced himself. I don't know. It was a brief conversation.

Q: Do you deny Mr. Adams, your labor relations man, was the intermediary between you and Mr. Jordan on the occasion about which you testified?

A: I can't do that because I don't know.

Q: Then you appreciate, Mr. Blanchard, that this grand jury is entitled to your frank, forthright testimony. You understand that, do you not?

A: Yes.

Q: Now, this event did not happen in 1949, it didn't happen in 1954, it didn't even happen last year. This event occurred just two months ago, isn't that so?

A: No, a little more than two months.

Q: Well, would you be kind enough to tell us who was in the room in addition to you and Jordan and Kenny Smith?

A: I don't remember. I don't think I stayed long there. I might have stopped in to have a few drinks, but I know it was crowded; maybe that's why I left, because it was crowded.

Q: Are you speculating now, Mr. Witness? I want to advise you that the grand jury is not interested in speculation, guessing. It wants the facts. You understand, do you not, sir, that the grand jury has to base its deliberations on factual testimony and evidence. It can't take speculation and guessing. Now, you indicated before that the social event was a wedding, is that what you said?

A: I said it might have been a wedding. Now that you say it, I don't think it was a wedding [be]cause [for] a wedding you always stay. It was a cocktail party.

Q: Let me ask you about the structure of your company. You indicated that you have a bookkeeper, is that correct?

A: Yes.

Q: What is the bookkeeper's name, please?

A: Well, the bookkeeper who was right in the office is a girl, Zelda Schwartz. We have accountant bookkeepers, they may do work on the books, but they're not right in the office.

Q: Who is responsible for the preparation of the payroll?

A: Zelda's not.

Q: Who is?

A: Well, we have, they call it an accounting department. It's really only two people.

Q: Who [are they]?

A: Well, there's [Bob Julian and] a new man there now. He's only been there about six months. Ralph Fredericks.

Q: Now what are Ralph's duties with respect to the staff payroll?

A: He prepares them. He makes sure that the time sheets are in, they match up, and whoever worked gets paid.

Q: Now, is the payroll maintained at a particular bank in Ithaca?

A: Yes.

Q: What bank is that?

A: The Ithaca State Bank.

Q: And the procedure for preparation of payroll is what?

A: Ralph knows the procedure. I don't know about it.

Q: Are all payments in terms of payroll made by check?

A: Sure.

Q: Do you, in fact, pay individuals, or make some payments in terms of payroll, in cash?

A: No. The payroll is check.

Q: Do you deny then that any employee or any individual was paid off the books in respect to services rendered to your company?

A: I don't know if I'd say that. Off the books. Sometimes the office - you see, we have people, they come in and they work a day or so and at the end they say, "This

work's too hard for me, give me my money and I'm leaving." Sometimes somebody, some representative of the company, pays them to get rid of them. I don't call that off the books.

Q: Putting aside the activities of the foreman in the field and focusing your attention on the actions of yourself and Mr. Blank and Mr. Fredericks and Miss Schwartz, do you, or to your knowledge, do any of the others, systematically make payments in cash off the books?

A: I don't.

Q: Do you deny having told Mr. Fredericks to make payments off the books?

A: I never used words like that, "paying off the books." I might have authorized a payment out in the field [when] somebody quits. There's no sense in making up the payroll when you only work one day, sometimes less than a day. You get a lot of lazy people in this industry.

Q: Now, you, in fact, personally told Adams to cash a check to ascribe to services that were not rendered and paid with cash to [a] union official?

A: I don't remember ever doing that.

Q: Well, that would be . . .

Comments: Now, you can see that you don't have any proof of this, but what you have to bear in mind is that there is a whole range of possibilities with respect to illegal conduct. What this is designed to show is a probe, a relatively innocuous one, with respect to a practice which is very common in industries of this type. (People with experience

in labor racketeering know that this happens very often.) So what you're trying to do is to make the witness aware of the scope of your [knowledge]. He may not give you anything, you may have to indict him. But don't you see how useful this is in terms of a jury presentation? This is the "I own the stationhouse" type of question. He wouldn't be indicted on it because you can't indict him for perjury, and probably not contempt [either], because of his reasonable explanation. Under the Aesop Fable cases, if the explanation is reasonable, you can't succeed on contempt. Nonetheless the jury will hear this part of it, and they will see that he is grudgingly yielding the more you tell him about the information you allegedly have. That's the reason why . . .

Tape

Q: . . . most unusual business practice, was it not, Mr. Blanchard?

A: Yes.

Q: And, in fact, it may even be illegal, isn't that so, Mr. Blanchard?

A: I don't know. I'd have to talk to my lawyer to find out.

Q: Look, you're an astute businessman, aren't you, Mr. Blanchard? You have been in business a long time, isn't that so?

A: Yes.

Q: In fact, you've made a great success and it's taken more than just hard work. It's taken brains and business sense, isn't that so?

A: Yes.

Q: Now, I have asked you about that cash that comes off the books and you conceded that such payments were made. Correct?

A: I conceded that the men in the field sometimes get paid because they don't work a full week.

Q: Do you concede that a specific off-the-books cash payment was made to an official of the local about which I questioned you?

A: I don't know.

Q: Do you deny it?

A: I can't deny it 'cause I don't know.

Q: You appreciate, do you not, Mr. Blanchard, that this line of questioning is directly relevant to the scope of the investigation of the grand jury that I described to you in the opening of our conversation today? You do appreciate that, do you not?

A: I do.

Q: You've no question about the relevancy of this line of questioning, do you, sir?

: No, I guess that's what you're looking for.

Q: Are there any vending machines in the plants that you operate, Mr. Blanchard?

A: Yes.

Q: And are those vending machines there through any kind of contract?

A: I don't think it's truly - they might have made somebody in the organization sign a contract - the machines have been there for years, they come and service them and the accounting department takes care of the money.

Q: When you say, they keep coming to service them, who do you mean when you refer to they?

Q: The vending company.

Q: What is the name of the vending company?

A: The ABC Vending.

Q: I see. Is there a formal written contract with ABC Vending?

A: I don't believe so.

Q: So what is the vending?

A: Yes, it's been there for years, I don't know how it started.

Q: Is there a commission that's paid to McIntosh in connection with the leasing of the space for these vending machines?

A: Oh, yeah.

Q: And what is the commission that you receive?

A: I don't know. I would say somewhere less than 5%, but I'm not certain, the accountants take care of it.

Q: Well, what is the mode of receipt of these monies?

A: I don't know. I really don't know.

Q: Are there records maintained with respect to receipt of the monies?

A: Yes. Obviously.

Q: And are these monies received by check?

A: I would say they are. I don't know, but I would think so.

Q: Now, I take it then that to summarize your testimony, McIntosh receives, in effect, 5% of the gross sales of ABC Vending on your properties and this is in the nature of a commission in return for the opportunity to vend to your employees. Is that correct?

A: I'm not sure of the 5%, but we give the company something around that.

Q: And this is, in fact, the conventional arrangement, is it not, with respect to such agreements in plants such as yours around the state?

A: Yeah.

Q: Indeed the only incentive, other than perhaps of having happier employees, of having such an invitation to a company such as ABC is, in fact, to make it a more profitable operation. Would that be true?

A: Yes.

Q: Now, with respect to these machines. Have there been many complaints made by you to the ABC Vending with respect to performance?

A: By me personally, no.

Q: By members of your executive staff?

A: No, they didn't complain to me. Just like the employees are always complaining about some condition, they complained that the soup was cold when it was supposed to be

hot and the ice cream was hot when it was supposed to be cold.

Q: Do you have a procedure by which such complaints are forwarded?

A: No.

Q: Are there records of these complaints in your business, Mr. Blanchard?

A: No.

Q: And you indicated you don't put much credence in these complaints. Would that be accurate?

A: Well, I don't know about my other people, they might have been upset about it.

Q: Now, did you personally become unhappy with ABC Vending, with respect to the arrangement you had?

A: No. I was only unhappy when I got reports that the men were unhappy.

Q: In what respect were the men unhappy?

A: Well, like I said, they complained about the quality . . .

Q: What was the extent of the unhappiness, Mr. Blanchard?

A: They used to complain, they used to say there were problems how they worked. In the wintertime you want some hot soup, and it's lukewarm.

Q: How many complaints were made?

A: I don't know.

Q: Did you personally take any action with respect to these complaints?

A: No.

Q: Did you direct your attorney . . . You do have an attorney, do you not, sir?

A: Right.

Q: Who is he?

A: Bill Smith.

Q: And did you direct Mr. Smith to make an inquiry [about] the ABC company in terms of whether they'd given inadequate service to the [machines]?

A: I didn't bother . . .

Q: So what you're saying, basically, is that there were some complaints which you personally did not take seriously and which the company did not act upon.

A: That's right.

Q: Have you personally had any dealings with officials of ABC within the last month?

A: No.

Q: Do you deny having conversations with these officials in the last month?

A: I don't remember,

Q: Then you don't know, is that so?

A: I don't remember talking to them, representatives of companies, I remember talking to somebody. I don't want to say I wasn't, or maybe I was . . .

Q: Do you know Richard Brown?

A: I've heard the name.

Q: Richard Brown is President with ABC Vending, is he not?

A: Yeah, I think he is.

Q: And Richard Brown was a classmate of yours in college, was he not?

A: Yes.

Q: Now, did you call Richard Brown on approximately the 10th of June this year and tell him in substance that the ABC machines had had complaints? Did you tell him that?

A: No, I don't think I ever said that.

Q: Did you have a conversation about terminating the contract with ABC Vending with its president, Mr. Richard Brown, yes or no?

A: I might have.

Q: Did you or didn't you?

A: I had a conversation with Richard Brown. I'm not sure of the details.

Q: What, in substance, did you tell Mr. Brown on the date in question, Mr. Blanchard?

A: I might have told him about the complaints, but I really didn't call him up for that. But I might have told him about the complaints. We were thinking about maybe trying another outfit.

Q: Did you tell Mr. Brown that you were thinking of trying . . .

A: I don't think so.

Q: Did you say that Dynamite Vending was getting the deal?

A: He might. Maybe he guessed it. I don't know. I don't know whether we talked about it or not.

Q: You do know something about Dynamite Vending, don't you, Mr. Blanchard?

A: I've heard of the company.

Q: Where did you hear about it? From whom did you hear about Dynamite Vending?

A: I don't know. It was just another company, a vending company.

Q: How did you come to get in touch with the people at Dynamite Vending?

A: I don't know. I never got in touch with them.

Q: Who brought Dynamite Vending to your attention?

A: I don't remember.

Q: Was it Percy Jordan?

A: He might have mentioned it, I don't know.

Q: Now, do you deny that Percy Jordan raised the subject of Dynamite Vending's coming into your factory? Yes or no?

A: I don't know whether he raised the subject. I remember having a conversation with . . . that might have come up, but whether he raised it **or not** I don't know.

Q: What was Mr. Brown's reaction when you told him that ABC Vending was going to be out and somebody else was going to be in?

A: He was unhappy.

Q: What specifically did he say?

A: He'd given us good service through the years. Things like that.

Q: Isn't it a fact that you told him the reason why

ABC was out and Dynamite was in, was because you were being forced to do it, in substance?

A: No, I don't remember saying I was forced to do anything.

Q: Are you telling this grand jury that you told Mr. Brown that the reason ABC was out was because of complaints from the workers?

A: I don't think I told the reasons. I might have said there had been some complaints. I might have said we just wanted to try a new organization.

Q: Just a minute, Mr. Blanchard. A few minutes ago when this question was first raised about your conversation with Mr. Brown you indicated that you hadn't told him there were complaints. Now, did you tell him there were complaints or did you not tell him there were complaints?

A: I probably told him there was a reason because, I probably did. I know the man. I might have said there were a lot of complaints . . .

Q: Now, have you agreed to a contract with Dynamite Vending?

A: No.

Q: Have you had conversations or discussions with respect to the subject?

A: No.

Q: Do you deny having discussed a possible contract involving Dynamite Vending with anybody?

A: No, I didn't have any talk of a contract with Dynamite.

Q: You indicated a few minutes ago, Mr. Blanchard, that you told Mr. Brown of ABC Vending that you were thinking

about possibly trying another vending company; is that your testimony?

A: Yes.

Q: How did you go about selecting a successor for ABC? Just sit back, relax, and tell the grand jury the dynamics, if you will, the sequence, [of] how you went about carrying out this business decision of yours that you were going to have a different company in here because of all these complaints you were receiving from the workers.

A: I didn't sit down and say, "Today's the day I'm going to get a new vending company." I might have said to somebody, "Check into this place," or maybe somebody said to me I should check into the place . . .

Q: Who said to you, and by the way, I want to remind you, Mr. Blanchard, "could be," "maybe," "possibly," that's not evidence in a court of law, it's not evidence to the grand jury. This grand jury needs specific definitive testimony. Now, I told you when you came in here today that you were being given transactional immunity, full and complete insulation from criminal prosecution for any crime disclosed by your testimony and you agreed, did you not, that in return for that immunity you had an obligation to be definitive and forthright with this jury? Now, is there any doubt in your mind about your obligation?

A: No, I understand.

Q: Now will you please tell us the name of the person who you have just indicated suggested to you that you might try Dynamite?

A: It might have been Jordan.

Q: It might have been Jordan. Was it, in fact, Percy Jordan?

A: Now that I think of it, yeah . . .

Q: When did he mention it to you?

A: Oh, I don't know.

Q: How many times have you met with Jordan, since the time you met him at the social event?

A: Once or twice maybe.

Q: I don't think we established when the social meeting was with Mr. Jordan. When was it?

A: It was in the spring of this year.

Q: Subsequent to that meeting - oh, by the way, did he raise the subject of Dynamite at that meeting?

A: I don't think so.

Q: So, in other words, he raised it later, is that correct?

A: Yeah.

Q: When and where?

A: I don't know, I might have been talking to him on the phone.

Q: Mr. Blanchard, I really don't want to be repetitious because you see we're wasting your time and the grand jury's time. But I just told you that "might" is speculative. The grand jury does not and cannot consider speculation.

Their directive from the supreme court is to consider evidence, so please, do not continue to give this jury speculation. Now, did you or didn't you discuss Dynamite with this fellow Brown subsequent to your Jordan rather, subsequent to your social meeting?

A: Yes, I spoke to him.

Q: You did? Oh, we're making progress. Where did you have this conversation?

A: It was on the phone.

Q: I see. And how long ago was that call?

A: A couple months.

Q: Which would be around June?

A: Yes. It was after Memorial Day 'cause I had been on vacation and came back right after Memorial Day.

Q: Where was your vacation?

A: Vegas.

Q: And did you gamble while you were in Vegas?

A: Yeah, a couple dollars.

Q: How much is a couple of dollars?

A: For the whole week? Under \$500.

Q: Did you go out there with anybody?

A: My wife.

Q: Did you meet any labor people out there in Vegas, Mr. Blanchard?

A: I don't know what you call labor people.

Q: Well, did you meet a man by the name of Martino out in Las Vegas, Bruno Martino?

A: No.

Q: Are you . . .

A: I met people, I don't know the names of some of the people I met, but I don't know anyone named Bruno Martino in Vegas.

Q: I'm going to ask the stenographer to mark this photograph as grand-jury exhibit 35, Mr. Foreman. And I ask the witness to look at it. Take your time, carefully study it. Now, let the record show that the witness is examining the exhibit. Do you know the person in the picture, Mr. Blanchard?

A: Yes.

Q: And is that the individual that you know as Bruno Martino?

A: I really didn't know his last name. But that's him. That's Bruno.

Q: Did you see this man in Las Vegas? Yes or no.

A: No.

Q: Again, when I say man, I'm referring to the person in the grand-jury exhibit just introduced. Did you ever have occasion to have a conversation with the individual now identified to the grand jury, by virtue of this exhibit, as Bruno Martino?

A: Yes.

Q: Tell us about that.

A: He came to my office and he talked about unionizing my plant.

Q: How did he come to your office? Did he have an appointment?

A: I don't know whether he had an appointment or whether he called up and said he was there, called up and said, "Can I come tomorrow," or . . .

Q: Is Mr. Martino a union official?

A: I believe he is.

Q: From what local?

A: Gee, I'm not sure.

Q: He is, in fact, connected, is he not, with Local 903, the same local that Percy Jordan is connected with, isn't that so?

A: Yes, they're connected, but I don't know if it's the same local.

Q: You indicate they're connected. On what do you base that testimony, Mr. Blanchard?

A: He mentioned it when he was in my office. He mentioned that he knew Jordan.

Q: How did his name come up in the conversation you had with Martino in your office?

A: He was talking about unions and I remembered the conversation at the cocktail party, I don't know, I'm not sure, he mentioned, maybe he asked me if I knew him and maybe I asked him if he knew Jordan.

Q: Now, let's get this straight, Mr. Blanchard. You're telling this grand jury that this fellow, Martino, who you probably never met before, comes to your office, with or without an appointment, you do not know, raises the subject of unions, alludes to Jordan in some manner and,

in fact, then proceeds to talk about some kind of contract. Is that what you told me?

A: I don't think we talked about a contract. He talked about wanting to unionize the place. I don't think we talked in terms of contracts.

Q: What, in substance, did he say with respect to the contract?

A: I don't know if he talked about a contract. He talked about unionizing. He said it's good for the workers, not bad for the company, because there are more satisfied workers if they belonged to a union and [fewer] gripes.

Q: Did you discuss terms?

A: I don't think so.

Q: Well, what, in substance, was the resolution of this conversation you had with him? How was the subject of unionization left at the conclusion of the meeting?

A: It was left up in the air.

Q: Did you give him any instructions?

A: No.

Q: You deny that you gave Bruno Martino instructions, is that correct?

A: What do you mean instructions? I don't understand that.

Q: Did you tell Mr. Bruno to have somebody call you?

A: I don't think so.

Q: Well, did you?

A: I don't remember telling him that, to have anybody call.

Q: It would have been completely inconsistent, would it not, for you to have him call you when, in fact, no arrangement had been made, correct?

A: I guess so.

Q: Well, is it a fact or isn't it a fact? We don't want guessing here.

A: I don't remember telling him to have anybody call me.

Q: Did you have any physical contact with Mr. Martino at the office?

A: Sir?

Q: Physical contact. Did either of you touch the other?

A: I might have shaken his hand.

Q: Beyond the shaking of a hand - was there any physical contact between you and Mr. Martino?

A: No.

Q: Can you deny it, sir?

A: He was in my office and I might have [shaken] hands with him and that was it.

Q: So I take it then your testimony is that excepting the shaking of a hand there was no physical contact between you and Mr. Martino in the office?

A: That's my testimony.

Q: Now, what about the level of the voices?

A: I don't know. He's kind of a loud guy so he's kind of loud and I'm not so loud.

Q: Did Mr. Martino curse you?

A: No I don't think he cursed.

Q: Do you deny it?

A: I mean he might have used some swear words, but just to emphasize something.

Q: What did he emphasize?

A: Something about the advantages of unions. He might have said, you know, words to the effect, like darned union, but he used something stronger than darned.

Q: Did he, in substance, tell you that if you did not sign a contract with his union that you would be injured, in substance, not necessarily those words.

A: I mean, you know substance; I mean he said it would be good for me to join the union. Now if I don't join the union maybe that's bad because it's not good.

Q: Are you telling the jury that he said it would be good to join the union, good for business?

A: Yes.

A: Are you telling the grand jury that he went beyond tender solicitude for your business and he also said it would be good for you personally if you joined the union?

A: If it's good for the business, it's good for me; I'm the president.

Q: What do you think he means when he says, in substance, it's good for you personally?

A: I wouldn't have any labor problems.

Q: Did you also take it to mean you wouldn't have any physical problems?

A: No.

Q: Did he, in fact, tell you that you were going to wind up bleeding unless you agreed to this proposal?

A: I don't remember him saying anything about bleeding.

Q: Have you ever been threatened by anybody in these words?

A: No.

Q: Is that correct?

A: I don't remember ever anybody telling me I was gonna bleed.

Q: But it would be a most shocking and unusual and dramatic statement by an individual if such a thing were made to you, wouldn't it, sir?

A: I wouldn't like it.

Q: Indeed, it would shock you considerably, wouldn't it?

A: I'm 49 years old. I don't get shocked that easy, but I wouldn't like it.

Q: Isn't it something, Mr. Blanchard, that would indeed etch itself indelibly in your mind?

A: I might remember it.

Q: Did this individual, Martino, tell you that you would wind up bloody if you did not agree to this union rake, yes or no?

A: I don't remember.

Q: Did Mr., did this individual, Martino, in fact threaten you physically?

A: He left the office and everything was kind of up in the air.

Q: That's not responding to the question. I'll repeat the question. Did this individual, Martino, physically strike you?

A: He didn't strike me during the discussion of the vending company.

Q: So you deny having been struck by Mr. Martino, is that correct?

A: He didn't strike me when we were in the office.

Q: But did you tell anybody that Mr. Martino had struck you?

A: I don't remember telling anybody that.

Q: Did you ever characterize Martino as "animal" in your conversation with any person?

A: I don't remember using that word.

Q: Now did you, in fact, tell Jordan that this fellow, Martino, was an "animal?"

A: I don't remember telling anybody that he was an animal.

Q: Did you tell Jordan that Martino was "your animal?"

A: I might have said something, you know, he works for you, or you're both unionmen. At first, maybe I would have said it.

Q: Did you complain to Jordan about being roughed up by Martino?

A: I might have said something.

Q: What?

A: Well, I didn't talk about the
You didn't ask me. I had an argument with him in a parking
lot that had nothing to do with the meeting, and after he
left my office and I left, we kinda ran into each other in
the parking lot and we had a disagreement. I kind of cut
him off when he was leaving and, I told you he was a loud
guy, he kind of pushed and shoved me a little bit.

Q: Are you telling the grand jury that you were in
fact pushed and shoved by Mr. Martino, is that what your
testimony is, in the parking lot, is that right?

A: That's correct.

Q: Is it your testimony that there was no physical
injury . . . as a result of this incident?

A: I think I got cut a bit.

Q: Where did you go immediately after the incident
in the parking lot?

A: I went back to the office to wash up.

Q: Who was there?

A: It was late in the day. I don't think anybody was
there.

Q: Zelda Schwartz was there, wasn't she?

A: Yes, I think, she was getting ready to leave.

Q: Did you, when you walked in there, tell Zelda Schwartz,
"That son of a bitch tried to kill me?" Yes or no?

A: No.

Q: Do you deny that?

A: Yeah, I deny it.

Q: Now, what did, what did Zelda Schwartz, what was Zelda's response when she saw you enter the office?

A: She was upset, you know. I was all dirty 'cause I'd fallen down and I came in to wash up. She was excited.

Q: Who cleaned the wound?

A: I think maybe my nose was bleeding.

Q: Your testimony is that the only injury you had was a cut?

A: I might have or something, I don't know. I remember that because I had to use my handkerchief for the blow.

Q: In fact, didn't Zelda want to call an ambulance?

A: She wanted to. I told her not to.

Q: She wanted to call an ambulance for a couple of scratches, is that your testimony?

A: She's an excitable woman.

Q: Did you ever tell Jordan to tell Martino that he had a nice way about him: "What do you do, feed him raw meat?"

A: I might have said that when I was complaining about the argument we had in the parking lot.

Q: Did you or did you not say that?

A: You seem to be meaning something there. If you can help, I mean, if you know what I said, then tell me, it might help me 'cause these things, they happened months ago and a lot of things have happened since then. I just don't remember, but if you refresh my recollection maybe I can help you.

Q: Let's just get this straight, Mr. Blanchard. Your testimony is that you have no recollection of these events, no definitive recollection of these events. Are you suggesting that they might have happened, are you suggesting that you might have referred to somebody as an animal, that you might have asked Mr. Jordan what he would do, "Feed him raw meat?" But you're not telling the grand jury you said these things. Is that correct?

A: I'm telling you, I can't remember.

Q: Are you prepared to give the grand jury only a duplicate of the evidence it already has in its possession?

A: I don't know what you have.

Q: You appreciate, do you not, that our obligation is to exhaust your recollection before the evidence in the grand jury's possession is disclosed?

A: I understand.

Q: Now, did you tell Jordan with respect to this individual, "Have him keep his frigging hands off me from now on?" Did you tell Jordan that?

A: I probably did. Because I was so upset about the parking lot thing.

Q: Mr. Foreman, with your permission I'm going to play for the grand jury exhibit number 19 and I want you to listen to this conversation tape recorded, as you know, by Mr.

Comments: O.K. As we discussed this morning, the effective way to do this is not to do what we did in the film. Not to play the tape at this point. The next step would be step two: to read the context of the statement to him, and the third step would be to let him read that segment of the transcript himself. If he still resists admitting that he said it, then you are in an extraordinarily powerful position when you play him the tape because he's going to hear his own voice and he's going to have to admit it. Then, you see, having already made the observation in the way of advice: "You appreciate, do you not, Mr. Witness, that it is the duty of the grand jury to exhaust your recollection before the evidence in the grand jury's possession is disclosed," you can see, of course, that this puts you in the maximum possible position in terms of the fairness argument. You have not only told him in substance what's on there, you have not only quoted it verbatim, you have not only let him see a section, but you were still required to play the tape. You see, don't you see how it reinforces the inference, on the part of the triers of fact, that what you've just characterized as a tactic implicitly on his part, he has, in fact, done. He's trying to find out exactly what you have and will conform his testimony only to that which is on the documentary record, the tape. Remember, he knew there was a wiretap here. But he didn't know what he said. People can never be sure definitively as to what they have said. So he may think he had said something about

raw meat or about the assault, but he can't be certain and he doesn't want to say more than he has to. This is the critical point in this whole case, right here, because all the rest is prologue, all the rest is ancillary and collateral. That's why we took the time to go through it. Notice, this was not brought out and aggressively used immediately or even fifteen minutes into it or half an hour into it. In the normal examination it probably wouldn't be done for another day or so . . .

Now, this is the key question in the law as well: confrontation. Do you have an obligation to play the tape for the witness? That's the central issue in a number of major cases in the federal court and in New York. The key case in New York is now the Monahan case. There is a collateral federal case, I think it's Nicholls. These cases are set out in your readings. But it goes to the heart of the character of this proceeding. Is the objective of the prosecutor to get the full truth and the full version of facts that reside in the witness's recollection and mind or is it merely to feed him so much and then stop it and indict him? Now, there is, of course, a point [at] which the prosecutor, as a duty, must conclude that the witness is thwarting and impeding the grand jury and has given no testimony. Now, up to this point this witness has given virtually no useful testimony. He has, in fact, connected Jordan and Martino. It's very helpful in the sense that he has grudgingly conceded an agency relationship with respect

to the meeting. He could have denied it. Notice, by putting the assault in the parking lot over a parking space he dis[sociates] the assault from the union discussion. So that he's done. But he has, in fact, conceded that his association with Martino was in relation to the contract which had originally been raised by Jordan and the key point on the tape is that he ends it with (and we'll get to that in a minute), "Have Jordan call me." Remember, that's point one on your little diagram that we gave out at the beginning of the session . . .

Tape

Q: Did you hear that conversation?

A: Yes.

Q: There are two people in that conversation, were there not?

A: Yes.

Q: Did you recognize the participants in the conversation?

A: I think I did.

Q: You think you did. Did you hear the words as follows: "Your animal told me that already. He has a nice way about him. What do you do, feed him raw meat?" Did you hear those words?

A: Yes, words like that, yes.

Q: What do you mean words like that, did you hear these words?

A: I heard a sentence that sounded like what you read.

Q: Who spoke those words?

A: Sound like my words.

Q: They are your words. Correct? No question about that?

A: My voice.

Q: Did you hear on that tape?

A: Yes.

Q: Did you hear the words, "I could tell you some stories till your hair would stand on end?"

A: Yes.

Q: Now, who was speaking those words?

A: I think that was Jordan.

Q: Think. Was it or wasn't it?

A: Sounded like Jordan.

Q: Now does that refresh your recollection with respect to the conversation?

A: Yeah. I was complaining about the argument in the parking lot.

Q: Well, did you tell Jordan in that conversation with respect to Martino, "Tell him to keep his frigging hands off me from now on?"

A: Yes.

Q: You did?

A: Yes.

Q: Now, did Jordan say that he, meaning Martino, under certain circumstances, does rough people up?

A: He might have said when he gets excited, he gets physical, pushes people. He might have said that.

Q: Martino was, in fact, having this conversation with you in your office on behalf of Jordan, is that not so?

A: It was on behalf of unions.

Q: On behalf of Mr. Jordan, is that not so?

A: It might have been on his behalf.

Q: Did Mr. Jordan tell you in this conversation that he didn't want to go to jail, "canned," to use his words?

A: I don't remember him saying that, but he could have said that.

Q: Did you, in fact, tell Jordan in the conversation that you had already agreed to a deal with Dynamite?

A: Gee, I don't remember saying that. I don't remember even what the deal was.

Q: Did you, in fact, say to Jordan: "All right, I said I'd do it," with reference to signing a contract? Yes or no?

A: I probably said that.

Q: Did you say, "I don't like it, but I have no choice?"

A: I might have said words to that effect. I don't remember what I said.

Q: But in substance, when you said you had no choice, what did you make reference to?

A: I guess the people who were complaining about the vending machines. I had no choice except to change.

Q: Is it a fact, Mr. Blanchard, that you were concerned here with your own safety and that is what you were concerned about when referring to or making the statement: "I have no choice?"

A: I think I was probably talking about the complaints and to keep peace I was going to change vending companies.

Q: Well, do you deny that you, in fact, told Mr. Jordan that because, in substance, because of the assault on you by Martino, you had no choice but to enter into this contract right away? Do you deny that?

A: No. I deny that.

Comments: Now, that, obviously, is the core possibility for perjury. He denied that he told Jordan he'd signed a contract as a result of the assault. There are multiple predicates in there and you might say, "Hey, wait a minute, you're not supposed to ask multiple-predicate questions," but that is the substance, the fair reading, and the overwhelming implication of the proof you have. So you may (I'm not saying this in a definitive light because obviously, you've got to read it in the entire context of the examination), but you may have a basis since he has categorically denied that that is what he told him. Remember, it's not the reference to the tape now; you just [have] to ask him, not "What did you say on the tape," but "Did you tell Jordan by implication at any time?" He has said, "No," so you are now in the position to proceed after careful analysis of the whole Q & A, with an indictment . . . on the predicate that he lied when he denied to the grand jury that he told Jordan. Not what was in his mind; what he told Jordan, that's what perjury is.

"What did you tell Jordan?" When you read this conversation it's susceptible to an interpretation that he did, in fact, tell Jordan, "I'll sign 'cause I'm scared." Now, it's true it's not in habe verbae, but the inferences are there and you may have a solid indictment of perjury on the basis of this denial. So why has he denied it? He's denied it because he is now openly against the wall and he cannot implicate Jordan. This is the package, the ball of wax, the ribbon on it. This is the ultimate point. Now, you may be obligated to indict him and have a plea bargain and then [have him] testify as your witness and admit that he had been lying to the grand jury. Admit the obvious, as he indicated before, he was scared. He lied to the grand jury for the same reason that he . . . gave in on the deal. At least he was planning to because of the fear for his life. Now, you'll find one final concession here, which witnesses often do, which can be helpful. Force him to the wall on the open questions. Now, the second major area which we have identified is the quid pro quo. First . . . [is] the coercion, the threat. Second is the deal. You'll see here there is a grudging concession of sorts with respect to the character of the deal, that he did agree to it. Because, you see, that's important in terms of the threat; whether it actually went through or not is beside the point. The fact that [an out] was found is not because he was any less brave. So this

then is the final point . . . There is a grudging concession which tends to give you the best of all possible worlds. If you have to, indict him and then use him as a witness. You may, of course, choose not to indict him. You may call his lawyer, after the session is over, and say, "I'm going to tell you something, Mr. [Smith]. Your guy flatly lied to the grand jury. I'm going to give you a chance to let him recant." Then he comes back in and makes his presentation and an indictment may not actually be ultimately final at this point. But given the performance he's given (which has been classic obstruction, evasion, stonewalling) I'm not sure that you have any choice.

Tape

Q: During the conversation with Mr. Jordan, did he, in fact, tell you that there may be a problem with the phone?

A: He said something. I remember him saying something about a problem with the phone.

Q: What exactly did you do after you were told of the problem with the phone?

A: I hung up.

Q: Did you receive any instructions from Mr. Jordan?

A: He might have said: "I'll come to see you . . ."

Q: Let's not beat around the bush, Mr. Blanchard. The grand jury's been very patient with you. In fact, didn't you go to the Ithaca Bathhouse to meet Mr. Jordan?

A: Yes, I did.

Q: And did you, in fact, state, in substance, to Mr. Jordan, that you were concerned with respect to police surveillance?

A: No. I don't remember talking about police.

Q: Do you deny that you told Mr. Jordan that you were concerned about the possible presence of police?

A: Where?

Q: In front of the Royal Ithacan Baths, at 250 Market Street, here in Ithaca.

A: I remember I went there and parked my car. He came and talked to me. I might have been worried about the cops giving me a ticket. I might have said, "Are there cops here?" I don't know.

Q: Did you say, "The cops are probably all over the place?"

A: Yeah. I was afraid of getting a ticket.

Q: Did Jordan say to you, "There's nothing they can hear once we're inside?"

A: I don't remember him saying anything like that. He might have told me not to worry or something because . . .

Q: Do you deny he said there is nothing they can hear once we're inside?

A: He might have said that to me. I don't know.

Q: Well, did he say it to you?

A: Yes. He said something along those lines. I think he was telling me not to worry, you know, about getting a ticket.

Q: That isn't very logical, is it, Mr. Blanchard? You were concerned about the police seeing you illegally parked. The fact that you were inside and they couldn't

hear what you were saying inside had nothing to do with your vulnerability in parking the car. Correct?

A: Yeah. I guess that's . . . Maybe I didn't understand what you said.

Q: Mr. Blanchard, isn't it a fact that you were concerned with respect to possible police surveillance because you were involved in illegal arrangements, a corrupt . . . with this fellow, Jordan?

A: No. I never had any problems with him.

Q: Do you deny that you told him that a deal was a deal?

A: I told him that I was going to change the vending company, but that had nothing to do with him.

Q: Do you deny that Jordan said to you: "We've got a deal?" Right? And you said: "Yes, I suppose so." Do you deny that?

A: No, but I wasn't talking about a deal with him. I was talking about a deal with the vending machine company.

Q: Do you deny having uttered those words, "Yes, I suppose so," in response to his words, "We've got a deal, right?"

A: I said that.

Q: You said that. Thank you very much. You're excused.

AGENDA

Morgan Blanchard

I. ADVICE

- 1) status of witness
- 2) full transactional immunity
- 3) right to counsel
- 4) perjury & contempt
- 5) scope of investigation:
 extortion, bribery of a L.O., bribe receiving
 by a L.O., assault, coercion, conspiracy & other
 crimes

II. BACKGROUND

- 1) age, fam. status, education, career
- 2) McIntosh Cider - character, gross, size, plants, workers,
 wages, hours, role of labor man, lawyer,
 bookkeeper
- 3) vending operations: prior use, terms, scope, need, complaints
- 4) office records: off the books (subpoena)

III. RELATIONSHIP with JORDAN

- 1) picture x
- 2) nature of relationship - social???
- 3) shop status - no union
 no unrest
- 4) nature of negotiations
- 5) relationship to Dynamite

IV. RELATIONSHIP with MARTINO

- 1) nature, duration & substance
- 2) connection to local
- 3) connection to Jordan

V. the ASSAULT

- 1) place & circumstances
- 2) other witnesses
- 3) conversation: tone & threats
- 4) injury, treatment
- 5) response to injury
- 6) nexus to Jordan

VI. the DEAL

- 1) terms
- 2) agreement
- 3) XYZ Vending

VII. FEAR OF POLICE

- 1) tap
- 2) surveillance at baths

-446-
DAILY PLANT REPORT

PLANT # 79/16

LINE # _____

INTERCEPTED AND RECORDED BY:

June 5

PAGE 1 OF 3

Det. John Montell

EL # 7916A

P.O. Doris Anderson

Changed to _____ at _____

Speed 3 and 3/4 -- 20 lines/minute

TIME & ORDER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
0:05 31/497	983-0600	Jordan (in) asks for Mr. Blanchard.
	①	Jordan: Bruno said that you wanted to speak to me.
	②	Blanchard: I don't like it - but I have no choice, we'll do it your way.
		Jordan: Hey, let's get this straight - I've been in business 20 years already, and if I didn't go to the can already, I hope to God I never go, but what I mean is I've never, I never force from anybody in my life, no but, I never went to a guy and said, this is what it is, I'm not that type of fellow.
	③	Blanchard: I know what type of fellow you are.
		Jordan: Look, you're not getting hurt in anyway. The workers are going to use machines so you might as well use Dynamite as your company.
	④	Blanchard: All right. I said I'd do it.
	⑤	Jordan: Look - I want you to be happy. I'm

of int. calls _____ # of incr. calls _____

of new persons int. _____

11:20
562/610

Denial - Possible

Observation report at Royal Ithacan Baths, 250 Market St.,
Ithaca, New York

Date: June 5, 1979

10:15 a.m. Officers stationed themselves at vicinity of
the above location.

10:19 a.m. Percy Jordan was observed exiting the baths
and standing on the street i/f/o said location.
He appeared to be nervous and was pacing back
and forth.

10:22 White Cadillac, license plate ITH903 registered
to Morgan Blanchard, 2505 Coldspot Ave.,
Ithaca, double parks at location. Male exits
and approaches Jordan. At this point, Det.
Seeper walked by and overheard male state, "the
cops are probably all over the place." Jordan then
did state, "there is nothing they can hear
once we're inside." - "park the car."

10:23 Male parks vehicle and enters location with
Jordan.

10:35 Male exits location; enters vehicle and drives
off. Surveillance is terminated due to traffic.

*Did you
express concern
about police
surveillance?*

~~_____~~

PRIMARY QUESTIONS

1. Did you tell Martino to ask Jordan to call you?
- * 2. Did you tell Jordan you had no choice?
3. Did Jordan tell you he hoped he wouldn't go to jail?
- * 4. Did you accuse Jordan, in substance, of being a strongarm type?
- * 5. Did you tell Jordan you'd use Dynamite as your company?
6. Did Jordan refer to frightening incidents?
7. Did you characterize Martino as an "animal"?
- * 8. Did you ask Jordan to instruct Martino to keep his hands off you?
- * 9. Did Jordan tell you the two of you had a deal?
- * 10. Did you agree with Jordan to seal a deal?
11. Did Jordan tell you he had a problem with the phone?
12. Did Jordan tell you to meet him at a location known to you?

ANCILLARY QUESTIONS

1. Do you pay employees off the books?
2. Describe the records maintained by your firm.
3. What was the reason for discontinuing XYZ Vending?
4. What were the roles of your bookkeeper, labor relations man and lawyer?
5. Was there agitation for a labor union in your plants?

