

U.S. DEPARTMENT OF COMMERCE
National Technical Information Service

PB-253 543

COMMISSION ON THE REVIEW OF THE NATIONAL POLICY
TOWARD GAMBLING

FBI, FCC AND POSTAL HEARINGS HELD AT WASHINGTON, D. C.
ON JUNE 26, 1974

COMMISSION ON THE REVIEW OF THE NATIONAL
POLICY TOWARD GAMBLING

26 JUNE 1974

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|---|--|----------------------------|--|--|-------------------------|
| BIBLIOGRAPHIC DATA SHEET | | 1. Report No. NGC-76/03 | 2. | 3. Report's Accession No. PR253643 | |
| 4. Title and Subtitle Commission on the Review of the National Policy Toward Gambling: FBI, FCC and Postal hearings Washington, D.C. , June 26, 1974 | | | 5. Report Date 6/26/74 | | |
| 7. Author(s) | | | 8. Performing Organization Repr. No. | | |
| 9. Performing Organization Name and Address Commission on the Review of the National Policy Toward Gambling Suite 3302 2000 M Street, NW Washington, D.C. 20036 | | | 10. Project/Task/Work Unit No. | | |
| | | | 11. Contract/Grant No. | | |
| 12. Sponsoring Organization Name and Address | | | 13. Type of Report & Period Covered | | |
| | | | 14. | | |
| 15. Supplementary Notes | | | | | |
| 16. Abstracts Testimony before the National Gambling Commission by representatives of the FBI FCC and the Post Office. Hearings conducted in Washington, D.C., 6/26/74 | | | | | |
| 17. Key Words and Document Analysis. 17a. Descriptors | | | | | |
| 17b. Identifiers/Open-Ended Terms | | | | | |
| 17c. COSATI Field Group | | | | | |
| 18. Availability Statement No restriction on distribution. Available from NTIS Springfield, Va. 22151 | | | 19. Security Class (This Report) UNCLASSIFIED | | 21. No. of Pages 168 |
| | | | 20. Security Class (This Page) UNCLASSIFIED | | 22. Price |

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COMMISSION ON THE REVIEW OF THE NATIONAL POLICY
TOWARD GAMBLING

COMMISSION MEETING

Room 155
Russell Office Building
Washington, D. C.

Wednesday, 26 June 1974

The meeting was convened, pursuant to notice, at
10 a.m.; Mr. Charles H. Morin, chairman, presiding.

PRESENT:

CHARLES H. MORIN, Chairman

JAMES M. COLEMAN, JR.

DAVID D. DOWD, JR.

ETHEL D. ALLEN

HOWARD W. CANNON

CHARLES J. CARNEY

JAMES E. RITCHIE

MARILU MARSHALL

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C O N T E N T S

| | <u>PAGE</u> |
|-------------------------------------|-------------|
| <u>AGENDA</u> | |
| <u>F.B.I. Cleveland & Staff</u> | |
| Testimony: | 2 - 23 |
| Questions: | |
| Cannon | 23 - 34 |
| Carney | 43 - 44 |
| Coleman | 34 - 35 |
| Dowd | 45 - 58 |
| Morin | 35 - 40 |
| Allen | 41 - 43 |
| Marshall | 45 - 50 |
| Marshall | 63 - 64 |
| Marshall | 50 - 58 |
| Marshall | 59 - 63 |
| <u>F.C.C. Hardy & Staff</u> | |
| Testimony: | 65 - 76 |
| Questions: | |
| Morin | 76 - 87 |
| Dowd | 87 - 89 |
| Coleman | 99 - 106 |
| Allen | 76 - 77 |
| Ritchie | 78 - 87 |
| Cannon | 89 - 95 |
| | 96 - 99 |
| | 100 - 101 |
| <u>POSTAL Tarpey & Staff</u> | |
| Testimony | 102 - 108 |
| Questions: | |
| Morin | 108 - 111 |
| Coleman | 112 - 115 |
| Allen | 120 - 121 |
| Ritchie | 115 - 118 |
| | 118 - 120 |

P R O C E E D I N G S

CHAIRMAN MORIN: The hearing will be in order.

This is the third public hearing of the Commission on the Review of the National Policy Toward Gambling. It is the fourth public hearing. We have had prior hearings; a hearing from those interested in state lotteries; we have had testimony here from the Department of Justice and from the Internal Revenue Service.

We are very pleased to welcome here today the Federal Bureau of Investigation, who will be represented by Mr. William V. Cleveland, the Assistant Director in charge of the Special Investigative Division. He has with him Mr. Staffeld and Mr. Kelly. I would like especially to welcome you here, Mr. Cleveland, and to thank you most sincerely both for myself and the whole staff. We never could be here without your help.

I understand that you have a prepared statement, after which you will be subjected to questioning by members of the Commission. I don't know whether any of the Congressional members will be here. If they are, they will take precedence.

MR. CLEVELAND: Thank you, Mr. Chairman.

I have Mr. Staffeld with me this morning because he has devoted 20 years to organized crime and is an expert in the field. John Kelly has also devoted a great many years to organized crime, so I hope between the two of us we will be

1984

1

bwm 2

1 able to answer your questions.

2 Mr. Chairman, my name is William V. Cleveland, and I
3 am an Assistant Director in charge of the Special Investigative
4 Division, Federal Bureau of Investigation.

5 Because our experience over the years has shown that
6 professional gambling forms the backbone of organized crime in
7 this country, we appreciate the opportunity to appear before
8 you today and present testimony regarding this often misunder-
9 stood field.

10 To begin with, by way of background, let me explain
11 that the FBI has not always had jurisdiction over gambling
12 violations. As a matter of fact, we had no jurisdiction what-
13 soever, to speak of, prior to September, 1961, when Congress
14 enacted three statutes banning interstate transportation in aid
15 of racketeering, interstate transportation of wagering
16 paraphernalia, and interstate transmission of wagering infor-
17 mation. Prior to that time, most gambling investigations in the
18 United States were limited to the local, county, or state levels.

19 The problems stemming from such a situation were
20 multiple. When a large-scale ring operated across state --
21 and sometimes international -- boundaries, local agencies were
22 unable to exercise comprehensive coverage of anything outside
23 their own immediate areas. In other instances, some depart-
24 ments had neither the experienced personnel nor the laboratory
25 facilities to handle complex gambling investigations. And in

bwm 3

1 other cases, honest, competent officers in one community found
2 their efforts thwarted by dishonest or incompetent associates
3 in another state or community.

4 Legislative Studies

5 Faced with these circumstances, various Congressional
6 groups have conducted organized crime hearings during the past
7 quarter of a century, including the two Senate bodies known
8 popularly as the Kefauver Committee and the McClellan Committee.
9 In addition, the President's Commission of Law Enforcement and
10 Administration of Justice was convened and published a 1967
11 study captioned "Task Force Report: Organized Crime."

12 The findings of these diverse groups were most
13 informative and enlightening (ranging as they did from labor
14 racketeering and narcotics trafficking to hoodlum infiltration
15 of legitimate business), but the one common strain running
16 through most of them was that gambling bankrolled the rest of
17 the underworld's empire and that legislative, judicial, and
18 police corruption were an almost inevitable consequence of
19 allowing illegal gambling to operate unchecked for any length
20 of time.

21 In fact, the Special Senate Committee to Investigate
22 Organized Crime in Interstate Commerce announced as far back as
23 1951 that the "most shocking revelations" it had uncovered dealt
24 with the "extent of official corruption and connivance in facil-
25 itating and promoting organized crime." After citing two

specific instances in which local bookmakers were paying off corrupt police officers -- at the rate of \$152,000 a month in one city and more than \$83,000 a month in another -- the Committee concluded that law enforcement itself had "broken down" in many of the communities visited.

Ten years later, after the Senate Permanent Subcommittee on Investigations heard a witness estimate that approximately \$750,000,000 was being spent annually by American gamblers to pay off dishonest police officials, Congress gave the FBI its first major jurisdiction in the organized crime field with the previously mentioned statutes..

Early Efforts

Before that, our efforts in this area had been restricted to random instances when underworld figures violated some specific statute over which we had jurisdiction, such as those aimed at thefts from interstate shipments, interstate transportation of stolen property, and the like. In 1943, for example, we shattered the entire top leadership of the Syndicate structure in Chicago for attempting to extort large sum of money from the motion picture industry. But these were isolated cases, involving individual subjects, and did not lend themselves to a coordinated, continuing campaign to eradicate the evil of organized crime as a whole.

Fortunately, the recent legislation has done much to remedy this situation. To date, FBI investigations under the

3
1 three 1961 laws have resulted in more than 1,800 convictions
2 and some \$2,900,000 in fines. Among those sentenced to prison
3 were such national Syndicate leaders of Raymond Patriarca, of
4 New England; Samuel Rizzo DeCavalcante, of Elizabeth, New Jersey;
5 John Philip Cerone, of Chicago; and Anthony Giardano, of
6 St. Louis, plus a number of their ranking aides and lieutenants.

7 Subsequent Congressional hearings determined, however,
8 that the laws limiting Federal efforts to interstate violations
9 left a big void regarding large-scale local gambling ring, which
10 city, county, or state authorities were unwilling, or unable, to
11 prosecute. As a result, Congress enacted the Organized Crime
12 Control Act of 1970, Title VII of which outlaws local gambling
13 operations meeting certain minimum specifications. The same
14 title also gives the FBI jurisdiction over any bribery of city,
15 county, or state officials (including prosecutors, judges, or
16 police officers) by persons whose activities fall within the
17 purview of the statute. To date, our investigations under the
18 Organized Crime Control Act have resulted in over 1,600 convic-
19 tions, some \$1,600,000 in fines, and confiscations of cash,
20 property, weapons, and wagering paraphernalia valued at approx-
21 imately \$10,800,000.

22 See Exhibit No. 1, captioned "Gambling
23 Convictions in FBI Cases ..." for an
24 analysis of prosecutive efforts under
25 the 1961 and 1970 statutes.

1 Of the laws enacted by Congress since 1961, one of
2 the most valuable in the fight against organized crime has been
3 Title III of the Omnibus Crime Control and Safe Streets Act of
4 1968, which provides for the use of court-approved electronic
5 surveillances in the investigation of certain specified viola-
6 tions.

7 Because organized crime is both national and inter-
8 national in scope, employs thousand of individuals in its
9 operations, utilizes the latest in electronic communications
10 systems, and has a long-standing reputation for killing or
11 intimidating live witnesses to its activities, electronic
12 surveillances are an absolutely essential weapon in the
13 Government's arsenal. As regards major gambling rings, it is
14 doubtful that they could stay in business a week without
15 extensive telephonic connections regarding their line data and
16 layoff operations. This is precisely the Achilles' heel that
17 Title III is aimed at.

18 Since their first use in 1969, court-approved
19 electronic surveillances in FBI cases have led to some 3,000
20 arrests in the gambling field, over 1,200 convictions, and the
21 confiscation of cash, property, weapons, wagering paraphernalia,
22 and contraband valued at more than \$7,000,000. In fact, of the
23 approximately 2,700 organized crime subjects in various stages
24 of prosecution as of April 1, 1974, nearly 1,700 were arrested
25 as a result of information developed by installations made under

bwm 7

1 the provisions of Title III. Hoodlum figures arrested, indicted,
2 or convicted since 1969 on electronic surveillance information
3 include some of the biggest names in the organized underworld,
4 as evidenced by the case involving Samuel Rizzo DeCavalcante,
5 a top Syndicate leader in the Elizabeth, New Jersey, area.

6 See Exhibit No. 2, captioned

7 "Samuel DeCavalcante Case"

8 Despite the effectiveness of these installations,
9 the FBI is well aware of their sensitive nature and uses them
10 strictly within the framework laid down by Congress in the
11 Omnibus Crime Control and Safe Streets Act of 1968. The legal
12 and procedural steps taken by the FBI to institute Title III
13 coverage are detailed in an exhibit we are herewith presenting
14 to the Commission for its information.

15 See Exhibit No. 3, captioned

16 "Chronology of Title III Electronic
17 Surveillance Investigation."

18 At the request of the Commission, we have conducted
19 a survey of all field offices with respect to the number and
20 type of Federal gambling investigations initiated by the FBI
21 during the period January 1, 1966, through December 31, 1973.

22 This survey disclosed that a total of 5,650 cases
23 (involving 9,213 individuals) were investigated by Bureau
24 Agents, with 742 being closed for failure to meet the elements
25 of the statutes. Of the remainder, prosecution was declined in

bwm 8

1 4,132 cases by Strike Force or United States Attorneys, 52
2 cases were no-billed by Federal Grand Juries, and 724 resulted
3 in indictments.

4 With respect to this survey, I would like to call to
5 your attention the fact that even the cases closed, declined,
6 or no-billed were not complete losses, since 1,978 of them
7 were referred to local authorities for prosecutive consideration.

8 Breaking down the cases wherein indictments occurred,
9 we note that 270 stemmed from court-approved electronic surveil-
10 lances and that 454 did not. Furthermore, the 270 Title III
11 cases involved 3,323 subjects, as contrasted with 2,227 in
12 non-Title III cases. On the other hand, convictions in
13 non-Title III cases have exceeded Title III convictions 1,337
14 to 1,210 during the period of the study because a number of
15 the latter cases were being held in abeyance pending a Supreme
16 Court decision regarding the issue of authorization signatures
17 on Title III applications.

18 Of the total number of cases where indictments were
19 returned, the major type of gambling was found to be sports
20 bookmaking (333 out of 724 cases), with horse bookmaking in
21 second place (221 cases). The latter figure, however, repre-
22 sents a partial duplication of the first figure since a number
23 of the operations raided handled both sports and horse book-
24 making. Numbers rings accounted for 187 of the cases, and
25 casino-type gambling totaled 110. Falling in the miscellaneous
category, with 14 cases, were such activities as punchboards,

bwm 9

tip sheets, and shell games. As regards casino-type operations, it is interesting to note that our offices report the nationwide pressure on these establishments has just about completely driven them underground, and that there is practically no open, illegal casino gambling in the United States at the present time. This includes such formerly notorious locations as those in Hot Springs, Arkansas, and the Newport-Covington area in northern Kentucky.

Scope of the Problem

On the whole, major gambling investigations are extremely complex in nature. They consume time, manpower, and material resources in almost unprecedented quantities. They are difficult to prove. They require expertise in the nuances of the trade. And the legal maneuvers encountered in a single case -- spearheaded by the highest priced defense talent available -- may drag on literally for months and years.

Typical of the effort required in one of these investigations was the 1967 conviction of international gambling figure Gilbert Lee Beckley and two of his associates in the United States District Court at Miami for violating the Interstate Transportation in Aid of Racketeering Statute. All three were sentenced to substantial prison terms, with Beckley receiving a total of ten years. Before these convictions could be recorded, however, or the case even taken to trial, it had been necessary for our Agents to analyze thousand of telephone

bwm 10

1 calls from all over the country and parts of Canada dealing with
2 the dissemination of line data by Beckley and other leading
3 handicappers.

4 See Exhibit No. 4, captioned "National
5 Gambling Communications Network"

6 The following year, John Roselli, a notorious
7 Syndicate racketeer on the west coast, was convicted and sen-
8 tenced to prison after the longest Federal criminal trial in
9 Los Angeles history. Subsequently, investigation conducted in
10 the Roselli gambling case led to the 1972 conviction of
11 Anthony Giardano, ranking Syndicate leader in the St. Louis,
12 Missouri, area, and two "captains" from the Detroit area.

13 See Exhibit No. 5, captioned
14 "John Roselli Case"

15 Even more recently, our New York office has advised
16 that one of its current investigations has entailed the use of
17 20 Agents for an entire year. Unfortunately, the litigation
18 in this matter has not been fully resolved yet, so we are unable
19 to say what the end results in that case will be.

20 Dissemination Program

21 Needless to say, not every gambling investigation
22 leads to prosecution in Federal court. Many do not even qualify
23 under the Federal statutes, or else do not fall within the
24 jurisdiction of the FBI. To insure that information thus
25 developed realizes its full potential, however, the Bureau has

lw - 31

1 instituted a fieldwide dissemination program aimed at forwarding
2 such data to the appropriate agency as rapidly as possible. .

3 The result has been that, during the past six years,
4 other federal, state, and local law enforcement agencies have
5 utilized information obtained from the FBI to make some 20,000
6 gambling arrests and confiscate over \$9,000,000 worth of cash,
7 property, weapons, and wagering paraphernalia.

8 See Exhibits Nos. 6 and 7, captioned
9 "Number of Gambling Arrest ..."
10 and "Value of Cash, Property, Weapons,
11 and Wagering Paraphernalia Confis-
12 cated..."

13 In addition, Federal gambling investigations by our
14 agents have uncovered tax violations utilized by the Internal
15 Revenue Service during the past year to confiscate, or assess
16 liens against, \$14,861,000 worth of property in the states of
17 Connecticut, Florida, Georgia, Massachusetts, Michigan, and
18 Washington.

19 Question of Evaluation

20 One difficulty law enforcement has encountered in the
21 fight against organized crime is that of determining the amount
22 of progress being made.

23 Simply counting convictions is not an adequate cri-
24 terion of prosecutive success, inasmuch as some subjects go to
25 prison for as much as ten years whereas others manage to get

lw - 32

1 off with a light fine and are almost immediately back out on
2 the streets again. Furthermore, some hoodlums are organiza-
3 tionally much more important than others, and their incarceration
4 tion hurts the underworld considerably more than does the
5 elimination of less important underlings.

6 Likewise, any attempt to use the "handle" concept as
7 a measuring device quickly runs into two stumbling blocks:
8 (1) few sources anywhere can be found to agree on what the
9 "handle" (or amount of money wagered during a given period)
10 actually is, and (2) it does not assess the overall threat a
11 particular mob figure and his followers pose to society at
12 large.

13 As an indication of the problems involved in trying
14 to determine what the national "handle" amounts to, the 1967
15 President's Commission on Law Enforcement and Administration of
16 Justice said that it had encountered estimates varying from as
17 low as \$7,000,000,000 a year to as high as \$50,000,000,000 a
18 year and concluded "There is no accurate way of ascertaining
19 organized crime's gross revenue from gambling in the United
20 States."

21 Obviously, then, the question arises as to how you
22 can employ the "handle" as a yardstick, if you cannot even de-
23 termine what it is.

24 By the same token, it would appear to have a minimum
25 usefulness, even if it were provably correct, since a hoodlum's

lw - 33

1 position is governed by many factors other than the size of his
2 gambling activities. The head of a syndicate group controlling
3 vast loansharking operations along the New York City waterfront,
4 international narcotics smuggling rings, powerful labor unions
5 capable of crippling widespread areas of the community, and a
6 vicious gang of professional killers sworn to carry out his
7 every command is certainly much more of a threat than the book-
8 making activities of a street-corner independent from a Midwest
9 manufacturing town, whose annual "handle" may exceed by several
10 million that of the New Yorker's relatively low-key numbers
11 operation.

12 Intelligence is the Key

13 FBI experience in the organized crime field has shown
14 conclusively that the only true means of evaluating accomplish-
15 ments is to develop an intelligence system aimed at identifying
16 the major underworld leaders, the scope of their activities,
17 their spheres of influence, and their source of income so that
18 a realistic guide can be established to determine both the
19 short-range and long-range goals being achieved.

20 As a result, we have targeted our investigations to
21 go for the roots of the gambling tree, rather than the indivi-
22 dual branches. And we think this approach is a highly effective
23 one.

24 In addition to the steadily rising conviction rate
25 of key gambling figures, we currently have in various stages

W - 34

1 of prosecution more than 2,500 organized crime subjects on
2 gambling or related charges (such as loansharking, perjury, or
3 contempt). Particularly hard hit have been the upper echelons
4 of the Syndicate in New York City, New England, Philadelphia,
5 Buffalo, Chicago, Cleveland, Detroit, St. Louis, Denver, and
6 Los Angeles.

7 Because of this intensified pressure, the underworld
8 leadership is being badly diluted, and rebellious young mobsters
9 at the bottom of the organization -- not to mention members of
10 rival gangs -- are asserting their independence and refusing to
11 obey orders unquestioningly as they did in the past.

12 At the same time, we are also hitting the big criminal
13 groups in the pocketbook, where it hurts almost as much as
14 going to prison.

15 Confiscations under the Organized Crime Control Act,
16 as previously mentioned, have already exceeded the \$10,000,000
17 mark; nationwide raids during one recent three-month period
18 broke up gambling rings estimated to have been handling over
19 \$1,200,000,000 a year in wagers; at least two major bookmakers
20 (one in New England and one in the South) have indicated to their
21 associates that Federal prosecutive efforts were driving them
22 into other lines of endeavor; and two national Syndicate figures
23 have fled the country because of the investigative "heat" being
24 brought to bear on them.

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25 Demands for Legalization

.W - 35

1 When Congress ordered the creation of this Commission
2 in the Organized Crime Control Act of 1970, one of the responsi-
3 bilities it gave you was that of making recommendations regard-
4 ing the possibility of legalizing gambling.

5 Unfortunately, this is a topic which normally gener-
6 ates more heat than light and I do not want to give the impres-
7 sion in answering your questions that the FBI is injecting
8 itself into matters of a strictly legislative nature.

9 Certain segments of the press and the public have
10 dedicated themselves to a campaign aimed at relaxing, if not
11 totally eliminating, all restrictions on gambling. They main-
12 tain that it is a criminal violation which injures no one and
13 brings pleasure to many. They allege that it promotes graft
14 and corruption because it gives police a means of demanding
15 extortion from the players as well as the operators. And they
16 conclude that betting with a numbers operator or bookmaker is
17 no more morally objectionable than wagering on a state lottery
18 or driving out to the nearest track and patronizing the pari-
19 mutuel windows.

20 As an investigative agency of the Federal Government,
21 the FBI is not in a position to pass judgment on the moral
22 aspects of gambling. Nor do we intend to inject ourselves into
23 the pro's and con's of the revenue benefits which would pur-
24 portedly accrue to the state and Federal governments from the
25 taxation of legalized gambling. We do think, however, that a

:lw - 36

1 closer look should be taken at the "victimless crime" label
2 which has been hung on gambling by those elements seeking to
3 promote a change in its status.

4 The people who say that no one is hurt by these
5 activities and that the offenses are not crimes at all but are
6 merely social transgressions overlook four important factors:

7 (1) Gambling and violence go hand-in-glove. Hood-
8 lums operating numbers or bookmaking rings generally protect
9 their monopolies by savage acts of terrorism against those op-
10 posing them, either directly or indirectly. Furthermore, this
11 brutality stems from the underworld's all-consuming greed and
12 desire to eliminate competition, and any attempt at legalizing
13 its activities would merely lead to greater violence as the
14 profit margins began to rise.

15 See Exhibits Nos. 8 and 9 for two photo-
16 graphs of the devastation wrought by the
17 November 23, 1962, bombing murder of
18 Youngstown, Ohio, hoodlum Charley Cavallaro
19 and his 11-year-old son. Also seriously
20 injured in the bombing, which represented
21 more than a decade of fighting for control
22 of gambling and other rackets in the
23 Youngstown area, was another of Cavallaro's
24 sons.
25

W - 37

1 See Exhibit No. 10 for a photograph of
2 material seized during an FBI raid on a
3 major Midwest gambling ring's headquarters.
4 The juxtaposition of weapons and wagering
5 paraphernalia should partially refute the
6 allegations of those who would have the
7 public believe that gambling is a "victim-
8 less" offense which hurts no one.

9 (2) Gambling saps the financial resources of the
10 Nation to deal with social problems by concealing vast sums of
11 money from taxation. It also drains the family budgets of
12 those least able to afford anything beyond the bare necessities
13 of life.

14 (3) Gambling spawns a whole generation of other
15 crimes. Not only does it drive hard-pressed victims to hood-
16 lum loansharks -- who regularly use threats, beatings, and
17 murders as tools of their trade -- but it also leads to rob-
18 beries, burglaries, and other crimes by victims indebted to the
19 underworld.

20 (4) Gambling creates a corps of silent victims
21 caught in the dual fear that assisting law enforcement will cut
22 them off from the services they so desperately crave as well
23 as marking them for gangland retaliation.

24 Whenever I hear people talk about gambling being a
25 "victimless crime," I think of one highly publicized case we

W -38

1 had in New York City a couple of years ago where a middle-aged
2 bartender robbed 20 banks in less than three months' time in
3 order to pay off a steadily mounting series of Syndicate gambli-
4 ing debts he had incurred. Or of a bandit shot to death in 1960
5 while trying to rob a bank and buy his way out from under an
6 accumulation of outrageously high gambling bills. If these
7 were "victimless crimes," I would like to hear someone explain
8 that to these men's wives.

9 Help or Hurt the Underworld?

10 As the Commission is undoubtedly aware, there are two
11 schools of thought regarding the effect of legalized gambling
12 on mob-controlled operations. One offers the not unlikely
13 proposition that housewives and other previous nongamblers,
14 caught up in the excitement of playing state lotteries, may be-
15 come addicted and start patronizing the hard-core numbers and
16 bookmaking businesses conducted by the Syndicate and their
17 associates. The other viewpoint maintains that state lotteries
18 actually undermine the criminal element by competing with them
19 and taking valuable customers away from them.

20 In preparation for this appearance we surveyed our
21 field offices covering the eight states which now conduct legal
22 lotteries and asked them what effect their investigations and
23 their informants had noted on illicit gambling as a result of
24 the creation of the lotteries.

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25 Without exception, the offices covering Connecticut,

7 - 39

1 Maryland, Massachusetts, Michigan, New Hampshire, New Jersey,
2 New York, and Pennsylvania reported no discernible effect what-
3 soever. As most of them pointed out, lotteries are not geared
4 to compete with the underworld's numbers racket which is con-
5 ducted daily, offers credit, pays better odds, is nontaxable,
6 and allows the gambler to select the particular digits on
7 which he wishes to place his wager.

8 Interestingly, the press reported last year that
9 New York City was considering a plan that would take the battle
10 right to the enemy's front. The Off-Track Betting Corporation
11 (OTB) announced in February, 1973, that it wanted to launch
12 a numbers operation of its own, identical in concept to the
13 Syndicate's but offering better odds. Instead of paying off
14 at the rate of 600-to-1 or 500-to-1, as the criminal element
15 does, OTB proposed reimbursing winners at the rate of 750-to-1.

16 If nothing else, such a system would offer the
17 public two options which might lure bettors away from the under-
18 world; presumably it would be honest (something that can rarely
19 be said of the illegal operators), and the higher odds mean
20 that a legitimate player would realize a greater take-home
21 payoff after taxes than an illicit player would without taxes.

22 See Exhibits Nos. 11, 12, and 13 for
23 technical descriptions of how a
24 typical bookmaker and a typical
25 numbers operator work.

- 40

1 To date, nothing has been done to implement the
2 OTB recommendations in New York City, possibly because of the
3 problems of deciding just which form such legalization should
4 take.

5 Basically, there are four alternatives available:
6 (1) outright abolition of all antigambling restrictions, (2)
7 licensing of private individuals and business concerns (as done
8 now in the State of Nevada), (3) licensing of quasi-public
9 bodies (such as OTB in New York), and (4) assumption of all
10 gambling functions by the government itself.

11 Inherent Problems

12 Since the first of these four options would obviously
13 mean a cutthroat warfare and ultimate domination by the under-
14 world, most proponents of legalization limit their advocacy
15 to one of the other three possibilities. Even so, the ques-
16 tions of corruption, indirect crimes, and expertise should be
17 taken into consideration.

18 As the Chairman of this Commission, Mr. Morin,
19 pointed out last July in an address before the National
20 Conference on Public Gambling, de-criminalization of gambling
21 will not end payoffs to dishonest police or other public offi-
22 cials, despite what idealists say to the contrary.

23 Nor will it end the need for losing gamblers to
24 commit robberies, burglaries, or embezzlements, or to borrow
25 from hoodlum loan sharks in order to make up their financial

blw - 41

1 shortages.

2 Also, as Mr. List, Attorney General from the State
3 of Nevada, pointed out to the National Conference on Public
4 Gambling, few states have either the expertise or the manpower
5 to adequately control casino gambling without going through
6 a difficult adjustment period.

7 Public Reaction

8 Admittedly the problem of gambling in the United
9 States is a serious one. Its total annual gross makes it the
10 country's single largest industry. In many cases it has ac-
11 quired an aura of glamor and daring. People used to betting in
12 the comfort of their homes with friends and relatives fail to
13 comprehend the evils and violence attending professional, or-
14 ganized gambling as practiced by the American underworld. And
15 even the judiciary -- daily listening to trials of murderers
16 and other vicious criminals -- tend to think of gambling viola-
17 tions (regardless of the size or other factors) as harmless
18 type offenses.

19 If this Commission successfully manages to inform
20 people everywhere regarding the true nature of gambling it will
21 have more than served its purpose.

22 Lately we have seen a tendency of some judges to
23 hand down substantial sentences of five and ten years in Syndi-
24 cate gambling trials, and we think this is an encouraging trend.
25 It shows a growing public awareness of the dangers posed to
society by the organized underworld.

av 31

1 We in the FBI certainly wish you every success
2 in your endeavors, and I hope that this presentation today
3 will be of some assistance to you in your efforts.
4

5 Thank you.

6 CHAIRMAN MORIN: Thank you very much, Mr. Cleveland.

7 Incidentally, by a strange coincidence, Senator
8 Cannon happens to be chairman of the Committee whose room
9 this is normally. I happen to be sitting in his seat. I think
10 the only thing I can do in retribution is offer him the first
11 questioning period.

12 SENATOR CANNON: Well, thank you, Mr. Chairman.

13 Mr. Cleveland, that is a very interesting statement
14 you have presented here. I would like to call your attention
15 to a few parts of it and question you a little further.

16 On page 7 you said that, "Even the cases closed,
17 declined, or no-billed were not complete losses since 1978 of
18 them were referred to local authorities for prosecutive
19 consideration."

20 Do you have any results on those cases that were
21 referred to local authorities?

22 MR. CLEVELAND: Because the other agencies do not
23 always keep us apprised of the prosecutive action they take with
24 the information we furnish them, our records are not complete
25 in this respect. Some of the accomplishments dealing with
arrests and confiscations, however, are set forth as Exhibits

av32 1 6 and 7 of my testimony.

2 Many of these instances stem from cases opened by.
3 the FBI but later referred to local authorities when it
4 became apparent that no federal law had been violated or the
5 United States Attorney did not believe federal prosecution was
6 warranted.

7 SENATOR CANNON: So that you do cooperate fully
8 with the local authorities on particular cases even though they
9 may not involve violations of the 1970 Act?

10 MR. CLEVELAND: Right. Yes, sir.

11 SENATOR CANNON: On page 11 you refer to, "20,000
12 gambling arrests and confiscate over \$9,000,000 worth of cash,
13 property, weapons, and wagering paraphernalia."

14 What type of property and wagering paraphernalia
15 have you confiscated there and have you been able to make a
16 disposition of those items to reduce them to cash?

17 MR. CLEVELAND: This would include a lot of technical
18 equipment: telephones, adding machines, office equipment,
19 automobiles, and the like. All of these items are turned
20 over to a United States Marshal, who is charged with disposing
21 of them after the government's prosecutive interests have been
22 completed.

23 SENATOR CANNON: So, if they are using an automobile
24 in the transportation of illegal gaming equipment, then that
25 is a confiscated item and that can be turned over to the Marshal.

av 33

1 for disposal?

2 MR. STAFFELD: We also have the privilege of
3 confiscating property under certain circumstances, but there
4 has been rather a reluctance to take that kind of a challenge.

5 SENATOR CANNON: In other words, if you find that
6 a location is being used, an apartment is being used or a
7 house is being used, then you can confiscate that property?

8 MR. STAFFELD: Technically we can.

9 SENATOR CANNON: Have you taken any actions under
10 that provision of the law?

11 MR. STAFFELD: No, sir. The Department of Justice
12 has asked that we not become involved. There have been some
13 instances when a federal judge has decided that this should
14 be done because of the gravity of the case. It has been very
15 seldom.

16 SENATOR CANNON: You indicated in your statement
17 or you said that as a result of efforts of the federal govern-
18 ment under the 1970 Act, you have driven a number of these
19 people to other endeavors and two national Syndicate figures
20 have fled the country.

21 Who are those figures?

22 MR. CLEVELAND: One is Sam Giancana in Chicago,
23 and the other one is Santo Trafficante in Tampa.

24 SENATOR CANNON: Are they still out of the country
25 and are warrants outstanding on them?

av 34

1 MR. STAFFELD: There are no warrents outstanding.
2 Gil Beckley, who was mentioned in Mr. Cleveland's testimony,
3 disappeared subsequent to his conviction, and of course, the
4 warrant is still outstanding for his arrest.

5 SENATOR CANNON: I see. He was never actually in
6 custody. He was convicted and then disappeared, is that it?

7 MR. STAFFELD: Yes.

8 SENATOR CANNON: Are there any outstanding warrants
9 on any of these people outside the country now and is there
10 any effort ongoing to extradite them.

11 MR. STAFFORD: Not to my knowledge. Do you feel
12 that the effect or the influence of organized crime has
13 increased or decreased over the past few years now as a result
14 of the activities or in connection with the activities under
15 the 1970 Act or 1961 Act?

16 MR. STAFFORD: Well, we do know that of the leaders
17 of this organized crime element involved in gambling operations,
18 many of them have been jailed or have for one reason or
19 another gotten out of the business.

20 Now, is organized gambling bigger today than it
21 was yesterday or ten years ago?

22 Offhand, this is a difficult judgment to make, but
23 I think we can safely say that, had it not been checked, it
24 would be a lot bigger than it is today. With the spotlight
25 turned on the problem after the Appalachian meeting of 1957,

av 35

1 the full force of public outrage and Congressional legislation
2 was brought to bear on corruption and gambling operations, and
3 I think that had this not happened, the situation would be
4 much worse now than it is.

5 SENATOR CANNON: Do you think that the prosecution
6 of these gambling offenses is the most effective means of
7 controlling organized crime?

8 MR. STAFFORD: I think certainly it is an
9 important one. Is it the most important? I think it probably
10 is.

11 SENATOR CANNON: Now, do you believe that you have
12 adequate tools in this area under the 1961 and 1970 Act or do
13 you think you ought to have more tools than Congress has
14 given you at the present time?

15 MR. STAFFORD: What we have now has been quite
16 effective and we certainly have not seen any need for additional
17 legislation, and we have not asked for it.

18 SENATOR CANNON: We have heard a lot of statements
19 that the proceeds from illegal gambling supports organized
20 crime.

21 Do you have precise and specific evidence to support
22 that, and if so, give us some examples of the types.

23 MR. STAFFORD: Well, we know that some gambling
24 operations support major syndicate gangs. They have no other
25 means of income. It all comes from their various gambling

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1 activities, so certainly it does support the organized crime
2 effort as a whole.

3 We have, of course, a man from Pittsburgh who has
4 testified with respect to the size of his operation and the
5 fact that he employed 2,000 individuals in this kind of an
6 operation. So it certainly is the source of income for
7 organized crime itself.

8 SENATOR CANNON: Well, were those 2,000 people
9 engaged in organized crime activities or in the illegal
10 gambling alone?

11 MR. STAFFORD: I would say they are part of the
12 same thing. They are organized crime and their function in
13 organized crime is the perpetuation of this gambling.

14 SENATOR CANNON: In your statement you indicate that
15 there is practically no illegal casino operations in the
16 United States today.

17 How did you use tools under the '61 or '70 Act
18 to close down Covington, Kentucky, for example, and some of the
19 other places that have been closed that were notoriously open
20 over the years?

21 MR. STAFFORD: Well, of course, these are operations
22 that you can penetrate through undercover operators. We had
23 some undercover operators who were able to penetrate and get
24 into the actual casino operations and also penetrate some
25 corruption aspects that were ongoing. It was through these

av 37 1 investigations, employing on-the-body recording devices to
2 pick up pertinent conversations, that we were able to penetrate
3 and close up those casino operations.

4 SENATOR CANNON: Do you have a feel for whether the
5 legalizing of the lotteries that have become more prevalent
6 recently now has tended to lessen the feeling of the dangers
7 of gambling, that is, from the standpoint of organized crime?

8 MR. STAFFORD: We have no indication that this is
9 cutting into organized crime's profits.

10 Is that what you mean?

11 SENATOR CANNON: What I was really directing that
12 toward is the attitude of the general public and the attitude
13 of the courts toward gaming as a result of the fact that
14 lotteries have started now to become quite prevalent from a
15 legalized standpoint, and your off-track betting is
16 proliferating and so on.

17 MR. STAFFORD: Well, I think probably insofar as
18 the public in general is concerned, I can think of probably
19 one appropriate example. I'm familiar with some offices in
20 the State of Maryland -- business offices -- and the secretaries
21 in them never knew what a lottery ticket was, probably never
22 bet on the numbers or did anything in that vein before. But
23 now that you can buy lottery tickets in the beauty parlor,
24 barbershop, and meat market, these employees can participate
25 under familiar surroundings and thus acquire an introduction

av 38

1 to this type of gambling.

2 Eventually, however, they outgrow this simplified
3 version and want something more frequent or more sophisticated.
4 Does this lead them into the illegal category? I don't know.

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1 SENATOR CANNON: But as far as the lotteries them-
2 selves are concerned, you say in your statement that they have
3 had no appreciable effect on the illegal type of activities?

4 MR. STAFFORD: I can't say that it decreases the
5 illegal effects of it.

6 SENATOR CANNON: From what you say there, I think
7 there is a reasonable inference that it might actually increase
8 it because of getting a broader segment of the public aware
9 of how it's played and what's going on.

10 MR. STAFFORD: There have been some surveys -- I
11 don't know how authentic or conclusive they are, but there
12 have been some suggestions that this may be the case. I don't
13 know how substantially it can be established.

14 SENATOR CANNON: What, to you, is the most pervasive
15 problem today for federal law enforcement in the field of
16 illegal gambling?

17 MR. STAFFORD: Well, I think that it's still the
18 problem of enforcement, and full enforcement from all levels
19 of police and other law enforcement agencies. I think we just
20 have to put the pressure on it constantly.

21 SENATOR CANNON: Do you think it's possible to
22 eliminate illegal gambling from the country?

23 MR. STAFFORD: No, sir, I do not. I think that
24 wagering, with the interest people have in it and the fact that
25 they have a little extra money, results in there always being

av 2 1 a gambling market of some kind.

2 SENATOR CANNON: You said in your statement that you
3 had on one case -- and it hasn't been concluded yet -- twenty
4 agents tied up on an investigation for a period of a year.

5 Is this kind of an effort of resources, both in the
6 money and personnel, justified in the problems that would be
7 eliminated by possible prosecution in a case of that type?

8 MR. CLEVELAND: We think it's fully justified,
9 Senator. The results, I think, will have a very good effect on
10 the particular endeavor involved, which was bleeding society of
11 millions and millions of dollars through gambling and corruption.

12 The fact that we were able to break that case, I
13 think, will have a great effect on that particular endeavor
14 throughout the area served by the gambling operation.

15 Do you agree with that?

16 MR. STAFFORD: Yes.

17 SENATOR CANNON: You talked about this Cavallero case
18 in Youngstown, Ohio, and have some exhibits here of the damage
19 done.

20 Were there ever any arrests and convictions in that
21 case?

22 MR. STAFFORD: No, sir, there were no arrests, but
23 because of the intensive investigative pressure brought on this
24 matter by local, state, and federal officials, the string of
25 bombings which had been plaguing Youngstown for ten years was

av 3

1 brought to an abrupt end.

2 SENATOR CANNON: Were you directly involved in the
3 investigations in an attempt to --

4 MR. STAFFORD: No, sir.

5 SENATOR CANNON: Why not? Didn't you have the
6 authority under the '61 Act?

7 MR. STAFFORD: There wasn't any direct involvement
8 as far as our gambling operations were concerned here. This
9 was an internal strife in the various underworld factions of
10 Youngstown at the time, but insofar as the murder or the
11 bombing, as I recall, we didn't investigate it.

12 SENATOR CANNON: You referred to the Roselli case
13 in your exhibits here.

14 Has that case been completely disposed of? And I'm
15 talking now about the Friars' Club case that was in the news
16 so much.

17 MR. STAFFORD: I think it has. It has been concluded.

18 SENATOR CANNON: And Roselli, was he convicted in
19 the Friars' Club case, or was that a different case?

20 MR. STAFFORD: Friars' Club.

21 SENATOR CANNON: Friars' Club; and you say that he
22 was Al Capone's protege and an old-time Syndicate member.

23 Was he involved in one of the so-called "family
24 operations"?

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25 MR. STAFFORD: Allegedly. Insofar as we can determine

1 he was supposed to be a west coast representative for the
2 Chicago organization.

3 SENATOR CANNON: Mr. Chairman, I don't want to use
4 up all of your time here.

5 CHAIRMAN MORIN: No. Our practice is in deference
6 to the rollcall bells here to let the Congressional members
7 question first. So I will call on Congressman Carney of Ohio

8 MR. CARNEY: I will defer my questions at this time.

9 CHAIRMAN MORIN: Well, before I pass on to other
10 members, I think Senator Gurney has submitted some questions.
11 I don't know whether he is going to be here personally, but I
12 think it would probably be more orderly if we waited. If he
13 doesn't appear, I will read some of them, and then I have some
14 of my own.

15 Mr. Coleman is the prosecuting attorney from
16 Monmouth County, New Jersey, and I am sure he has had some
17 contact with some of your friends over on that side of the
18 river. So you're next, Jim.

19 MR. COLEMAN: Thank you, Mr. Chairman.

20 Mr. Cleveland, I have one or two questions. On
21 page 20, you have stated there were four alternatives available.
22 One is an outright abolition of all anti-gambling restrictions,
23 and I am certain that the Federal Bureau of Investigation is
24 not for that.

25 MR. CLEVELAND: That is right, sir.

1 MR. COLEMAN: The other three, of course, deal with
2 who should run it: the state, private, or by the government.

3 But going back to what Senator Cannon raised of the
4 two possible effects of lotteries, where you have said that you
5 have no information that the credit will be illegal to present
6 handling sold from all the eight states that have lotteries; is
7 that correct?

8 MR. CLEVELAND: The survey we made was from our
9 field offices covering those areas indicated that it had not
10 been made to give us that breakdown.

11 MR. COLEMAN: And that other possibility that you
12 suggest about people compulsively having gotten on the track,
13 so to speak, going to other gamblers; I assume there are no
14 statistics on that either?

15 MR. CLEVELAND: No, sir.

16 MR. COLEMAN: Thank you, Mr. Chairman.

17 CHAIRMAN MORIN: Also on our Commission is the
18 prosecuting attorney from Stark County, Ohio, who is Mr. Dord.
19 We have law enforcement people on the Commission, as you know,
20 Mr. Cleveland.

21 MR. CLEVELAND: Yes, sir.

22 MR. DORD: I'm particularly interested in that
23 part of your statement that deals with the scope of the
24 problem.

25 On page 9, in particular, the complex nature of

av 6

1 gambling cases, both from an enforcement and a prosecution
2 standpoint; and in the context of how do we make a more
3 comprehensive enforcement effort against the problem of
4 gambling, I sense from your testimony that you feel that your
5 effort would be certainly complemented by a more effective
6 local effort than is presently taking place in many areas of
7 the country.

8 Is that a fair summary of your judgment, that the
9 overall enforcement effort would certainly be better, given
10 a more effective local effort?

11 MR. CLEVELAND: There is no question about that,
12 Mr. Dowd. I think that we have to have an effort on the part
13 of all local authorities if we are to have any success at all,
14 and where there is not that full effort, then it's a question
15 of the huge amount of manpower devoted to a problem to try to
16 get it in hand.

17 MR. DOWD: Accepting that the enforcement problem
18 as you describe it is complex, and accepting the proposition
19 that even among members of the Federal Judiciary you have
20 judges who look upon gambling as of a minor nature, do you
21 have any recommendations to the Commission on how we might, in
22 some way, help stimulate a more comprehensive local effort,
23 recognizing that you have the problems of priorities at the
24 local level, you have the problems with the judges probably
25 compounded in the sense of looking upon gambling offenses as

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1 minor and unwilling for one reason or another to visualize it
2 in the context that you do in this very comprehensive report?

3 Is there some way that we can help stimulate a more
4 effective local effort?

5 MR. CLEVELAND: I would think it boils down to a
6 public relations problem. I think if this Commission is able
7 to inform the general public of some of the dangers of organized
8 crime and organized gambling, it would go far toward getting
9 the problem to the people. I think most people don't realize
10 the seriousness of the problem.

11 MR. DOWD: I think that probably includes people
12 in enforcement.

13 MR. CLEVELAND: Yes, sir, I think so.

14 MR. DOWD: You have a difficult time -- the FBI
15 have a difficult time in visualizing how the evils of illegal
16 gambling that you have categorized are going to be eliminated
17 by more legalization?

18 MR. CLEVELAND: We have not seen yet where there
19 has been too much decrease in illicit gambling in those areas
20 where they have legalized gambling.

21 MR. DOWD: Well, you have talked about the attractive-
22 ness of illegal gambling, easy credit, no taxation; Those
23 two stand out in my mind.

24 Even if the government were to assume in some broad
25 way all gambling in the sense that they would attempt not to

av 8

1 franchise it but simply to assume the entire gambling operation,
2 would that still leave open the illegal gambling market in the
3 sense that there might be easy credit that the government would
4 not extend, and also the taxation problem?

5 MR. STAFFORD: I can't visualize all gambling
6 becoming legal, so I have a difficult time looking at the other
7 side of it. If you have the same facilities in legal gambling
8 as you have in illegal gambling -- I don't know what that would
9 be -- but that is something that I can't visualize, so I
10 hardly know how to answer the question.

11 MR. DOWD: The reason I asked this second line of
12 questions following up the enforcement questions, is that your
13 response to a more effective local enforcement effort is
14 public relations, and when I talk about the problem of gambling,
15 I constantly get feedback to me by people that I consider to be
16 responsible and the people I consider to be well-educated, the
17 answer is to legalize it.

18 I think we have developed a truism in the country
19 that legalize gambling and you get rid of all of the evils
20 of illegal gambling, and I accept your answer of public
21 relations as a way to get to the local enforcement problem,
22 but I'm not certain that we would be persuasive because we
23 have developed, over a period of years, the misbelief that
24 legalized gambling will cure all the evils of illegal gambling.

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25 MR. STAFFORD: I think the people that are saying

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1 "legalize it" are the people who are probably not gamblers,
2 except on a Saturday afternoon golf match. They aren't familiar
3 with the needs of the gambler or the wants. They are not
4 familiar with booking a horse or betting a number, and so
5 therefore, the answer to them is simply legalize it. But if
6 they themselves were bitten by the wagering bug, I think they
7 would recognize that they would still want to bet every day
8 instead of once a week.

9 They might not have a good line of credit at the
10 bank, and they would be requested to go to a shylock (or hoodlum
11 loan shark) to get funds to pay off the bookmaker. This is a
12 channel where they are going to get into the illegal side of
13 wagering and illegal credit transactions, both of which are areas
14 where representatives of organized crime excel.

15 MR. DOWD: Just one more area I would like to pursue.
16 I detected in one of your answers that some of these investigations
17 that were not pursued were turned over to -- at least the
18 information -- then to local authorities where the judgment was
19 made that the attitude of a federal judge, who would inevitably
20 hear the case, was such that you consider it nonproductive.

21 If that is your response, that there really wasn't
22 a determination, that there was no offense committed, but that
23 simply it was not productive to proceed with it.

24 MR. CLEVELAND: No. There was an offense committed
25 in a case that had been established. But in the final analysis,

av 10

1 it would be more appropriate to effect prosecution in local
2 court and it was turned over to local authorities for handling.

3 MR. DOWD: You had a good case, but it was a waste
4 of time as far as going --

5 MR. CLEVELAND: It was a good case, no question.
6 As a matter of fact, we had to utilize Title III Electronic
7 Surveillances, which require a tremendous amount of manpower
8 to establish the case, but in the final analysis it was not
9 tried in federal court, so it was turned over to the local
10 authorities.

11 MR. DOWD: I might say in response to that explanation
12 that I think local enforcement occasionally is downgraded in
13 its effort when they have reached the same conclusion that
14 it's a waste of their time and resources to concentrate on a
15 gambling figure because they are going to meet the same result
16 with the court and find they have wasted a great deal of time
17 and effort for a minimal sentence, if they can even obtain a
18 conviction.

19 MR. CLEVELAND: That is possibly true, because there
20 is no question but what investigations do burn up a tremendous
21 amount of manpower.

22 MR. DOWD: Thank you.

23 CHAIRMAN MORIN: Dr. Allen has just arrived from
24 having apparently spent an hour locating the hearing room.

25 Would you like to get your breath, Dr. Allen?

av 11.

1 DR. ALLEN: Please, Mr. Chairman.

2 CHAIRMAN MORIN: Let me take over for a minute, if
3 I may.

4 What impresses me somewhat is the concern expressed
5 by the Commissioners, and I am sure, by yourselves, by Senator
6 Gurney in his questioning, and that is, is it really doing us
7 any good for you to devote twenty agents to lengthy investigations
8 just to prosecute one senior crime figure, when as soon as you
9 put him away another one pops up in his place and the operation
10 keeps on going?

11 First of all, you mentioned that the conviction --
12 I'm not sure which one it was -- but one of the convictions
13 obtained, or that you hoped to obtain, was going to have a
14 great effect on the availability of illegal gambling to
15 organized crime.

16 How will that be if none of them has apparently
17 so far? What effect will it have?

18 MR. STAFFELD: Well, it would be absolute disruption.
19 We know in some areas where we have continued to remove by
20 prosecution the senior man or the senior elements of the
21 organization, that it has gotten to a point now where to step
22 up and take the leadership role is only waving a flag and asking
23 for a federal investigation.

24 This is certainly disruptive to the underworld and
25 it certainly isn't helping the continued operation of the

av 12 1 gambling organization. So instead of being in a great big
2 network, they're probably breaking off into segments, neither
3 one of which requires the strength of criminal ability as the
4 larger organization which preceeded it.

5 That's the only thing we can suggest.

6 CHAIRMAN MORIN: Are you saying they acquire the
7 strength in the field of gambling or in other illegal gambling?

8 MR. STAFFELD: Right across the board, gambling
9 as well as other illegal activities.

10 CHAIRMAN MORIN: You have been very candid, and
11 as a matter of fact, other witnesses agree with you that there
12 really isn't any hope of stamping out illegal gambling in the
13 United States. Other witnesses, as a matter of fact, have said
14 that the best we can do is hope to control it.

15 I think, also, that it is generally agreed by your
16 Bureau and by the Department of Justice and others, that these
17 vast gambling activities could not be carried on without
18 several things, the first being a highly sophisticated
19 communications network; second, a corrupt police force,
20 locally corrupt police and other officials.

21 Am I correct in saying that without -- I mean, in
22 other words, ideally if we had local police forces with -- I
23 say this in all sincerity -- with the integrity of your own
24 Bureau, that this operation could not exist?

25 MR. STAFFELD: I think it is unfair to speak broadly

av 13

1 of corruption in law enforcement. There is some excellent work
2 being done by police across the land. You mentioned the
3 importance of the gamblers' communications systems. A bookie
4 can sit in an apartment and accept wagers for quite a while.
5 His success may last for a year or two years, until all of
6 a sudden somebody notices the pattern of traffic of messengers
7 or what have you.

8 They then decide that this pattern may indicate
9 the existence of a gambling operation and they move in. During
10 the period of time the operation was in effect, I wouldn't want
11 to say that the lack of investigative activity was due to
12 corruption on the part of law enforcement. It just had not been
13 found.

14 During that period it can become extremely large
15 and have communications over the country telephonically.

16 CHAIRMAN MORIN: It seems to me fairly obvious that
17 you couldn't conduct a numbers operation or a successful sports
18 betting operation without the local police knowing about it
19 and doing something about it if they have the desire to do so.

20 MR. CLEVELAND: Mr. Chairman, I think it is a well
21 recognized fact that in connection with investigations of
22 narcotics and gambling, local law enforcement throughout the
23 country has more problems with integrity than in any other
24 areas of local enforcement.

25 SENATOR CANNON: That raises a question in my mind.

av 14

1 You have already discussed the twenty agents that
2 were on one case for a year and still the case is not completed.

3 Wouldn't that same effort in the field of narcotics
4 be more productive than this type of activity?

5 MR. CLEVELAND: I think both areas are very
6 important because, admittedly, the finances for organized crime
7 come mainly from those two sources; namely, narcotics and
8 gambling. And that's where they get their funds to branch out
9 to other crimes, many of which become vicious crimes. Those
10 two also are the types of crimes where the craving for narcotics
11 and the craving by those hooked on gambling drive some people
12 into committing other crimes to finance these addictions.

13 It's getting there.

14 MR. STAFFELD: We do not have any jurisdiction in
15 narcotics matters. With regard to the narcotics problem,
16 however, it's the desire of Congress and the Attorney General
17 that the efforts of the FBI be of assistance in these investi-
18 gations because they feel that it is important. We do very
19 actively assist in collecting and disseminating information
20 to local and Federal law enforcement agencies whenever we run
21 across narcotics information of any kind.

22 SENATOR CANNON: Do you just pass it on? You say
23 you don't have any jurisdiction.

24 MR. CLEVELAND: That's right.

25 SENATOR CANNON: And in response to my questioning,

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1 you said that you didn't think you needed any additional tools?

2 MR. CLEVELAND: No, sir. The Drug Enforcement
3 Administration is the one designated to handle all narcotic
4 matters. They are also a part of the Department of Justice.
5 They have their own status to enforce. We assist them in every
6 way possible.

7 MR. COLEMAN: For my information, can't you make
8 a narcotics arrest?

9 MR. CLEVELAND: Of course we can make a narcotics
10 arrest if it's in connection with some case we are handling
11 where it ties in, but that is the primary jurisdiction of
12 the Drug Enforcement Administration.

13 CHAIRMAN MORIN: Getting back to this matter of
14 communication, your statement impresses me: "It's doubtful
15 they can stay in business a week without extensive telephonic
16 connection regarding their line data and layoff operations."

17 Does the telephone company know when they are
18 putting in these installations -- what they are going to be
19 used for?

20 MR. STAFFELD: Well, not a bootlegging service.
21 I don't think necessarily that the telephone company would
22 know that a particular phone is being used for gambling purposes.
23 They can acquire national lines and just like big business,
24 it can go from a business house, it can go from an apartment.
25 But I don't think that the telephone company itself would

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1 normally know what the nature of the business is unless it
2 was in some way monitored to see the nature of the traffic
3 on the phone.

4 CHAIRMAN MORIN: Well, when you then, by the use
5 of your wiretaps, know that an installation is being used by
6 an organized gambling operation, why don't you have the phone
7 company rip out the installation?

8 MR. STAFFELD: We can do that after we acquire the
9 evidence under the statutes.

10 CHAIRMAN MORIN: Do you have the power to do that?

11 MR. STAFFELD: Yes, sir.

12 CHAIRMAN MORIN: Do you feel that the telephone
13 companies are cooperating with you?

14 MR. STAFFELD: Absolutely. They have a responsibility
15 to their customers, too, but they certainly wouldn't condone
16 illegal activity on their facilities.

17 CHAIRMAN MORIN: We are getting used to some
18 mind-boggling figures here: the \$7 billion minimum, currently,
19 that you have said are your estimates ranging from \$7 billion
20 to \$50 billion of profit from illegal gambling going into
21 organized crime, and one of the more mind-boggling numbers here
22 is the \$750 million used to corrupt public officials and the
23 police.

24 The Organized Crime Control Act, I believe -- I
25 have forgotten the section -- isn't that the one that gives

av 17 1 you the authority to go in and enforce?

2 MR. STAFFELD: Section 1511.

3 CHAIRMAN MORIN: Have you used that frequently?

4 It strikes me if you're going to get to the root of
5 the problem, maybe that section would be one of the most
6 powerful weapons.

7 Is that an act of 1970?

8 MR. STAFFELD: Yes.

9 CHAIRMAN MORIN: Let me put it another way. It
10 seems to me that you may not have had really a fair trial of
11 that section. I mean, it's only three or four years old.

12 MR. STAFFELD: Well, it's had a fair amount of use.
13 It certainly is something that, when enacted, I'm sure
14 everybody in the field of law enforcement was cognizant of
15 what it meant, and it may have been a significant deterrent;
16 we don't know, but we have used it.

17 CHAIRMAN MORIN: The thing that is sort of dismaying
18 is that with all of these deterrents, that the problem seems
19 to be growing. Perhaps it's growing at a slower rate than it
20 would otherwise.

21 MR. STAFFELD: No, sir, I don't think that
22 corruption is growing. I think that for one thing, law
23 enforcement at all levels is being upgraded. We have a better
24 caliber of officer. We have a better circumstance of pay and
25 benefits for these officers, and I think in many instances

W 18

1 they can now handle the responsibilities without having some
2 outside income.

3 As a result, I certainly feel and I hope there is
4 less of an inclination toward corruption.

5 CHAIRMAN MOREN: Could we move on to the decriminali-
6 zation or the legalization issue?

7 In reviewing the testimony we have heard here,
8 apparently even a legalized gambling operation competing against
9 an illegal gambling operation suffers competitively from two
10 things, presumably.

11 One is that the illegal one will grant easy credit.
12 Secondly, I take some issue with your statement here in which
13 you said they are nontaxable. I guess they are taxable, but
14 nobody pays the tax on them.

15 Let's take sports, to be more specific, and it's
16 a little easier to discuss rather than the numbers or horse
17 booking. If a given state were to legalize sports gambling,
18 that is, that the football cards are obtainable from the local
19 grocery store, and who is licensed to sell it, and it is run
20 much as the state lotteries are; and number two, supposing
21 the Internal Revenue Code were amended to exempt from taxation
22 winnings from legalized gambling operations; and thirdly, the
23 state had passed statutes making gambling debts enforceable in
24 courts; would that add to the illegal sports gambling

19 1 operations?

2 That is a hard one to answer. That's a lot of "if"...

3 MR. STAFFELD: I would kind of tend to believe that
4 it would not. I don't think that illegal side of things is
5 going to take advantage of some legal channel to go against
6 some so-called client who has not paid the bill.

7 CHAIRMAN MORIN: Let me argue with you. If I
8 can get the credit from my corner grocery store, why would I
9 want to go and gamble on credit illegally and ask the use of
10 those rather strenuous enforcement techniques that are used?

11 MR. STAFFELD: If you can acquire the credit --

12 CHAIRMAN MORIN: In other words, if I can get a
13 football card from my corner grocery store on credit, knowing
14 that if I don't pay him the only thing he can do is sue me or
15 go to small claims court or something, and it's going to be tax
16 free if I win, why would I run the risk of doing it through
17 a bookie and having my legs broken?

18 MR. STAFFELD: This is one particular narrow set
19 of the sports wager. I guess you are talking about the weekend
20 football play?

21 CHAIRMAN MORIN: You tell me that it is 62% of all
22 gambling. The Department of Justice does; somebody does.

23 MR. STAFFELD: It's the majority. Well, that's
24 fine; that could probably be accomplished. But how about the
25 fellow that wants to bet on every day's baseball game or some

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1 other aspect, and I don't know whether the corner grocer, under
2 a legalized circumstance, would be able to handle it that way
3 and still put out the credit card.

4 CHAIRMAN MORIN: Why is that? Because of the skill
5 needed?

6 MR. STAFFELD: I think there has to be a real
7 knowledge. After all, they have a back office and they have
8 a front office and they have accountants that are handling all
9 of these things. It is big business. I don't think that corner
10 grocer could handle it.

11 CHAIRMAN MORIN: Not even by itself?

12 MR. STAFFELD: You still have to have books and
13 records. That becomes a big business then.

14 CHAIRMAN MORIN: I am impressed by the fact that the
15 soccer pools for example, in England, handle something like
16 14 million bettors a week, and that is all handled in one
17 centralized computerized operation. But that is one of the
18 issues that the Commission is going to have to tangle with in the
19 next year. This is, is it possible -- and if so, under what
20 circumstances -- to legalize a gambling operation which can
21 successfully compete with organized crime's gambling operation
22 without being taken over.

23 Dr. Allen, I will turn it over to you because I know
24 that you are rested.

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25 DR. ALLEN: Thank you, Mr. Chairman.

av 21

1 Do either one of the gentlemen know, I would like
2 to ask -- you have a statement here that says, "Gambling
3 saps the financial resources of the nation to deal with social
4 problems by consuming vast sums of money from taxation."

5 What social problems do you refer to per se, and how
6 do you arrive at that conclusion?

7 MR. STAFFELD: Well, I think that probably a good
8 example would be the fact that many people who can't afford
9 a dollar for groceries are putting it into a wagering circum-
10 stance, and after they put the first dollar in, they try to
11 put another dollar in to try to recover the dollar they lost,
12 and it just becomes endless. This is money that is taken out
13 of a family need and going into a criminal channel.

14 DR. ALLEN: Then you do not mean to imply that the
15 lack of tax funds from individuals was causing the federal
16 government per se to be derelict in their duty toward social
17 problems?

18 MR. STAFFELD: No.

19 DR. ALLEN: Wouldn't it follow that if there is no
20 money that they are getting from taxes that could be put into
21 federally funded programs, that we are per se enhancing the
22 possibility of social deprivation continuing?

23 MR. STAFFELD: I don't know --

24 DR. ALLEN: You are speaking of individuals per se.

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25 If you add all of that money up together, and it doesn't come to

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1 the federal government in income tax, then this means that
2 there is less money for the federal government to put into
3 social programs, am I right, to correct social problems?

4 How is it your reference is primarily to the
5 individual family budget as opposed to the overall social
6 programs that the government is supposed to be responsible for?

7 MR. STAFFELD: Let me see if this would answer the
8 question: In connection with our gambling investigations,
9 after or simultaneously when we complete our investigation
10 and the arrests are made and we acquire all the books and
11 records of the gambling operation, the Internal Revenue Service
12 has the privilege of examining those books and records and
13 pursuing this man for taxes unpaid. So we are attempting
14 to recover what has been lost previously by the gamblers' use
15 of this money without taxation.

16 Is that what you have in mind, Doctor?

17 DR. ALLEN: Not exactly. I'm trying to determine
18 from you whether or not -- you have a \$750 billion a year
19 business and the tax on that business, say, would be somewhere
20 in the neighborhood of \$60 million. That is \$60 million
21 worth of social programs that we have to do without as long as
22 gambling is illegal?

23 MR. CLEVELAND: That's one way to look at it.

24 DR. ALLEN: Is that what you're saying?

25 MR. CLEVELAND: That's one way to look at it.

av 23

1 Because you're being deprived of the tax dollars, and whether
2 it's for the social programs you have in mind or whether it's
3 the taxes to build roads, the government is being deprived of
4 that money.

5 DR. ALLEN: Would the legalization of gambling
6 eradicate that problem?

7 MR. CLEVELAND: I don't think so, because up to
8 now we haven't found any cases that legalized gambling has cut
9 into illegal gambling. It's still going on.

10 DR. ALLEN: The next question has to do with the
11 confiscation of money. What happens to the money that you
12 confiscate?

13 MR. CLEVELAND: It goes back to the Treasury.

14 DR. ALLEN: I have never seen where in print.
15 I mean, it has never been established -- I have never seen
16 anywhere in print where it goes and what it goes for.

17 MR. STAFFELD: Well, it's of course like all the
18 property, the automobiles and whatever, it ultimately becomes
19 the property of the U.S. Government.

20 DR. ALLEN: I have a couple of questions on wire-
21 tapping which you said is essential to your operation.

22 In respect to that, how useful has wiretapping been
23 in obtaining gambling convictions relative to the fact that
24 there is a great disparity in sentencing by judges for gambling
25 offenses as opposed to narcotic offenses?

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1 MR. CLEVELAND: I don't think we can answer that
2 insofar as narcotics convictions are concerned, because we have
3 no statistics on that since that has not been our jurisdiction.
4 So I don't have any comparison for you, Dr. Allen.

5 DR. ALLEN: Well- is it more expensive to wiretap
6 for numbers betting or horse racing or is it again the same
7 overall cost across the board, or in what way does it differ,
8 if it does differ at all?

9 MR. STAFFELD: I think there are studies made by
10 the Administrative Office of the Courts in which there has
11 been a cost figure established for all use of the Title III
12 technique. I do not know that there has been any breakdown --
13 certainly there hasn't been by us -- as to whether it is more
14 or less costly to put a man in jail for narcotics operation
15 than it is in gambling operations. But there may be a figure
16 in the Department of Justice for that.

17 DR. ALLEN: Well, I believe somewhere in the
18 testimony it was stated that the arrests and convictions for
19 gambling offenses have fallen off considerably in the last
20 several years, and that under those circumstances, there are
21 certain aspects of gambling activity that are currently being
22 considered by many states across the country as costing more
23 to enforce the laws against them than the activity itself
24 would garner in the way of, say, disruption of community
25 service or disruption of community well-being per se. For

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1 example, numbers.

2 In Philadelphia, where I come from, for example,
3 we have had 35,000 numbers arrests last year. 5,000 people
4 came to trial, and of the 5,000, 747 were convicted. That's
5 an awful lot of manpower wasted, an awful lot of trial time
6 wasted, and an awful lot of money spent for purposes that
7 apparently weren't served.

8 And we are wondering whether if Philadelphia and
9 Pennsylvania per se legalized the numbers, which was the primary
10 source of arrests, our manpower figures and costs for that
11 35,000 alone which I think ran somewhere in the neighborhood
12 of \$2-1/2 million -- this is money which could be used better
13 in other services.

14 MR. STAFFELD: Whether it would be better?

15 I don't think we could really make a guess here,
16 but it is still part of the enforcement effort.

17 I think in our own figures here we had, as I recall,
18 something like 5,400 cases out of which something like one-fifth
19 of them resulted in going to court. So in law enforcement
20 there is always a -- you don't get a one-for-one situation;
21 you don't open a case and see that through to conviction all
22 the time.

23 Sometimes you can't establish the violation and
24 as a consequence, there is only a percentage of cases to get
25 in to the courts. Granted, that is a cost from which there is.

av 26

1 no benefit, but I think that is part of law enforcement.

2 DR. ALLEN: Well, speaking from a humanistic point
3 of view, supposing you had a 66 year old widow on social
4 security whose husband perhaps was a laborer -- didn't make
5 much money while he was paying social security -- she may
6 be existing on a minimal fee, and she decides that it is to her
7 benefit from a financial point of view to, say, write
8 numbers and she writes maybe a book that is about \$40 or \$45
9 a week. She is arrested for numbers and has to go through
10 all this harassment.

11 Now, we are speaking from a humanistic point of
12 view and not a law enforcement point of view.

13 MR. CLEVELAND: Dr. Allen, in the first place, none
14 of the FBI's arrests are aimed at the little old lady at the
15 candy store nor are they aimed at the Mom and Pop operations.
16 We try to aim our investigations at the top leaders of
17 organized crime and the top leaders of syndicates, so as to
18 approach the problem from the top, not from the bottom.

19 DR. ALLEN: Suppose I were a syndicate operator and
20 I found out that you weren't going to bother the Mom and Pop
21 people -- that's the way our syndicate would be organized,
22 with the Moms and Pops -- and I would have no middle echelon
23 in there if I thought I could get away from it from that
24 standpoint.

25 So what could you do to me if you're not going to

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1 bother with them?

2 MR. CLEVELAND: We don't have any interest what-
3 soever in disturbing the Mom and Pop operations. We figure
4 that is a local enforcement problem altogether. As a matter
5 of fact, the 1970 statute is aimed at 5 or more people combined
6 in an operation that has so much take and has been in business
7 for so long. None of those fit the Mom and Pop operations.

8 DR. ALLEN: Then if the Mom and Pop operation is
9 to be the local law enforcement agencies' problem, and it
10 becomes a drain on the resources of the local law enforcement
11 agency, so that the state then comes and decides that the
12 Mom and Pop operations cost us more money than they actually
13 make in our estimation, you know, from a nearsighted point of
14 view, well, say, if the state then decides to legalize the
15 operation, then are you prohibited from your activities?

16 MR. STAFFELD: The federal government would still
17 have laws on the books which certainly would supersede the
18 laws that you are talking about. Your question about the
19 Mom and Pop operations is one I think is interesting because
20 there's no question about it, there are a lot of people who
21 supplement their income through, as you say, a need for
22 a couple of dollars to tide them over, and they are taking
23 a little action, so to speak.

24 It's not unusual for these people to start out
25 on a very small scale, but because they are available -- they

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1 are on the corner; they are in a central area -- it could
2 well be that their action becomes quite heavy, and up to this
3 time they are operating strictly by themselves. All of a
4 sudden they have a volume of maybe \$1,000 a day. Somebody
5 is going to walk into that candy store and say, "Half of you
6 is me, henceforth all of your action comes to me."

7 They are all of a sudden swallowed up into an
8 organized crime operation, and they then take directions.
9 If Mom and Pop don't want to go along with the organization
10 that comes in, sometimes their store is burned, their legs
11 are broken, or there is damage to property. It becomes a
12 tough law enforcement problem.

13 DR. ALLEN: Thank you.

14 CHAIRMAN MORIN: We always make the staff wait
15 until the last.

16 Yes, excuse me, Mr. Coleman.

17 MR. COLEMAN: One area which I think I would like
18 to ask you about: You say in New Jersey is now currently on
19 the ballot in November the question of casino gambling.

20 Assuming that it passes and there is some sort of
21 casino gambling which may or may not be limited, and then as
22 in the lottery, other states follow, would you envision,
23 your people, that this might cause some problem for the federal
24 enforcement if, say, eight or ten states also jump into
25 casino gambling?

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1 MR. STAFFELD: Under the Federal Gambling Statutes,
2 the action in many instances must be a violation of state law
3 before we can acquire jurisdiction.

4 MR. COLEMAN: I'm talking about making it legal.
5 Would you feel that, say, casino gambling would pose any federal
6 problem?

7 But if it did come to pass and were profitable,
8 other states might say, "Let's us take a whack at it, also."

9 MR. CLEVELAND: Other states will certainly be
10 watching it very carefully to see how it comes out.

11 MR. COLEMAN: Would it be fair to say you oppose it?

12 MR. CLEVELAND: I think it is not fair to say one
13 way or the other. However, you can't start a casino with
14 people from the Church. They wouldn't know how to run it.

15 CHAIRMAN MORIN: Why don't you go hire a bunch of
16 guys from Las Vegas? Maybe we will have a dealer draft.

17 I think Ms. Marshall is going to inquire on behalf
18 of the Staff this morning.

19 MS. MARSHALL: Thank you, Mr. Chairman.

20 Mr. Cleveland, before I begin, both Mr. Ritchie and
21 I, on behalf of the Staff, would like to commend you and compli-
22 ment the Bureau for the excellent quality of the data which
23 you gathered for us.

24 Our staff is in the process of analyzing it now,
25 and we are very appreciative of the work that you have done for

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1 us.

2 MR. CLEVELAND: Thank you so much.

3 MS. MARSHALL: As you know, sir, on May 15 we
4 received testimony from Mr. Degin and Mr. Joyce of the
5 Department of Justice, and during the course of their testimony,
6 they stated that in their opinion the local law enforcement
7 effort with respect to gambling would be aided if the states
8 would implement at least three tools, those tools being
9 electronic surveillance legislation comparable to our Title III
10 on a federal level, a series of special Grand Juries, and
11 perhaps also a special prosecutor.

12 Would the Bureau be in agreement with that? Do
13 you have a position on that?

14 MR. CLEVELAND: I think there is no question but
15 what that's true. Twenty-two of the states and the District
16 of Columbia already have enabling legislation for electronic
17 surveillance, and I think that figure will increase and it
18 will undoubtedly be very valuable.

19 MS. MARSHALL: You would then take a position that
20 these are necessary tools in the fight against illegal
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1 gambling?

2 MR. CLEVELAND: Very necessary.

3 MS. MARSHALL: Would you also be in favor of legis-
4 lation that would in some way insure the integrity of the local
5 law enforcement, for example, something comparable to the
6 1511 statute?

7 MR. STAFFELD: Well, I think probably -- I would
8 expect that there is legislation on just about every local juris-
9 diction which would now take care of it. As I say, 1511 is
10 certainly a deterrent on a federal level. If there isn't any-
11 thing like that on a local level, I think there should be.

12 MS. MARSHALL: What would be your position, sir,
13 with respect to mandatory minimum sentences for recidivists
14 in gambling cases, particularly on the federal level?

15 MR. STAFFELD: Well, I think that is probably one
16 of our problems, is that there are an awful lot of people being
17 arrested; who don't spend much time away from their families,
18 and as a consequence, are back on the street ready to do busi-
19 ness the next day. If there was a little bit more inconvenience
20 to them -- after all, I think the underworld feels that they
21 can pay money any time, but jail time is something that they
22 cannot cope with.

23 MS. MARSHALL: Back to the Department of Justice
24 testimony, they stated that as a result of the recent intensi-
25 fication program, the federal law enforcement effort is able to

W - 2

1 reach two percent of the illegal gambling market. Do you agree
2 with that figure?

3 MR. STAFFELD: I don't think we have an idea as to
4 the percentage.

5 MS. MARSHALL: Mr. Cleveland, are there certain geo-
6 graphic regions or localities that the Bureau considers to have
7 a more serious illegal gambling problem than others?

8 MR. CLEVELAND: Yes. I think the more serious
9 localities are in the major cities, although that doesn't al-
10 ways necessarily follow.

11 MS. MARSHALL: By "major cities," you are referring
12 to the Northeast and Midwest?

13 MR. CLEVELAND: All major cities through the country.

14 MR. STAFFELD: Any industrial area is certainly a
15 crime area.

16 MS. MARSHALL: Do you feel that increased publicity
17 is desirable in attempting to deter bettors from illegal gamb-
18 ing?

19 MR. STAFFELD: Well, I think it may on occasion have
20 an effect, but I think in years gone by it wasn't unusual and
21 it probably got to be rather a satisfying piece of notoriety
22 when somebody was taken out of a -- well, some of the old
23 speakeasies. I don't really know how much effect that has on
24 gambling now. It probably doesn't have any. It depends on the
25 individual. If he is embarrassed, he is not going to go back.

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1 MS. MARSHALL: On page 19 of your statement you said
2 that lotteries have no discernible effect on illegal gambling.
3 Do you feel that that is the case regarding off-track betting
4 in New York City?

5 MR. STAFFELD: I think that the local authorities
6 have made some kind of a survey and announced figures which
7 suggest that it has not had any effect on illegal wagers.

8 MS. MARSHALL: In the area of pari-mutuel betting,
9 particularly pari-mutuel racing, does the Bureau consider that
10 this is an area that is in need of more federal controls, or do
11 you take the position that their policies are adequate?

12 MR. STAFFELD: I don't think that we have had any
13 occasion to find a problem generally in that area, and I don't
14 think we have had any reason to suggest a need. There have been
15 some problems in some single horse racing cases, but it is not
16 general, I don't think.

17 MS. MARSHALL: Not enough to justify increased fed-
18 eral controls?

19 MR. STAFFELD: Not to my knowledge.

20 MS. MARSHALL: Mr. Chairman, that's all I have.
21 Thank you.

22 CHAIRMAN MORIN: Both Senator Gurney and Senator
23 Cannon have the same question here. I will ask it for the
24 record.

25 Has there been any indication that organized crime

blw - 4

1 or racketeers have penetrated state-operated lotteries? Was
2 this a fear when New Hampshire started its lottery in 1964?

3 MR. STAFFELD: Of course, New Hampshire was the first
4 lottery and it was an interesting thing. We were watching it
5 to see what would happen. Mr. Powers, a former agent, was the
6 guiding light on it, and had certainly an interest that there
7 be no underworld intrusion. We found none, no interest or no
8 attempt on the part of organized crime to enter into that lot-
9 tery or any other state operation.

10 CHAIRMAN MORIN: That seems to be their experience.
11 Mr. Coleman, Dr. Allen?

12 Again, let me thank you most sincerely, not only for
13 coming here and being so helpful, but in helping the staff.
14 I'm very, very appreciative. The hearing will be adjourned.
15 We will reconvene here at 2:00 p.m. for testimony from the
16 Federal Communications Commission and following that, from the
17 United States Postal Service. If there are any members of the
18 public who wish to be represented in the transcript as being
19 present, you should see the Secretary of the Commission at the
20 door.

21 (Whereupon, at 12:00 noon, the hearing was adjourned.)
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blw - 4

AFTERNOON SESSION

(2:00 p.m.)

CHAIRMAN MORIN: Will the hearing please come to order.

This is the fifth in a series of public hearings being conducted by the Commission on the Review of the National Policy Toward Gambling. The first four meetings were occupied in receiving testimony from various persons who were interested in state lotteries. Our second hearing involved testimony of members of the Department of Justice followed by testimony from the Internal Revenue Service.

The fourth public hearing which was held this morning elicited testimony from the FBI, and we are pleased this afternoon to have representatives from the Federal Communications Commission with us, whom I would like to thank for being here. Mr. Ashton Hardy, the General Counsel of the Federal Communications Commission, will lead the panel from that agency.

He is accompanied by Mr. Hilburt Slosberg and Mr. William Ray, who is Chief of Complaints and Compliance Division of the FCC.

Thank you, gentlemen, and please proceed.

MR. HARDY: Mr. Chairman and Commissioners: I am pleased to have the opportunity to appear before you today to testify with respect to the Federal Communications Commission's experience in two areas: concerning lotteries and the

5lw - 5

1 broadcasting of information concerning horse races.

2 Accompanying me today are Associate General Counsel
3 Hilburt Slosberg, who is to my left, who has been extensively
4 involved in the development of Commission policy in these two
5 areas, and Mr. William B. Ray, who, as Chief of the Complaints
6 and Compliance Division of the Commission's Broadcast Bureau, is
7 in close contact with the day-to-day problems in these areas.
8 Mr. Ray is to my right.

9 Since I am new to these questions -- having been with
10 the Commission only two months -- I am delighted to have the
11 assistance of such experienced staff members as Mr. Slosberg
12 and Mr. Ray. I have a brief statement, after which the three
13 of us will be pleased to answer any questions you may have.

14 The Federal Communications Commission's responsibil-
15 ities in connection with the broadcast of lottery information
16 derive from Section 1304 of the United States Criminal Code,
17 formerly Section 316 of the Communications Act of 1934. This
18 section prohibits the broadcast of "...any advertisement of or
19 information concerning any lottery, gift enterprise, or similar
20 scheme offering prizes dependent in whole or in part upon lot
21 or chance..." For violation of Section 1304, the Commission is
22 specifically authorized by the Communications Act to revoke a
23 license, issue a cease and desist order, or assess a monetary
24 forfeiture. The Commission's affirmative obligation under
25 Section 1304 was enunciated by the Supreme Court in a 1954

blw - 6

1 decision in which the Court stated, and I quote:

2 "...We have no doubt that the Commission, concurrently
3 with the Department of Justice, has power to enforce Section 1304
4 Indeed, the Commission would be remiss in its duties if it
5 failed, in the exercise of its licensing authority, to aid in
6 implementing the statute, either by general rule or by indivi-
7 dual decisions." In view of this concurrent responsibility,
8 Commission action in this area is regularly coordinated with
9 the Department of Justice.

10 Until approximately ten years ago, the Commission's
11 involvement in enforcement was limited primarily to scattered
12 instances of product promotions, generally involving some type
13 of contest or merchandise "give-away." As indicated in infor-
14 mation previously supplied to you, since the Commission was
15 granted authority in 1961 to assess monetary forfeitures for
16 violations of Section 1304, there have been 42 instances in
17 which forfeiture action has been initiated.

18 All of these actions involved product promotions
19 contests or similar types of nonstate lotteries. In addition,
20 I would point out, there is presently pending a license renewal
21 proceeding in which issues were specified for hearing involving
22 alleged broadcast of lottery information that might be of aid
23 to illegal gambling on "numbers" games.

24 However, since the middle sixties, the Commission
25 has been increasingly drawn into the problems created by the

blw - 7

1 conflict between the growing number of states that have begun
2 conducting state-sponsored lotteries to raise revenue and the
3 prohibitions of Section 1304. State lottery Commission have
4 complained of the anomalous situation created when a state is
5 operating a legislated lottery and desires to utilize the broad-
6 cast media to publicize the lottery while Section 1304, and I
7 quote, "substantially limits the use of the broadcast media to
8 bring the lottery to the attention of the state's citizens."

9 The Commission has adhered to the view that the ques-
10 tion of the propriety of promoting lotteries on broadcast media
11 is a legislative policy determination properly resolved by
12 Congress and has consistently taken the position that it has no
13 alternative but to apply the requirements of Section 1304 until
14 it is amended or qualified.

15 This position was reaffirmed in a recent letter to
16 the Chairman of the House Judiciary Committee in response to his
17 request for the Commission's views on H.R. 6668 and other pend-
18 ing legislation. These bills would amend Title 18 of the United
19 States Code to permit the transportation, mailing and broad-
20 casting of advertisements and other information relative to
21 lawful state lotteries. Although the Commission took no posi-
22 tion on the merits of these bills, it did note that the Depart-
23 ment of Justice "...generally favored enactment of H.R. 6668 as
24 promoting the policy decisions of those states which have de-
25 termined to conduct lotteries, while protecting the public

blw - 8

1 policy of still other states which have rejected the lotteries."
2 The Commission stated it would defer to this judgment of the
3 Department.

4 However, the Commission noted that since broadcast
5 signals, as a technological matter, cannot be confined to poli-
6 tical boundaries, any of the various exemptions in the bills
7 would result in the broadcast of state lottery information into
8 states which do not conduct lotteries. Of course, broader
9 exemptions would result in wider dissemination.

10 The Commission recommended certain technical amend-
11 ments to any legislation which might be adopted in order to
12 avoid the potential problem of conflicting interpretations in
13 the limited number of cases where stations are licensed to two
14 locations in different states.

15 The Commission's present approach to the broadcast
16 of lottery information, with particular reference to state
17 lotteries, is primarily based on the Commission's Supplemental
18 Declaratory Ruling, adopted in 1970 pursuant to a decision
19 of the United States Court of Appeals for the Second Circuit.

20 The court in that case held that Section 1304 only
21 prohibits the broadcast of lottery information that "directly
22 promotes" a lottery. That Ruling and subsequent Commission
23 action in this area have relied on this "directly promoting"
24 standard.

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25 However, in January of this year, the United States

Elw - 9

1 Court of Appeals for the Third Circuit reversed a 1971 Commission
2 ruling which concluded that the announcement of the winning
3 number in a state lottery, even though in the form of a news
4 report, constituted a direct promotion of the lottery and was
5 prohibited by Section 1304. The court held that news broad-
6 casts are protected by the First Amendment and thus are exempt
7 from the prohibition of the statute. According to the court's
8 interpretation, Section 1304 should be construed to apply only
9 "...to the promotion of lotteries for which the licensee re-
10 ceives compensation..." and perhaps also to "...some uncompen-
11 sated promotional announcements outside the context of broad-
12 cast journalism which might be found by the FCC to be promo-
13 tional and not news..."

14 The Commission and the Department of Justice peti-
15 tioned the Supreme Court to review the Third Circuit's decision,
16 and the Court recently agreed to hear the case. The primary
17 basis of the petition was the conflict between the Third
18 Circuit's decision and the "directly promoting" standard pre-
19 viously established by the Second Circuit. The Commission felt
20 it was imperative that the Supreme Court review the case in
21 order to resolve the conflicting interpretations of the statute
22 to establish uniform guidelines for the Commission and its
23 licensees to follow.

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24 The petition to the Supreme Court was also founded
25 on the Commission's and the Justice Department's belief that

clw - 10

1 the Third Circuit decision has erroneously declared a portion
2 of Section 1304 unconstitutional as violative of the First
3 Amendment.

4 I turn my attention now to the other area of gamb-
5 ling-related information -- the broadcast of the information
6 concerning horse races.

7 The Commission has the statutory mandate to license
8 broadcast stations to operate in the public interest. It is the
9 Commission's belief, supported by expressions of Congressional
10 concern, that it is not in the public interest for licensees
11 to broadcast horse racing information which would aid illegal
12 gambling.

13 In 1961, Congress enacted Section 1084 of the
14 Criminal Code to provide penalties for the use of wire communi-
15 cations facilities for the transmission of wagering information.
16 Radio and television were omitted from the statute based on
17 the specific determination that the Commission already had
18 adequate authority to deal with broadcast stations which pro-
19 gram in a manner that aids illegal gambling. In the House
20 Report on the Bill, which became Section 1024, the Committee
21 stated:

22 "The bill does not include within its pro-
23 visions radio and television stations. The Attorney
24 General is of the opinion, and the Federal
25 Communications Commission agrees, that the

W - 11

1 Commission has adequate authority under exist-
2 ing law to prevent the transmission of gambling
3 information over the radio and television facil-
4 ities. It is evident that this power to act to
5 revoke a station's license when the station is
6 not operated in the public interest (47 U.S.C.
7 312) is preventing misuse of these means of
8 communications. 14/"

9 In 1964, in furtherance of the this goal, the
10 Commission adopted a Policy Statement concerning the broadcast
11 of horse racing information. The objective of that statement was
12 the curtailment of the use of broadcast facilities to dissemi-
13 nate information which might be of substantial use to illegal
14 gambling. Examples of broadcasts which were of concern to the
15 Commission included:

16 (1) The broadcasting of a full program of races from
17 a racetrack, simultaneously with the running of the race;

18 (2) broadcasting detailed changes in prerace infor-
19 mation, such as post positions, jockeys, probably odds and
20 scratches, prior to the race;

21 (3). broadcasting of "off" times as soon as this in-
22 formation is available or shortly thereafter;

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25 14/ H. Rept. 967, 87th Cong., 1st Sess. at 2.

lw - 12

(4) broadcasting race results and prices paid on a race before the next race has been run at the same track on the same day, and

(5) broadcasts of horse race information sponsored by publishers of "scratch sheets" or other publications disseminating detailed horse racing information by touts, or other persons whose activities may result in aiding illegal gamblers or bookmakers. 15/

The Commission stressed that its concern was primarily with those licensees who may regularly engage in these types of programming -- and not where there are only isolated or sporadic instances of such broadcasts.

In addition, the Commission recognized the established role of horse racing in many states and emphasized that it did not intend to inhibit the broadcast of races, or of full information about races which are of widespread interest to the general public.

In 1973, the Commission reaffirmed this position in a ruling pursuant to a request from New York's Off-Tracking Betting Corporation. The Commission held that, while the 1964 Policy Statement forbids any advertising of horse racing that might directly aid or encourage illegal gambling, it would permit advertising which only induces people to follow a state's

- 13

1 legalized betting course, such as New York's off-track betting
2 operation which has the avowed purpose of suppression of illegal
3 gambling. 16/

4 It has been the Commission's experience that lic-
5 ensees have complied with the standards set out in the Policy
6 Statement. In fact, as I indicated in a recent letter to your
7 Executive Director, the Commission has not been required to
8 initiate administrative sanctions against any of its licensees
9 in this area. However, I might point out, there is presently
10 pending a license renewal hearing in which possible violation
11 of these policies was included among the issues specified for
12 hearing. 17/

13 In summary, then, ladies and gentlemen, so far as
14 the broadcast of lottery information is concerned, the
15 Commission finds itself operating in a mixed environment of
16 statutory obligations and judicial uncertainty. It has no al-
17 ternative but to apply the prohibitions of Section 1304 of
18 the Criminal Code, whether or not the lottery is now consider-
19 ing legislation which would liberalize present restrictions on
20 broadcast of information about state-operated lotteries.

21 In addition, the Commission has asked the Supreme
22 Court to resolve the conflicting judicial interpretations of

23
24 16/ 41 FCC 2d 172 (1973).

Federal Reporters, Inc.

25 17/ Cosmopolitan Broadcasting Corporation (WMBI(FM), New York)
File No. BRN-1359, Docket 19857.

- 14

1 the statute. Thus, the Commission's involvement in this area
2 could undergo substantial change in the near future depending
3 on the outcome of the pending legislation and the Supreme
4 Court decision.

5 By contrast, the enforcement picture in broadcast
6 of horse racing information is much more settled. Since adop-
7 tion of the Commission's Policy Statement in 1964, broadcast
8 licensees, for the most part, have complied with the standards
9 that were set out there. We will, of course, continue to
10 scrutinize carefully, through license renewal proceedings and
11 in other ways, those occasional reports of horse racing or other
12 broadcasts that might be of aid to illegal gambling.

13 This concludes my prepared statement. Mr. Slosberg,
14 Mr. Ray, and I will now be glad to answer any questions you may
15 have.

16 (Complete statement of Mr. Hardy follows.)

17 CHAIRMAN MORIN: I don't think I spotted any of the
18 state lottery Commissioners here today. They are very interested
19 in this entire subject. I take it the position of the
20 Commission on Section 1204 is that you really don't have any
21 discretion. It says any lottery and it isn't distinguishing
22 between legal and not legal lotteries.

23 MR. HARDY: That is correct.

24 CHAIRMAN MORIN: I suppose that is relatively unas-
25 sable at the present time. I know there is a letter in here.

1w - 15 1 and I'm sorry I haven't read it to completion. Do you have a
2 position on that?

3 MR. HARDY: We really don't sponsor it or feel one
4 way or the other. We would like to have some clarification
5 in order that we might notify our licensees. We will live with
6 whatever the Congress decides to do in that area.

7 CHAIRMAN MORIN: We will start our questioning with
8 Mr. David Dowd, who is the Prosecuting Attorney for Summit
9 County, Ohio, and engaged in law enforcement of a different
10 sort.

11 MR. DOWD: I begin with this question: If Section
12 1304 is aimed to permit the broadcasting of lottery informa-
13 tion, what language would you suggest to resolve the problems
14 of the location and of how to contain broadcast signals within
15 a particular state?

16 MR. HARDY: Do you want to answer that?

17 MR. SLOSBERG: The Commission has already suggested
18 to the House Committee certain language to cover the few in-
19 stances where stations are assigned to two communities in two
20 different states. Beyond that, the legislation to which the
21 Commission addressed itself in brief would authorize a broad-
22 cast station assigned to a community which conducted legal
23 lotteries or in which a state lottery was legal could broad-
24 cast information concerning that lottery.

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25 They could also broadcast announcements of a lottery

- 16

1 in an adjoining state if it was legal in the state.

2 We have the unusual situation where the State of
3 New Jersey has a state lottery and realistically they have no
4 major broadcast stations located within the state. There are
5 several UHF stations. Channel 13 is an educational station
6 which is assigned to New Jersey. Basically, the northern part
7 of the State of New Jersey gets television service part from
8 New York stations and the southern part from Philadelphia
9 stations.

10 The language covers that. It would not permit --
11 the language of the bill would not permit a broadcast station
12 assigned to a community in which a state lottery was not legal
13 to broadcast any information concerning a lottery. This was
14 another possibility in terms of situations that could arise.

15 In Missouri and Illinois, Illinois has a lottery
16 which is not yet in operation. Part of Illinois gets television
17 service from St. Louis. The Committee has drafted language in
18 this bill, H.R. 6568 which would cover the first two of those
19 situations. We suggested additional language simply to cover
20 the dual assignment situation where a station is licensed to
21 communities in two adjoining states.

22 MR. DOWD: Has the FCC been made aware or discovered
23 any violations as of now by any of the radio stations concerning
24 state lotteries or any apparent violations as of now?

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25 MR. HARDY: Mr. Ray may be able to answer that from

lw - 17

1 the Complaints and Compliance Division.

2 MR. RAY: I can recall no violations that have come
3 to our attention. There may have been one or two minor one-
4 time matters that we did not feel would justify sanctions by
5 the Commission. There haven't been any substantial violations
6 that we know of at all. We have had many inquiries from states
7 where there are legalized lotteries as to what types of broad-
8 cast materials they could carry and still be within the
9 Commission's interpretation of 1304.

10 MR. DOWD: Thank you. That's all I have, Mr.
11 Chairman.

12 CHAIRMAN MORIN: On my left and your right is Mr.
13 James Coleman, Prosecuting Attorney from Monmouth County, New
14 Jersey.

15 MR. COLEMAN: Thank you.

16 Mr. Slosberg, I was reading in the paper some know-
17 ledge of the New Jersey broadcasting case. I refer to an art-
18 icle about the Supreme Court review. Not only your organiza-
19 tion but the New Jersey Lottery has filed an appeal.

20 Are they the same case?

21 MR. SLOSBERG: We have a rather unique situation in
22 Commission procedures. The Commission's initial ruling in the
23 New Jersey case was in response to an inquiry by the broad-
24 casters. The Commission issued its ruling, its view of the
25 station. The New Jersey State Lottery petitioned for

blw - 18

1 reconsideration as interested parties and the Commission has
2 been very flexible in according interested parties the right to
3 petition for reconsideration even though they may not have
4 been in the initial proceeding.

5 The decision that was appealed or the ruling that was
6 appealed to the Third Circuit was the Commission ruling on
7 reconsideration and the appeal to the Third Circuit was obtained
8 by the state lottery people.

9 MR. COLEMAN: The New Jersey Cape Broadcasting made
10 an application and submitted it in the nature of the announcing
11 the winning number.

12 MR. SLOSBERG: Yes.

13 MR. COLEMAN: You denied their application based,
14 I assume, on the decision given by the Second Circuit?

15 MR. HARDY: And Commission policy.

16 MR. COLEMAN: Going back to what you presented to us
17 today, we are reading, gentlemen, from your prepared statement
18 Section 1304 prohibiting the broadcast of any advertising or any
19 information concerning lotteries. I would assume that the
20 Second Circuit decision was the result of an argument by you or
21 your counsel saying that the announcement of a lottery number
22 was in violation. Is that correct?

23 MR. SLOSBERG: Not quite. What happened was the
24 New York questions were raised concerning the flexibility or
25 the scope within which they could accept and put on an

b7w - 19

1 announcement concerning the New York State lottery. The
2 Commission issued a declaratory ruling giving guidance on a
3 number of abstract questions that were raised with the
4 Commission.

5 The Commission's ruling or advice was appealed to
6 Second Circuit.

7 MR. COLEMAN: What was the Commission's advice at
8 that time? At that time there had been no interpretation of
9 this Section, had there?

10 MR. SLOSBERG: This was the New York case, right?

11 MR. HARDY: Actually, I believe what occurred was
12 that the Commission had made a response to one of the questions
13 and I believe that there were 10 or 11 questions presented.

14 The Commission stated that it would not be put in the
15 position of answering in advance the 10 or 11 questions. That
16 declaration by the Commission was appealed to the Second
17 Circuit. The Second Circuit concluded that any information
18 directly promoting a lottery would be proscribed by the
19 statute and then remanded the material back to the Commission
20 for a specific response to each of the 10 questions that were
21 presented -- 10 or 11 questions that were presented.

22 As a result of that ruling by the Second Circuit, the
23 Commission then issued the declaratory statement which has been
24 the foundation of the Commission's position ever since on all
25 of those items.

blw - 20

1 MR. COLEMAN: Was it the Commission's argument that
2 the announcement of a winning lottery number was in violation
3 of the statute?

4 MR. HARDY: Yes, it was. That was not appealed
5 thereafter.

6 MR. COLEMAN: I understand that. Now you're faced
7 with a court decision which flies right in the face of that.

8 MR. HARDY: That is correct, sir.

9 MR. COLEMAN: Do you think today that the mere
10 announcement of the winning lottery number is in fact promotion
11 of the lottery?

12 MR. HARDY: It's not proper, I don't think, sir, for
13 us to answer that. That would be a Commission determination.
14 We might make -- as Staff members we might make certain remarks
15 to the Commission with regard to that. Until such time as the
16 Supreme Court decides that Third Circuit case, I really don't
17 believe it would be proper for us to attempt to state what the
18 Commission's position would be on that.

19 MR. COLEMAN: You are already arguing in court,
20 aren't you?

21 MR. HARDY: We are arguing in court that the broad-
22 cast of the winning lottery number is not a hot news item, but
23 is in violation of the statute. We will argue that position
24 in court.

25 MR. COLEMAN: Gentlemen, in your statement you say

Elw - 21

1 that you feel that you should attempt to regulate any information
2 that may be used to further an illegal lottery being disseminated
3 through the communities, is that right?

4 MR. SLOSBERG: Broadcast. Operations of broadcast
5 stations in the public interest would exclude broadcasting of
6 information that would aid illegal gambling.

7 MR. COLEMAN: What about the announcement of the
8 winning horse in a race?

9 MR. SLOSBERG: I can't say.

10 MR. HARDY: That does not apply to horse racing in-
11 formation.

12 MR. COLEMAN: We have heard testimony here at some
13 length that the numbers, for instance, the winning numbers made
14 on the basis of the handle at such and such a racetrack at the
15 area. That is, disseminate any time a radio station wants to
16 give it.

17 MR. SLOSBERG: Perhaps to put your question in a
18 little more accurate perspective, I can say this. In 1963 the
19 Commission on advice of the Department of Justice initiated an
20 inquiry into the broadcasting of horse racing information. The
21 Commission established a special committee under the chairman-
22 ship of Commissioner Robert E. Lee.

23 That committee conferred with state racing commis-
24 sioners throughout the country.

25 As a result of these discussions, the Commission

olw - 22

1 determined that it would not be proper to adopt precise rulings
2 as to what would and what would not constitute announcements or
3 information which would aid illegal gambling. It therefore
4 issued what it called a policy statement with respect to the
5 broadcast of horse racing information and it set out its pri-
6 mary objectives and that is that broadcast stations should not
7 broadcast information which in fact did aid illegal gambling.

8 It set forth in that statement some examples of
9 what it considered to be improper information, improper broad-
10 cast information. These examples had been drawn from various
11 discussion with state racing commissions around the country.
12 The Commission put that out as guidance to its licensees.

13 The Commission has had little or no problem with
14 that general policy statement until such time as the Off-Track
15 Betting Corporation in New York raised some additional questions.

16 As Mr. Hardy's statement pointed out, our activities
17 in this area are undertaken in coordination with the Department
18 of Justice.

19 The statement and rulings that the Commission has
20 issued over a number of years have not departed from the views
21 generally expressed by the Department of Justice.

22 I cannot -- none of us here -- can tell you whether
23 the Commission would in any given instance find that the broad-
24 cast of this kind of information or that kind of information
25 in any case which may arise in the future, would or would not

1 - 23

1 contravene the policy statement. These questions are presented
2 to the Commission when they arise.

3 MR. COLEMAN: Again, sir, would you be able to tell
4 me, 1304, the language which prohibits the advertisement of
5 information which is being decided by the courts, was that
6 which an eye toward a legal or illegal lotteries?

7 MR. SLOSBERG: The Second Circuit Court of Appeals
8 and this was the major ruling of the Commission in that case
9 initially was that 1304 applied to state-conducted lotteries as
10 well as to illegal lotteries. The Second Circuit was quite
11 emphatic in saying that this was correct.

12 Congress had evidenced that clear intention in many
13 other collateral legislation forbidding, for example, federally
14 insured savings and loan associations from selling lottery
15 tickets through their windows.

16 That was the thrust of the initial ruling, so that
17 it was fairly clear that it did apply to state lotteries. The
18 language of the statute talked about the broadcast of any
19 information concerning a lottery. The courts have said this
20 really doesn't mean that. It means information directly pro-
21 moting a lottery, not simply concerning it.

22 Under the guidance set forth by the Second Circuit,
23 it seemed clear that the broadcast of a winning number at the
24 time, and as a major announcement to the ticket holders, directly
25 promoted the lottery within the meaning of the Second Circuit

blw - 23

1 Court decision. The Third Circuit decision, as we read it, did
2 not dispute that. It said even if it directly promoted a
3 lottery, if it constituted news, if it were a hot news item,
4 it was beyond the reach of 1304.

5 MR. COLEMAN: And the First Amendment?

6 MR. SLOSBERG: Yes, sir. And therein was the direct
7 conflict that we saw.

8 MR. COLEMAN: The real conflict is whether it vio-
9 lates the First Amendment and whether it is constitutional?

10 MR. SLOSBERG: Yes. The Commission's position is
11 that it was not tolerable for the Commission to say that in the
12 Third Circuit area in Pennsylvania and New Jersey and Delaware,
13 this is what 1304 means, but in New York, Connecticut and the
14 Second Circuit area, it means something else and Lord knows
15 what it means in the rest of the country.

16 MR. COLEMAN: Just one more question, if I may, Mr.
17 Chairman.

18 Assuming there is a substantial First Amendment ques-
19 tion and your organization -- the Commission has said that the
20 mere announcement of a winning lottery number would not aid an
21 illegal lottery -- if you can answer this: now, is there any
22 valid reason for such a prohibition?

23 MR. SLOSBERG: The Commission has expressed no view
24 as to the desirability of the continuance, repeal or modifica-
25 tion of 1304. The Commission is simply seeking to apply the

lw - 24

1 statute in whichever way it is interpreted by the courts, and it
2 has said time and time again that we have no alternative

3 MR. COLEMAN: There are two decisions now?

4 MR. HARDY: Hopefully we will have one.

5 MR. COLEMAN: The one you chose was the first one,
6 right? You are appealing the second one?

7 MR. HARDY: In the second case, the Commission issued
8 its declaratory statement. In that statement it took the posi-
9 tion that the broadcast of the winning lottery number was pro-
10 scribed by 1304.

11 Now, the Third Circuit Court of Appeals' opinion
12 flies in the face of the Commission's decision on that special
13 point. Therefore, we are in the position of having to repre-
14 sent the Commission and take the Commission's position forward
15 to the Supreme Court. That's our reason why we are in the
16 Supreme Court with that ruling.

17 MR. SLOSBERG: I suggest, Mr. Coleman, we have no
18 other way of resolving that question.

19 MR. COLEMAN: You could call it a day and forget it.
20 I wouldn't say there is no way you could resolve it.

21 MR. HARDY: I don't believe we could tell the people
22 of the Second Circuit that the position of Second Circuit Court
23 of Appeals is wrong. I don't think the Commission would have
24 that right under law.

25 MR. COLEMAN: The lottery people of the Second

W - 25

1 Circuit wouldn't be mad at you, would they?

2 MR. HARDY: The lottery people wouldn't, but I
3 think the Second Circuit Court of Appeals would be.

4 The Department of Justice would have to state our
5 policy.

6 MR. COLEMAN: Lottery people are obviously very in-
7 terested in this.

8 MR. HARDY: Yes, they are.

9 CHAIRMAN MORIN: Section 1304 as it would be amended
10 together with your suggested change would make it lawful to
11 broadcast lottery information from a state where the lottery
12 was legal and by a station licensed in that state. Is that
13 correct?

14 MR. HARDY: That is correct.

15 CHAIRMAN MORIN: Does that include promotions al-
16 together?

17 MR. SLOSBERG: Anything. There would be no limita-
18 tion.

19 CHAIRMAN MORIN: Regardless of the range of the
20 station?

21 MR. HARDY: Well, we have no way of telling a station
22 on a border, for instance, that it cannot broadcast although
23 it's in the same state where it is legal for a station in the
24 middle of the state, for instance, that does not -- where it's
25 signal does not cross the state line that it is permitted to

lw - 26

1 broadcast. It would be a totally impossible situation to put
2 the Commission in.

3 CHAIRMAN MORIN: I agree with you. I wanted to
4 have on the record where we stood today with that amendment.
5 This is perhaps not a fair question to ask of you from the FCC
6 standpoint, but since there is a prohibition of the transmission
7 interstate -- by means of interstate commerce gambling para-
8 phernalia, would the same rules apply to transferring the
9 gambling information by mail?

10 MR. SLOSBERG: Are you talking about 1084? 1084
11 permits that.

12 CHAIRMAN MORIN: The transportation of lottery
13 material by mail?

14 MR. SLOSBERG: 1084 excepts from the prohibition
15 against the interstate transportation of gambling information
16 excepts from that prohibition, where gambling is legal to
17 another state where gambling is legal.

18 CHAIRMAN MORIN: I'm talking about 1953, not 1084.
19 I'm sorry. That is carrying or sending through interstate
20 foreign commerce any paraphernalia or devices.

21 MR. HARDY: I don't believe that we have studied
22 that bill. I'm not sure that it would fall within the juris-
23 diction of the FCC.

24 CHAIRMAN MORIN: I'm sure it wouldn't.

25 MR. HARDY: We would be a little reluctant to try

lw - 27

1 and answer something like that for the Commission. We are here
2 as representatives of the Commission. I would not want to take
3 a position for the Commission on that without having some view.

4 CHAIRMAN MORIN: I wouldn't ask you to.

5 MR. RAY: Senate 3524, Mr. Chairman, would amend
6 1301, 02, 03, and 04 and among the amendments of 1301, 2 and 3
7 shall not apply to the transportation or mailing of tickets or
8 other materials concerning a lottery which is lawful in the
9 state in which it is conducted. It exempts completely from the
10 provisions of 1304 broadcast stations within the state where
11 it is a state operated lottery.

12 CHAIRMAN MORIN: Thank you.

13 Senator Cannon?

14 SENATOR CANNON: Thank you, Mr. Chairman. I missed
15 the discussion up to now. I'm sorry. I will pass now.

16 CHAIRMAN MORIN: Doctor Allen is an orthopedic sur-
17 geon and a city councilwoman from Philadelphia.

18 DR. ALLEN: I don't know a thing about the FCC.

19 CHAIRMAN MORIN: Well, we'll see.

20 DR. ALLEN: What amount of resources and manpower of
21 your Commission have been devoted to the assurance of compliance
22 of your licensees of the governmental regulations?

23 MR. HARDY: We don't have any Commission records which
24 would tell us the answer to that question. We handle the ques-
25 tions that come from our licensees on a case-by-case basis

- 28

1 generally in the Complaints and Compliance Division. This works
2 very closely with the General Counsel's office.

3 We respond to those questions on an ad-hoc case-by-
4 case basis. We don't have any records which disclose to us
5 precisely how much time is spent in handling the limited ques-
6 tions that come regarding the broadcast of lottery information.

7 DR. ALLEN: Is the enforcement phase the responsibi-
8 lity of the Department of Justice?

9 MR. HARDY: That falls within the Department of
10 Justice. We work in conjunction with the Department of Justice
11 when our licenses come up for renewal or we feel it is approp-
12 riate to impose a forfeiture upon a licensee for violation.
13 The actual enforcement of 1304 lies with the Department of
14 Justice.

15 MR. RAY: Perhaps I should add that as you said in
16 your statement, Mr. Hardy, the Commission is empowered under
17 the Communications Act, however, to revoke a license for the
18 violation of 1304, or to impose a monetary fine of up to
19 \$10,000.

20 We have initiated 42 forfeitures. A number of hear-
21 ing actions on a renewal of licenses included issues about the
22 broadcast of lotteries. There have been a couple of cases
23 which included the broadcast of information about horse racing
24 which might be of substantial assistance to illegal gambling.
25 In that sense we enforce it, but not the criminal parts of it.

1 As far as the amount of time, as Mr. Hardy says,
2 have a division of 53 people. We are required to deal with
3 complaints of the public on all broadcast subjects, to iden-
4 tify those complaints which may indicate an actual violation,
5 write records to the Commission and recommendations about
6 should be done about it. I might just mention in passing
7 in fiscal '73, 16,322 complaints that we received on broadcast
8 matters, 51 concerned alleged broadcast of lottery information
9 or advertisements. The total in this field is rather small
10 compared to some of the other subjects we get complaints on.

11 Since we do not monitor stations, we rely upon
12 complaints from the public or from local law enforcement officials.
13 If we get a complaint we try to determine whether a station
14 broadcasting information of assistance to illegal gambling,
15 deal with local law enforcement officials.

16 DR. ALLEN: What in a horse race broadcast would
17 constitute a help to illegal gambling?

18 MR. RAY: To give the results and the mutual odds
19 of one race before the next race at that track is broadcast
20 because then the person that had the bet with the bookie for
21 first race will know whether he has lost or he's got to
22 to bet on the second one.

23 MR. HARDY: He would have a telephone available
24 make his bets on a race-by-race basis.

25 MR. RAY: Also, detailed information about the

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1 OF 2

blw - 30

1 scratches, say at noon of the day of the race. The people going
2 to the track to bet legally don't need that. They will get it
3 when they get to the track.

4 It's only the people that are going to bet through
5 a bookie who really want that information, this late pre-race
6 information.

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1 CHAIRMAN MORIN: You don't consider the broadcasting
2 of the words "they're off" to be a news broadcast?

3 MR. RAY: Not as I remember them when I used to be
4 a young man in Chicago. I remember going to a bookie joint
5 once.

6 DR. ALLEN: Relative to the revocation of licenses,
7 do these occur before the Department of Justice enforces the
8 criminal aspects of the statute?

9 MR. RAY: We don't wait until the Department of
10 Justice institutes a criminal prosecution. We do get their
11 opinion as to whether this would hold up on appeal. If you
12 revoke the station, most times they will appeal it. If it
13 is a forfeiture and they refuse to pay it, the Department of
14 Justice has to go into local District Court. We have to have
15 them with us before we proceed.

16 MR. SLOSBERG: Should the Department recommend crimi-
17 nal prosecution, the Commission would withhold administrative
18 sanctions until the Department has cleared that up.

19 DR. ALLEN: One final question relative to the
20 state of Michigan which is so close to Canada. In your
21 opinion, does that give the State of Michigan's lottery an
22 unfair advantage over my home state of Pennsylvania?

23 MR. SLOSBERG: The director of that lottery would
24 say yes.

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25 MR. HARDY: He feels it has been instrumental in

cam 2

1 making that lottery successful.

2 DR. ALLEN: What does your Commission intend to do
3 about that, if anything?

4 MR. HARDY: If the legislation is passed, the broad-
5 cast of legal state lottery information, then it is permissible
6 and all of our licensees will be so notified.

7 DR. ALLEN: If the legislation is not passed, what
8 steps could be taken to make sure that Canada does not get the
9 information from Michigan?

10 MR. SLOSBERG: We deal constantly with Canada con-
11 cerning broadcast relations on both sides of the border. We do
12 not always see eye to eye. Canadian relations at the present
13 time, for example, call for the deletion of programs picked up
14 in Canada and directed over cable systems. We regularly engage
15 in discussions with them directly and through the State Depart-
16 ment.

17 We would have no basis for suggesting to them that
18 their broadcast stations should not carry certain kinds of
19 programs. That is basically their concern.

20 DR. ALLEN: Specifically, then, if the statute were
21 to pass, could it be written so that it pertains directly to
22 public broadcast or to cable and if it pertained to cable, would
23 it afford Syndicate activities a greater range of activity by
24 virtue of the fact that cable is a little bit more -- which
25 doesn't have access to it, in other words. Primarily in the

cam 3

1 areas where the folks would be more likely to bet because they
2 have the wherewithal to do the betting, would cable television
3 broadcast of lotteries, et cetera, afford the illegal element
4 of gambling a greater degree of activity in your opinion?

5 MR. HARDY: Well, if the statute is amended to make
6 it permissible to broadcast lottery information, it will ob-
7 viously receive such wide dissemination through the over-the-
8 air broadcasts, that cable would only be adding to that. You
9 understand that cable picks up broadcast signals and then
10 disseminates the information into areas where there is no broad-
11 cast reception or into areas where it may be received better
12 over a cable system.

13 I really believe that if the statute is amended that
14 it will permit both broadcast and cable dissemination of lottery
15 information.

16 DR. ALLEN: I'm thinking of the way cable is utilized
17 in some areas of the east coast for the promotion of pornographic
18 movies which certainly are not shown on regular broadcast
19 channels.

20 MR. HARDY: The Commission is well aware of that.

21 MR. SLOSBERG: I haven't heard it described in those
22 terms.

23 DR. ALLEN: If as a legislator I wrote the statute so
24 that it was applicable only to cable, then I'm asking, would it
25 afford the illegal element a more efficacious end?

cam 4

1 MR. HARDY: I would not think so.

2 CHAIRMAN MORIN: The history of this Commission is
3 that Dr. Allen's last final single question elicited more in-
4 formation than the rest of the Commission put together.

5 MR. RITCHIE: I would like to thank you for your
6 cooperation on behalf of the Staff. They have been very coopera-
7 tive.

8 I would like to turn away from lotteries for a
9 moment to the subject of those policies affecting horse racing.
10 On page 8, you state that in 1964, the Commission adopted a
11 policy, the object of which was to curtail the use of broadcast
12 facilities to disseminate information which might be of sub-
13 stantial use to illegal gambling and thereafter you provide
14 some very helpful examples to the Commission.

15 You then state that in 1973, you made certain con-
16 cessions because New York City Off-Track Betting Corporation's
17 efforts were aimed at the same objective.

18 Could you tell our Commission what concessions or
19 what changes you made regarding OTB in New York City from the
20 policy as stated in your statement?

21 MR. COLEMAN: Page 10 is where they discuss that.
22 Is that what you're referring to?

23 MR. RITCHIE: Yes.

24 MR. HARDY: Mr. Ritchie, we have a copy of the press
25 release that would suffice to respond to that question, to

cam 5

1 tell you what the Commission's policy has been since 1973. We
2 have the release that emanated from the Commission at that time.

3 MR. RITCHIE: I think you have already supplied that
4 to us. The point I wish to make is that when an activity was
5 aimed at the same illegal activity which the Commission's policy
6 was directed toward, it seems that you are willing to make cer-
7 tain concessions about utilizing broadcast facilities to pro-
8 mote that activity.

9 What is that or is that not a true statement?

10 MR. SLOSBERG: Well, I would phrase it a little
11 differently, Mr. Ritchie. The Commission objective with respect
12 to the broadcast of horse racing information is simply that it
13 would be contrary to the public interest for a broadcast licensee
14 to broadcast information which would be of aid or assistance to
15 illegal gambling. That is the general objective. It is based
16 upon the public interest standard in the communications statute.

17 The Off-Track Betting Corporation raised certain
18 questions as to what they could, might or might not do. The
19 Commission kept that, in terms of the same objective; would this
20 information, the broadcast of this information, aid or be of
21 assistance to illegal gambling? Where the Commission determined
22 that it would not be, it had no objection to such broadcasts.
23 Where it would, the Commission -- the Commission was of the
24 opinion that it would aid illegal gambling, the Commission in-
25 dicated that it would be barred by the '64 policy.

can 6

1 MR. RITCHIE: The purpose of my question is that this
2 Commission has received a great amount of testimony from the
3 Federal Bureau of Investigation which reflects that -- most
4 pervasive illegal activities concern -- I wonder if the Commis-
5 sion has ever considered curtailing broadcast facilities as it
6 relates to sporting events because that lends itself to en-
7 couraging an illegal activity.

8 MR. HARDY: You mean to eliminate all sports
9 programming?

10 MR. RITCHIE: I'm saying, has the Commission ever
11 considered the proposition that they may be encouraging an
12 illegal activity by broadcasting very widely sporting events
13 upon which illegal bookmaking occurs?

14 MR. SLOSBERG: I'm quite certain that were the
15 Department of Justice to raise the question with the Federal
16 Communications Commission, the Commission would give it very
17 serious consideration. The so-called horse racing policy state-
18 ment, stems from just such an inquiry and concern by the
19 Department of Justice in the field upon the passage of 1084,
20 Title 18 in 1961.

21 MR. HARDY: Do you mean whether or not the Commission
22 has ever considered whether it is allowing broadcast of football
23 games, baseball games and other sporting events to aid in il-
24 legal gambling?

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25 MR. RITCHIE: Yes.

cam 7

1 MR. HARDY: I don't believe the Commission has even
2 taken that into consideration to determine whether it is
3 proper for their licensees to broadcast ball games and other
4 sports entertainment events.

5 MR. RITCHIE: Would you agree in line with the
6 Commission's 1964 policy statement regarding horse racing, that
7 if this Commission should find that horse bookmaking is less of
8 a problem than sports bookmaking, that it might well recommend
9 the Commission consider a reassessment of that policy. Would
10 that be proper?

11 MR. SLOSBERG: It would be appropriate and it would
12 have great weight if it were joined in by the Department of
13 Justice.

14 MR. RITCHIE: That concludes my questions. Thank
15 you.

16 CHAIRMAN MORIN: I don't think that we should leave
17 that record quite open that way. I can see that being trapped
18 into the following headline, "Federal Communications Commission
19 considers banning televising of professional football --"

20 MR. HARDY: We would not want to leave that impres-
21 sion. That would have to rest with Congress. If Congress de-
22 cided it was against the national policy in regard to policy
23 toward gambling to prohibit the broadcast of all sporting
24 events, I think that that would have to be a Congressional
25 determination. I do not believe the Commission would undertake

cam 8

1 such a drastic step.

2 CHAIRMAN MORIN: I'm certain you're not even consi-
3 dering it.

4 MR. HARDY: No, sir.

5 CHAIRMAN MORIN: Mr. Cannon?

6 MR. CANNON: How do you reconcile the fact that you
7 permit the televising of horse races in which one can see who
8 won the race as distinguished from the fact that you can't go
9 ahead with the announcements concerning the racing information?

10 MR. SLOSBURG: The Department of Justice has advised
11 the Commission over a period of years of its views in this area
12 and what it considered to be of material assistance to illegal
13 gambling.

14 The policy statement therefore clearly sets forth
15 that there is no objection to the broadcast of feature races
16 generally and that our objection is limited to certain kinds of
17 information, which the Commission did not dream up on its own.

18 The Commission makes no claim to any expertise in
19 this area as to what aids or abets illegal gambling or what
20 does not. It consults with the Department of Justice on a
21 regular basis and its views and the views reflected in its
22 documents reflect the views of the Department of Justice.

23 MR. CANNON: They specifically have said it's all
24 right to go ahead and broadcast the picture of the race itself,
25 but you can't broadcast the information concerning who won the

cam 9

1 race?

2 MR. SLOSBERG: There are only certain restrictions.
3 Senator, and these concern pre-racing information, actually.
4 The principal thrust of this is against broadcast of track
5 conditions, post positions, jockeys' weights, shortly before
6 a race which will aid people who are going to bet through a
7 bookie - parimutuel information broadcast before the next race
8 at that track is run because it could aid illegal gambling.

9 There is no prohibition against televising an actual
10 race itself. Our investigators also talk to the local United
11 States Attorney, the local Prosecuting Attorney, the police
12 officials of the state that is involved.

13 MR. CANNON: It seems to me that they have some
14 artificial constraints there that are not realistic in this
15 day and age.

16 Thank you.

17 CHAIRMAN MORIN: Thank you, Mr. Hardy and gentlemen
18 for coming. You have been very helpful.

19 MR. HARDY: Thank you again.

20 CHAIRMAN MORIN: The hearing will stand adjourned
21 for five minutes. We will then hear from the United States
22 Postal Service.

23 (Recess.)

24 CHAIRMAN MORIN: The hearing will please come to
25 order.

am 10

1 This is the sixth in a series of public hearings
2 conducted by the Commission on the Review of the National
3 Policy Toward Gambling. In the first five hearings, we heard
4 testimony from the persons interested in the state lottery
5 operation in the United States, from the Department of Justice,
6 from the Internal Revenue Service, from the FBI and just pre-
7 ceding this hearing, from the Federal Communications Commission.

8 This afternoon we will hear testimony from represen-
9 tatives of the United States Postal Service, who will be repre-
10 sented by Mr. John D. Tarpey, who is the Assistant Chief
11 Inspector for Crime Investigations of the U. S. Postal Service.
12 Would you identify your colleagues for the reporter, please.

XXXXXXXXX 13 MR. TARPEY: On my right, Assistant General Counsel,
14 George P. Davis and on my left, John Ventrisca, Attorney with
15 the General Counsel's Office of the U. S. Postal Service.

16 My formal statement was previously submitted to the
17 Commission for the record and it was rather historical and
18 rather lengthy.

19 In the interest of saving time, I would suggest to
20 the Chairman that I would paraphrase the early part of the
21 statement and go into more detail at the end of the statement,
22 specifically the status of the lottery law at this time.

23 CHAIRMAN MORIN: Fine, sir. Your entire statement
24 will go into the record as submitted.

25 (The complete statement follows.)

11 1 MR. TARPEY: Thank you.

2 The present lottery statute was brought about for
3 the most part by the adverse effect that the Louisiana Lottery
4 had on the public in general and on the Postal Service in
5 particular.

6 The Postmaster General at that time became concerned
7 with the lottery which was a quasi-legal lottery and which re-
8 sulted in much corruption in the State of Louisiana and great
9 profits to the operators of the lottery.

10 The mails were used rather extensively in promoting
11 the lottery to all states. In many instances, postmasters and
12 others were agents of the lottery, sold lottery tickets and
13 remitted receipt to the lottery operators by mail.

14 The first really effective postal lottery law was
15 passed in 1890. This made it a violation of the law to send
16 through the mail, anything connected with a lottery. It put
17 some teeth in the previous laws by providing imprisonment of
18 one year and a fine of \$500 for each violation of the statute.

19 The effect of the anti-lottery law was immediate
20 and rather dramatic. In the first ten days of September, 1890,
21 just before passage of the act, the New Orleans post office
22 delivered over 10,000 letters to the Louisiana lottery. Af-
23 ter the act had been passed, only 400 letters were delivered.

24 The same dramatic effect was achieved in connection
25 with the amount of remittances in the nature of money orders

cam 12

1 being delivered to the lottery in the amount of about \$1,700
2 prior to the passage of the law and immediately after that, less
3 than half that amount.

4 The Postal Inspection Service as the law enforcement
5 agency of the Postal Service was called upon to enforce the
6 law. We have been at it ever since.

7 We were able to put out of business the Louisiana
8 Lottery. Then after that, a number of independent operators
9 started to fill in the void and again operate lottery schemes
10 of various sorts and we, through enforcement of the lottery
11 statute, were able to act against these people and get the
12 situation under control.

13 Thereafter, the biggest problem we had in the area
14 of lotteries has been foreign-based lotteries. In those
15 instances, we have, through the anti-lottery law and also,
16 through enforcement of the stop-order provisions, or mail-stop
17 provisions of the administrative statute, Title 39, United
18 States Code 3005, were able to deal, we think, very effectively
19 with the operators of foreign-based lotteries.

20 To bring the present concern into focus, we are
21 presently enforcing, for the most part, Title 18 USC, Section
22 1302, which is the postal lottery statute. It is a criminal
23 law, a felony, which prohibits the mailing of a certain pro-
24 scribed material in connection with the operation of a lottery.

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25 The statute is rather specific in that it requires

cam 13

1 that the matter involved be connected with the lottery and that
2 the mailing of the proscribed material is in violation of the
3 statute.

4 I think I should mention also at this point, that
5 the inspection service, for the most part, uses 1302 in many
6 cases in connection with the investigation of complaints of
7 violations of the lottery statutes by fraternal organizations,
8 religious organizations, and so forth. By bringing provisions
9 or the lottery statute to the attention of the organization, we
10 are able to get voluntary compliance.

11 In connection with the foreign-based lottery opera-
12 tions, we are able to effectively deal with them through the
13 issuance of the mail-stop order under Title 39 USC, Section 3035.

14 With the recent introduction of the so-called legal
15 state lotteries, we have not changed our position with respect
16 to enforcing the law. We have investigated violations of
17 Section 1302 brought to our attention and we have presented the
18 facts to the United States Attorney for consideration of pos-
19 sible prosecution.

20 We have maintained liaison with the Department of
21 Justice in connection with the operations of the state lotteries.
22 We have been in touch with the directors of the state lotteries,
23 and talked with them about the operation of the lotteries.

24 In 1965, Postal Inspection Service investigated 383
25 cases of alleged use of the mails by lotteries. 347 promotions

cam 14

1 were discontinued, 14 persons were arrested, 11 individuals
2 were convicted. In 1974, through March 30, there were 173
3 investigations, 321 promotions discontinued, 1 arrest and 1
4 conviction.

5 In the years between, lottery investigations de-
6 creased gradually, but there have never been less than 200
7 investigations in any year. The relationship between the
8 increase in the legal lottery operations and the gradual de-
9 crease in illegal lottery investigations during this period is
10 only conjectural.

11 Some of these investigations were of operations of
12 the so-called "legal lotteries." We have consistently consulted
13 with the Department of Justice on the matter of prosecution for
14 use of the mails by these legal lotteries.

15 We have twice formally presented cases to United
16 States Attorneys -- once in Michigan and once in Massachusetts
17 -- both in 1973. The United States Attorney in Michigan de-
18 clined to prosecute; the United States Attorney in Massachusetts
19 has not yet indicated his intention to prosecute or not to
20 prosecute.

21 We have, moreover, on two occasions, made informal
22 presentations to United States Attorneys -- once in New Hampshire
23 and once in Pennsylvania; both advised us of their intent not
24 to prosecute.

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25 In October, 1973, the Department of Justice requested

cam 15

1 the Postal Inspection Service to provide positive information
2 about the use of the mails by state-operated lotteries. I
3 directed that the appropriate operating official of each state-
4 operated lottery be contacted by a Postal Inspector, asked if
5 he was aware of the restraints on the use of the mails by
6 lotteries imposed by Section 1302 of Title 18 of the United
7 States Code, and asked what, if any, effort was made to avoid
8 violation of the statute.

9 In every instance but one, our inquiries indicated
10 to us that there was some use of the mails in the lottery opera-
11 tion. In the usual case, the operating official disavowed any
12 intent to violate the statute, but interpreted it in a manner to
13 permit some use of the mails in the lottery operation.

14 For our own information, we caused mail counts to be
15 made of the mail received by the headquarters of three state-
16 operated lotteries in a two-day period in March of this year.
17 Only first class and air mail was counted and, as forbidden by
18 law, none of the mail could -- or was -- opened to ascertain its
19 content.

20 In the case of one lottery, however, because specially
21 prepared mailer envelopes were used in applying for season sub-
22 scription tickets, and a pre-addressed standard envelope used in
23 claiming prizes, we were able to identify 903 subscription re-
24 quests for subscription tickets and 2,755 claims for prizes won.

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25 In the other two lotteries, 238 letters and 804 letters.

cam 16

1 respectively, were received. Of the 804 letters counted in the
2 case of the one lottery, 70 percent bore out-of-state postmarks
3 from just about every state in the United States.

4 Thank you for your time and attention.

5 CHAIRMAN MORIN: Thank you very much for coming.

6 It is a very interesting story. I am at a loss as
7 to what questions to ask other than where there appear to be
8 clear violations of the statute which have been brought to the
9 attention of the United States Attorneys who refused to prose-
10 cute, what conclusions do you draw?

11 MR. TARPEY: We feel that we have fulfilled our
12 responsibility in investigating and reporting to the United
13 States Attorneys of facts as our investigation has developed
14 them.

15 We feel basically that we have done our job in this
16 respect. We recognize that this is a very sensitive area for
17 United States Attorneys. As you know, they are located in the
18 states where the lotteries are in operation. It is politically
19 sensitive.

20 I think, also, the fact has to be considered that
21 this is in their state a legal lottery passed and approved by
22 the legislature of the state. These are problems that the
23 United States Attorney has to face.

24 I don't think that they are problems that I can
25 provide a solution to.

cam 17

1 CHAIRMAN MORIN: No. I'm sure of that. I didn't
2 mean to imply that you weren't doing your job. I'm sure that
3 you're doing your job.

4 Would you clarify for me the incoming mail. In other
5 words, the subscription requests for tickets and prizes won,
6 that does not violate any statute.

7 MR. TARPEY: We think they do if they are in connec-
8 tion with a lottery.

9 I think that they are covered as mailing proscribed
10 by the statute, Section 1302.

11 MR. DAVIS: The statute, the first part of the
12 statute, prohibits from the mails any letter, package, postal
13 card, or circular concerning any lottery, et cetera. This, I
14 think, proscribes from the mails the incoming requests to pur-
15 chase the tickets as well as the outgoing ticket sent in re-
16 sponse. Any letter, package, postal card, or circular concern-
17 ing any lottery.

18 CHAIRMAN MORIN: Therefore, if I'm in Massachusetts
19 and buy a lottery ticket and I'm in California and someone tells
20 me that I have won, I cannot lawfully write and ask for payment
21 nor can payment be sent to me?

22 MR. DAVIS: No.

23 CHAIRMAN MORIN: Have you taken a position which
24 would --

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25 MR. RITCHIE: There are two types of legislation

cam 19

1 pending according to the information of the Staff: one was in-
2 troduced by Senator Cotton, and Mr. Findley from Illinois, would
3 very well repeal those provisions of 1302 presently being ex-
4 cused.

5 There is a second type of bill which would allow
6 intrastate mailing and that is H. R. 6668.

7 CHAIRMAN MORIN: Has the Senate taken any position
8 on those bills?

9 MR. DAVIS: The Postal Service comment on every lot-
10 tery bill that has been introduced to date has been to take no
11 position whatsoever on this morality or the policy question
12 involved of whether or not the public interest is against the
13 use of the mails by lotteries.

14 Our interest has been primarily one of trying to see
15 that whatever bill might be enacted does not contain any provi-
16 sions directing the Postal Service to perform obligations it
17 could not perform or obligations that would be very costly to
18 perform.

19 The cost of such obligations would have to go into
20 our rate base and would have to be paid by purchasers of postage
21 stamps.

22 A bill that would direct the Postal Service not to
23 accept, transport, or deliver any lottery material is a bill
24 that we could not say in good conscience that we could enforce.
25 You put any lottery material you wish in a plain white envelope

cam 19

1 and our letter carriers will never know it is there.

2 CHAIRMAN MORIN: You do take the position that intra-
3 state mailing violates the statute?

4 MR. DAVIS: That is quite clear, yes.

5 CHAIRMAN MORIN: Did I understand? Have there been
6 any criminal references at all having to do with state lotteries?

7 MR. TARPEY: We have made two formal presentations to
8 United States Attorneys for criminal prosecution and in both
9 cases prosecution was declined.

10 CHAIRMAN MORIN: I'm sorry. I was thinking about
11 reference to the Justice Department itself.

12 MR. TARPEY: In every instance that we make the for-
13 mal presentation to the United States Attorney, we provide a
14 copy of that to the Justice Department here in Washington.

15 Recently, we have met with the Justice Department
16 and we have exchanged views. We met recently with state offi-
17 cials of state lotteries together with the Justice Department.

18 We have had a sort of a round-table discussion of
19 the problem. The Justice Department is aware of the investiga-
20 tions we have made. They are aware of our position in the en-
21 forcement of the law. I would like to think that most state
22 officials are also aware of our position.

23 CHAIRMAN MORIN: Commissioner Dowd is the Prosecuting
24 Attorney from Stark County, Ohio, a state which is interested
25 in its lottery problem. I turn the questioning over to him.

cam 20

1 MR. DOKD: Mr. Chairman, it seems to me that the
2 presentation has really answered whatever questions I have.

3 As I understand it, and correct me if I'm wrong, we
4 have a statute that imposes upon Postal Service at least some
5 enforcement obligations, but the Justice Department is apparently
6 taking a position that simply has stopped any prosecution as it
7 might relate to a state-operated lottery so there is no prose-
8 cution of this law as of now, even though there are apparent
9 constant daily violations?

10 MR. TARPEY: There have not been any prosecutions as
11 yet of state-operated lotteries, but the matter is still, I'm
12 sure, under consideration by the Justice Department as to pos-
13 sible prosecution.

14 MR. DOWD: If I took that long to determine matters
15 in my jurisdiction, I would be out of office the next time
16 around. An obvious violation, which is a comment, not a ques-
17 tion.

18 CHAIRMAN MORIN: Mr. Coleman is also a Prosecuting
19 Attorney, from Monmouth County, New Jersey.

20 MR. COLEMAN: Does this law apply to newspapers?

21 MR. TARPEY: Yes, the law does apply to newspapers.
22 In connection with the publishing of results and so forth. It
23 does apply to newspapers.

24 MR. COLEMAN: Isn't the law broken every day in the
25 mails by mailing of newspapers with lottery results in them?

am 21

1 MR. TARPEY: We will follow a policy, both the
2 Postal Service and the Justice Department, that in connection
3 with lotteries and newspaper items, anything that is newsworthy
4 is a news item.

5 We have not taken any strong position with respect
6 to prosecuting newspapers for printing newsworthy items or
7 matters that the public should know about.

8 I think that the -- I don't know what lottery results
9 you are referring to, but I expect you probably mean the lottery,
10 state lottery results.

11 MR. COLEMAN: Winning number, whatever it might be,
12 on some page of the local paper. People move away and a lot of
13 the New York papers are mailed out, interstate as well as intra-
14 state. That would be a clear violation by giving out lottery
15 information, wouldn't it?

16 Isn't that a fact?

17 MR. TARPEY: Yes, I would say that that particular
18 interpretation of law would say that it violates --

19 MR. DAVIS: Many newspapers follow a practice of
20 having two editions, one of which will contain lottery informa-
21 tion. If it is to go out of state, they will truck it rather
22 than use the mails. The other edition they will feel free to
23 use the mails with.

24 We have run into a number of cases where this has
25 happened on the part of newspapers who are zealous in seeing

cam 22

1 that they do not digress from the rather clear mandate of the
2 statute.

3 The statute prohibits any publication of any kind
4 containing any advertisement of any lottery or containing any
5 list of the prizes drawn or awarded by means of such lottery
6 whether said list contains any part or all of such prizes.

7 MR. COLEMAN: I understand you're not the legisla-
8 tive-making body, but do you see anything wrong in sending a
9 newspaper from Asbury Park, New Jersey or Miami or Philadelphia
10 that has last week's lottery number in it?

11 Are you promoting the lottery?

12 MR. TARPEY: No. I don't feel that as a Postal In-
13 spector and a representative of the Postal Service that the
14 matter of morality, whether it is good or bad is something we
15 should comment on.

16 MR. COLEMAN: As I understand, apparently there was
17 a scandal in the Louisiana Lottery. There was something bad
18 about it. The thing wasn't being run right; wasn't that it?

19 One of the purposes of the act was to curb that
20 being done with the assistance of the United States mails, isn't
21 that correct?

22 MR. TARPEY: Yes.

23 MR. COLEMAN: We don't have that problem today, at
24 least to my knowledge. The testimony we heard here this mor-
25 ning from the FBI, I don't know what problem there is.

am 23

1 MR. TARPEY: I would only say that as long as the
2 states run the lotteries and run them well, there probably won't
3 be that chance that they would be corrupt. That is under the
4 present law. What would happen if the law were changed and the
5 states were given carte blanche to compete with one another --
6 who knows what would happen.

7 MR. COLEMAN: Your testimony is very candid testi-
8 mony. You said one of your brother federal agencies refused to
9 prosecute when you have given them information.

10 MR. TARPEY: Has declined to prosecute rather than
11 refused.

12 MR. COLEMAN: Declined?

13 MR. TARPEY: In two specific cases.

14 MR. COLEMAN: Mr. Chairman, that is what we are here
15 to find out; whether the laws are archaic and whether they are
16 being enforced or not. I understand you're not going to bring
17 a prosecution over sending the Daily News from New York to
18 Pennsylvania.

19 MR. TARPEY: I don't think so.

20 MR. COLEMAN: I have no further questions.

21 CHAIRMAN MORIN: Doctor Allen is one of our Commis-
22 sioners. She is a member of the City Council as well as being
23 an orthopedic surgeon.

24 DR. ALLEN: What's the policy of your department
25 toward the foreign lotteries like the Irish Sweepstakes or

n 24

1 whatever that game is they have down at Puerto Rico?

2 MR. TARPEY: Our policy with respect to the Irish
3 Sweepstakes and the West Indian Sweepstakes -- the problem is
4 that there the violators of the statutes for the most part are
5 in foreign countries and we cannot prosecute under the statute.

6 We have regularly followed the policy of trying to
7 cut off from them the fruits of their lottery scheme and deny
8 them the remittance from people.

9 We do that under Section 3005. We ask the General
10 Counsel's Office to obtain a mail-stop order in which we list
11 the name of the agent to whom the remittances are to be sent.

12 We publish this in our postal bulletin and we send it
13 to all our post offices and we direct the post office people at
14 ports of embarkation for overseas that mails addressed to these
15 agencies of the lotteries be returned stamped "Lottery Material:
16 Fraudulent." And then we feel we are doing what we can to pro-
17 tect the public from the foreign lotteries.

18 DR. ALLEN: Do you intercept these lottery tickets
19 or confiscate the money?

20 MR. TARPEY: Well, in the majority of cases, the
21 Customs Service -- with whom we work very closely -- they bring
22 to our attention lottery material that they intercept being
23 brought into the country. Under their border search authority,
24 they have the right to look at this mail. And when they deter-
25 mine that it is lottery material, they advise us and advise us

in 25

1 of the names of the agents and we proceed with the stop orders.

2 That is how we are apprised, for the most part, of
3 the names of the agents of the lottery.

4 DR. ALLEN: Are you, then, saying that you do not
5 intercept any lottery tickets and/or confiscate any money?

6 MR. TARPEY: In some instances, lottery material
7 comes to our attention in other ways. In those instances, we
8 have a procedure that we follow where we go to court and ob-
9 tain a search and seizure warrant to seize and confiscate the
10 material.

11 In some instances lottery books, for example. They
12 are rather bulky and in a light envelope. They tear up in our
13 cancelling machines and postal employees become aware of the
14 fact that they are lotteries.

15 In many instances, these lottery tickets are sent to
16 people who have not asked for them. They are unsolicited and
17 some people become offended by receiving them. And they bring
18 them to our attention.

19 DR. ALLEN: If you do confiscate any money, what
20 happens to it?

21 MR. TARPEY: We don't confiscate any money at all.
22 What we do, we stop the mail from going out of the country and
23 we return it to the sender intact without opening it.

24 DR. ALLEN: What happens to the sender?

25 He is in violation of the statute too, isn't he?

cam 26

Doesn't it cover that?

MR. TARPEY: I would say that the sender is in technical violation of the law in that he is making a mailing that is in violation of 1302. But, we feel that our enforcement of the law should be directed to those people who are profiting by the lottery, rather than those people who may be considered to be victims of the lotteries. We consider the sender of lottery funds a victim.

DR. ALLEN: Has the Department ever been sued by a person who sent money on the grounds that he may have been a winner?

MR. TARPEY: Not that I know of.

CHAIRMAN MORIN: Mr. Ritchie?

MR. RITCHIE: Thank you.

I take it in your discussions with directors of the state lotteries, you have brought to their attention the obvious results of the mail coverage of their subscription or ticket claims; is that correct?

MR. TARPEY: We haven't had any mail coverage.

MR. RITCHIE: Your review of the mails received, the survey of the materials you received which reflected some in -- in one lottery, 70 percent of the 804 letters bearing out-of-state postmarks.

MR. TARPEY: I don't know that that was discussed directly with the state officials.

cam 27

1 MR. RITCHIE: My problem is in terms of the impact
2 of those types of statistics upon the obligations of the Postal
3 Service. Have you given any thought to the amount of additional
4 manpower and resources it would require the Postal Service to
5 employ to enforce 1304 against the state-operated lotteries if
6 you chose to go through confiscations, prosecution, et cetera.

7 MR. TARPEY: No, we really haven't considered that.

8 MR. RITCHIE: Have you officially derived what you
9 believe to be Congress' intent regarding Section 1304? Is it
10 to eliminate lotteries, be they legal or illegal state operation.

11 MR. TARPEY: I'm not familiar with that statute.

12 MR. DAVIS: I think the legislative history -- it's
13 1302, I believe.

14 MR. RITCHIE: I'm sure, 1302.

15 MR. DAVIS: At the time the Congress enacted the
16 statute, it was intended to deny use of the mails to a state-
17 operated lottery that was lawful within that state. The last
18 34 years, the Congress has had presented to it, I don't know
19 how many bills, that would change that result.

20 It hasn't chosen to change it. You might argue from
21 that with, I think, moderate validity, that that expresses a
22 Congressional intent not to change the law. We have the law
23 still on the books.

24 MR. RITCHIE: If 1302 was designed and intended to
25 eliminate lotteries, then can you give this Commission the

cam 28

1 statistical utilization of the Postal Service resources to
2 accomplish that intent?

3 MR. DAVIS: I don't think it was designed to elimi-
4 nate lotteries. I think it was designed to deny the mails to
5 the promotion of lotteries. As to how many postal personnel
6 are used in enforcing this, I can't say.

7 It is not -- the enforcement of the lottery statute
8 is not the soul or indeed, isn't the primary function of any
9 single postal employee. Postal employees devote their time to
10 this statute and they devote their time to many other things.
11 In my office, we devote a moderate amount of time to the enforce-
12 ment of the statute.

13 MR. RITCHIE: Would you view your enforcement efforts
14 as more an advisory capacity to the state operations as opposed
15 to an enforcement capacity at this point?

16 MR. TARPEY: No. We are investigating with the view
17 of determining facts for prosecution, if that is considered
18 appropriate by the United States Attorney.

19 MR. RITCHIE: I have no further questions.

20 CHAIRMAN MORIN: Mr. Coleman?

21 MR. COLEMAN: What sort of time or percentage of
22 work do you spend on this? It would appear not to be -- it
23 would be a minimal amount?

24 MR. TARPEY: As far as the Postal Inspection Service
25 is concerned, we don't have any specific records dealing

cam 29

1 directly with our efforts in the lottery field. We do have
2 statistics which we maintain of work hours and caseload. We
3 have it broken down into a broader group. All our lottery work
4 is included with the fraud cases. This includes all of the
5 violations of 3005 and the 1302.

6 We use a total of about 15 percent of our manpower
7 for those.

8 Now, in the area of F. cases, fraud cases, we inves-
9 tigate in excess of 11,000 cases a year and we investigate
10 about 200 lottery cases, under Section 1302. On that basis, it
11 is about 2 percent of 15 percent, which would be a minimal
12 amount of effort and time on our part.

13 MR. COLEMAN: Thank you.

14 CHAIRMAN MORIN: I get a picture here of a statute
15 that was passed to cure an ill which is not present in state
16 lotteries. I don't see that there is any great urgency felt
17 on the part of the Justice Department to enforce it. I think
18 we sympathize with the position of the Postal Service.

19 Thank you very much for coming.

20 MR. TARPEY: Thank you.

21 CHAIRMAN MORIN: The hearing will stand adjourned.
22 The next hearing of the Commission is on July 24th.

23 (Whereupon, at 4:00 o'clock p.m., the hearing was
24 adjourned to reconvene on July 24th, 1974.)

121E

STATEMENT
OF
ASSISTANT CHIEF INSPECTOR JOHN D. TARPEY
UNITED STATES POSTAL INSPECTION SERVICE
BEFORE
COMMISSION ON THE REVIEW OF THE
NATIONAL POLICY TOWARD GAMBLING

June 26, 1974

I am grateful for the invitation to appear today before this Commission and I welcome the opportunity to review with you the experience of the Postal Inspection Service in enforcing the postal laws concerning the transmittal in the mails of lottery materials and information.

In 1746, at Philadelphia, Benjamin Franklin, at the time Assistant Postmaster General in the British colonial postal system, and later to be named the first Postmaster General of the United States, sponsored a lottery!

Mr. Franklin, the nature of whose duties is so closely identified with some of the duties of the Postal Inspection Service of today as to earn him the place of the first Postal Inspector, of course did nothing illegal. In lending his support to this effort to raise funds to fortify the city against a feared French assault, his action had the approval of the governor and of the Philadelphia Council. It was, furthermore, consistent with the

manner in which funds for legitimate and praiseworthy purposes were raised at the time - including the construction of some of our oldest and most prestigious colleges and universities.

From the arrival of the first English settlers in America - some of whose settlements were financed by lotteries in England - to the time of the American Revolution there were reportedly 158 lotteries conducted under license in the several colonies - "legal" lotteries. There were probably as many more conducted on a smaller, local scale without benefit of license.

Lotteries were by most people considered legitimate and respectable, and public works - bridges, roads, streets, public buildings, and churches - were financed by lotteries.

Lotteries proliferated after the American Revolution, as our young republic grew and expanded and had need to finance public services and facilities. From 1790 to the Civil War, I have read, 47 colleges, 300 other schools, and 200 church groups were the beneficiaries of lotteries, as well as many municipal, civic and fraternal bodies.

We have no records of the period to refer to, but I am certain that the United States mails were used to transport lottery information and materials for many - if not all - these lotteries.

By 1840, however, the attitude toward lotteries was changing. They had been outlawed in England in 1826. In the United States, more and more, perceptive citizens were troubled at seeing how lotteries promoted gambling, with its attendant evils, and were encouraged to use their voices and their influence in opposition to them. In 1840, 12 of the then 26 states had laws against lotteries, with the trend running against lotteries in many of the other states.

In 1842 Congress banned lottery ticket sales in the District of Columbia, possibly the first Federal Government action in restriction of lotteries, although in 1827 the first federal act dealing with lotteries had forbade postmasters from acting as agents for the sale of lottery tickets.

By the time the Civil War began, only three states had not banned lotteries. In 1865 the 39th Congress failed to pass legislation implementing a suggestion that the Postmaster-General deny use of the mails to lotteries. On July 27, 1868, however, the 40th Congress enacted legislation declaring:

"That it shall not be lawful to deposit in a post office, to be sent by mail, any letters or circulars concerning lotteries, so-called gift concerts, or other similar enterprises offering prizes of any kind on any pretext whatever."

Mr. Farnsworth, the House manager of the bill, in reporting it out, noted that the House conferees had stricken a Senate amendment authorizing postmasters to remove from the mails and forward to the Dead Letter Office letters or circulars suspected of containing lottery material. It was considered unwise to give postmasters this extraordinary power to be exercised upon mere suspicion.

On June 8, 1872 Congress made it illegal to mail letters or circulars concerning "illegal" lotteries. On July 12, 1876, just four years later, the word "illegal" was removed from the statute, and the law was made applicable to all lotteries, including the so-called "legal" lotteries - those, that is, not prohibited by state laws.

At this time the largest lottery operation in the United States was the Louisiana Lottery. Chartered by the State of Louisiana in 1868 for a period of twenty-five years, from July 1, 1869, it was widely believed at the time that the charter had been obtained by bribery and corruption. With 12 drawings a year, it was estimated that the annual income of the lottery was approximately \$23 million, with net profits somewhere between \$3 and \$10 million.

No wonder, then, that when time came for renewal of the lottery charter, the lottery company made to the Louisiana legislature "an offer it couldn't refuse." It was proposed that the lottery would pay, during the life of the proposed contract, \$31 million at the rate of \$1,250,000 per year - \$350,000 of it for the public schools of the state, \$350,000 for levee construction and maintenance, \$80,000 to the state hospitals, \$40,000 for the state insane asylums, \$25,000 for the deaf, dumb and blind, \$5,000 for the state Soldiers' Home, \$50,000 toward pensions for disabled Confederate veterans, \$100,000 to the city of New Orleans for drainage and sanitary purposes, and \$250,000 to the general fund of the state. The governor vetoed the charter renewal legislation, but it became law over his veto.

On September 19, 1890 Congress passed the Anti-Lottery Act, barring all lottery materials from the mails; prohibiting the sending of checks, drafts and money orders for purchases of tickets, and prohibiting the mailing of letters containing lottery advertisements. Violation of the law was punishable not only by a \$500 fine, as in the 1876 law, but by imprisonment for a year. The law now had teeth in it.

Two and a half months before passage of the Anti-Lottery Act, the frustration of the Postal Service had been expressed by

Postmaster General Wanamaker in a June 28, 1890 letter to the President of the United States. Summing up, Mr. Wanamaker said:

"With all the admitted evils within and without the Postal Department, resulting from this nefarious traffic, I am as the head of this Department, powerless to act. It is indeed a humiliating position, subjecting me to the suspicion of law abiding citizens that your Postmaster General is ignorant of, indifferent to, or wilfully evading the law when he is without authority under existing statutes to exclude this matter from the mails. It is even more humiliating to contemplate that the entire Post Office Department is, in point of fact, the principal agent of the Louisiana State Lottery Company, and that every extension of the postal system spreads the hurtful power and influence of that company."

The effect of the Anti-Lottery Law was immediate and dramatic. In the first ten days of September 1890 - just before passage of the Act on September 19th - the New Orleans post office delivered 30,000 letters to the Louisiana Lottery; in ten days in July 1891, the lottery received 534. In the ten days in September, 8,464 registered letters were received; in July, 41. In September money orders to the amount of \$1,695.98 and postal notes in the

amount of \$8,275.86 were paid to the Lottery agent; in July the payments were \$93.00 and \$200.48.

The Postal Inspection Service wasted no time in enforcing the law. Immediately after its passage Chief Postal Inspector E. G. Rathbone had dispatched Postal Inspector William T. Sullivan of the St. Louis Division to New Orleans to supervise enforcement there. On November 1st the Austin, Texas, Division of the Inspection Service was activated and within the month the newly-appointed Inspector in Charge, George C. Maynard, visited New Orleans, now within his jurisdiction, to personally observe enforcement operations there. Shortly afterwards he moved his headquarters from Austin to New Orleans.

Postal Inspector Sullivan made the first arrest for violation of the Anti-Lottery Statute on November 5, 1890, but prosecution was declined by the United States Attorney.

That same month a Postal Inspector at Houston, Texas, had reached the point in his investigation of the local agent of the lottery where he felt he had sufficient evidence for prosecution - only to have the evidence destroyed by the Assistant Postmaster at Austin. The Assistant Postmaster was dismissed for insubordination, the Postal Inspector started all over again, and in February 1891 the lottery agent was indicted, subsequently pleading guilty.

Vigorous enforcement of the statute continued. From the date of its passage, September 19, 1890, to the end of the fiscal year, June 30, 1891, there were 152 arrests by Postal Inspectors, 75 indictments and 56 convictions. From July 1, 1891 to October 23, 1891, a period of just over three months, there were 49 arrests, 578 indictments and 3 convictions. The relatively small number of convictions within this period is due, I am sure, to the normal time lag between indictment and trial and conviction.

In his Annual Report to the President of the United States, Postmaster General Wanamaker, on December 5, 1892, said: "There is little doubt that, so far as the mails are concerned, the business of the lottery companies has practically ceased, though resort is still, of course, to private carriers."

Statistics bear this out. In 1892 the Inspection Service received for investigation as possible violations of Section 3894 of the Revised Statutes, which the Anti-Lottery Act of 1890 had become, - and from which is derived our current Section 1302 of Title 18 of the United States Code, - a total of 220 cases. In 1893, 34 fraud orders were issued prohibiting the delivery of mail matter to certain addressees, of which 13 were directed at lottery operations. In 1893, also, the Inspection Service closed 44 cases based upon

complaints against lottery operators. We do not know the total number of complaints received.

The next year, 1894, the number of fraud orders issued increased to 223, directed against 187 schemes, many of them against so-called "bond investing companies," a camouflage contrived by clever operators to disguise a lottery. This large increase in fraud orders was the result of the coming into existence of hundreds of small lotteries seeking to fill the void left when the Louisiana Lottery ceased use of the mails in 1892.

The Postmaster General, in his report to the President this year, 1894, noted that there had also been an influx into the United States of lottery material from lotteries operated abroad, chiefly in Europe, Mexico and Central America. With other nations of the world holding a more tolerant view of lotteries than that of the United States and Great Britain, there was little cooperation in any attempt to keep lottery material out of the international mails entering the United States.

To the extent that it was able under the law, the Inspection Service enforced the law against foreign lotteries, and not without some success. In April 1891 Postal Inspectors at El Paso, Texas, had arrested the President of the Juarez, Mexico, Lottery

Company, which was flooding the United States mails with lottery materials, when he very unwisely crossed the border to mail, in El Paso, his lottery circulars to addressees in the United States. He was trying to save the difference between the five cent per item Mexican international rate and the three cent United States domestic rate.

Subsequently a second officer of the Juarez lottery was arrested. A total of 550 indictments was returned against the lottery company and its officers, but prosecution dragged on until February 1892. That month United States Supreme Court decisions in two test cases, sustaining the anti-lottery laws, followed by the collapse of the Louisiana Lottery, caused the defendants to plead guilt.

In 1893, also, there passed in the Senate, but failed of passage in the House, an attempt to have the Anti-Lottery Act of 1890 extended to permit the Postmaster-General to issue orders to return to the senders all first class mail under seal addressed to lottery companies. Then, as now, of course, first class mail could not be opened without a warrant.

In 1896 the Post Office Department issued 193 fraud orders, forbidding the delivery of mail matter and payment of money orders to parties and corporations found to be operating lottery

or fraudulent schemes through the mails. 41 of the fraud orders were against the so-called bond investment companies, 16 against avowed lotteries and 10 against miscellaneous operations held to be, in fact, lotteries. This same year the Postmaster-General reported:

"The headquarters of all or nearly all of the avowed lottery concerns has been removed to foreign shores, and while the Post Office Establishment of the United States refuses to carry mail addressed to them, it is thought much mail matter sent by them reaches the addressees in this country through the mails, which the Department practically has no power to prevent, and that express companies, notwithstanding the stringent provisions of the Act of March 2, 1895 (28 Stat L, 963) carry correspondence and large sums of money from our people to them.

"This Department has no power or jurisdiction to enforce that part of the act above cited which prohibits international mail and interstate carriers from transporting lottery matter from foreign countries into this country, or from one State to another, and unless the execution of the law be made mandatory on some Department or office its provisions

will be of little avail in the suppression of the lottery traffic."

Mexico and Honduras were the favorite locations of foreign lotteries aimed at the United States at this time. The Louisiana Lottery tried operating from Honduras for some few years after abandonment of its operation in Louisiana.

In 1897 the Post Office Department issued 244 fraud orders, 24 of them against bond investing schemes, 27 against miscellaneous lotteries. In 1898, 62 fraud orders were issued, only 5 against lotteries. In 1899 the Post Office Law Department issued 336 original opinions on lottery schemes of various kinds, with 99 fraud orders issued, but only 9 against lotteries.

In 1900, 84 fraud orders were issued. There were 26 against foreign lotteries, none against domestic lotteries. The next year, 1901, saw 15 fraud orders issued against foreign lotteries, but only 4 against domestic lotteries, and the Postmaster-General's Annual Report had this comment:

" . . . it seems proper to state that the enforcement of the law concerning lotteries and frauds has been so faithfully and vigorously conducted that there is no longer within the limits of the United States a

regularly organized or chartered lottery doing business through the mails. . . .

" . . . There may be, and doubtless are, some concerns that transact limited business by the aid of messengers, but it can be positively stated that they do not use the mails, unless it is to a limited extent under sealed communications, which there is no possible means of lawfully detecting, except by the merest accidents."

Our statistical reporting for much of the period from the turn of the century until the time we began computerizing our records is incomplete with respect to lottery information, which frequently was included with information about fraudulent non-lottery schemes using the mails. The records do, however, reflect a steady increase in the number of fraud orders directed against foreign lotteries and a fairly constant, much lesser number of fraud orders against domestic lotteries.

In the early 1930's - and continuing to some extent to the present - the United States was flooded with lottery material and tickets from the Irish Sweepstakes, as well as a smaller amount of material from Cuban, Mexican and other Caribbean lotteries. Millions of Irish Sweepstakes tickets were

confiscated entering the United States, and fraud orders were issued against foreign addressees as soon as they were identified as receiving agents for remittances from the United States.

In 1932, for example, a lottery promotion began which used a high powered radio station on the Mexican border to broadcast lottery announcements daily. Listeners in the United States were solicited to mail their money to persons identified in the radio broadcasts. The Post Office Department, of course, issued a fraud order against each name as it was announced, and, although the names were changed frequently, remittances estimated as amounting to thousands of dollars were prevented from reaching the lottery operators, several of whom were subsequently arrested, convicted and imprisoned.

The New Hampshire Lottery in 1964, and the seven state lotteries which have followed, have not changed the position of the Inspection Service with respect to the enforcement of the laws against use of the mails by lotteries.

In 1965 the Postal Inspection Service investigated 283 cases of alleged use of the mails by lotteries. 347 promotions were discontinued, 14 persons were arrested, 11 individuals were convicted. In 1974, through March 30, there were 173 investigations, 321 promotions discontinued, 1 arrest and 1

conviction. In the years between, lottery investigations decreased gradually, but there have never been less than 200 investigations in any year. The relationship between the increase in the legal lottery operations and the gradual decrease in illegal lottery investigations during this period is only conjectural.

Some of these investigations were of operations of the so-called "legal lotteries." We have consistently consulted with the Department of Justice on the matter of prosecution for use of the mails by these legal lotteries. We have twice formally presented cases to United States Attorneys - once in Michigan and once in Massachusetts - both in 1973. The United States Attorney in Michigan declined prosecution; the United States Attorney in Massachusetts has not yet indicated his intention to prosecute or not to prosecute.

We have, moreover, on two occasions, made informal presentations to United States Attorneys - once in New Hampshire and once in Pennsylvania; both advised us of their intent not to prosecute.

In October 1973, the Department of Justice requested the Postal Inspection Service to provide positive information about the use of the mails by State-operated lotteries. I directed that the

appropriate operating official of each State-operated lottery be contacted by a Postal Inspector, asked if he was aware of the restraints on the use of the mails by lotteries imposed by Section 1302 of Title 18 of the United States Code, and asked what, if any, effort was made to avoid violation of the Statute.

In every instance but one, our inquiries indicated to us that there was some use of the mails in the lottery operation. In the usual case the operating official disavowed any intent to violate the Statute, but interpreted it in a manner to permit some use of the mails in the lottery operation.

For our own information we caused mail counts to be made of the mail received by the headquarters of three State-operated lotteries in a two-day period in March of this year. Only first class and air mail was counted and, as forbidden by law, none of the mail could - or was - opened to ascertain its content. In the case of one lottery, however, because specially prepared mailer envelopes were used in applying for season subscription tickets, and a pre-addressed standard envelope used in claiming prizes, we were able to identify 903 subscription requests for subscription tickets and 2,755 claims for prizes won.

137E

In the other two lotteries, 238 letters and 804 letters, respectively, were received. Of the 804 letters counted in the case of the one lottery 70 per cent bore out-of-state postmarks, - from just about every State in the United States.

Thank you for your time and attention!

Mr. Cleveland's statement, 1/11/61

138<

Mr. Chairman, my name is William V. Cleveland, and I am an Assistant Director in charge of the Special Investigative Division, Federal Bureau of Investigation.

Because our experience over the years has shown that professional gambling forms the backbone of organized crime in this country, we appreciate the opportunity to appear before you today and present testimony regarding this often misunderstood field.

To begin with, by way of background, let me explain that the FBI has not always had jurisdiction over gambling violations. As a matter of fact, we had no jurisdiction whatsoever, to speak of, prior to September, 1961, when Congress enacted three statutes banning interstate transportation in aid of racketeering, interstate transportation of wagering paraphernalia, and interstate transmission of wagering information. Prior to that time, most gambling investigations in the United States were limited to the local, county, or state levels.

The problems stemming from such a situation were multiple. When a large operation operated across state--and sometime international--boundaries, local agencies were unable to exercise comprehensive control of anything outside their own immediate areas. In other instances, some departments had neither the experienced personnel nor the laboratory

facilities to handle complex gambling investigations. And in other cases, honest, competent officers in one community found their efforts thwarted by dishonest or incompetent associates in another state or community.

Legislative Studies

Faced with these circumstances, various Congressional groups have conducted organized crime hearings during the past quarter of a century, including the two Senate bodies known popularly as the Kefauver Committee and the McClellan Committee. In addition, the President's Commission on Law Enforcement and Administration of Justice was convened and published a 1957 study captioned "Task Force Report: Organized Crime."

The findings of these diverse groups were most informative and enlightening (ranging as they did from labor racketeering and narcotics trafficking to hoodlum infiltration of legitimate business), but the one common strain running through most of them was that gambling bankrolled the rest of the underworld's empire and that legislative, judicial, and police corruption were an almost inevitable consequence of allowing illegal gambling to operate unchecked for any length of time.

In fact, the Special (Senate) Committee to Investigate Organized Crime in Interstate Commerce announced as far back as 1951 that the

"most shocking revelations" it had uncovered dealt with the "extent of official corruption and connivance in facilitating and promoting organized crime." After citing two specific instances in which local bookmakers were paying off corrupt police officers--at the rate of \$152,000 a month in one city and more than \$83,000 a month in another--the Committee concluded that law enforcement itself had "broken down" in many of the communities visited.

Ten years later, after the Senate Permanent Subcommittee on Investigations heard a witness estimate that approximately \$750,000,000 was being spent annually by American gamblers to pay off dishonest police officials, Congress gave the FBI its first major jurisdiction in the organized crime field with the previously mentioned statutes.

Early Efforts

Before that, our efforts in this area had been restricted to random instances when underworld figures violated some specific statute over which we had jurisdiction, such as those aimed at thefts from interstate shipments, interstate transportation of stolen property, and the like. In 1945, for example, we shattered the entire top leadership of the Syndicate structure in Chicago for attempting to extort large sums of money from the motion picture industry. But these were isolated cases.

involving individual subjects, and did not lend themselves to a coordinated, continuing campaign to eradicate the evil of organized crime as a whole.

Fortunately, the recent legislation has done much to remedy this situation. To date, FBI investigations under the three 1961 laws have resulted in more than 1,800 convictions and some \$2,900,000 in fines. Among those sentenced to prison were such national Syndicate leaders as Raymond Patriarca, of New England; Samuel Rizzo DeCavalcante, of Elizabeth, New Jersey; John Philip Cerone, of Chicago; and Anthony Giardano, of St. Louis, plus a number of their ranking aides and lieutenants.

Subsequent Congressional hearings determined, however, that the laws limiting Federal efforts to interstate violations left a big void regarding large-scale local gambling rings which city, county, or state authorities were unwilling, or unable, to prosecute. As a result, Congress enacted the Organized Crime Control Act of 1970, Title VIII of which outlaws local gambling operations meeting certain minimum specifications. The same title also gives the FBI jurisdiction over any bribery of city, county, or state officials (including prosecutors, judges, or police officers) by persons whose activities fall within the purview of the statute. To date, our investigations under the Organized Crime Control Act have resulted in over 1,600 convictions, some \$1,600,000 in fines, and confiscations of

cash, property, weapons, and wagering paraphernalia valued at approximately \$10,800,000.

See Exhibit No. 1, captioned "Gambling Convictions in FBI Cases. . ." for an analysis of prosecutive efforts under the 1961 and 1970 statutes.

Of the laws enacted by Congress since 1961, one of the most valuable in the fight against organized crime has been Title III of the Omnibus Crime Control and Safe Streets Act of 1968, which provides for the use of court-approved electronic surveillances in the investigation of certain specified violations.

Because organized crime is both national and international in scope, employs thousands of individuals in its operations, utilizes the latest in electronic communications systems, and has a long-standing reputation for killing or intimidating live witnesses to its activities, electronic surveillances are an absolutely essential weapon in the Government's arsenal. As regards major gambling rings, it is doubtful that they could stay in business a week without extensive telephonic connections regarding their line data and layoff operations. This is precisely the Achilles' heel that Title III is aimed at.

Since their first use in 1969, court-approved electronic surveillances in FBI cases have led to some 3,000 arrests in the gambling field, over 1,200 convictions, and the confiscation of cash, property, weapons, wagering paraphernalia, and contraband valued at more than \$7,000,000. In fact, of the approximately 2,700 organized crime subjects in various stages of prosecution as of April 1, 1974, nearly 1,700 were arrested as a result of information developed by installations made under the provisions of Title III. Hoodlum figures arrested, indicted, or convicted since 1969 on electronic surveillance information include some of the biggest names in the organized underworld, as evidenced by the case involving Samuel Rizzo DeCavalcante, a top Syndicate leader in the Elizabeth, New Jersey, area.

See Exhibit No. 2, captioned
"Samuel DeCavalcante Case"

Despite the effectiveness of these installations, the FBI is well aware of their sensitive nature and uses them strictly within the framework laid down by Congress in the Omnibus Crime Control and Safe Streets Act of 1968. The legal and procedural steps taken by the FBI to institute Title III coverage are detailed in an exhibit we are herewith presenting to the Commission for its information.

144

See Exhibit No. 3, captioned
"Chronology of Title III Electronic
Surveillance Investigation"

At the request of the Commission, we have conducted a survey of all field offices with respect to the number and type of Federal gambling investigations initiated by the FBI during the period January 1, 1960, through December 31, 1973.

This survey disclosed that a total of 5,650 cases (involving 9,213 individuals) were investigated by Bureau Agents, with 742 being closed for failure to meet the elements of the statutes. Of the remainder, prosecution was declined in 4,132 cases by Strike Force or United States Attorneys, 52 cases were no-billed by Federal Grand Juries, and 724 resulted in indictments.

With respect to this survey, two points that I would like to call to your attention are that: (1) the foregoing statistics, at the request of the Commission, do not include Title III investigations, and (2) even the cases closed, declined, or no-billed were not complete losses, since 1,978 of them were referred to local authorities for prosecutive consideration.

Breaking down the cases wherein indictments occurred, we note that 270 stemmed from court-approved electronic surveillances and

that 454 did not. Furthermore, the 270 Title III cases involved 3,523 subjects, as contrasted with 2,227 in non-Title III cases. On the other hand, convictions in non-Title III cases have exceeded Title III convictions 1,337 to 1,210 during the period of the study because a number of the latter cases were being held in abeyance pending a Supreme Court decision regarding the issue of authorization signatures on Title III applications.

Of the total number of cases where indictments were returned, the major type of gambling was found to be sports bookmaking (332 out of 724 cases), with horse bookmaking in second place (221 cases). The latter figure, however, represents a partial duplication of the first figure since a number of the operations raided handled both sports and horse bookmaking. Numbers rings accounted for 137 of the cases, and casino-type gambling totaled 116. Falling in the miscellaneous category, with 14 cases, were such activities as punchboards, tip sheets, and shell games. As regards casino-type operations, it is interesting to note that our offices report the nationwide pressure on these establishments has just about completely driven them underground, and that there is practically no open, illegal casino gambling in the United States at the present time. This includes such formerly notorious locations as those in Hot Springs, Arkansas, and the Newport-Covington area in northern Kentucky.

Scope of the Problem

On the whole, major gambling investigations are extremely complex in nature. They consume time, manpower, and material resources in almost unprecedented quantities. They are difficult to prove. They require expertise in the nuances of the trade. And the legal maneuvers encountered in a single case--spearheaded by the highest priced defense talent available--may drag on literally for months and years.

Typical of the effort required in one of these investigations was the 1967 conviction of international gambling figure Gilbert Lee Beckley and two of his associates in the United States District Court at Miami for violating the Interstate Transportation in Aid of Racketeering Statute. All three were sentenced to substantial prison terms, with Beckley receiving a total of ten years. Before these convictions could be recorded, however, or the case even taken to trial, it had been necessary for our Agents to analyze thousands of telephone calls from all over the country and parts of Canada dealing with the dissemination of line data by Beckley and other leading handicappers.

See Exhibit No. 4, captioned
"National Gambling Communications
Network"

The following year, John Roselli, a notorious Syndicate racketeer on the west coast, was convicted and sentenced to prison after the longest Federal criminal trial in Los Angeles history. Subsequently, investigation conducted in the Roselli gambling case led to the 1972 conviction of Anthony Giardano, ranking Syndicate leader in the St. Louis, Missouri, area, and two "captains" from the Detroit area.

See Exhibit No. 5, captioned
"John Roselli Case"

Even more recently, our New York office has advised that one of its current gambling investigations has entailed the use of 20 Agents for an entire year. Unfortunately, the litigation in this matter has not been fully resolved yet, so we are unable to say what the end results in that case will be.

Dissemination Program

Needless to say, not every gambling investigation leads to prosecution in Federal court. Many do not even qualify under the Federal statutes, or else do not fall within the jurisdiction of the FBI. To insure that information thus developed realizes its full potential, however, the Bureau has instituted a fieldwide dissemination program aimed at forwarding such data to the appropriate agency as rapidly as possible.

The result has been that, during the past six years, other Federal, state, and local law enforcement agencies have utilized information obtained from the FBI to make some 20,000 gambling arrests and confiscate over \$9,000,000 worth of cash, property, weapons, and wagering paraphernalia.

See Exhibits No. 6 and 7, captioned
"Number of Gambling Arrests. . ."
and "Value of Cash, Property, Weapons,
and Wagering Paraphernalia Confiscated. . ."

In addition, Federal gambling investigations by our Agents have uncovered tax violations utilized by the Internal Revenue Service during the past year to confiscate, or assess liens against, \$14,861,000 worth of property in the States of Connecticut, Florida, Georgia, Massachusetts, Michigan, and Washington.

Question of Evaluation

One difficulty law enforcement has encountered in the fight against organized crime is that of determining the amount of progress being made.

Simply counting convictions is not an adequate criterion of prosecutive success, inasmuch as some subjects go to prison for as much

as ten years whereas others manage to get off with a light fine and are almost immediately back out on the streets again. Furthermore, some hoodlums are organizationally much more important than others, and their incarceration hurts the underworld considerably more than does the elimination of less important underlings.

Likewise, any attempt to use the "handle" concept as a measuring device quickly runs into two stumbling blocks: (1) Few sources anywhere can be found to agree on what the "handle" (or amount of money wagered during a given period) actually is, and (2) It does not assess the overall threat a particular mob figure and his followers pose to society at large.

As an indication of the problems involved in trying to determine what the national "handle" amounts to, the 1967 President's Commission on Law Enforcement and Administration of Justice said that it had encountered estimates varying from as low as \$7,000,000,000 a year to as high as \$50,000,000,000 a year and concluded "There is no accurate way of ascertaining organized crime's gross revenue from gambling in the United States."

Obviously, then, the question arises as to how you can employ the "handle" as a yardstick if you cannot even determine what it is.

By the same token, it would appear to have a minimum usefulness, even if it were provably correct, since a hoodlum's position is governed by many factors other than the size of his gambling activities. The head of a Syndicate group controlling vast loansharking operations along the New York City waterfront, international narcotics smuggling rings, powerful labor unions capable of crippling widespread areas of the community, and a vicious gang of professional killers sworn to carry out his every command is certainly much more of a threat than the bookmaking activities of a street-corner independent from a Midwest manufacturing town, whose annual "handle" may exceed by several million that of the New Yorker's relatively low-key numbers operation.

Intelligence is the Key

FBI experience in the organized crime field has shown conclusively that the only true means of evaluating accomplishments is to develop an intelligence system aimed at identifying the major underworld leaders, the scope of their activities, their spheres of influence, and their sources of income so that a realistic guide can be established to determine both the short-range and long-range goals being achieved.

As a result, we have targeted our investigations to go for the roots of the gambling tree, rather than the individual branches. And we think this approach is a highly effective one.

In addition to the steadily rising conviction rate of key gambling figures, we currently have in various stages of prosecution more than 2,500 organized crime subjects on gambling or related charges (such as loansharking, perjury, or contempt). Particularly hard hit have been the upper echelons of the Syndicate in New York City, New England, Philadelphia, Buffalo, Chicago, Cleveland, Detroit, St. Louis, Denver, and Los Angeles.

Because of this intensified pressure, the underworld leadership is being undermined, and rebellious young mobsters at the bottom of the organization--not to mention members of rival gangs--are asserting their independence and refusing to obey orders unquestioningly as they did in the past.

At the same time, we are also hitting the big criminal groups in the pocket where it hurts almost as much as going to prison.

Confiscations under the Organized Crime Control Act, as previously mentioned, have already exceeded the \$10,000,000 mark: nationwide raids during one recent three-month period broke up gambling rings estimated to have been handling over \$1,200,000,000 a year in wagers.

at least two major bookmakers (one in New England and one in the South) have indicated to their associates that Federal prosecutive efforts were driving them into other lines of endeavor; and two national Syndicate figures have fled the country because of the investigative "heat" being brought to bear on them.

Demands for Legalization

When Congress ordered the creation of this Commission in the Organized Crime Control Act of 1970, one of the responsibilities it gave you was that of making recommendations regarding the possibility of legalizing gambling.

Unfortunately, this is a topic which normally generates more heat than light and I do not want to give the impression in answering your questions that the FBI is injecting itself into matters of a strictly legislative nature.

Certain segments of the press and the public have dedicated themselves to a campaign aimed at relaxing, if not totally eliminating, all restrictions on gambling. They maintain that it is a criminal violation which injures no one and brings pleasure to many. They allege that it promotes graft and corruption because it gives police a means of demanding extortion from the players as well as the operators. And they conclude

that betting with a numbers operator or bookmaker is no more morally objectionable than wagering on a state lottery or driving out to the nearest track and patronizing the pari-mutuel windows.

As an investigative agency of the Federal Government, the FBI is not in a position to pass judgment on the moral aspects of gambling. Nor do we intend to inject ourselves into the pro's and con's of the revenue benefits which would purportedly accrue to the state and Federal governments from the taxation of legalized gambling. We do think, however, that a closer look should be taken at the "victimless crime" label which has been hung on gambling by these elements seeking to promote a change in its status.

The people who say that no one is hurt by these activities and that the offenses are not crimes at all but are merely social transgressions overlook four important factors:

(1) Gambling and violence go hand-in-glove. Hoodlums operating numbers or bookmaking rings generally protect their monopolies by savage acts of terrorism against those opposing them, either directly or indirectly. Furthermore, this brutality stems from the underworld's all-consuming greed and desire to eliminate competition, and any attempt at legalizing its activities would merely lead to greater violence as the profit margins began to rise.

See Exhibits No. 8 and 9 for two photographs of the devastation wrought by the November 23, 1962, bombing murder of Youngstown, Ohio, hoodlum Charley Cavallaro and his 11-year-old son. Also seriously injured in the bombing, which represented more than a decade of fighting for control of gambling and other rackets in the Youngstown area, was another of Cavallaro's sons.

See Exhibit No. 10 for a photograph of material seized during an FDI raid on a major Midwest gambling ring's headquarters. The juxtaposition of weapons and wagering paraphernalia should partially refute the allegations of those who would have the public believe that gambling is a "victimless" offense which hurts no one.

(2) Gambling saps the financial resources of the Nation to deal with social problems by concealing vast sums of money from taxation.

It also drains the family budgets of those least able to afford anything beyond the bare necessities of life.

(3) Gambling spawns a whole generation of other crimes. Not only does it drive hard-pressed victims to hoodlum loan sharks--who regularly use threats, beatings, and murders as tools of their trade--but it also leads to robberies, burglaries, and other crimes by victims indebted to the underworld.

(4) Gambling creates a corps of silent victims caught in the dual fear that assisting law enforcement will cut them off from the services they so desperately crave as well as marking them for gangland retaliation.

Whenever I hear people talk about gambling being a "victimless crime," I think of one highly publicized case we had in New York City a couple of years ago where a middle-aged bartender robbed 20 banks in less than three months' time in order to pay off a steadily mounting series of Syndicate gambling debts he had incurred. Or of a bandit shot to death in 1968 while trying to rob a bank and buy his way out from under an accumulation of outrageously high gambling bills. If these were "victimless crimes," I would like to hear someone explain that to these men's wives.

Help or Hurt the Underworld?

As the Commission is undoubtedly aware, there are two schools of thought regarding the effect of legalized gambling on mob-controlled operations. One offers the not unlikely proposition that housewives and other previous non-gamblers, caught up in the excitement of playing state lotteries, may become addicted and start patronizing the hard-core numbers and bookmaking businesses conducted by the Syndicate and their associates. The other viewpoint maintains that state lotteries actually undermine the criminal element by competing with them and taking valuable customers away from them.

In preparation for this appearance we surveyed our field offices covering the eight states which now conduct legal lotteries and asked them what effect their investigations and their informants had noted on illicit gambling as a result of the creation of the lotteries.

Without exception, the offices covering Connecticut, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, and Pennsylvania reported no discernible effect whatsoever. As most of them pointed out, lotteries are not geared to compete with the underworld's numbers racket which is conducted daily, offers credit, pays better odds, is non-taxable, and allows the gambler to select the particular digits on which he wishes to place his wager.

Interestingly, the press reported last year that New York City was considering a plan that would take the battle right to the enemy's front. The Off Track Betting Corporation (OTB) announced in February, 1973, that it wanted to launch a numbers operation of its own, identical in concept to the Syndicate's but offering better odds. Instead of paying off at the rate of 500-to-1, as the criminal element does, OTB proposed reimbursing winners at the rate of 750-to-1. If nothing else, such a system would offer the public two options which might lure bettors away from the underworld: presumably it would be honest (something that can rarely be said of the illegal operators), and the higher odds mean that a

legitimate player would realize a greater take-home payoff after taxes than an illicit player would without taxes.

See Exhibits No. 11, 12, and 13
for technical descriptions of how a
typical slotmachine and a typical
numbers operator work.

To date, nothing has been done to implement the OTB recommendations in New York City, possibly because of the problems of deciding just which form such legalization should take.

Basically there are four alternatives available: (1) outright abolition of all antigambling restrictions, (2) licensing of private individuals and business concerns (as done now in the State of Nevada), (3) licensing of quasi-public bodies (such as OTB in New York), and (4) assumption of all gambling functions by the government itself.

Inherent Problems

Since the first of these four options would obviously mean a culture war and ultimate domination by the underworld, most proponents of legalization limit their advocacy to one of the other three possibilities. Even so, the questions of corruption, indirect earnings, and expertise should be taken into consideration.

As the Chairman of this Commission, Mr. Merkin, pointed out last July in an address before the National Conference on Public Gaming, de-criminalization of gambling will not end payoffs to district police or other public officials, despite what idealists say to the contrary.

Nor will it end the need for losing gamblers to commit robberies, burglaries, or embezzlements, or to borrow from hoodlums, loan sharks in order to make up their financial shortages.

Also, as Mr. List, Attorney General from the State of Nevada, pointed out to the National Conference on Public Gaming, few states have either the expertise or the manpower to adequately control casino gambling while going through a difficult adjustment period.

Public Reaction

Admittedly the problem of gambling in the United States is a serious one. Its total annual gross makes it the country's single largest industry. In many cases it has acquired an aura of glamor and daring. People used to betting in the comfort of their homes with friends and relatives fail to comprehend the evils and violence attending professional, organized gambling as practiced by the American underworld. And even the judiciary--daily listening to trials of murderers and other vicious

criminals--tend to think of gambling violations (regardless of the size or other factors) as harmless type offenses.

If this Commission successfully manages to inform people everywhere regarding the true nature of gambling it will have more than served its purpose.

Lately we have seen a tendency of some judges to hand down substantial sentences of five and ten years in Syndicate gambling trials, and we think this is an encouraging trend. It shows a growing public awareness of the dangers posed to society by the organized underworld.

We in the FBI certainly wish you every success in your endeavors, and I hope that this presentation today will be of some assistance to you in your efforts.

Thank you.

SUMMARY OF TESTIMONY OF MR. WILLIAM V. CLEVELAND
ASSISTANT DIRECTOR OF THE SPECIAL INVESTIGATION
DIVISION, FEDERAL BUREAU OF INVESTIGATION

FBI jurisdiction in gambling cases began in 1961 when Congress enacted three statutes banning interstate transportation in aid of racketeering, interstate transportation of wagering paraphernalia and interstate transmission of wagering information.

The findings of several legislative and executive studies had concluded that gambling bankrolls the rest of the underworld's empire and that legislative, judicial and police corruption is an inevitable consequence of unchecked gambling operations.

To date, FBI investigations under the three 1961 laws have resulted in more than 1,800 convictions and some \$2,900,000 in fines. It is difficult to say that enforcement of these laws has checked the growth of organized gambling, but the Bureau feels that the situation would be much worse if they had not been implemented. Prior to 1961, most gambling investigations were conducted by state and local law enforcement agencies which did not possess the experienced personnel nor the facilities to handle complex gambling investigations.

The jurisdiction of the Bureau was further expanded by the Organized Crime Control Act of 1970 to include intrastate violations which local authorities could or would not prosecute. Title VIII of this act outlaws local gambling operations meeting certain minimum specifications and grants the FBI jurisdiction over bribery of state and local officials, when said bribery is connected with an illegal gambling business. This act has resulted in over 1,600 convictions, \$1,600,000 in fines, and confiscations valued in excess of \$10,800,000.

The most effective weapon in dealing with organized gambling is Title III of the Omnibus Crime Control and Safe Streets Act of 1968, which provided for the use of court-approved electronic surveillance in the investigation of specific violations. Syndicated gambling rings could not exist without extensive telephonic connections, therefore, Title III surveillance has proven to be invaluable in combating organized crime in this area.

Court approved electronic surveillances in FBI cases have led to some 3,000 arrests, over 1,000 convictions, and confiscations valued at more than \$7 million.

During a period from January 1, 1966 through December 31, 1973, the Bureau investigated 5,650 gambling cases (including 9,213 individuals) with 724 resulting in indictments, and 1,978 being referred to local authorities.

Sports bookmaking was found to be the most extensive type of gambling operation with horse bookmaking in second position. These two types of operations made up over three quarters of the 724 indictments with numbers rings, casino-type gambling and miscellaneous operations accounting for the remainder.

There is no accurate way of ascertaining the amount of progress being made in the fight against organized gambling. The number of convictions is an inadequate indication due to the disparity of sentencing practices and the inability to convict the higher echelon racketeers. An accurate estimate of the "handle" is impossible to determine and is no indication of the mob's overall threat to society at large.

FBI experience has shown that the only way to evaluate their accomplishments is to develop an intelligence system which identifies the underworld leaders, the scope of their activities, spheres of influence and

sources of income, so that short and long range effectiveness can be measured. The Bureau targets their investigations towards the top of the gambling operations and not at the "Mom and Pop" type enterprises. This has resulted in a rising rate of convictions of key gambling figures which has the effect of diluting underworld leadership and impairing its morale. It is the belief of the FBI, however, that it is impossible to completely eradicate organized gambling.

The FBI does not attempt to pass judgement on the moral aspects of gambling, the pros and cons of revenue benefits to the state governments from the taxation of legalized gambling, but they do not believe is a "victimless" crime. Gambling and violence are often inseparable, as competition is never tolerated. Gambling conceals vast amounts of money from taxation and family budgets. It leads to more serious crime: i.e. loan sharking, robbery and burglary. Silent victims of gambling fear that assisting law enforcement will mark them for gangland retaliation.

The FBI has found no discernible rise or fall in the rate of gambling in those states which have instituted legal lotteries. There is no evidence that the underworld has infiltrated any of the state lotteries, however, the Bureau feels that the legalization of gambling would not cure all the ill effects of illegal gambling. States could not offer credit, exempt winnings from taxation, or handle the volume of day to day betting with the same efficiency and expertise as organized crime does now. The spread of crime as a result from gambling losses would also not be affected by the decriminalization of gambling.

It is, therefore, the position of the FBI that more public awareness of the true situation of gambling would help a great deal in fighting the growth of gambling and its subsequent influences.

SUMMARY OF TESTIMONY OF MR. JOHN D. TARPEY,
ASSISTANT CHIEF INSPECTOR FOR CRIME INVESTIGATION
UNITED STATES POSTAL SERVICE

Use of the mails by lotteries was first prohibited by Congress in 1868. In 1872 Congress made it illegal to mail letters or circulars concerning illegal lotteries. The law was made applicable to all lotteries in 1876 when the word "illegal" was removed from the statute. The Anti-Lottery Act of 1890 barred all lottery materials from the mails, prohibited the sending of checks and money orders for the purchase of tickets, and prohibited the mailing of letters containing lottery advertisements. Violations were made punishable by imprisonment as well as fines, as provided by the 1876 law. The 1890 Act was immediately enforced and effectively put the corrupt Louisiana State Lottery out of business.

The Postal Inspection Service, as the law enforcement agency of the U. S. Postal Service, has been enforcing this law, Title 18, U. S. Code 1302, ever since. Section 1302 makes it a felony to mail proscribed material in connection with the operation of a lottery. Foreign based lotteries such as the Irish Sweepstakes are checked by the stop-order and mail stop provisions of administrative statute, Title 39, U. S. Code 3,605.

Since 1965 there have never been less than 200 lottery investigations in any year. The relationship between the increase in the number of legal lottery operations and the gradual decrease in illegal lottery investigations during this period is only conjectural.

A 1973 investigation of state lotteries by the Postal Inspection Service found that in all but one instance Section 1302 of Title 18 has been violated. Lottery officials disavowed any intent to violate the statute, but interpreted it in a manner to permit some use of the mails in the lottery operation. Mail counts were made at the headquarters of three state operated lotteries in March 1974. In one state 70 percent of the mail received bore out-of-state postmarks from almost every state in the country.

Violations of the lottery statute by legal lotteries have been investigated by the Postal Inspection Service and the facts presented to United States Attorneys in those states for consideration of possible prosecution. Prosecution was declined in 1973 in Michigan, New Hampshire, and Pennsylvania. The United States Attorney in Massachusetts has not yet indicated his intention to prosecute or not to prosecute.

Many newspapers whose circulation crosses state lines print lottery advertising and list winning numbers in clear violation of Section 1302. It is the policy of some newspapers, however, to publish separate editions without this information for those who subscribe by mail. None of those newspapers which do not make this provision has been prosecuted, and no such action is being considered by the Department of Justice.

Under current laws the operation of the state controlled lotteries is free from corruption and present no serious problem to the Postal Service. They seek only to direct the enforcement of the law against those who are profiting by a lottery and not those who are technically violating the law by using the mails as subscribers, the victims of a lottery. The Postal Inspection Service investigates 11,000 fraud cases a year of which only 200, or less than 2 percent deal with lotteries. Only if those state lottery laws are changed, or abuses were found in those laws to corrupt the legal lotteries, and the states were given carte blanche to compete with one another would there be any cause for concern by the Postal Service.

SUMMARY OF TESTIMONY OF MR. ASHTON HARDY,
GENERAL COUNSEL - FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission's responsibilities in connection with the broadcast of lottery information are derived from Section 1304 of Title 18, United States Criminal Code. This statute prohibits the broadcasting of any advertisement or information concerning lotteries, gift enterprises, or similar schemes offering prizes dependent on lot or chance. The Commission is authorized to revoke licenses, issue cease and desist orders, or assess monetary fines up to \$10,000 for violations of this section by broadcast stations. The power of enforcement is under the jurisdiction of the Department of Justice, with which the Commission regularly coordinates its actions in this area.

Until the middle sixties, F.C.C. involvement with violations of 1304 was limited to scattered instances of product promotions involving contests, or merchandise "give aways". Since the inception of the New Hampshire Lottery in 1964, however, the Commission has increasingly been drawn into problems created by the conflict between the operation of state lotteries and the provisions of 1304. The Commission adheres to the view that the question of the propriety of promoting lotteries on broadcast media is a legislative policy determination properly reserved to Congress and, therefore, it has no alternative but to apply the law in whichever way it is interpreted by the courts until it is amended or qualified.

The House Judiciary Committee is studying H.R. 6668 and other similar bills that would permit the transportation, mailing and broadcasting of lottery information and advertisements. The F.C.C. has taken no position on these bills but would defer to the judgment of the Department of Justice, which generally favors enactment of H.R. 6668.

The legislation to which the Commission is addressing itself would authorize a broadcast station in a community in a state in which a state lottery is legal to announce information concerning that lottery and the results of other state controlled lotteries if it wished to do so. It would continue to prohibit a broadcast station

located in a state which does not operate a lottery to broadcast any lottery information. Stations whose signals cross a state line into a state where there was no legal lottery would not be prohibited from broadcasting such information as it would be unfair to that station and impossible to enforce. The F.C.C. could not at the time of the hearing take a position as to the future legality of broadcasting this type of information across state lines. Those provisions of H.R. 6668 would be in conflict with Title 18, Section 1304 of the U. S. Code, which forbids the interstate transmission of wagering information with the exception being the broadcasting of this information from a state in which a lottery is legal into another state that operates a lottery.

The Commission's present approach to the broadcast of lottery information is primarily based on the Commission's Supplemental Declaratory Ruling, adopted in 1964 pursuant to a decision by the Second Circuit Court of Appeals. That decision held that Section 1304 only prohibits the broadcasting of lottery information that "directly promotes" a lottery.

In a 1971 ruling, the Commission ruled that the broadcasting of a winning number in a state lottery, even if in the form of a news report, constituted a direct promotion of a lottery which would be in direct violation of 1304. This ruling, however, was reversed by the Third Circuit Court of Appeals in 1974. The court ruled that news broadcasts were protected by the First Amendment and thus were exempted from the prohibitions of the statute. The Third Circuit decision did not dispute the "directly promoting" aspect of the decision of the Second Circuit, but ruled that even if a newscast directly promoted a lottery, if it constituted news and not mere advertisement it was beyond the reach of 1304.

The Commission and the Department of Justice petitioned the Supreme Court to review the Third Circuit's decision, and the Court has accepted Certiorari in the case. The primary basis of the petition was to rectify the conflict between the Third Circuit's decision and the "directly promoting" standard previously established by the Second Circuit. This would establish uniform guidelines for the F.C.C. and its licensees to follow. The Commission and the Department of Justice believed that the Third Circuit's decision had erroneously declared a portion of 1304 unconstitutional.

Until the Supreme Court rules on the Third Circuit decision, the Commission felt it would be improper to decide whether the broadcasting of a winning lottery number was in fact a promotion of legal lotteries. They will, however, argue in court that such announcements are not "hot news" items, but are in violation of the statute.

The Commission could not recall any serious violation of 1304 by its licensees. They have received many inquiries from the stations located in lottery states as to what types of broadcast materials they could carry and still be within the Commission's interpretation of 1304.

In the public interest, the F.C.C. and its licensees are regulating any information that could be used to further illegal lotteries and gambling in their communities. This includes the broadcasting of horse race information which in fact does aid illegal gambling. The Commission had little or no problem with that general policy established in 1964, until the Off-Track Betting Corporation of New York raised some additional questions as to what could or could not be done. The Commission determined that where such information would not be of assistance to illegal gambling it had no objections to such broadcasts. Where it would aid this type of activity, broadcasting such information would be barred by the 1964 policy.

The Complaints and Compliance Division of the F.C.C. handles each case brought to its attention by the public as they come in. There are no records to indicate the amount of resources and manpower devoted by the Commission to insure compliance with government regulations by the licensees. In fiscal 1973 only 51 complaints out of a total of 16,322 concerned alleged broadcasting of lottery information.

The Commission would only consider the question of banning all sports broadcasting if this question was presented to them by the Department of Justice. The F.C.C. has never considered this possibility and has no plans to do so. If Congress determines that such broadcasts encourage illegal gambling activity and moved for its prohibition only then would the Commission's policy on this question be changed.

