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STATEMENT OF JOSEPH D. MC NAMARA
CHIEF OF POLICE -- SAN JOSE, CALIFORNIA
BEFORE THE
U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
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ACQUISITIONS

INTEREST IN ARSON: GENERAL BACKGROUND AND CONCERN

Mr. Chairman, I would like to discuss with the Subcommittee today the topic of arson-for-profit by placing it in the larger context of organized crime. Arson-for-profit is carried out either by individuals with no connection to organized crime, for the purpose of defrauding insurance companies, or by organized crime in order to terrorize, sabotage, blackmail or defraud. When the perpetrator is an individual unrelated to organized crime, the main investigative burden lies with fire departments and insurance companies; local law enforcement agencies do not usually become deeply involved. However, when arson-for-profit is linked to organized crime, arson then represents the tip of the iceberg of organized criminal activities, most of which are obviously covert by nature. It is in this sense, that of surfacing some of the organized crime activities, that arson is of paramount interest to all law enforcement agencies.

New Danger from New Organized Crime Groups

I stress that organized crime is not limited to any one ethnic or racial group in the United States. Indeed, along with the growing concern I share with colleagues in law enforcement regarding the increasing influence of organized crime, there is a parallel concern that new groups are evolving into the same structures and patterns of behavior that have provided success for organizations such as La Cosa Nostra.

In fact, there is much evidence that the older organized crime groups have evolved into very sophisticated enterprises, with full access and utilization of the most advanced techniques that money and unprincipled ruthlessness can buy. Older organized crime groups now infiltrate legitimate businesses and transact enormously profitable illegal financial dealings.

As this evolution takes place and older organized crime networks expand into non-traditional quasi-legal activities, traditional organized criminal activities, narcotics, gambling, loan sharking, prostitution, and pornography are inherited by other population groups which in turn become new organized crime groups. These new groups, in carrying out the traditional criminal activities, such as arson, are sometimes aided or protected by the older groups, making investigation even more difficult.

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Arson as Warning

If society, through its law enforcement representatives, is unable to protect itself from overt acts of organized crime violence such as arson, not much hope can be placed on society's ability to protect itself from the more elusive techniques of organized crime.

Arson is but a visible manifestation of the traditional techniques of organized crime, and in that sense, should be a grim warning to law enforcement agencies. Even when the result is not as obvious as arson, the degree to which organized crime has permeated our society ought to frighten all Americans because of the potential for the erosion of our basic institutions of democratic government.

Influence on Business

Organized crime has achieved its success in penetrating American business in a variety of ways. For example, it can employ arson to sabotage the equipment of a competing business, to punish an uncooperative firm or to intimidate a recalcitrant company into acquiescence. More subtly, organized crime takes over businesses through the devious use of illegally obtained funds or, more recently, through complex, computer-aided financial transactions that are extremely difficult to unravel.

Many experts in law enforcement feel that the criminal assault against American business has been against an almost completely defenseless target. Business executives have been generally naive, unwary, and unprepared to deal with experienced, cunning, and when necessary, violent criminal adversaries. Trained in traditional business and management skills, businessmen tend to think of business security in terms of security guards, burglar alarms, and inventory checks rather than the very real danger of organized crime frauds and takeovers.

Businesses are at a further disadvantage in dealing with organized crime activities for two other reasons: First, intelligence gathering on organized crime, in general, and arson, specifically, is probably at its lowest ebb in decades, a point I would like to address later; second, when white collar crime is involved, local law enforcement agencies usually do not view the problem as being their primary responsibility, nor are the agencies perceived as a possible resource by local businesses. Thus, little law enforcement protection against organized crime is afforded to corporations.

Whatever the means, once members of an organized crime group penetrate heretofore legal business, they operate that business illegally, as the Kefauver Committee showed over a decade ago. They continue to invest, and they continue to monopolize by force. When this occurs, the public pays the ultimate bill since the operations of American business are intricately involved with the well-being, standard of living, and livelihood of American citizens. Excessively high prices to customers, below-standard quality of products, inflated insurance premiums, unfair competition and loss of revenue to the State are but a few of the items of that ultimate bill.

Erosion of Public Trust

There is another hidden cost in that bill which society pays when organized crime takes over legal enterprises. Business, quite appropriately, has always been a political influence in our democratic society. Instances where known organized crime members have acquired respectable business images with the attendant political and social influence have made it appear hopeless and hazardous to the average citizen to even attempt to challenge the organized crime operation.

As an illustration, I am reminded of the investigation conducted in the 1940's by then District Attorney Hogan of New York, who disclosed that in a wiretapped conversation a candidate who had just been nominated for the New York State Supreme Court judgeship (tantamount to election) thanked Frank Costello, a leading organized crime figure, for the nomination and pledged his "undying gratitude." The resulting investigation disclosed the sorry picture of organized crime's great influence and almost complete control of the local political process. District Attorney Hogan uncovered and destroyed the system by which gangsters had effectively taken over and subverted government to their own ends. It should constitute a grim warning to any who would minimize or romanticize organized crime. Had District Attorney Hogan not uncovered that situation, New York residents might have been faced with the spectacle of a known crime figure hobnobbing with judges and high elected officials.

That particular spectacle was avoided through the disclosure of the wire-tapping conversation, but we can all think of instances when such bizarre associations have been publicly flaunted. The average citizen sees such relationships, sees organized crime flourishing, sees how inadequate punishment is for the few cases that are prosecuted and the sad result is that public trust is eroded. Instead of obtaining public support, public cooperation, and public

vigilance to aid in their investigations on arson and other organized crime activities, law enforcement agencies understandably have to deal with public apathy, reluctance, and fear.

Low Ebb of Intelligence Gathering and Sharing

As I mentioned earlier, an important reason for the present success of organized crime activities, arson included, is that law enforcement intelligence gathering and sharing capabilities are at their lowest ebb. No responsible officials in law enforcement deny that there have been past abuses in intelligence gathering and protection of privacy, nor do responsible leaders quarrel with the need for reform, study, and safeguards to be developed in these areas. Certainly the Freedom of Information Act and the Privacy Act are cornerstones in building and protection against future violations of citizens' right by government. However, many of us believe that it is important to point out to the public and Congress that government has a basic responsibility to protect the rights of citizens from violation by criminals as well as against potential violations by government employees.

For example, the Secret Service reports that it is experiencing so severe a decline in the quality and quantity of intelligence information that its ability to protect the President and other public figures has been seriously impaired. Similarly, other agencies are experiencing the same dearth of intelligence information that might help them investigate possible arson cases and other organized crime activities.

At the present time we hesitate to share information of an intelligence nature with the Federal Bureau of Investigation or the Secret Service because we know that the sources of that information will probably become available under the Freedom of Information Act queries. It is most foolhardy to imagine that the sophisticated criminals we are dealing with do not, through attorneys and fronts, take all possible advantages to learn what information law enforcement has gathered about their activities. It has always been difficult to obtain information about secret organizations with well-deserved reputations for killing individuals who give information to authorities about their criminal activities. In all honesty, we must admit that anyone giving such information today to federal authorities is taking an almost reckless risk with his or her own safety. Furthermore, a good deal of important and valuable information about individuals, businesses, and activities is simply that--information and not evidence which could be sustained in a judicial proceeding. So, a good deal of the required additional

evidence is withheld from law enforcement from the fear that a law abiding citizen's cooperation in informing law enforcement authorities about criminal activities can cause the citizen to be sued when his identification is learned through the Freedom of Information Act, Privacy Act, or legal discovery motions. The overwhelming majority of leaders in law enforcement think that the balance in these areas has swung against law enforcement to the point that organized criminals and terrorist groups have been immeasurably strengthened because law enforcement is unable to gather intelligence and evidence against them. It is a vicious cycle--the more such groups succeed, the more powerful they appear and the less likelihood that citizens will dare cooperate with law enforcement against these criminal conspiracies.

INTEREST IN ARSON: SPECIFIC EXPERIENCES

San Jose Experience

Arson Investigation

In California there are currently approximately sixty arsons daily and another sixty to seventy daily fires that are classified as being under suspicious circumstances. The State's Health and Safety Code states that fire departments will investigate every fire for cause; our municipal fire code restates the above.

In San Jose, as in Los Angeles and San Francisco, arson investigations are carried out by the fire departments; the police are generally only superficially involved. Local fire departments, while expert at arson investigation, are not equipped to collect intelligence that can tie an arson case to organized crime. No state agency is presently systematically collecting or disseminating data on a regular basis on organized crime arson cases.

In fiscal year 1976-77, 254 fires (45 percent of the fires investigated by the San Jose Fire Department) were identified as arson caused in San Jose; we had thus on the order of five arsons weekly during that year. Since intelligence information in this area is sadly lacking, it is difficult to identify the offenders and determine whether arson-for-profit was the motive. Whereas, almost 50 percent of the arson fires resulted in the arrest of persons in fiscal year 1976-77, that was due to a large extent to the arrest of six suspects who cleared 23 arson cases; in fiscal year 1977-78 it is anticipated that only 28 percent of the arson fires will be cleared by arrest, and for fiscal year 1978-79, it is anticipated that the clearance rate will have dropped to 24 percent.

Arson Increases Cause for Concern

In San Jose it is also anticipated that arson fires will increase faster than population in the next few years. This, coupled with the expected drop in the clearance rate of arson cases and the increased activity of fairly recent groups that resort to violent acts of intimidation, causes grave concern to the San Jose Police Department.

As I mentioned earlier, we are concerned that new groups are evolving into patterns that have provided success for earlier organized crime groups; those patterns include arson, murder, and extortion. Since 1976, there have been at least ten murders associated with syndicated organized crime in California. All of the victims were either organized crime figures, witnesses or known informants. The highly publicized .22 caliber killings throughout the nation are other examples of Mafia-type hits, which underscore the need for controlling the increasing influence of organized crime.

REGIONAL ARSON INTELLIGENCE SYSTEM

September 1977 Meeting in San Francisco-San Jose Area

As a reflection of our grave concern about arson and other organized crime activities compounded by the low ebb of intelligence information, a meeting was held on September 1, 1977, by Thomas E. Kotoske, the U.S. Attorney in Charge, Racketeering Section, San Francisco. The conference was attended by federal, local law enforcement and fire officials. Conferees generally agreed on the following conclusions:

1. That structural arsons in this region were a serious problem which, for a variety of reasons, had not received sufficient attention.
2. That important intelligence information relating to arson conspiracies was probably being lost partially because California police have traditionally viewed arson investigations as primarily a fire department responsibility. Consequently, intelligence gathering on arson suffered because fire agencies did not possess police intelligence gathering and sharing capabilities.
3. That a regional arson intelligence capability with both police and fire input was necessary.

With Mr. Kotoske, the federal government's top organized crime prosecutor for the Western United States agreeing that an area-wide arson intelligence system was a necessary step if we were to stem the rising tide of arson, I decided to seek the assistance of another Justice Department agency.

I proposed that a grant to inaugurate a regional arson intelligence system be provided by the Law Enforcement Assistance Administration at the Justice Department. In my letter to James O. Golden, Director of the LEAA's Enforcement Division in the Office of Regional Operations, I summarized the conclusions reached by the conference.

I was optimistic that LEAA would look with favor on the suggestion for two reasons.

First, the chief organized crime prosecutor for the Justice Department in the west thought it was needed, and I could only assume that his judgment would carry some weight at LEAA.

Second, I knew that LEAA had previously recognized the threat of organized crime which would be the focus of the arson intelligence network's activities. In the past, the agency had provided both discretionary and block grant funds to start up intelligence systems and train law enforcement personnel in technical investigative techniques necessary to identify and destroy organized crime activities.

Such a regional arson intelligence network as we envisioned could work closely with the Arson Task Forces recently established under the Bureau of Alcohol, Tobacco and Firearms, to pool information and avoid duplication of effort. The ATF Arson Task Forces do not take the place of a regional arson intelligence network, which would closely interweave local fire and police personnel intelligence gathering and sharing. For example, our Intelligence Unit in the San Jose Police Department has not yet been contacted by the Arson Task Force of the local ATF office in San Francisco.

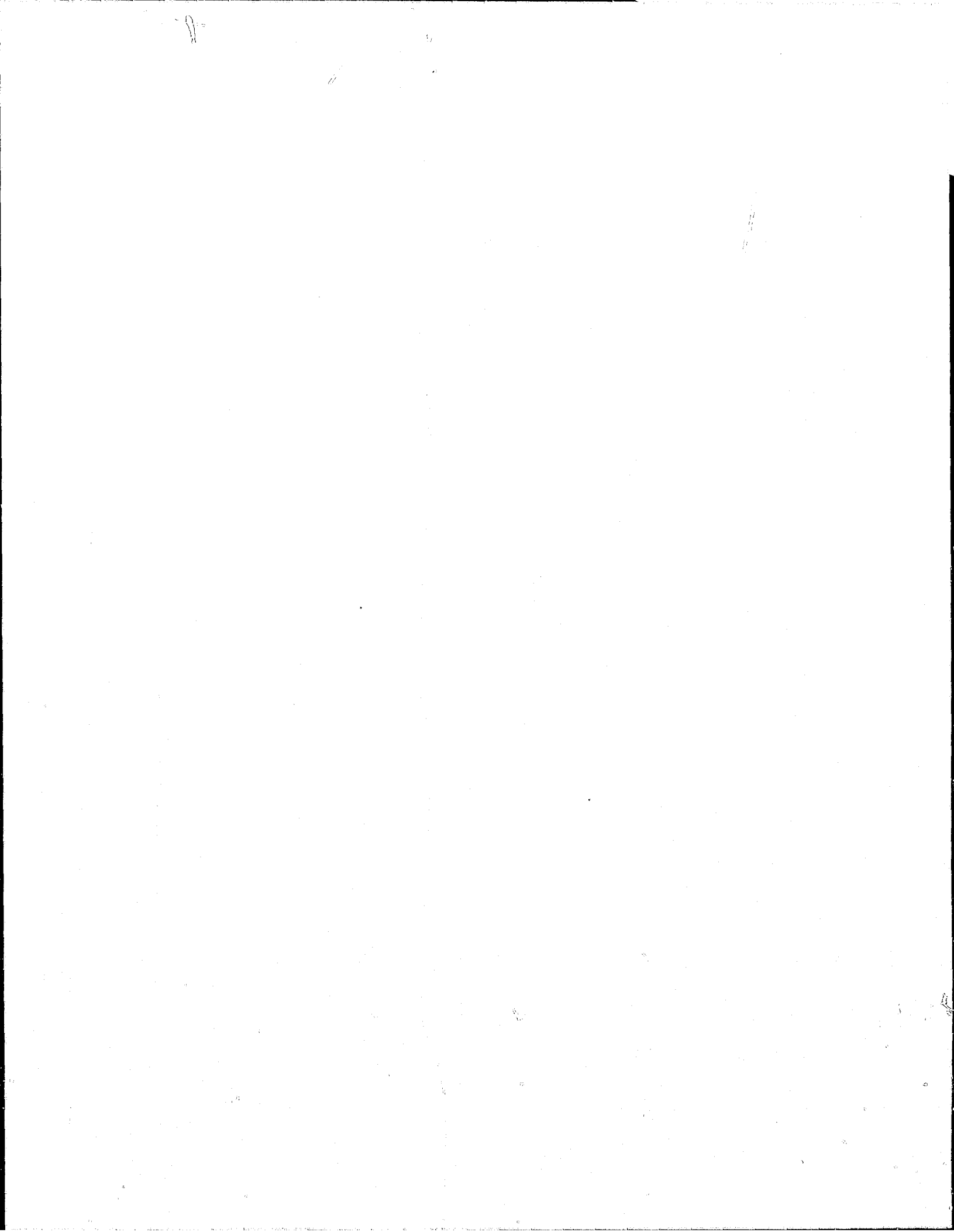
Unfortunately, neither the fact that a federal strike force attorney recommended it, nor the fact that LEAA had previously funded such projects, made any difference. LEAA advised me that there was no way it could help through direct financial assistance for an arson intelligence network.

Instead, I was told that such a network might be grafted onto another LEAA-funded program in San Jose dealing with crime analysis and internal operations research. It would have been impossible to integrate that project with an area-wide organized crime arson intelligence network. I drew the distinct impression that LEAA really had no idea how urgent the need for an arson intelligence system was. Moreover, it was clear that the agency did not have a grasp of the narrow scope of the program it had funded, which could not possibly have accommodated the intelligence network contemplated.

RECOMMENDATIONS

In closing, I would respectfully offer a number of suggestions to the Subcommittee in the hope of alleviating the problems that I have briefly described:

1. We would ask that Congress consider legislation earmarking a very small percentage of the taxes that business pays to fund a voluntary education program to alert banks and major corporations to the danger of infiltration and victimization by organized crime elements.
2. We would ask Congress to review the exemptions to the Freedom of Information Act and to consider Standard 2.4 of the National Advisory Committee on Criminal Justice Standards and Goals Task Force Report on Organized Crime. The standard calls for the accommodation of legitimate law enforcement needs in organized crime control, intelligence programs and protection of basic individual rights of privacy.
3. We would ask that increased federal attention be paid to the crime of arson, especially as it has been used by organized crime groups for terror, extortion, and fraud.
4. We suggest that LEAA fund arson intelligence efforts involving both fire and police personnel.
5. We recommend the increased use of Federal Grand Juries to scrutinize the newer organized crime groups in efforts to prevent them from attaining the power and proficiency of older organized crime groups and to continue scrutiny of older groups with special attention to business fraud.



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