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X ARSON IN AMERICA

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OF THE
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UNITED STATES SENATE
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PERMANENT SUBCOMMITTEE ON INVESTIGATIONS



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ARSON IN AMERICA

-----Ordered to be printed

-----, from the Committee on Governmental Affairs,
submitted the following

REPORT

INTRODUCTION

Arson-for-profit is a major and growing crime problem in the United States. For years, experts close to the problem have warned of its dangers. Nevertheless, the crime has grown to the point where it now constitutes a serious menace to the social and economic well-being of the Nation and its citizens.

A report by the National Fire Prevention and Control Administration, entitled, "Arson: America's Malignant Crime," quotes the alarming conclusion reached by one State fire marshal: "If we continue to do nothing in terms of a collective and unified approach to this problem, the incidence of arson will increase to a degree that eventual solutions will be next to impossible."¹

It was with these thoughts in mind that the United States Senate Permanent Subcommittee on Investigations in November 1977 authorized a preliminary inquiry into arson-for-profit, focusing on the dimensions of the problem, the response of the Federal Government, and the people and techniques utilized in the performance of the crime.

On August 23-24 and September 13-14, 1978, the subcommittee held public hearings on arson-for-profit in the United States, taking testimony from "torches," insurance company employees, local and State law enforcement authorities, arson victims, and Federal officials who bear much of the responsibility for controlling this rapidly rising crime.

¹ "Arson: America's Malignant Crime," National Fire Prevention and Control Administration, September 1978, p. v.

Arson has been described by Senator John Glenn as a "raging criminal epidemic"; by Senator Sam Nunn as "an attractive crime to commit"; and by Senator Charles H. Percy as "a national scourge that threatens to get worse unless a unified effort is launched."

The arson plague has already ravaged hundreds of thousands of commercial and residential acres in New York City, Chicago, Philadelphia; Boston, Detroit, and other metropolitan areas. Block after block of scorched and gutted structures stand vacant and useless. They are silent testimony to the destruction. In the South Bronx alone, some 30,000 buildings have been destroyed by fire in the past 10 years. In Chicago, the number of arson incidents nearly tripled between 1974 and 1977, while dollar losses jumped 150 percent.

Long thought by the public to be a sporadic act of greed, arson has evolved over the past decade into a way of life in many metropolitan areas. The postwar exodus of commerce and the middle class to the suburbs has left core-city areas occupied largely by economically marginal groups and failing businesses. Unable to draw sufficient income from their properties, many landlords and businessmen cut costs by allowing them to deteriorate. Some find arson to be a short cut to solvency. Others view arson as a lucrative investment; big profits can be made through arson following the purchase and deliberate over-insuring of rundown, low-cost, urban real estate.

Free-flowing insurance dollars now fuel a thriving trade in arson-for-profit, often involving businessmen, landlords, insurance agents, and law enforcement authorities as coconspirators.

When a spate of fires suddenly invades a block or a neighborhood, a mood of defeat and pessimism tightens its grip on the residents. An exodus begins. Resulting tenant vacancies squeeze landlords to the breaking point. Businesses relocate. Vacant and semivacant buildings become playgrounds for fire-prone vandals. Over time, whole neighborhoods become ghost towns for the most desperate of the poor, unemployed, and elderly. As buildings burn and commerce flees, financially stricken cities steadily lose their tax bases, making public services increasingly harder to fund. Arson fuels this vicious cycle. The Chicago Tribune, in a three-part series on arson's effect on the city, reported:

Dorothy Maeda was born in a house on the northeast corner of Rockwell and Hirsch Streets, and 54 years later, lives 3½ blocks from there. In recent years, * * *, she has seen the neighborhood * * * become pocked with boarded up buildings, seen it lose nearly a third of its people, seen vacant lots appear like a rash. "Is a lot of that due to fires"? "Are you kidding"? Maeda said, "All of that is due to fires."²

Estimates by the American Insurance Association indicate that 240,000 arson fires occurred nationwide in 1977, costing some \$1.6 billion. The dollar loss represents a more than twofold increase since 1970. Arson incidents rose an estimated 70 percent during the same 7-year period. A recent survey by that association noted that reported arson fires have almost doubled in the 6 years between 1971 and 1977.³ Based

² Chicago Tribune, June 6, 1978, p. 17.

³ Stephen H. Webster, Kenneth E. Mathews, Jr., "A Survey of Arson and Arson Response Capabilities in Selected Jurisdictions," U.S. Department of Justice, Law Enforcement Assistance Administration, February 1979, p. 1.

on reports filed by fire and police authorities across the country, these figures, alarming as they appear, may actually understate the magnitude of the current problem.

Most experts concede that a satisfactory statistical picture of the arson problem has not yet emerged. In its year-long study of arson, the Illinois Legislative Investigating Commission (ILIC) evaluated reporting techniques and attempted to verify the soundness of current statistical estimates. Thomas Hampson of the ILIC testified before the subcommittee that "neither the method of detecting arson; nor the method of establishing the statistics are uniformly applied throughout the country" (p. 203).⁴ The ILIC concluded that "accurate, meaningful arson statistics are not currently available."⁵

An unknown, but undoubtedly quite substantial, number of arsons go unreported each year. Without skilled investigators, it is often difficult even to demonstrate that arson has occurred. Evidence may be consumed by the fire itself or scattered in the ensuing cleanup. Local law usually requires that the fire be listed as accidental or natural unless proven otherwise. Few States and localities have enough trained investigators to detect most arsons. The average fire department assigns only one staff member to its arson unit for every \$2.5 million in the department's budget.⁶ Volunteer firemen, comprising approximately 80 percent of the Nation's firefighting forces, are even more likely than professionals to overlook evidence of arson. A 1976 report by the Aerospace Corp. contends that at least half of fires labeled "unknown cause" may actually be arson.⁷

Arson's enormous potential profitability has attracted the attention of organized crime. Testifying before the subcommittee, San Jose Police Chief Joseph McNamara called arson "a visible manifestation of the traditional techniques of organized crime * * *" (p. 183). Angelo Monachino, who participated in 11 arsons as a "soldier" in the Rochester Mafia, when asked by Senator Percy if organized crime is becoming increasingly involved in arson-for-profit, replied that "It is my belief, yes, sir" (p. 60). And Gary Bowdach, a knowledgeable witness on organized crime matters who committed four gangland arsons within 1 month, asserted that a professional torch could easily clear more than \$1 million in 1 year. "Arson-for-profit is about the easiest thing there is to get away with * * *," he added.⁸

⁴ Refers to page numbers in the printed hearings of the Permanent Subcommittee on Investigations entitled "Arson-for-Hire," Aug. 23-24, Sept. 13-14, 1978.

⁵ Arsons, Illinois Legislative Investigating Commission, May 1978, p. 7.

⁶ Webster, Mathews, op. cit., p. 2.

⁷ "Arson and Arson Investigation: Survey and Assessment," Law Enforcement Assistance Administration, October 1977, p. 14.

⁸ Organized Criminal Activities: South Florida and U.S. Penitentiary, Atlanta, Ga." Hearings before the Permanent Subcommittee on Investigations, August 1978, part 1, p. 89.

II. ARSON WITH IMPUNITY

The enormity of the problem, and its nationwide scope, was most graphically demonstrated to the subcommittee during the testimony of three self-admitted arsonists. These torches, two of whom testified under aliases for their own protection, and one of whom was in the Federal witness protection program, detailed their own involvement in this crime.

"MICHAEL SMITH"

Mr. "Smith" of Minneapolis, who confessed to setting more than 100 buildings afire, perhaps summed it up best when he told the subcommittee on August 23:

* * * there are hundreds, possibly thousands, of arsonists out around the country who know what I know. They know that insurance companies are quick to pay off on losses, even if arson is suspected.

They know that some greedy businessmen will stop at nothing to get their money out of a failing property and think nothing of hiring a torch to do it. It has also become big business for some. They know that law enforcement agencies, for the most part, are ill-equipped to detect an arson, much less put together enough circumstantial evidence for an arrest or a conviction.

They know that in many States laws discourage the sharing of information between insurance companies and law enforcement agencies concerning possible arsons (p. 14).

All three witnesses testified that the possibility of apprehension was of little or no concern when they contemplated a torch job. Officials in the insurance industry readily confirmed this lack of law enforcement activity. George Clark, vice president of Cravens, Dragen and Co., of San Francisco, testified that "the arsonist is not pursued by law enforcement" (p. 136).

Michael Smith supplied a personal description of this seeming lack of law enforcement diligence. He testified that, for years, the Minneapolis Arson Squad had no idea that only one person was committing the numerous arsons which he performed. The arson investigators believed Smith's jobs were really the work of two arsonists, whom they called "the lightning twins" (p. 13).

He was finally caught because he made a mistake in trying to burn a house in a neighborhood where residents had learned to be alert and watchful. They reported his nocturnal entry into a building to authorities. Thus, it was not the diligence of the arson squad which led to his downfall; rather it was the alert citizenry.

After his apprehension, he told the arson squad how he set his fires. They refused to believe that the method he outlined would work, much less that he could have set as many fires as he did. The "lightning twins" of Minneapolis were in reality one man, a self-described loner.

Entry

Like the other two arsonists who testified, Smith's entry into the arson business was not something he sought. Rather, it came about almost by happenstance.

While working for a construction company, he began associating with a real estate broker who would buy, refurbish, then sell small homes in various sections of the city. Smith's lifestyle had given his landlords cause to evict him from several apartments, largely because he frequently hosted raucous, late-night parties. He was looking for a place of his own. The realtor suggested that he move into one of his unrehabilitated homes and live there rent-free while refurbishing it. After the building was sold, the realtor would reimburse Smith for the time and materials required for the renovation.

Smith did high caliber work, and word of his proficiency spread in the real estate community. Through his work, he came in contact with many real estate brokers and other businessmen. One day, during a conversation with a broker, he was told that the man had made a mistake in the purchase of a small house. "I hold him that doctors bury their mistakes and suggested that a broker could burn his mistake," the arsonist told the subcommittee (p. 12). While Smith testified that he did not advance himself as the candidate to do the burning, the broker asked him if he would see to it that the building was torched. He agreed to do it, and leveled the place. For his work, he was paid \$500 by the grateful broker, who collected the cost of the burned structure from the insurance company.

Smith repeated this experience many times—in his recollection more than 100 before his own carelessness caught up with him. He commented:

A professional arsonist today is in a seller's market. Many businessmen and speculators who know their way around can call an arsonist to provide instant liquidity of their property the way the average person telephones a reservation to a restaurant. It is just that easy (p. 11).

Asked by Senator Percy how much money he earned from this enterprise, Smith replied that "It was a bunch" (p. 17). One fire alone yielded him \$4,500 (p. 34).

Smith's background in home building enabled him to quickly identify the weak points in a building's construction. He boasted that he never had a failure—meaning that not one of the buildings he torched remained standing. So confident of his prowess was he that Smith stated in response to a question about whether he could level the Dirksen Senate Office Building in which he was then testifying, "I would take the whole inside out of it without any trouble" (p. 21).

Technique

Smith said his method of operation was simple. After receiving his downpayment and a key to the targeted building, he would visit the site in the afternoon. Then:

* * * To avoid suspicion as I entered the structure, I would carry a dropcord over one shoulder and perhaps a tool case in my hand so that neighbors would not be suspicious of anything. I would appear to be simply a construction worker doing some refurbishing.

Once inside the building, I would check the location of heat vents and ducts, and where the furnace and hot water heater was. I would also note where space heaters, if any, were located. Having cased the place, I would leave after about 10 minutes, turning over in my mind the best way to burn it to the ground (p. 12).

He successfully employed two techniques in his trade, which he plied at night, after devising the best way to level the building in the afternoon.

One was to remove the safety switch from the gas hot water heater in the building, then snuff out the pilot light after turning up the water heat control to high. Gas would flow throughout the building, eventually reaching a pilot light at the kitchen stove or furnace. An explosion would result, followed by a fire that would destroy the building. By measuring the cubic feet in the structure, he could estimate how long it would take for the leaking gas to reach a fire point. He could be miles away by the time the fire actually started.

In buildings heated by hot air ducts, Smith used another method. He would pour flammable liquids into the ducts and when the liquid reached a point closer to the furnace, it would start a chain-reaction explosion through the duct system, igniting the entire structure (p. 13).

When asked what he would do after setting up a building, the arsonist replied that he went home to bed, and never had any trouble falling asleep. His time-delay systems afforded him plenty of opportunity to be well away from the building before it went up in smoke. He noted:

I remember one occasion that I set one up about 1 o'clock in the afternoon. It went off at 2 o'clock the next day, and I was in Nashville, Tenn., and had been there since 7 o'clock that morning. * * * I drove. If I had flown, I could have been anywhere in the world (p. 30).

ANGELO MONACHINO

Whereas Smith was a loner as he went about destroying property for profit, Angelo Monachino of Rochester, N. Y., was every bit a team player. His team was the mob of Rochester, an organized crime family which used arson as a vehicle for income—just as it counted on revenue from extortion and gambling in that western New York city.

Monachino was a "soldier" in the mob from 1971-1975, performing numerous tasks, many of them illegal. In 1975, he went into the Federal witness protection program, cooperating with Federal and local prosecutors in numerous criminal actions against individuals with whom he formerly associated. He obtained immunity from the Federal Government in exchange for his testimony (p. 43).

Soldier's life

Monachino began associating with members of the mob in 1968. As a building contractor always looking for new business, Monachino made the acquaintance of Patrick Marrocco, proprietor of a restaurant and night club in Rochester, known as El Morrocco. It was at El Morrocco that Monachino met Eugene DiFrancesco, who was associated with Frank Valenti, said to be the "Godfather" of the Rochester mob.

Valenti is currently serving a 20-year prison sentence at a Federal penitentiary in Springfield, Mo. Monachino believed his growing friendship with DiFrancesco would lead to contracting assignments through Valenti and his associates. Over a period of time, Monachino obtained their confidence.

He learned that the mob was involved in gambling and extortion in the Rochester area, but that Valenti scrupulously avoided potential income sources that many organized crime families find too promising to resist—drugs and prostitution. In characterizing the Rochester boss' attitude towards prostitution, Monachino said: "Frank never liked that because * * * he always felt that nobody should make a living off a woman" (p. 58).

But Monachino learned that the boss considered arson-for-profit a useful and "legitimate" source of income for the mob, and regularly dispatched his men to set buildings afire in the Rochester area.

Monachino noted that the mob carefully decided which buildings to set afire in order to insure substantial proceeds. The fire at the El Morocco restaurant itself typified the mob's modus operandi. (This was the first fire handled by the mob of which Monachino had personal knowledge.) Valenti encouraged Marrocco to make sure that all the insurance policies on the restaurant were paid up before the building was torched. The witness said that owners of properties scheduled for mob arson attempts were advised to "get as much insurance coverage as they could so that the payoffs would be substantial" (p. 38).

He noted from personal experience that property owners seldom had difficulty increasing their coverage. He also said that loss adjustments were generally fairly high. This was because company adjusters were never commissioned to handle these claims:

We would always instruct the property owners to get a private adjusting company to represent the interests of the owner of the building which had burned. These adjusters would get a percentage of the settlement under an agreement with the building owner (p. 38).

The payoff to the mob was handled in the following manner, the witness said:

* * * If a businessman wanted his place burned by us, we would demand 25 percent of the final insurance payment for the loss, with 25 percent of that up front.

In other words, we would take 61¼ percent of the insurance value of the property in cash before we did anything. This payment was a way to test the owner's good faith. Then, after the fire and the insurance was paid, we would require the building owner to make up the difference between what he paid us in advance and the amount needed to satisfy 25 percent of that payment. The mob split the payment with 25 percent to the people who did the fire and 25 percent to the man who brought the assignment in. The rest would go to Valenti who paid out other expenses. That was how it was supposed to happen * * * (p. 38-39).

Murder

In all, Monachino knew of or participated in 11 different fires for the mob. While these fires might have produced substantial sums for the organization, the witness testified he received only \$700 for his role (p. 39). He didn't complain because "it wouldn't do much good to complain anyway." One of his coconspirators on the fires, Vincent Massarro, did complain about the low rate of return. Asked what happened to Massarro after he complained, Monachino responded that he was killed. In an exchange with Senator Nunn, Monachino related the circumstances of the killing:

Senator NUNN. How was Massarro killed?

Mr. MONACHINO. He was shot.

Senator NUNN. By whom?

Mr. MONACHINO. DiFrancesco.

Senator NUNN. Where?

Mr. MONACHINO. In my place of business, my shop.

* * * * *

Mr. MONACHINO. I was talking to him and Gene came out from the office and shot him (p. 52).

Given his considerable experience in the construction industry, Monachino explained it was natural for the mob to turn to him for advice on setting buildings afire. He obtained the assistance of Massarro in setting up these fires. Then his employee in the construction firm, Massarro, would be paid a full day's wage while he was setting up the fire (p. 39).

System

In most of the fires set by Monachino, or other members of the Rochester syndicate, he said the following pattern would be followed:

In most of the fires that we set, we would take battery acid carriers, which were square cardboard boxes with plastic containers inside, and pour flammable liquids, such as gasoline, paint thinner, kerosene, or alcohol into them. Then we would take some twine and make a handle for the battery acid carriers and cover them. Then even during daylight, we could walk into a building with no one being suspicious, since nobody could tell that we were carrying liquids into the building.

We would also carry in filament paper, measuring 8 by 11 that was used for development of photographs. We would cut them in 2-inch strips and lead them from one jug of flammable liquid to others placed at various points in the building. We would also sometimes use toilet paper as streamers, running the paper from one jug to another. We would use 1 by 2 strips of wood, to help kindle the fire. We would also strip the plaster off the walls so that a good draft could be developed through the 2 by 4 beams supporting the walls. We would open certain doors or close certain doors to draft the fire upward through the building. Some windows would be

blocked off. Sometimes we would cut holes in the floor to help the fire move through the building more quickly. To get the fire going, we would use a couple of peach baskets full of excelsior and place the excelsior near a candle that we would place on the floor.

Whenever we bought a batch of candles, we would time them to see how long it would take to burn down to the floor. Once we knew that, we would be able to figure how long it would take before the fire would go off. When the candle burned down to where the excelsior and filament paper were, the fire would start, moving through the streamers of toilet paper and filament paper, to the flammable liquids, igniting the floors, the walls, and finally bringing down the entire structure (p. 39).

Monachino regarded timing as very important. Often, the fires were planned for 2 or 3 o'clock in the morning, because there would be little traffic along the roads at that hour and therefore there would be few passers-by to report the fire before it got a good start. Also, he noted, "there were fewer firemen on duty during those hours. In rural communities, where we sometimes set fires, there were only volunteer firemen available, and they were asleep when our fires started" (p. 40).

Monachino had been told by DiFrancesco that "a high official in the (Rochester) fire department was on our side." This official, whom he did not name, often showed up at the fire scene after a building targeted by the mob had been destroyed. This official would arrange "to have the cause of the fire written off as something other than being suspicious or incendiary" (p. 40). Monachino testified that the assistance of the fire official helped the conspirators obtain quick settlements from the insurance company, since suspicious causes were rarely ascribed to most of his arsons.

Not only was the hour important to mob arsonists in Rochester, but the witness said they also purposely selected bad weather days.

* * * Snow, rain, and freezing weather made it harder for firemen to get to the blaze. When it was freezing, the hoses would sometimes freeze up and the water spraying the fire would freeze before it did much good in putting out the fire.

Often in freezing weather, fire hydrants would be inoperative. A windy night was a good time to set fires, because, once the fire moved through the roof, the wind would accelerate the speed of the fire.

We were never concerned about rain or snow putting out a fire because we set them so well that there was no chance that the water would ever put them out (p. 40).

Like Smith, Monachino was not in the arson business for the thrill of it. Financial remuneration was his primary motive (p. 47).

And like Smith, he believes that just about any building can be taken down by an efficient arsonist:

MR. MONACHINO. There is no such building that is fireproof.
Senator PERCY. No such?

MR. MONACHINO. Not to my knowledge.

Senator PERCY. In other words, it just takes a little more

ingenuity, little more set up, little more preparation, but you can burn any building down.

Mr. MONACHINO. If you make up your mind to, yes, you can (p. 50).

Monachino had as little fear of apprehension during an arson attempt as Smith. Even in jurisdictions with functioning arson squads, there were never any detailed investigations of suspicious fires, he said (p. 51).

Monachino, a "soldier" in the Rochester mob, testified that the organization had been engaged in arson-for-hire for many years. He said that there might have been a few individuals plying the trade of arson in the Rochester area in addition to the syndicate activity in this field. He emphasized that a large demand for arsonists exists in Rochester.

"JOE WILLIS"

In many ways, the story of "Joe Willis" is perhaps the most alarming of all. First, it underscores the ease with which an unscrupulous landlord can have his properties burned, with virtually no risk of his being caught. Perhaps more importantly, it highlights the way this vicious crime can involve innocent young victims and destroy their lives.

Jobless

Willis, of Philadelphia, told the subcommittee that in his midteens he left his family home to live alone in an apartment. The apartment's owner, a former employer of Willis' father, owned numerous properties in Philadelphia (p. 68).

Willis was unemployed, but the landlord quickly found odd jobs for him. The landlord put him to work on other apartments he owned in Philadelphia's inner-city. The two had a kind of barter arrangement: Since Willis often lacked the cash to pay his rent, the landlord would accept his work on the properties in lieu of rent. Occasionally, the landlord would pay by cash or check for work Willis did on these properties.

Sometimes, the landlord's odd job assignments would slack off and Willis would fall behind on his rent. In 1976, the landlord, noting his tenant was then \$200 behind on the rent, told him that he was unable to rent out one of his apartments and he wanted it burned down. "He said he didn't want it anymore, and in exchange for burning the house down, he would cancel out my \$200 debt," Willis testified (p. 70).

Still a teenager, Willis did not believe that it was illegal for the owner of a building to have it burned down. "I simply figured that the building was his, he could do anything he wanted to it" (p. 70).

There was nothing sophisticated in the way he approached his first arson job. Instructed by his landlord to use gasoline, he purchased some late one night at a gas station near the abandoned apartment house, climbed onto the roof, peeled back the tin sheeting blocking the entry to the back window, entered, poured gas throughout the building, lit a match, and left. The house burned down and the next day, his landlord gave him \$150 and also excused the back rent. "He said I had done a good job" (p. 70).

Arsons

Some months later, at the direction of his landlord, Willis began working in an auto parts store. From that vantage point, he watched the comings and goings of people in the neighborhood, some of whom rented property from the landlord. When one particular tenant moved out, Willis advised the landlord that the apartment house was vacant. The landlord directed him to set the place afire at about 4:30 p.m.

When I asked him why around that time, he said because of the traffic. It would be like very busy around that time and the fire engines would have a problem getting to the fire (p. 71).

That property also burned down, and Willis was able to stay in his apartment.

However, the handyman assignments were few and far between, and for a time there were no more arson jobs to do. As a result, he was forced to go on welfare and fell still further behind on his rent.

He was searching for a way to "demolish our relationship. Like, if I had some place to go, I would have went, but I had no other place to go" (p. 72). He realized that he had become a type of indentured servant to his landlord, but felt he had no option but to continue. He was trapped by his dependency on the landlord.

At that point, the landlord's operation became apparent to Willis. The landlord approached him about the possibility of canceling out his entire debt through an arrangement designed to defraud the insurance company. Willis explained:

* * * he offered to give me a house for about \$1,400 and after I had signed papers putting the house in my name, he told me * * * that the house would be insured for about \$5,000 and that the cost of the house for me to him would be like \$1,400.

What I could do after I signed the papers or put the house in my name, what I could do was burn the house down and receive the insurance money, which would be about \$5,000, pay him and the rest would be mine (p. 73).

However, the landlord later decided not to go through with this operation and never gave Willis the paper to sign.

Willis was eventually caught in the act of setting afire another of his landlord's homes. He later began cooperating with local and Federal law enforcement authorities. Using a body recording device while talking to his landlord, he was able to obtain sufficient information to demonstrate to the authorities that the landlord "was the moving force behind these fires" (p. 74). Willis is currently serving a 5-year suspended sentence for his crimes; the landlord received a 9-month jail sentence in Federal court for mail fraud with 2 years probation.⁹

Willis testified that he had to have a couple of drinks before he could work up the nerve to set fire to the buildings. Like Smith and Monachino, he got no thrill from setting these fires. It was just, as the witness said, the "need for money" (p. 78).

⁹ Willis' sentencing record, along with his landlord's conviction, are in the sealed files of the subcommittee.

In summary, although they worked in different cities and came from different backgrounds, all three arsonists who testified before the subcommittee stressed similar points. None expressed any concern that the police might catch him while setting an arson. All emphasized that they recognized the enormous financial returns that could be made through arson.

III. ANATOMY OF A CONSPIRACY

As tragic and ominous as these cases are, they reflect only part of the grim picture. The examples presented in the previous section detailed the personal involvement of three arsonists. But arson-for-profit frequently involves carefully constructed relationships among many individuals. In fact, as the subcommittee learned, when an arson conspiracy is formed, a problem develops that requires the utmost diligence and perseverance of Federal and local law enforcement agencies. On occasion, as Willis indicated, the conspiracy is nothing more than an ad hoc, informal arrangement between a building owner and the torch. Sometimes, however, arson conspiracies involve numerous individuals from all walks of life, who depend on insurance payoffs from deliberately set fires as a relatively steady source of income.

For example, an arson ring operating in the Symphony Road area of Boston involved 33 conspirators. Operating from 1973 to 1976, the group set at least 35 fires and caused more than \$6 million damage. Local law enforcement officials described it as a "massive conspiracy to burn Suffolk County for profit."¹⁰ This conspiracy was comprised of a variety of officials, including a retired State fire marshal, a retired captain from the Boston Arson Squad, lawyers, insurance adjusters, loan company officers and real estate agents. This conspiracy was no simple agreement between a landlord and a torch. It was a massive and sophisticated system that threatened to destroy a sizable area of a major city.

In an effort to understand the dynamics of a major arson conspiracy, the subcommittee carefully examined the operations of one of the largest arson rings ever uncovered by Federal investigators.

This conspiracy, operating in and around Tampa, Fla., resulted in guilty verdicts against 16 defendants on Federal charges of conspiracy, racketeering, and mail fraud. Three other defendants pleaded guilty.

The February 1978 convictions were the culmination of a 2-year effort by the Organized Crime Strike Force in Tampa. The investigation demonstrated that the conspiracy had been operating for 4 years in Tampa, "defrauding major insurance companies of hundreds of thousands of dollars," two Strike Force attorneys, Eleanor Hill and Eades Hogue, testified during the subcommittee's hearings (p. 110).

NO PRECEDENT

Hill, Hogue, and William James, the other Federal attorney working on the case, had little in the way of precedent to guide their investigation.

The criminal arson business in the Tampa area, though apparently thriving, had not previously been pinpointed as a

¹⁰ "The Symphony Road Fire Murders," Ken Hartnett, *Nations Cities*, February 1978.

target area by Federal law enforcement agencies, in keeping with the notion that arson was traditionally considered to be a State or local offense, nor by previous State investigations on arson,

Hill and Hogue said in a joint statement presented to the subcommittee.

Little, if any, precedent existed for prosecution of an entire arson "enterprise" * * * encompassing not only the street level arsonist, but also the businessmen and property owners whose finances and realty provided the basic economic incentives for the * * * arson industry (p. 111).

Aided by information provided from an insurance investigator, the Federal prosecutors identified Willie Noriega, a well-known Tampa arsonist, as the key to successful prosecution. After considerable negotiation with the Federal prosecutors, he agreed to cooperate. Through his help, the prosecutors were able to "turn" two other conspiracy participants, Victor Arrigo, a part-time arsonist, and Joseph Carter, a Tampa insurance adjuster (p. 112).

CONSPIRATORS

Noriega's operation attracted many persons.

As with any successful, self-supporting business enterprise, legitimate or otherwise, much of the attraction of the enterprise lay in its potential for extravagant profit at little or no risk,

Hill and Hogue said.

The ability of the enterprise to offer such results stemmed from its highly-specialized yet interdependent infrastructure; every community of interest needed to insure continued success was present (p. 112).

In describing the conspiracy, the prosecutors noted that there were several street-level arsonists whose services were sought by property owners. They, in turn, had access to realtors "who provided not only ample tips on locating low-cost and oftentimes substandard housing for burning, but also the financial resources with which to purchase such property." Two prominent Tampa businessmen helped "to legitimize, at least on the surface level, the real estate transactions of the enterprise through a barrage of paperwork," the prosecutors pointed out (p. 112).

None of the enterprises would have worked, however, without the assistance of Joseph Carter, described as "one of Tampa's most well-known and highly efficient insurance adjusters" (p. 113).

Carter, now serving a 5-year sentence for his involvement, "performed several important functions," for the conspiracy, Ms. Hill and Hogue said (p. 113). He steered property owners to insurance companies likely to pay off with little or no investigation. He arranged that the property be insured for the maximum return by providing for over-evaluation of property. And, he insured the final collection by personally supervising and taking part in the claims process and final payment. Carter, who testified before the Subcommittee, noted,

"While our group was working smoothly, we had an arson empire" (p. 88). His participation was no less important than that of two full-time officers of the Tampa Fire Department, John Lostracco and Jimmy Farina, who were "simultaneously not only customers of the enterprise, reaping the illegal profits of arson," but also provided an inner connection to local law enforcement which had the responsibility for investigating the fires that the conspirators set. Summarizing the arrangement, Mr. Hogue and Ms. Hill said:

* * * arson in Tampa was a highly profitable business, supported by a peculiarly specialized network of individuals whose services combined to guarantee the continued successful operation of that business (p. 113).

While none of the arsons focused upon by the Federal Strike Force in Tampa resulted in personal injury, the greed of the conspirators drove people from their homes. The burning of a frame home in a rundown area of the city was one of the most egregious examples of the conspirators' operations. The house was owned by Bessie Mae Williams, an elderly, blind, black woman delinquent in her mortgage payments to realtor Sam Martino, one of the conspirators. One day, working on orders from Martino, Noriega drove the woman to Martino's realty office, where Martino threatened to kick her out unless she signed over the property to him. For \$50 she sold the house to the realtor. Noriega then assumed a \$1,900 first mortgage, which Martino continued to hold, while the realtor took out a second mortgage on his newly acquired property for \$2,500.

"At the time of this transaction, Noriega and Martino had but a single purpose in mind—to burn the property and collect on the insurance proceeds," the prosecutors testified. Subsequently, the torch and another associate bought out Martino's interest in the first mortgage. They then took out \$38,000 worth of fire insurance to cover the residence, even though it had been cited for building code violations by the city's Bureau of Minimum Housing. Two attempts were made to burn down the building; the second succeeded on Easter Monday, April 15, 1974. The insurance company paid \$27,000 to the new owners of the property (p. 113).

Asked by Senator Chiles how a building purchased for \$50 could be insured for \$38,000, Carter explained, "Because they did not inspect the building * * *" (p. 91).

The subcommittee summoned the adjuster to testify in order to gain a better understanding of the motivations of a conspirator and the operation of the conspiracy. Carter is presently incarcerated in a Federal prison.

ROLE OF THE ADJUSTER

Carter's testimony made it abundantly clear that arson-for-profit is a virtually risk-free and lucrative enterprise, offering a financial temptation to even the most law-abiding citizen who suddenly finds himself in financial straits.

Carter described himself as just such a victim, as he outlined his insurance career before the subcommittee. He began working in claims adjustment in 1951, first handling storm loss and automobile accident damage claims. Even before coming to Tampa, he told the subcom-

mittee, he was aware that a claims adjuster "could make extra money by giving claimants the benefit of the doubt on insurance settlements" (p. 86). When claimants would come to him asking for his assistance in approving a payment equal to the value of the maximum coverage under a policy, Carter testified, "I would always refuse any such temptation, and I believe that I had a reputation for being a fair but tough adjuster" (p. 86).

But, he testified, his superiors did not respond when he reported these incidents; in fact, he was—

eventually directed to stop reporting such offers. I drew the impression from all this that adjusters for some insurance companies are frequently approached by claimants to award them more insurance money than is actually deserved (p. 86).

Described by the prosecutors as one of the best-known adjusters in the Tampa area, Carter learned that in Tampa, "many properties were overinsured and insurance agents were not above adding \$1,000 or \$2,000 to a policy, since they received additional premium commissions" (p. 86).

He also noted that many of the properties covered had numerous code violations and that the owners of the properties had no intention of improving them. Since the companies seldom checked on individual properties covered, "owners would routinely tell the insurer that their buildings, while in fact vacant, were tenant-occupied" (p. 86).

Before his involvement in the insurance fraud plot, Carter took the manner in which properties were being covered quite seriously. On one occasion, he showed a map of the City of Tampa to insurance company executives.

To give them an idea of what the company's exposure was, I went through the map with different colored pencils, showing them where poor and substandard dwellings were located and where safer dwellings were located. I told them to insure more in the safer areas and I believe that my advice helped the company considerably (p. 86).

Carter criticized insurance agents, who also serve in many instances as underwriters for their companies:

* * * Often, the way it works is that a building owner will come into an agent's office, give him the address of the structure, how large it is, and what kind of coverage he wants. The agent will then tell him how much the premium is; the building owner will give him a check, and the property owner is immediately covered under a binder until the company issues a policy. Thus, the agent in many cases does not inspect the property. In my experience as an adjuster in Tampa, I was appalled at the number of buildings on which I adjusted fire and other types of loss which were unbelievably overinsured (pp. 86-87).

Another fact which quickly occurred to Carter was that many of the fire losses he adjusted were caused by arsonists. Occasionally, when he advised the claimant that the company would refuse payment

because of an obvious arson, the claimant would get in touch with the local office of the State insurance commission. This agency would eventually advise the adjuster to pay off on the questioned claim unless he could actually prove the claimant caused the arson (p. 87).

Carter testified that one of the principal claimants in these suspicious fires was Paul Guarino. He began to cultivate Guarino in the early 1970's, "as a sort of stool pigeon," in order to learn who was setting the fires (p. 87).

Guarino would tell him if he or others were involved in the fire. If it was not the handiwork of Guarino, he would go to the insured and threaten him with exposure. The adjuster would "tell him that I knew there was an arson and insist that he accept a lower payment * * *. By this method I saved thousands of dollars for the companies" (p. 88).

Through Guarino, the witness testified, he met Willie Noriega, the major Tampa torch in the conspiracy.

About that time, in 1973, Carter began experiencing heavy gambling losses at the dog tracks, often betting as much as \$900 a night. Before his gambling losses occurred, the adjuster had resisted Guarino and Noriega's offers of money in exchange for advantageous settlements. Once he was short of cash, however, Carter was more vulnerable.

In November 1973, he finally gave in to the conspirators, agreeing to help them settle a fire loss of some \$4,200.

I told them that I would no longer work for nothing; that I wanted a piece of the action. I settled the claim involved for less than it was worth, but guided them through the preparation of the proof of loss, amount of insurance on the building, and the contents, even though I knew it was arson (p. 88).

He insisted that he be paid "up front."

With Carter assisting the group, a system was developed. He would identify the companies that

would be the best ones to approach about getting higher coverage on buildings they owned and wanted to torch. I would steer them to the companies with the most liberal claims payment policies, companies which also paid in a hurry. These were companies which had trust in me because I usually settle claims for less than the face amount of the policies,

he explained to the subcommittee (p. 88).

Carter summed up the operation of his group this way:

* * * our group had all the elements participating which would have allowed the conspiracy to continue forever, if it had not been broken up by the strike force. We had the insurance adjuster, an important figure because everything has got to be handled through him; we had accommodating insurance agents, the torches, and the fire department all apparently working to defraud the insurance companies (p. 88).

In explaining how the insurance companies handle the considerable financial losses that arson entails, Carter said that "it comes out of the hide of the consumer." In his opinion, insurance companies pass on the loss, through higher insurance rates for everyone. He also argued that the increased cost of insurance premiums makes it virtually impossible

for some people in areas with a high incidence of arson to obtain insurance coverage.

Criticizing the insurance industry for not inspecting more of the properties that it insures, Carter said:

It would be an extremely wise investment and if they were really concerned in protecting the customers, this is money that they should spend * * *. Putting it simply, I think they are penny-wise and pound-foolish.

When Senator Nunn questioned Carter on the relative capabilities of an organized conspiracy, the witness responded:

* * * if a group of unscrupulous people with these particular elements which I have mentioned here—the insurance adjuster, the agent, officials, torches, and owners of buildings—did, in fact, get together under the present investigative system that fire departments * * * have, I don't think that they could possibly prevail against an organized system.

It is my opinion that organized crime in this country, syndicates, are becoming well-acquainted with the amount of moneys that could be made out of arson-for-profit cases (pp. 99-100).

SUMMARY

The subcommittee concluded that these conspiracies were a critical factor in the development of arson-for-profit as an increasingly serious problem in America. The sophistication of these organizations in pinpointing and committing these profitable arsons has made the task of law enforcement agencies an exceedingly difficult one. However, the subcommittee recognized that without the financial incentive, this crime would substantially diminish. Therefore, the subcommittee did not limit its investigations to those who actually committed the crime, but also studied the insurance industry in an attempt to discern how the financial temptations could be reduced. The problems of the profit in arson-for-profit is the subject of the next chapter.

IV. THE ROLE OF THE INSURANCE INDUSTRY

In pursuing its investigation, the subcommittee heard members of the insurance industry testify about the problems they face in trying to discourage arson-for-profit. James McMullen, director of security investigations for the Farmers Group, Inc., a Los Angeles, California-based insurance company, told the subcommittee that arson-for-profit succeeds throughout the United States for many readily apparent reasons. He said that insurance is easily obtainable "for amounts in excess of the real value of the insured property." He attributed this to "irresponsible insurance agents who value their sales commissions more than the risk to their companies. By valuing profits above principle, they abrogate their moral if not legal, obligation to protect the company against unreasonable risks," McMullen testified (p. 129).

He suggested that law enforcement agencies should receive better support from criminal courts, "which deal too leniently with arsonists" (p. 129).

He also recommended that insurance company officials and law enforcement investigators be exempted from civil damage suits or criminal action for disclosing information to appropriate officials. Such immunity would permit the insurance industry to cooperate on a much grander scale with the law enforcement community.

SCREENING

Testifying about arson-for-profit schemes throughout the United States, McMullen was asked by Senator Chiles if precoverage inspections of all properties—to assure the company of their insurability—would be economically sound.

McMullen replied that the cost "would be nominal." He said that an inspection could be performed for \$25 per unit, "and considering the size of this arson problem, that is not much money" (p. 131).

OVERINSURANCE

McMullen said that most arson-for-profit cases involved deliberate overinsurance. While principally blaming the profit motive of the agent, McMullen—a veteran of 37 years in the insurance claims business—was also critical of adjusters.

* * * considering my observations in many years in this field, it is my opinion that probably about 25 percent of adjusters would succumb to proposals to participate in a profit through conspiracy * * * (p. 132).

He noted that the average adjuster makes "somewhere less than \$17,000 a year," prompting Senator Chiles to remark: "In some instances he could make that in one contract, adjusting one claim." McMullen acknowledged that this was true (p. 132).

LITIGATION THREAT

Also testifying on insurance company procedures was George Clark, Pacific Coast vice president for claims for Cravens, Dargen & Co. This company provides general agency services, including premium collection, policy issuance, and claims adjustment on the West Coast for several insurance companies.

Clark seconded McMullen's criticism of present State laws which often make it impossible for insurance companies to pass on to law enforcement agencies this suspicion concerning individuals who may be involved in an arson insurance fraud. Clark said:

* * * If we instruct cause-of-loss investigators to send copies of their reports to district attorneys, it looks as if the big insurance companies with unlimited funds for investigation are trying to put the policyholder in jail. If we voluntarily share the material and the district attorney dismisses the case, we are wide open for a civil suit. Punitive damages in some States will be the price we pay for sharing this valuable information with law enforcement authorities (p. 135).

Clark recommended that immunity laws be passed to allow insurance companies to release information to law enforcement authorities involving suspicious fire claims. The immunity would cover liability for civil or punitive damages for release of such information (p. 136).

Clark also criticized law enforcement agencies with respect to arson-for-profit. Senator Chiles noted that, in previous meetings with the subcommittee staff, Clark had indicated that, were he a criminal, he would be an arsonist. Clark elaborated:

* * * it seems to me that my experience with arson cases or suspected arson cases recently has been that the arsonist is not pursued by law enforcement. * * * There seems to be a lack of interest as far as law enforcement is concerned. If the loss is insured and if the property owner is made whole, they seem to lose some interest in pursuing the criminal (p. 136).

Clark also disputed some of the testimony from torches who indicated that they always insured no one was in the properties that they were to burn; he noted that human lives are often lost in arson cases. In one recent instance, in an Alaska motel,

* * * A rolling ball of fire came down the stairway, past the desk. People started running to rooms, pounding on the doors to get people out. There were a number of employees there. Yet, they were unsuccessful in getting everyone awakened and aroused to the extent they could escape, and there were three very tragic deaths that occurred as a result of that fire (p. 137).

Similarly, the recent arsons in two New Jersey tenements which resulted in more than 40 deaths stand as tragic testimonials to arson's devastation.

STAFF STUDY AND INDUSTRY RESPONSE

In May 1978, the subcommittee submitted a questionnaire to 15 of the Nation's largest fire insurance companies. This questionnaire was

designed to ascertain whether business practices and attitudes within the private insurance market may contribute to the upsurge in arson-for-profit.

The responses to the questionnaire, as well as the results of independent research conducted by subcommittee staff, were presented in the "Staff Study of the Role of the Insurance Industry in Dealing with Arson-for-Profit." This report, published in February 1979, recommended that:

Insurers should require routine risk reviews prior to coverage, including property inspection and background checks on applicants;

Insurers should scrutinize current policy and claims challenges, develop effective arson investigation teams, and make more frequent civil challenges on arson fraud;

Companies should develop in-house investigative expertise and be prepared to pursue arson investigations;

Insurers should work together with government officials toward modifying privacy laws and fair claims practices laws;

Companies should investigate the possibility of serious corruption in the ranks of claims adjusters; and

Companies should retain and share information on the number, value and location of all arsons and suspicious fires, as well as information concerning the owners of such properties.

Copies of the staff study were distributed to all companies which completed the original questionnaire, as well as to others in the insurance community. The 15 companies responding to the questionnaire were asked by Chairman Nunn and Senator Percy to comment upon the recommendations made in the staff study.

The response from the industry was mixed. The majority of the responding companies praised the staff study for focusing attention on the arson problem. Significantly, no company that commented on the study challenged its central premise that the insurance industry must take a leading and highly visible role in arson prevention and detection.

William G. Walton, senior vice president of Royal-Globe Insurance Cos., wrote Senators Nunn and Percy:

We believe the committee has identified most of the serious arson problems which insurers encounter. We agree with most of the report's conclusions * * * we concur that further progress is necessary.

The companies did argue in their letters to Senators Nunn and Percy that the good intentions of the companies are frequently thwarted by laws which tie the hands of any company wishing to pursue a suspicious fire involving potential fraud. Almost without exception, the companies argued that the existence of privacy laws and fair claims practices acts, coupled with lack of immunity statutes in most States, inhibit effective arson prosecutions. Fair claims practices acts establish guidelines for insurance companies in adjusting claims by policyholders so as to assure prompt settlement unless the insurance

company can demonstrate a good faith belief that the insured has attempted to defraud the carrier.

The companies also asserted in their letters to Senators Nunn and Percy that competing social priorities—the need for privacy of personal information submitted by policyholders versus the need for such data expressed by law enforcement units—make a full-scale attack on arson very difficult.

Throughout the course of its investigation, the subcommittee has been aware that the eradication of arson-for-profit will not happen overnight. It is true that existing laws frequently make it difficult (but not necessarily impossible) for the insurance companies to implement antiarson measures they have heretofore not employed.

The subcommittee is not convinced that the insurance industry is doing everything within its power to curtail the arson problem.

For example, the subcommittee staff conducted interviews with housing code inspection commissioners in cities across the country. These interviews revealed that fire insurance companies have not availed themselves of the valuable information existing in the files of the city governments with respect to housing code violations of properties whose owners seek insurance coverage. This information, available to anyone with a legitimate interest in a particular property, could assist insurance companies in protecting themselves against writing policies on fire-prone properties. Major cities, such as New York and Boston, have computerized their code violation files, making retrieval of the information a simple, one-step process.

The subcommittee believes that insurance companies do an inadequate job of educating themselves about the properties that they insure. Many companies have argued, with some justification, that it would be prohibitively expensive to thoroughly inspect every property prior to coverage. Although precoverage inspections would present the companies with the best opportunity to learn about a property, there are other means available. Rather than examining all risks, insurers could minimize their inspection loads by obtaining information from building code authorities. Such research could alert companies to possible motives behind sudden requests for sizable increases in coverage.

In an attempt to learn what steps the insurance industry could take, the subcommittee staff requested Boston Housing Code Commissioner John Vitagliano to examine his files in order to determine if they contained information which would be valuable to an insurance company sincerely interested in preventing arson. Vitagliano discovered that of the 178 arsons in Boston in 1978, 39 occurred in buildings with some type of code violation. Significantly, 20 of the arsons took place in buildings that had what the commissioner termed "very serious violations." He said a very high correlation exists between arson and code violations; he considered it extremely unlikely that a random sample of 178 buildings would reveal 20 with serious code violations. He concluded that an inspection of code violation records could help an insurance company identify those buildings most likely to be targets for arson.

Based on this information, it might be advisable for the insurance industry to examine the possibility of using housing code violations records as a source of valuable arson control information.

There are other uncertainties as to the degree of effort exerted by insurance companies in performing arson investigations. Some companies claim they investigate all suspicious fires and insurance claims. But there are significant differences between companies as to what constitutes an investigation. There can be no doubt that companies which advertise their antiarson efforts, as some do, are seeking to reduce the attractiveness of arson-for-profit. But it is also true that an aggressive investigative effort by all fire insurance companies, in concert with a media campaign, is even more desirable.

One firm taking an aggressive stance on arson investigation is MFA Insurance Co. of St. Louis. This company has 30 trained investigators who automatically investigate every claim against the company exceeding \$3,500. The company trains these inspectors to look for the telltale signs of arson and insurance fraud. The subcommittee applauds these efforts and urges other companies to consider adoption of similar procedures in an attempt to curtail the rate of insurance fraud.

SUMMARY

The subcommittee recognizes that the insurance industry faces a formidable task in combatting arson. The subcommittee believes that the insurance companies must make the prevention of arson and related insurance fraud a top priority item. Without a concerted effort by the industry to pursue all avenues of investigation, arson-for-profit will continue to be a lucrative, criminal enterprise. The subcommittee reaffirms its conviction that the insurance industry plays a critical role in providing an incentive for arson-for-profit, and the subcommittee concludes that the industry must work diligently to remove that incentive.

V. LOCAL LAW ENFORCEMENT PROBLEMS

The primary burden for detecting and investigating arson-for-profit schemes falls upon State and local law enforcement agencies throughout the United States. Representatives of these units testified before the subcommittee about problems they have encountered in this area. Their testimony served to reinforce the evidence already collected by the subcommittee which indicates that arson-for-profit is out of control. Key points made by local law enforcement spokesmen were these:

In some cases, organized crime has moved into the arson-for-profit racket;

The ways in which an arsonist can set fire to a property are practically unlimited;

Prosecutors are often reluctant to bring arson conspiracy cases; when they do, they frequently assign the least experienced staff members to handle cases which require sophisticated prosecutorial experience;

Sophisticated laboratory analysis of fire scene residue is often unavailable, further complicating the task of the local arson units;

Since many fire departments fail to list highly suspicious fires as arson, the number of reported arsons is misleadingly low. Fire departments frequently lack the expertise and scientific equipment to properly determine whether a fire was the result of an arson; and

Local law enforcement agencies receive little help in fighting arson from the Justice Department's Law Enforcement Assistance Administration.

In defining the problem, Leonard H. Mikeska, chief arson investigator for the Houston Fire Department, described arson as having reached "epidemic proportions" (p. 176).

ORGANIZED CRIME

When law enforcement officials speak of organized crime today, they no longer speak only of the Mafia. "Organized crime is not limited to any one ethnic or racial group in the United States," said Joseph D. McNamara, Police Chief of San Jose, California (p. 183). Chief McNamara advised the subcommittee that:

older organized crime networks expand into nontraditional 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.

An example of this, Chief McNamara testified, involves the Hells Angels motorcycle group. While attempting to take over legitimate

businesses in Santa Clara County, Calif., they allegedly burned down some of these establishments in an effort to intimidate those reluctant to let the Angels take over. Chief McNamara said:

this is a classical organized crime technique and that is why I referred * * * to the fear that these newer groups, as organized crime is moving into higher levels, more sophisticated business crimes, that this activity is being taken over by motorcycle gangs and by some of the newly emerging groups moving into those areas (p. 192).

A more traditional type of organized crime arson operation was recently uncovered in Chicago, according to Ronald Ewert, acting executive director of the Illinois Legislative Investigating Commission. Ewert, testifying before the subcommittee, said that "there is no doubt that organized rings contribute to arson-for-profit."

He reported on two known organized crime members recently convicted of establishing four dummy corporations for the sole purpose of burning the buildings they owned for the insurance. The individuals, Anthony Tinghino and Barry Tucker, collected nearly \$75,000 before their convictions for bribing investigators and insurance company adjusters (p. 203).

TECHNIQUES

Fire officials continue to be amazed at the ingenuity of some arsonists. Houston Chief Arson Investigator Mikeska testified before the subcommittee:

There seems to be no end to the imagination of arsonists * * *. In my experience, if a torch wants to bring down a building, even against some of the best security, he can succeed. By using elaborate timing devices which set off the fire long after the arsonist has departed the premises, he can effectively establish an alibi by being anywhere when the fire begins (p. 171).

Mikeska outlined a number of different fire-setting techniques utilized in the Houston area in recent years. Among them:

In a warehouse protected by burglar alarms at all entry points, a torch broke the skylight, spread flammable liquid into the building by using a pressurized insecticide sprayer, and then ignited the building by dropping a match inside.

Some arsonists have filled large balloons with flammable liquids, tied the balloon to a string nailed to the ceiling in a building targeted for destruction, then set a lighted candle under the swinging balloon. When the balloon stopped swinging, it settled over the flame and exploded.

One arsonist turned on an electric radio, and wrapped it tightly in a blanket. Hours later, the blanket began smoldering, setting the building on fire. The arsonist had departed long before.

Another torch affixed a kitchen match to the bell striker on a telephone so that it would vibrate when the phone rang. He placed a piece of sandpaper close enough to the match so that when the bell rang, the match rubbed the surface of the

sandpaper and started a fire. Long after he set up the fire hazard, the torch called that phone number, successfully setting a fire in the building (pp. 171-172).

PROSECUTORIAL PROBLEMS

Because of the extreme difficulty in proving that a fire was caused by arson, law enforcement officials must depend upon sophisticated, experienced attorneys to prosecute arson-for-profit cases. As Houston's chief arson investigator explained to the Subcommittee:

Arson is not like a murder or a burglary, where all the prosecutor really needs is two competent witnesses to make his case. Arson crime prosecution requires careful development of circumstantial and scientific evidence (p. 173).

However, Mikeska noted that only rarely will the Houston district attorney assign his most experienced attorneys to arson cases.

More often than not, the prosecutors assigned to handle our arson cases are too young and inexperienced to win these cases. They try hard, and they devote much time and effort to doing the best that they know how. But what is needed are skilled, experienced attorneys.

He said that the arson squad in Houston "could keep two prosecutors busy full time advising on development on arson-for-hire cases and try them in court." However, none is assigned to the arson squad (pp. 173-174).

SCIENTIFIC ANALYSIS

Mikeska also told the subcommittee of the difficulty his men often encountered in making evidence taken from fire scenes available for court cases. Since the fire department depends upon the Houston Police Laboratory to analyze this evidence, and that laboratory often has a lengthy backlog, it "often takes as much as a year and a half to get around to our samples for analysis," (p. 174) said Mikeska.

Arson cases occasionally have resulted in an acquittal because of the absence of a chemical analysis report. As Mikeska explained:

* * * The arson investigator, when it comes time to testify about the nature of the substance he discovered at the fire, is therefore unable to offer laboratory proof that the material was flammable. If he testifies that the substance smelled like gasoline, a smart defense attorney can quickly destroy the investigator's credibility through a series of questions designed to show that, without chemical analysis of the material, it cannot be shown to a certainty that the material was, in fact, gasoline (p. 174).

Likewise, the Illinois Legislative Investigating Commission's 1978 report, entitled "Arsons," found weaknesses in the Illinois State crime laboratory's arson detection techniques. We mention those findings here, not to criticize that particular facility, but to highlight the current lag in bringing to bear the best available expertise on arson investigations.

Pursuing an independent inquiry of a 1977 fire in the Humboldt Park area of Chicago, the Commission gathered six debris samples from the fire scene to be tested for accelerants. Each sample was sliced in half; one half of each sample was sent to a private testing laboratory in Chicago, the other half to a State crime laboratory. Although both facilities employed a gas chromatograph for analysis, the private lab used more sophisticated and sensitive equipment than the State's. The results reflected this difference. While the State laboratory detected no accelerants on any of the samples, the private facility found traces of paint thinner on all six and concluded that the fire "must have been of incendiary origin" (p. 199).

UNDERESTIMATE OF ARSON INCIDENTS

The exact number of arsons throughout the United States is unknown. But indications from some recent statistical reports in Texas, provided to the subcommittee by Mikeska, strongly suggest the existence of many more arsons than fire departments actually report. "Many fire departments lack the professional expertise to even determine the cause of the fire," said Mikeska. He noted that in San Antonio, the fire department reported 69 arson fires in 1970. "But this relatively low number was because the city lacked any trained arson investigators," he said. In 1971, under a newly hired fire chief, an arson squad was created, and by 1977, San Antonio's reported arsons had increased to 662, a 1,000 percent increase in 7 years. "In other words, the crime of arson is largely undetected in Texas, and I think the problem of under-reporting is nationwide," Mikeska stated (p. 171).

Some other statistics he presented to the subcommittee compared arson reporting in two West Texas cities having similar economies and populations. In 1977, Amarillo and Lubbock both reported approximately the same number of fires. However, the incidence of arson in Lubbock was 15.2 percent—571 incendiary fires of a total of 3,747, but only $\frac{3}{10}$ of 1 percent in Amarillo—11 incendiary fires out of 3,263. Mikeska, interpreting those figures, concluded: "the firefighters in Lubbock are better skilled in arson detection than those in Amarillo" (p. 171).

PROBLEMS WITH THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

Perhaps the most frustrating experience for local law enforcement agencies in dealing with arson is the Law Enforcement Assistance Administration's (LEAA) lack of concern about this crime. LEAA is the agency within the Justice Department responsible for disbursing Federal funds to local law enforcement agencies to assist them in dealing with problems that the agencies are unable to fund on their own.

Mikeska told of the difficulty he experienced in obtaining prompt laboratory analyses of suspicious debris. He had asked LEAA authorities in Texas for help in obtaining funds to set up a laboratory to handle arson investigation, but received no help.

On another occasion, the Texas Law Enforcement Assistance Administration office sponsored an arson training program in Austin. The curriculum for that program was largely developed by members of the Houston Arson Squad, who also served as instructors at the sessions.

These courses were attended by police officers and firemen from throughout Texas. Despite the fact that most of the program was developed by the Houston Arson Squad, and the program was designed primarily to assist firemen, LEAA only paid the expenses of police department employees. "Every fire department employee who went, including men from Houston, was required to pay room and board during the session," Mikeska related. Summing up his feelings about LEAA, Mikeska reported that the "Federal performance in dealing with the raging arson problem is abysmal" (p. 174).

Police Chief McNamara of San Jose provided the subcommittee with another example of LEAA's lack of interest in arson. In September 1977, at a conference in the San Francisco Bay region convened by the Justice Department's Organized Crime Section, attended by Federal and local law enforcement and fire officials, Chief McNamara had a lengthy discussion with Thomas E. Kotoske, in charge of the Justice Department Organized Crime Strike Force in San Francisco. Kotoske noted the need for a regional arson intelligence system in San Francisco/San Jose area. Kotoske asserted that:

important intelligence information relating to arson conspiracies was probably being lost * * * because California police have traditionally viewed arson investigations as primarily a fire department responsibility. * * * intelligence gathering on arson suffered because fire agencies did not possess police intelligence gathering and sharing capabilities (p. 193).

Chief McNamara then sought the assistance of LEAA in obtaining the funds needed to establish a regional arson intelligence system. He was confident that, since the chief organized crime prosecutor for the Justice Department on the West Coast supported the system, LEAA would seriously consider the proposal. Moreover, McNamara told the subcommittee:

I knew that LEAA had previously recognized the threat of organized crime which would be the focus of the arson intelligence network's activities.

* * * * *

Unfortunately, neither the fact that a Federal strike force attorney was recommending 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 (p. 193).

VI. FEDERAL ENFORCEMENT ROLE

Although local law enforcement agencies bear a major portion of the responsibility for dealing with arson-for-profit, there is substantial authority under Federal law for several law enforcement agencies to join in the battle against this crime.

Arson itself is not a Federal crime unless it occurs within special maritime or territorial jurisdictions of the Federal Government or on property administered by certain Federal agencies.¹¹

Nevertheless, Federal agencies can pursue arson investigations if they relate to crimes within the jurisdiction of an agency. Most Federal arson inquiries begin during an investigation into Federal crimes accompanying arson.

Four Federal law enforcement agencies investigate crimes frequently associated with arson incidents. They are the U.S. Postal Service, the Federal Bureau of Investigation, the Internal Revenue Service and the Bureau of Alcohol, Tobacco and Firearms (BATF) in the Treasury Department.

The U.S. Postal Service has power to investigate arsons when they involve interstate transport of explosives; mail fraud; use of fictitious names or addresses; and mailing of injurious articles.¹²

The FBI has jurisdiction over arson or property destruction-type crimes within special maritime jurisdictions.¹³ It can investigate interstate transportation of explosive or incendiary devices.¹⁴ Mail fraud or fraud by wire, radio or television can be investigated by the FBI.¹⁵ It can also investigate flight to avoid prosecution,¹⁶ destruction of Government-administered property,¹⁷ destruction by fire on Federally-owned or leased land or land in the public domain.¹⁸ Interstate travel in aid of racketeering, with an arson connection, can also be investigated by the FBI.¹⁹

The Internal Revenue Service may probe arson incidents under statutes relating to its power to proceed against persons conspiring to defraud the United States, by uttering fraudulent statements, or by failing to pay taxes, file returns or supply information.²⁰

The BATF has authority to investigate interstate explosives transport, unlawful acts involving firearms or other destructive devices.²¹

All these agencies may investigate patterns of activity thought to be violating the Racketeer Influence and Corrupt Organizations Act (RICO).²² Arson is one of the crimes specifically listed in the RICO

¹¹ 18 U.S.C. 7.

¹² 18 U.S.C. 842-845; 18 U.S.C. 1341; 18 U.S.C. 1342; 18 U.S.C. 1716.

¹³ 18 U.S.C. 81 and 18 U.S.C. 1368.

¹⁴ 18 U.S.C. 842-845.

¹⁵ 18 U.S.C. 1343.

¹⁶ 18 U.S.C. 1073-1074.

¹⁷ 18 U.S.C. 1361-1362.

¹⁸ 18 U.S.C. 844(g).

¹⁹ 18 U.S.C. 1952.

²⁰ 18 U.S.C. 371; 18 U.S.C. 1001; 26 U.S.C. 7201, 7203, 7206.

²¹ 18 U.S.C. 842-845; 18 U.S.C. 922-925; 26 U.S.C. 5861.

²² 18 U.S.C. 1962-1963.

statutes which may constitute a proscribed pattern of racketeering activity.

The subcommittee asked the General Accounting Office to review the activities of these Federal agencies to determine how effectively they were performing their legislatively-mandated task of investigating and prosecuting arsonists. On April 4, 1978, the GAO reported that:

The Federal Government has not considered arson-related crimes an enforcement priority; therefore, the Government does not have a unified, coordinated program specifically designed to prevent, detect, investigate, and prosecute these crimes (p. 398).

The GAO, in analyzing the activities of the U.S. Postal Service, FBI, Internal Revenue Service and BATF, found that the agencies failed to collect data which would demonstrate that the problem was severe. Nevertheless, the Justice Department told the General Accounting Office that "no evidence existed to support the contention that arson-related crime is a serious national problem or that a greater Federal effort is warranted" (p. 399).

The General Accounting Office called on Attorney General Griffin Bell to "take the lead in developing information needed to assess the seriousness of the arson problem and, based on the result, develop an appropriate Federal law enforcement strategy" (p. 402). Senator Nunn, then subcommittee vice chairman, and Senator Percy, the ranking minority member, released the GAO findings to the public. At the time of release, the two Senators commented:

The GAO report is discouraging in view of evidence already being developed by the staff that arson-for-profit is on the rise and that local fire and police agencies are having an extremely difficult time in bringing violators to justice.

The General Accounting Office did note, however, even though there appeared to be little interest on the part of these law enforcement agencies in arson-for-profit, that BATF and the Postal Service had begun to show signs of becoming more aggressive in the field (p. 402).

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

A second GAO report, submitted to the subcommittee on April 24, 1978, focused on the activities of the Law Enforcement Assistance Administration.

The information contained in this report suggested that the lack of interest cited in the other four Federal agencies examined in the earlier study also prevailed at LEAA (p. 409). Analyzing LEAA's funding activities over the 3 years 1975 to 1977, the GAO reported that LEAA had spent less than 1/10th of 1 percent on arson control programs. LEAA allocated approximately \$1.7 million for arson programs, out of a total of \$2 billion disbursed to local agencies. The majority of this allocation went to New York City (p. 418).

In July 1978, shortly after the subcommittee released the GAO report concerning LEAA, that agency issued a press release summarizing the results of a 1977 study it had commissioned on arson-for-profit. The \$90,000 study by the Aerospace Corp. had originally been

published in October 1977. It documented a 325 percent increase in building fires between 1965 and 1975 and reported that in 1975 alone, arson losses amounted to \$1.4 billion. This destruction also claimed 1,000 deaths (including 45 firefighters), and 10,000 injuries (pp. 368-369).

LEAA's 10-month delay in issuing the press release on the Aerospace report was the subject of questioning directed to James Gregg, Acting Director of LEAA, during his testimony before the subcommittee on September 14, 1978.

"It is a very, very small administrative problem here," Senator Percy said.

* * * You have a report. You commissioned it. You gave the money. They make the report. They deliver it to you. You could assign an intern to do this * * * Just boil it down, get it out. Get a press release out on it. That is not a competing priority. What you are really saying to me is this thing is so far down at the bottom of the barrel that you can't even assign an intern to synthesize the report, summarize it, put a press release out on it (p. 370).

Gregg denied that the 10-month delay in issuing the press release suggested a lack of interest in arson on the part of LEAA. He testified that there were "some problems with GPO [Government Printing Office] and the time it took to get the documents published by GPO accounted, in part, for the delay" (p. 370).

However, according to Stephen Boyle, Director of Legislative Affairs for LEAA, the report had been published by the Government Printing Office in October 1977 and then distributed to law enforcement agencies around the United States.

Other indications of LEAA's lack of interest in arson problems were brought to the attention of the subcommittee. Houston's Chief Arson Investigator Mikeska testified that his unit needed two prosecutors to handle arson-for-hire cases, additional training for his squad, access to a laboratory, and funds to pay informants. He told the subcommittee that the LEAA "should be the place to go to obtain such assistance," but noted that "previous experience with LEAA in Texas leads me to believe that arson is not a crime that the agency cares too much about" (p. 174).

During testimony before the subcommittee, then-Acting LEAA Administrator Gregg claimed that LEAA had actively supported arson-control programs around the country. One example he gave concerned an LEAA grant to the Massachusetts attorney general's organized crime unit. This grant, according to Gregg, made it possible for that office to move against a large arson-for-profit scheme.

Senator Percy, however, noted that Steve Delinski, chief of the Massachusetts attorney general's criminal division, had informed the subcommittee staff "that at no time did anyone in LEAA advise or even encourage use of this money for arson control" (p. 365). Senator Percy pressed Gregg on this point:

* * * what this subcommittee is trying to obtain is evidence as to how high in priority the Federal Government is placing

this, and it is entirely to the credit of Massachusetts that they took these funds and used them for this purpose.

It was not LEAA that had anything to do with their decision and their judgment.

Gregg backed away from taking the credit, commenting "I am sure in 1976 with respect to this program that the information you got on that is correct" (p. 365).

Senator Percy also emphasized his belief that the establishment of crime laboratories to handle arson cases is an appropriate avenue for LEAA funding. Senator Percy noted that subcommittee staff had been informed that LEAA had denied a request from the Massachusetts State fire marshal to establish a State fire marshal's crime laboratory. Senator Percy asked:

We have been informed that the Massachusetts State fire marshal's crime laboratory is so poorly funded that employees have to buy test tubes and other equipment out of their own personal pockets in the later months of the year. * * * Is this another example of how LEAA is assisting States to deal with the arson problem? * * *

Gregg responded:

To my knowledge, at the national level, we have not directly funded laboratories that exclusively deal with the problem of arson. However, we have had an extremely keen interest in the general quality of crime laboratories (p. 366).

Senator Percy asked Gregg if it was reasonable to expect that LEAA would now encourage State LEAA planning agencies to:

give a high priority to requests for arson assistance in view of the enormous upsurge in arson that this subcommittee has documented and the ease with which criminals in organized crime syndicates can get away with arson-for-profit (p. 270).

Gregg replied, "We will be happy to work with you on a statement of this sort and I think we can come very close to the one you read."

Within days, Gregg advised Senator Percy that he was sending letters to every State and territorial LEAA planning agency encouraging them to fund arson control grant requests submitted by local law enforcement agencies. The letter, which went out on September 28, 1978, reads as follows:

The Law Enforcement Assistance Administration is increasingly focusing attention on a problem of national concern—arson, one of the fastest growing crimes in America. LEAA efforts have centered on assistance in establishing or strengthening arson investigation units, training arson investigators, improving crime laboratory capabilities and initiating research.

Growing interest on the part of the Congress and the criminal justice community has increased public awareness of the cost and scope of arson. I was pleased to note the resolution dealing with arson which was adopted at your recent annual meeting of the National Conference of State Criminal Justice Planning Administrators. Particularly encouraging was that portion of the resolution which urges each State

planning agency to support the concept of "an increase of pre-service and in-service training of fire fighters and police officers to more readily identify suspicious fire * * *."

On September 14, 1978, I testified before the Senate Permanent Subcommittee on Investigations regarding anti-arson efforts of LEAA. Attached is a copy of my prepared statement for your full information. During the course of my testimony, the Subcommittee requested that LEAA ask all State planning agencies to increase their recognition of anti-arson efforts.

I therefore urge all State planning agencies, in a manner determined appropriate by each State, to increase the emphasis on anti-arson efforts in State plans and through allocation of block grant resources.

I also call your attention to the September 1978 issue of the LEAA Newsletter which contains a number of items on the subject of arson and National Fire Prevention Week, October 8 through 14.

Through our cooperative efforts, I am sure we can help local jurisdictions reduce the serious problem of arson that many of them are facing.

Since the issuance of that letter, subcommittee staff in May 1979 checked with fire departments in seven major cities across the country to determine the degree of follow-up by LEAA.

In each of the cities—San Francisco, Los Angeles, Phoenix, Chicago, Boston, New York and Washington, D.C.—the report was virtually the same: None had heard from LEAA directly. One fire chief said he had been advised about the availability of LEAA funding for an arson research project by his city's police chief. New York, one city which has received LEAA funding for arson control programs, obtained the money through the city's police department. LEAA's past history of treating police departments as the only law enforcement agencies worth dealing with is a critical obstacle to effective arson control at the local level.

The previous failure of LEAA to deal with the fire service agencies no doubt contributes to the absence of funding programs in this field.

Apprised of these problems in the field, LEAA told subcommittee staff that a new program is being developed that will provide action grants to city fire departments. LEAA also advised the subcommittee that a mailing list of local fire service agencies is currently being developed.²³ Once this list is ready, LEAA will be in a better position to communicate directly with the fire departments, thus eliminating a hindrance to Federal-local cooperation.

DEPARTMENT OF JUSTICE POLICY

Although the Justice Department had told the GAO that arson was not a serious problem, it lacked the figures to document this claim. Apparently responding to the GAO's determination that the Federal law enforcement agencies had enmeshed themselves in a self-fulfilling

²³ Interviews week of May 14, 1979, with Henry S. Dogin, Administrator, LEAA, J., Robert Grimes, Assistant Administrator, Office of Criminal Justice Programs, and Judy O'Connor, Program Manager, Arson Unit.

prophecy, the Department advised the subcommittee that it would now begin accumulating reliable statistics to determine the extent of the arson problem. Addressing this issue before the subcommittee, Robert L. Keuch, Deputy Assistant Attorney General for the Criminal Division, said:

It is very important we think first to determine our statistics, particularly the scope of the problem. We have attempted to initiate programs that will result in more meaningful data (p. 329).

Mr. Keuch also assured the subcommittee that the Department "and in particular the Criminal Division, is continuing to review the totality of Federal efforts and resources for contending with crimes of arson." And, he added, "The magnitude and seriousness of the problem are, you may be sure, fully appreciated" (p. 331).

FEDERAL BUREAU OF INVESTIGATION

The Federal Bureau of Investigation also signaled to the subcommittee a more serious attitude about pursuing arson profiteers. Donald W. Moore, Jr., Assistant Director, Criminal Investigative Division of the Bureau, assured the subcommittee:

As part of its overall campaign against organized crime, the FBI is firmly committed to the allocation of our available investigative and supportive resources to assist in the protection of the American public from the growing organized arson-for-hire problem on a national level (p. 348).

Prior to Moore's appearance before the subcommittee, FBI Director William Webster sent a memorandum to each of the 59 Bureau offices around the country directing them to increase their emphasis on arson-for-profit cases involving organized crime. The August 2, 1978, memorandum reads as follows:

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
OFFICE OF THE DIRECTOR,
Washington, D.C., August 2, 1978.

INVESTIGATION OF ARSON MATTERS

The continued emphasis on target quality organized crime cases makes it incumbent to highlight the FBI's significant jurisdiction in major arson and related violations.

Unlike many other covert criminal activities, the impact of major arsons has a direct visible effect on the lives of the average citizen. Insurance premiums are raised, property is destroyed, people are killed or maimed, and the quality of life in the area affected by arson is considerably diminished.

Title 18, United States Code, Section 1961-1968, Racketeer Influenced and Corrupt Organizations (RICO) is an effective means to curtail mob-run arson rings. In addition to arson, there are several other related unlawful acts covered by this

statute. Among these violations are mail fraud, fraud by wire, obstruction of justice, bank fraud and embezzlement, and local felonies including murder, extortion, and bribery.

An example of a quality RICO-arson case recently investigated by the Tampa Division of the FBI in close cooperation with the local Federal strike force resulted in solving hundreds of arsons, the conviction of 19 individuals, including insurance adjusters and others who were sentenced to substantial jail terms. Additionally, over \$350,000 was directed by the jury to be forfeited by the defendants coupled with the seizure of their related corporations. Thus, the entire pattern of arson-oriented racketeering activity was terminated through successful prosecutive action.

In order to implement a cohesive, meaningful approach the FBI is instituting an action-oriented program and an ongoing assessment as to the magnitude of this problem within each of their respective field divisions.

1. Their efforts will be to determine identities of professional torches (arsonists), including their modus operandi, physical description, past criminal activities, clients, and related necessary data.

2. Establishing effective liaison with the police/fire and related agencies delegated primary responsibility for arson investigations. During the course of this liaison determine if there is a pattern of major arson activity conducive to a qualitative RICO investigative approach with particular emphasis placed on substantial organized crime activity.

If such a pattern of major organized arson exists in a field division and the FBI has jurisdiction, appropriate investigative effort should be promptly initiated.

Each field office should record its progress in establishing increased major organized arson coverage.

It has been determined that arson investigations need not stand alone but often form a valuable part of a RICO investigation encompassing a number of other racketeering activities.

If good judgment prevails in the selection and investigation of key arson violations, it is anticipated that the FBI will contribute substantially to the fight against organized crime in an area of concern to a large segment of our population (exhibit 14, pp. 340-341).

Moore told the subcommittee that the Bureau was currently investigating arson violations "from coast to coast" (p. 349). He also noted that Director Webster had authorized extensive arson training programs for agents and that FBI resources were available to assist local police officers in handling arson-related evidence. "The FBI pledges a cooperative effort with other Federal and local authorities in the total unified campaign to eradicate arson-for-profit as a major national problem," he testified (p. 350).

On a related matter, however, the FBI objected to establishing arson as a class I crime in its uniform crime reports—a goal that Senator Glenn had been pursuing for some time. Paul Zolbe, Director of the

Uniform Crime Report Section for the FBI, joined Mr. Moore in responding to Senator Glenn's questions about the Bureau's historic resistance to defining arson as a crime as serious as burglaries, rapes, and murders.

Zolbe acknowledged to Senator Glenn the fact that the FBI had never changed the crime index since its creation in 1930. Zolbe agreed that arson is a serious crime, which is the first criterion for inclusion within the UCR.

Senator Glenn noted that a second criterion for categorizing a crime as a class I is its volume. Zolbe also agreed that arson was occurring across the United States with increasing frequency.

The third area used in determining whether a crime should be class I is reliability and uniformity of reporting to the police. Senator Glenn said:

* * * If there is not exactly uniform reporting of arsons, and I suppose this would be an adequate reason for not including arson, isn't it a proper role of the FBI * * * to try to come up with some minimum basic uniform standards for reporting that would include arson or include new serious crimes?

Zolbe disagreed that the FBI's responsibility for statistically documenting crime included arson. He maintained that the Bureau felt at this time:

* * * the most reliable data source would be the fire service community, or as in the case of offenses in the crime index, they are more likely to be reported to law enforcement. That is why I would suggest that law enforcement just wouldn't have the arson offense information (p. 357).

Senator Glenn then noted that the fourth criterion is the likelihood of reporting and that the criminal act reveal itself as such at the time it is recorded. Noting that some arsons were not immediately detectable, Senator Glenn said that the FBI included in its automobile theft figures statistics that were not immediately reported.

Summarizing his view of this requirement for having the crime be reportable as soon as it is completed, Senator Glenn commented:

* * * time of reporting to me is a completely ridiculous requirement. What is important is that a crime has occurred and we should be looking into it whether it is recorded within 5 minutes, 2 hours, 20 days or 1 year.

To me it is a crime and we should be dealing with it if it is occurring in quantity that is causing serious concern, damage and loss across the country (p. 357).

In response, Moore assured the Senator that "the FBI is certainly aware there is a definite need to record statistical data relative to arson" (p. 358).

However, throughout a lengthy exchange of views on this matter, the FBI remained adamant in its resistance to establishing arson as a class I crime. As a result of FBI intransigence, the 95th Congress

passed legislation mandating the reclassification of arson as a class I crime.²⁴

TREASURY, POSTAL SERVICE

The Treasury Department also acknowledged that arson has become a "growing problem." Assistant Secretary Richard J. Davis testified that:

There can be no doubt as to the seriousness of the arson-for-profit problem. It has been characterized as the nation's fastest growing crime; its cost is felt in human suffering as well as in extraordinary economic effects such as the loss of homes, businesses and jobs * * * (p. 372).

Within the agency are two units with primary responsibility in dealing with arson-for-profit—the Bureau of Alcohol, Tobacco and Firearms and the Internal Revenue Service. John G. Krogman, Acting Director of the BATF, testified that his agency is now taking steps "to aggressively attack the problem within the limits available to it" (p. 377).

Krogman cited the creation of task forces in 23 cities. These task forces involve agents from BATF, FBI, the U.S. Postal Service, and local police and fire investigative units. He reported that task force investigations have begun on 75 different cases since the first unit was established in Philadelphia in 1977.

Far less encouraging was the report from the Internal Revenue Service, which conceded that it had not established a specific arson program; moreover, no one in the IRS was monitoring arson investigations. Nevertheless, William E. Williams, Deputy Commissioner of IRS, acknowledged that, as a result of information developed at the hearings, arson appeared to be a potentially lucrative income source.

Senator Percy questioned Williams about the IRS procedure for investigating individuals who may have fraudulently obtained funds through fire loss insurance claims without declaring such funds as income. The Senator noted that the subcommittee had heard testimony about a major arson fraud conspiracy in Tampa, in which 19 individuals were sent to jail (p. 388). Williams was unable to confirm that Tampa IRS agents were pursuing the convicted Tampa conspirators. Senator Percy then pointed out that the Organized Crime Strike Force attorneys who handled the case noted that the IRS had not contacted them to obtain information necessary to pursue tax fraud actions against those convicted. Senator Percy asked Williams to provide additional data on the Tampa matter. On October 30, 1978, Williams advised the subcommittee that the relevant testimony from the subcommittee hearings was being forwarded for evaluation to appropriate service centers. Williams added:

I can assure you that the IRS views arson-for-profit as a serious problem, and will take all the necessary steps to see that it receives appropriate attention in our balanced tax administration system (p. 388).

²⁴ Public Law 95-624, sec. 14.

The subcommittee also examined the arson-related activities of the U.S. Postal Service. Chief Postal Inspector C. Neil Benson testified that his agency was "beginning to be aware" of the magnitude of the arson problem (p. 383). He observed that the Postal Service had made some changes to deal with the arson problem, but that until 1977 no separate count of arson investigations had been made. In that year, of 197 investigations undertaken by the Postal Service, 30 were arson-related and resulted in 33 arrests. From January to June 1978, 17 arson-related mail fraud investigations had been undertaken, resulting in 16 arrests (p. 384).

Senator Glenn, in question submitted to Benson, asked whether the number of investigations conducted by the Postal Service accurately represents the total number of arson mail fraud cases. Responding by letter, Benson answered:

* * * I am inclined to believe that there may be many such cases unreported to us, in spite of our efforts to encourage such reporting of suspected arson-related mail fraud. * * *

In responding to a question involving the role of organized crime in arson-for-profit, Benson commented:

Undoubtedly, organized crime will, or already has, moved into the lucrative area of arson-for-profit. Some of our cases have indicated that possibility (p. 386).

Thus, it appears that the Federal agencies with line responsibility for law enforcement activities regarding arson-for-profit have begun to focus more resources against the arsonist and his conspirators, but there are still serious problems.

VII. ARSON'S HUMAN TOLL

The subcommittee's arson-for-profit investigation and hearings confirmed the immense economic damage which arson imposes on the nation. For example, the subcommittee learned that in Los Angeles alone, incendiary losses between July and December 1978 were \$10.5 million. This is an annual rate which more than doubled the property losses of the preceding year.

But arson is all too often viewed as merely a financial and property crime. Less attention is paid to the fright, physical injury, and long-lasting emotional scars its innocent victims suffer. Arson fires now kill approximately 1,000 Americans each year, injuring 10,000 more. In addition, arson brings terror, dislocation, and financial ruin to thousands of families. As Senator Percy observed during the subcommittee's hearings, "No amount of money could repay these victims for the loss of their homes and emotional security, and for their struggles following the fires to reestablish their own well-being and that of their families" (p. 141).

FACT OF LIFE

Arson is an everyday fact of life in some urban areas. Nevertheless, when the cry of "fire" rings through a building, even the most hardened inner-city resident may go numb with fear. At a fire scene, a few seconds can spell the difference between life and death. Hedy Byrd, a New York City resident and mother of four, was asleep in her apartment early one morning. She awakened to the sound of breaking glass. What followed were the most harrowing few minutes of her life, as she told the subcommittee:

I jumped out of bed and ran to the window. I saw flames shooting up from the lower floors past my fourth floor window. I ran into my children's bedroom and woke up my 5-year-old daughter, Regina, and my 3-year-old son, Eric. I grabbed Terrence, my 9-month-old baby, tucked him under my arm, and began leading Regina and Eric out of the apartment.

I had to push Regina and Eric up the stairs because everyone in the building was struggling to get to the roof. There was panic on the stairway as it started to burn.

* * * * *

* * * We climbed the stairs gagging on the smoke until we reached the roof where all the tenants were now waiting (pp. 157-158).

Rosetta Boyd of New York City told the panel how she also almost lost her children in an arson fire:

* * * I unlocked the door and the smoke hit me in the face. I fought my way through the blinding heat and black smoke.

My children were lying motionless on their beds. I picked up my two daughters, tucked them under my arms and carried them downstairs, calling for someone to get my sons. A man carried my two boys out of the burning building. The unconscious children were on the sidewalk, where they were given oxygen. * * * The fire marshal who treated them told me if the children had been upstairs for several more minutes, they would have died of smoke inhalation (p. 168).

Fear often lingers long after the flames of a torched building have been doused. The terror surfaces in nightmares, illnesses, and mental unrest. "I did not get a full night's sleep for many long months," said Elsa Peterson, a Minneapolis arson victim. "Loud noises still make me jump" (p. 145).

A dentist who had lived and worked next door to Miss Peterson for years blew up his office to collect insurance money. The explosion and ensuing fire almost killed Miss Peterson and her elderly aunt. The fact that a neighbor's deliberate act of greed had almost killed her left Miss Peterson deeply troubled. She testified:

It is difficult to fathom the callousness of his act. Today, I live every moment with an inkling of fear in the back of my mind. Dr. Graca was our neighbor for more than 20 years but he didn't seem to care much about the lives of those who lived in the vicinity of his office (p. 146).

EMOTIONAL IMPACT

For inner-city residents victimized by one or several arsons, the prospect of moving into yet another run-down, fire-prone tenement is both frightening and depressing. Yet, such victims often have little choice. Safe, well-maintained housing is commonly beyond their means. Although in New York City, fire victims receive priority consideration for public housing facilities, few are actually placed. The rest must do the best they can in the private housing market.

The children often suffer from the same fears that burden their parents. After experiencing a second devastating fire, Ms. Byrd related:

As far as the future is concerned, I refuse to move into another tenement. My old landlord repaired the building and asked me to move back into the same apartment, but I didn't. My children were petrified that if we live in another tenement, it too will burn. They see all the tenements burning down around town and know that it could happen again * * * (p. 159).

Unfortunately, most inner-city victims expressing these sentiments must ultimately resign themselves to a return to the tenements. Quite often, their worst fears are realized. Some victims report a history of three, four, or more burnouts, each of them accompanied by fright, dislocation, and related financial stress.

It may be difficult for those who have never experienced a burnout to understand fully the emotional strains. Miss Peterson described her feelings this way:

There was nothing we could do. I felt so helpless and frustrated, I began to cry. I went into shock, I think. It was an awful, disheartening experience. * * * (p. 145).

Though burnouts are always costly, arson's more fortunate victims manage to defray their financial and property losses through their own resources or those of their families. But some are not so lucky. Poverty-stricken and welfare families must turn to local government and charitable organizations for shelter, food, and financial relief. This, of course, places further demands on taxpayers who fund these government services. Even for the desperate, as Ms. Boyd remembers, assistance may not be immediately forthcoming:

* * * I sat down on the steps, wondering what to do next. First, I called my sister to check on the kids and afterward, I called the Red Cross for help. We had no clothes to wear and no food to eat. The Red Cross directed me to the Fox Street Shelter in the Bronx. I took a bus there at 8 a.m., but the shelter wasn't open yet. So, I went downtown to the Department of Social Services to get clothes and money. But they told me that because I had had a previous fire 3 years earlier, I was not entitled to any reimbursements until I had been cleared of any involvement in the arson. Later that day, I returned to the Fox Street Shelter, but I was told I should go to the Regent Arms Hotel in Manhattan for temporary shelter (p. 167).

The homeless may move in with families and friends, or sometimes into shelters provided by relief agencies. Overcrowding and strange conditions inflict further strains. Ms. Byrd testified that her temporary hotel

* * * was 60 blocks from our (old) apartment. My children were separated from all their friends. * * * Our hotel room was very cramped for five people. All my children had to sleep in the same room" (p. 158).

The housing available to impoverished fire victims may be considerable distances from familiar neighborhoods, friends, and relatives. Adults must find new jobs and create new living patterns. Children, already strained by the crisis itself, and by the anxiety of their elders, must learn to cope with new schools and surroundings. Though some adjust quickly, others are confused, or distraught over conditions beyond their control. Ms. Byrd's daughter, Lisa,

* * * couldn't finish the first grade because we couldn't find transportation to her old school and because it was too late in the school year to reregister her in a school close to the hotel. If she does not pass an achievement test she has to take this fall, she will have to start in the first grade all over again, falling a full year behind the children her age (pp. 158-159).

FRUSTRATION

Homes and possessions can be wiped out by arson, erasing the fruits of long years of financial striving. Many despair at the thought of starting over. As Miss Peterson recalled:

Walking through the house that first time after the fire, we were nearly overwhelmed with despair. Our home was in ruins. * * *

* * * Repairs were very costly. The damage came to about \$25,000, but we had only about \$18,000 in insurance coverage. * * *

* * * We lost many things I am afraid we will never replace. * * * We bought new furniture, but it was different and strange. * * * I also lost two braided rugs, treasures to me because my mother made them. These were sentimental, personal things; things that gave us joy just to look at. Life seems a little sadder without them (pp. 145-146).

Miss Peterson's story reflects the heartbreaking discovery made by many arson victims: their insurance coverage is frequently insufficient to cover both the monetary and personal losses.

The urban poor almost always lack insurance because their incomes are so low, and inner-city insurance rates tend to be so high. Ms. Boyd described her circumstances to the subcommittee:

It will take a long time before I will be able to replace the furniture I lost in the fire. * * * Before the fire, I purchased beds on an installment payment plan. I am still making payments on the beds, which were destroyed in the fire.

In addition, I have to buy new clothes for everyone, and hopefully, I will be able to buy some dressers and living room furniture. But that won't be for a while. The money the city gives me will not come close to covering all the expenses I now have (p. 159).

Arson profiteers draw their profits from the shattered dreams of innocent people. Scuttled hopes and depressed expectations are among the hidden costs of arson. At the time of her most recent fire, Ms. Boyd had been attending beautician school. After the fire, she said, " * * * finishing school has become a major problem. Because of my being out so long, I would have to re-enroll, due to the fire and trying to locate a new apartment" (p. 167).

Millions of Americans in decaying urban centers currently lead lives of crisis and desperation. Their expenses far outstrip their incomes. Buildings and neighborhoods crumble, sometimes unheeded by landlords and public officials. Crime permeates their neighborhoods. Families spend years recovering from past crises, coping with current ones, and warding off new ones. Arson-for-profit exploits this environment, and worsens it.

VIII. FEDERAL INSURANCE ADMINISTRATION

BACKGROUND

Congress has determined that the revitalization of America's cities should be a priority item for the Government. Indeed, there can be no doubt that the problem of urban decay is of critical importance to America's future. It is clear that all agencies with an impact upon America's cities must not work at cross-purposes with respect to the overall policy goal. If specific agencies fail to function in ways that contribute to the healthy development of the cities, then it will be necessary to reexamine their mandates and possibly alter their authorities.

Central to the subcommittee inquiry was an exploration of the possible role of State-run fair access to insurance requirements (FAIR) plans in encouraging arson-for-profit. Each of the nation's 28 FAIR plans is an insurance risk pool, financed through the combined assets of private firms which write fire insurance in each State. One of the responsibilities of the Federal Insurance Administration* (FIA) in the Department of Housing and Urban Development (HUD) is to oversee the operations of these plans.

The FAIR plan idea originated during the late 1960's in response to both "redlining" and riots which were adversely affecting the Nation's urban insurance market. Redlining was a practice many insurance companies employed to minimize their losses by avoiding writing insurance in designated areas of high risk in some cities. Decades of economic decline had resulted in serious deterioration of the urban housing market. Insurers concluded that policies written on inner-city properties had a higher measure of risk than those written in economically thriving suburban areas. But this led to unfortunate results for the cities. Restricted insurance availability undermined an already failing business climate. With insurance money for damage repair unavailable, residential areas grew increasingly uninhabitable.

Between 1965 and 1968, violent disturbances and ghetto riots fed apprehensions within the insurance industry about the marginal nature of the urban business that they covered. Although summer riot losses totaled some \$75 million in 1967 and \$68 million in 1968 (compared, for example, to losses of \$715 million from Hurricane Betsy in 1965) insurers became concerned that massive rioting might bring financial ruin to their industry.²⁵

The Urban Property Protection and Reinsurance Act of 1968 (12 U.S.C. 1749bbb et seq. (1976)), authorized the Federal riot reinsurance program, under which private firms may purchase insurance from

*Effective April 1, 1979, the FIA became the Federal Insurance and Hazard Mitigation Office and is in the Federal Emergency Management Agency, where its authority is essentially unchanged.

²⁵ "Fire Insurance: Its Nature and Dynamics," Gelvin Stevenson, National Fire Prevention and Control Administration Grant No. NFPCA-78007, sec. 9.3.1.

the Federal Government to protect themselves against possible riot losses. To purchase this reinsurance, a company must participate in its State's FAIR plan. Some States go even further and make FAIR plan participation a condition for doing business within that State.

Each plan is owned and managed by the property insurance companies within the State. Contributions, profits, and losses are apportioned among the participating companies in relation to the percentage of business each firm does.

Today, FAIR plans exist in 25 States, Puerto Rico, and the District of Columbia.²⁰

The purpose of the FAIR plans is to make basic fire insurance available to property owners unable to obtain it in the private market. No plan may reject an insurance applicant without first inspecting the property in question and notifying the owner of the reasons for refusal. By increasing the availability of property insurance, the FAIR plans were intended to foster economic revitalization by bringing prosperous businesses and citizens back to troubled core-city areas.

GAO REPORT

There has been growing concern, however, that FAIR plan business practices actually may be contributing to the increase in arson in recent years. Critics have accused the plans of writing insurance indiscriminately, making little effort to screen out potential defrauders or to investigate suspicious claims. While these charges have also been levelled against private insurers, high arson rates in inner-city areas indicate that the FAIR plans may be particularly at fault. Through vigorous action to deter arson-for-profit, FAIR plans might be able to alleviate the arson problem substantially.

With this in mind, the subcommittee in a letter of August 2, 1977, asked the GAO to review the FIA's administration of the program. The analysis was not encouraging.

The GAO's report on arson in the FAIR plans, issued May 31, 1978, bore out allegations of FAIR plan laxity in battling arson-for-profit. And, though reliable statistics are scarce, the GAO found indications that arson-for-profit losses are a major problem in the FAIR plans. A Massachusetts FAIR plan official estimated that 40 percent of Massachusetts arson was FAIR plan-related, though the plan writes only 15 percent of the State's fire insurance business (p. 439). The Metropolitan Chicago Loss Bureau claims that 33 percent of the fire claims paid by Illinois FAIR plan were deliberately set (p. 438). In its May 1978 report entitled "Arsons," the Illinois Legislative Investigating Commission (ILIC) bore out the GAO's findings, stating that "The correlation between the FAIR plan and the properties that are being torched is too obvious and recurrent to ignore."²¹

The Property Insurance Plans Service Office, the national FAIR plan organization, told the GAO that FAIR plans may be failing their intended objective of revitalizing core-city areas and actually fueling urban decay (p. 444). By providing readily available insurance to un-

²⁰ FAIR plans are now operating in California, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, Rhode Island, Virginia, Washington, and Wisconsin.

²¹ "Arsons," Illinois Legislative Investigating Commission, May 1978, p. 91.

scrupulous property owners, the plans provide a tempting incentive to burn. Logically, this almost surely contributes to soaring arson rates. Since damages on profit-motivated fires rarely get repaired, a predictable pattern develops: where property values plummet, buildings are abandoned, and arson follows.

Because the Federal Insurance Administration is charged with monitoring the effective achievement of FAIR plan goals, it is reasonable to expect considerable concern over the tendency of the plans, as currently run, to obstruct these very goals. As the law itself states, the lack of insurance "accelerates the deterioration" of urban areas.²⁸ Yet, FIA has responded slowly to a situation which seems to challenge its fundamental mandate. FAIR plan officials told GAO that FIA has continued encouraging the plans to extend coverage as freely as possible, despite warnings that this policy may be unwise (pp. 444-447).

According to GAO, FAIR plans commonly encourage arson-for-profit by:

Providing insurance in amounts which far exceed the market value of properties, thus making them more profitable to burn than to sell or use (pp. 441-445);

Extending insurance to individuals without sufficiently considering evidence which might indicate their dishonest intent (pp. 445-450);

Requiring 30 days' notice on policy cancellation, during which time criminals can "torch" their properties and collect the insurance benefits, before the coverage expires (pp. 449-450).

The GAO reported that some FAIR plans habitually provide any amount of insurance requested by the applicant, without attempting to determine the property's true value. Other plans now attempt to limit coverage to the estimated market value of the properties, thus reducing the incentive to burn. For example, after adopting this approach in 1976, the Maryland plan registered a substantial reduction in fire losses (p. 443).

Regulations in some States require that payments be made at "cash value" (replacement cost minus depreciation) rather than at market value. In core-city areas where building costs exceed the sale value of structures, this system may provide a financial incentive to burn: collecting the insurance brings more money than selling the property.

Several FAIR plan officials told GAO that the plans commonly provide insurance to almost any applicant (p. 445). Many plans have done little to improve their applicant screening procedures to cope with arson. The responsibility for the tardiness rests partly with FIA. According to numerous FAIR plan officials, FIA's policy has been that FAIR plan coverage should be extended as widely as possible (p. 445).

Neither the Urban Property Protection and Reinsurance Act nor FIA regulations requires FAIR plans to insure substandard risks. The act specifies that "reasonable underwriting standards" should be applied. Yet, Illinois FAIR plan officials complained to GAO that FIA interpreted the "reasonable underwriting standards" in such a

²⁸ 12 U.S.C. 1749 bbb, 42 U.S.C. 4011.

way that the plans felt obliged to insure almost any risk. The looseness of standards meant that the Illinois FAIR plan denied coverage to only one applicant out of every hundred. The Illinois Legislative Investigative Commission (ILIC) also reported on this difficulty. Illinois FAIR plan officials told ILIC that the Department of Housing and Urban Development had opposed efforts to tighten underwriting criteria, meaning that the plan felt it could deny coverage only in extreme circumstances. They told ILIC that building code violations were insufficient grounds for denying coverage.²⁹ This view apparently corresponds with the policy of HUD as expressed in a July 29, 1970 HUD regulation which stated that "the mere fact that a property does not satisfy all current building code specifications would not, in itself, suffice" (35 F.R. 12113-12117), as reason for denying coverage.

Washington and Pennsylvania FAIR plan officials also complained that FIA pressured them to cover dangerous risks (p. 447). So far, FIA has done little to discourage the perception that it opposes efforts toward greater underwriting selectivity in the plans. An October 31, 1977, letter from then FIA Deputy Administrator John Robert Hunter to Massachusetts FAIR plan General Manager Eugene Lecomte indicates a studied opposition to use of FAIR plan underwriting restrictions to combat arson. The letter states that:

* * * arson-for-profit can be successfully attacked, as you have so ably demonstrated, through post-claim review and vigorous prosecution of the culprits as opposed to attempts to combat it through screening and selection practices. * * *

Many FAIR plan officials dispute this point, claiming that arson-for-profit cannot be checked solely through claims review and better prosecution. Unless the plans employ all the private underwriting prerogatives, except location, these FAIR plan officials say, arson will continue to undermine American cities (p. 448). They believe that the plans should find and evaluate personal background information, when deciding whether to insure a risk (p. 454).

Although most States require private insurers to provide only 5-day notice on policy cancellation, most FAIR plans still operate under FIA rules requiring 30-day notice. FIA's 30-day requirement is designed to provide the insured enough time to procure a new policy. But it can be costly in cases where it hampers cancellation of coverage on a property likely to be torched. Although FIA has helped some plans explore alternatives to this policy, it has neither terminated nor modified the regulation in any way.

Recently, several FAIR plans have attempted to alter their notice period from 30 days to five days. FIA has adopted an inconsistent policy; it has both supported and opposed these efforts. When the Rhode Island FAIR plan applied to the State insurance department for release from the 30-day requirement, the department asked FIA for advice. FIA recommended approval of the 5-day notice, provided that the State insurance department would review each case (p. 448). A similar request by the Massachusetts FAIR plan received no support from FIA, and was subsequently denied by the State insurance department. GAO claims that the New York plan's request also went

²⁹ "Arsons," Illinois Legislative Investigating Commission, pp. 38-39, 91.

³⁰ See app. 1.

unsupported by FIA because the plan, according to FIA, failed to show that the 30-day requirement caused undue hardship to the plan (p. 450).

An Illinois request drew initial support from FIA in 1974. But, as GAO officials told subcommittee staff, FIA later advised the plan that it should comply with a newly enacted 1975 Illinois law requiring all insurers to provide 30-day notice.³¹ FIA's advice was irrelevant since, the Illinois Insurance Department informed subcommittee staff, the 30-day requirement does not apply to the plans. FIA appears not to know this, nor has it altered its earlier advice to the plan.³²

FIA COMMUNICATIONS WITH THE PLANS

The controversy over the meaning of the Illinois 30-day cancellation law illustrates an overall weakness in FIA's relationship with the plans: poor communication. For example, HUD Secretary Patricia Harris responded to the GAO critique in a letter to Senator Abraham Ribicoff, chairman of the Committee on Governmental Affairs. Included with the letter was an FIA memorandum, commenting on the Illinois law. To buttress the view that the 30-day notice law does apply to the FAIR plan, the memo says:

* * * FIA was informed by Mr. DeMott, the general counsel of the Illinois Insurance Department, that legislation passed by the Illinois Legislature in 1975 in effect prohibited the Director of Insurance from continuing the 5-day cancellation agreement. We are unaware of any other official Illinois insurance department opinion which differs from the general counsel's, and we note that the FAIR plan's counsel apparently subscribes to Mr. DeMott's view (p. 261).

Subcommittee staff checked with the Illinois Insurance Department and discovered that the Department has never employed anyone by the name of DeMott.³³ The statement above apparently refers to a Daryl Demoss, who once worked as a staff attorney in the Department. Demoss never has held the position of general counsel and terminated his employment with the Department in 1976.

When contacted by the subcommittee staff, Demoss recalled possibly expressing his verbal concern to FIA that the law could interfere with FAIR's new 5-day notice option.³⁴ He claims, however, that neither he nor the Department ever officially informed FIA that the law would interfere with the 5-day option. Demoss said good arguments have been made, that the 30-day law for insurance companies does not apply to the plan, due to the distinction between the plan and ordinary insurance companies.³⁵

The view now prevailing within Illinois is that the FAIR plan remains free to exercise its 5-day option, despite the 1975 law. Dale Emerson, assistant deputy director of the Illinois Insurance Department, told GAO that the prevailing opinion within the department is that the 30-day law does not apply to the FAIR plan.³⁶

³¹ Interview with Dewey Gibson, accountant, GAO, November 1978.

³² Interview with Dale Emerson, assistant deputy director, Illinois Department of Insurance, November 1978.

³³ Ibid.

³⁴ Interview with Daryl Demoss, November 1978.

³⁵ Ibid.

³⁶ Interview with Dewey Gibson, op. cit.

FIA also states in effect that the FAIR plan "subscribes" to the position it believes is held by the Illinois Insurance Department. In fact, plan officials told subcommittee staff that the plan has reviewed the law, has decided it does not apply, and is currently exercising the 5-day option.³⁷

FIA has failed to supply the plans with up-to-date information and advice on arson. As the arson situation has worsened and the need for information has grown, the FAIR plans could have benefited from information and advice on arson. The FIA might have taken on such a role, but did not. FAIR officials complained to the GAO that assistance and advice from FIA have been sorely lacking. Although FIA asserts that it has sent information to State FAIR plans and insurance departments (p. 281), FAIR officials interviewed in Boston and Chicago reported that they had received no guidance on the arson problem from FIA.³⁸ Indeed, FIA was unable to provide GAO with any arson "guidance" information (p. 452).

Asked by Senator Percy in a letter dated October 6, 1978,³⁹ to submit arson information which has been distributed by FIA to the plans, the FIA supplied a scanty response (p. 282). Reprinted in the hearing record (pp. 285-292, 317, 326), the documents include a waiver of Ohio's 30-day rule and letters encouraging other States to take similar action. Also included are New York and Missouri FAIR plan underwriting guides, touted by FIA as examples of properly-expanded underwriting authority. Beyond this, the documents supply no information helpful to FAIR plans in battling arson. FIA has been less than vigorous in keeping FAIR plans informed of the nature of, and possible solutions to, the arson problem (pp. 285-292, 317-326).

Yet, another example of FIA's failure to provide guidance involves the practice of writing coverage on massage parlors, nude bars and other such commercial establishments. FAIR plan officials in Boston and Chicago said that such businesses have in the past been covered by their policies.⁴⁰ By enabling the establishment of FAIR plans, Congress intended to encourage commerce in the inner city; however, writing policies on businesses such as massage parlors and their ilk does not appear to the subcommittee to be the proper way to achieve this goal. While these type of businesses may be legal, they are also frequently the target of citizen protests, police raids and occasionally are known to be controlled by underworld elements. It is at least an open question whether they strengthen the economic and social fabric of a city.

FAIR plan officials advised the Subcommittee staff that they have never had any guidance from FIA on this matter.⁴¹ (Illinois FAIR officials recently began canceling policies of massage parlors in the Chicago area, defending their action by telling the parlor owners that it was not in the public policy interests of the plan to cover these operations. According to these officials, the parlors filed no appeal and apparently were able to obtain coverage in the private insurance market, probably at higher premium rates.)

³⁷ Interview with Edmund W. Murphy, planning and development manager, Illinois FAIR plan, December 21, 1978.

³⁸ Interviews with Charles Cliggett and Eugene Lecomte, op. cit.

³⁹ See app. 2.

⁴⁰ Interview with Charles Cliggett and Eugene Lecomte, op. cit.

⁴¹ Ibid.

FIA's silence on this issue appears to be symptomatic of its attitude towards availability of FAIR plan insurance generally: the agency seems to view its role as making insurance available to all. In fact, Congress intended that insurance through the FAIR plans should be provided to rehabilitate deteriorating cities—that the plans were a means to a legitimate social and economic goal. FIA should review the economic and social importance of massage parlors and the like to determine whether insuring them through the FAIR plans really helps or hinders the goal of rebuilding the nation's inner cities, and then issue a guideline on this subject.

FIA RESPONSE TO GAO STUDY

Perceiving that FAIR plan arson-for-profit may well be a major problem, the GAO report recommended that FIA authorize procedural changes in the various FAIR plans. Specifically, the GAO urged the FIA to:

Require FAIR plans to establish property values at the time of coverage to eliminate overinsurance;

Require FAIR plans to weigh relevant personal background information in deciding whether to issue coverage;

Permit FAIR plans to use a 5-day cancellation notice, with insurance department approval of each case (p. 454).

Upon reviewing the report, the FIA responded that the actions called for would exceed FIA's authority. In her letter to Governmental Affairs Committee Chairman Ribicoff, HUD Secretary Patricia Harris asserted that State regulations, not FIA requirements, govern FAIR plan coverage and cancellation practices.⁴² The letter disclaims any FIA authority to tell the FAIR plans how to proceed on questions such as those raised in the GAO report. Secretary Harris overlooked apparently the fact that the FIA has in the past itself issued regulations on FAIR plan cancellation notices and other procedural matters.

The letter reveals that FIA sees its oversight role as strictly limited to ensure that FAIR plan coverage is extended as widely as possible and that no applicant is denied coverage unfairly. Beyond this, FIA feels it cannot go. FIA supports this view by referring to the act which specifies FIA's role of insuring that the plans are "making essential property insurance readily available." The letter also argues that since the plans are subject to State authority, FIA would violate its proper role if it issued "blanket requirements" along the lines urged by the GAO (p. 251).

Contrary to this view, a broader interpretation of FIA's role exists—one which recalls the fundamental purpose of the act. While the law requires the FIA to make property insurance "readily available," it also directs FIA to "identify any aspects of the operation or administration of such plan which may require revision, modification, or other action" to carry out the purposes of the Act (12 U.S.C. 1749 bbb, 6-a). The language of the law has been used as the basis for the issuance of FIA regulations that are binding on the FAIR plans. In the preamble to the act, Congress declared that "the vitality of many American cities

⁴² See app. 3.

is being threatened by the deterioration of their inner-city areas; * * * and this deterioration poses a serious threat to the national economy; * * *." (12 U.S.C. 1749 bbb). The need to stem this deterioration was the primary public policy motivation for this act.

There should be no conflict between the FIA's role of "making property insurance readily available," and its role of insuring that the plans fulfill the policy objectives of the act. At the least, the FIA should define "reasonable underwriting standards" (the language of the act) so as to guide the plans toward stricter exclusion of unsound properties and unreliable applicants. In the subcommittee's view, it has not done this.

The FIA is concerned that FAIR officials might use additional underwriting authority unfairly to exclude worthy applicants. Excessive underwriting might penalize deserving property owners without substantially alleviating the arson problem. But its concern that the plans not abuse any broadened authority should encourage the FIA to pay closer attention to the operations of the plans. Rather than merely responding to initiatives from the plans, the FIA should develop and issue specific underwriting guidelines. Current regulations state that "reasonable" criteria may include:

- physical condition of properties;
- the purpose for which the property is used;
- other characteristics which violate public policy and substantially increase exposure to risk (35 F.R. 12113-12117);
- (Illinois FAIR officials told staff that the FIA could improve its regulations simply by changing an "and" (*italic above*) to an "or".) ⁴³
- patterns of code violations;
- an applicant's adverse loss record.

The subcommittee sees no reason why these criteria should not be revised to deal with arson's special perils. Although the FIA's concern about "blanket requirements" cannot be overlooked, this is not sufficient reason for failing to address the problem. Detailed guidelines, rather than "blanket requirements," may be the answer. By successfully reducing arson through careful underwriting, while still making insurance readily available for proper purposes, the FAIR plans might set an example and a challenge to be met by the voluntary market.

FIA RESPONSE TO SUBCOMMITTEE QUESTIONS

Gloria Jimenez, Administrator of the Federal Insurance Administration testified at the subcommittee's request on September 14, 1978, but time constraints limited the scope of questioning.

One of Administrator Jimenez' statements bears particular scrutiny, however. Asked by Senator Percy whether the FIA could assume greater responsibility in promoting FAIR plan anti-arson strategies, she responded that, "I don't have any statutory authority over the FAIR plans. They are within the States' domain" (p. 262). But the FIA does hold regulatory power with respect to the FAIR plans (12 U.S.C. 1749bbb-6), which it has exercised in the past, though infrequently over the last decade. Since 1970, the FIA has published a substantial number of regulations affecting crime insurance and flood insurance programs, but has remained virtually silent on FAIR plan

⁴³ Interview with Charles Cliggett, *op. cit.*

operations. Its most recent regulatory directive to the plans was promulgated in 1976.

Because of the time limitations of the hearings, Administrator Jimenez agreed to respond in writing to submitted questions. On October 6, 1978, Senator Percy submitted a list of 20 questions⁴⁴ designed to clarify the FIA's record and its current assessment of two basic issues raised by the subcommittee investigation, specifically:

- (1) The outlook for improving FAIR plan procedures for screening and inspecting properties and applicants; and
- (2) FIA's own role in guiding the plans toward prudent policies.

On November 6, 1978, Administrator Jimenez responded in writing. Several of the answers were nonresponsive, incomplete, or possibly misleading.

For example, Senator Percy's question No. 10 (p. 279), asked for FIA's reaction to a case, cited by the GAO, in which a State insurance authority directed a FAIR plan to insure an individual who was then under indictment for arson. Administrator Jimenez responded that "we have been unable to identify either the individual in question or the FAIR plan" (p. 279). The GAO advised subcommittee staff that the plan in question was in Massachusetts.⁴⁵ Apparently, no one at FIA had called to learn this.

The response to Senator Percy's questions about problems in the Illinois FAIR plan was misleading in several respects and quite inaccurate in the overall impression it conveyed (p. 277). The GAO had reported the claim by Illinois FAIR officials that the plan had little leeway in screening poor risks. Illinois officials had said that coverage could be denied to an applicant only if:

- The property was vacant;
- Previous unrepaired fire damage existed; or
- The owner had been convicted of arson (p. 446).

Asked to comment, Administrator Jimenez asserted that three additional criteria, not mentioned by GAO, were operational at the time of the GAO's probe. She noted that the GAO's failure to mention these additional criteria amounted to a "serious misunderstanding" of the FAIR plan situation. Consequently, subcommittee staff traveled to Chicago and interviewed the Illinois FAIR officials originally interviewed by GAO: Manager Charles Cliggett, Controller John Andrews, and Planning and Development Manager Edmund Murphy.⁴⁶ Staff also interviewed FIA examiner William Curtis on this matter.⁴⁷

According to Curtis, Cliggett told him that, besides those criteria listed by the GAO, a number of additional underwriting criteria—now used regularly—were receiving sporadic use at the time of the GAO probe. When questioned by staff of the subcommittee, Illinois FAIR officials confirmed what the GAO reported. Interviewed separately, each concurred that, at the time of the original probe, the plan's criteria for denying coverage were essentially only those listed in the GAO report.

⁴⁴ See app. 2.

⁴⁵ Interview with Dewey Gibson, op. cit.

⁴⁶ The subcommittee staff members conducting the interviews were Jonathan Cottin and Mark Hager.

⁴⁷ Subcommittee staff member Mark Hager conducted the interview.

None of the three reported telling the GAO that additional criteria were in regular use. New standards had been phased in since the GAO study, contrary to FIA's assertion that "these underwriting standards were effective and being employed prior to the GAO investigation" (p. 277). The officials also recalled expressing frustration to the GAO over their limited prerogatives to deny coverage when the possibility of arson was reasonably suspected.

In challenging the GAO's perception, the FIA raised a serious matter because the Congress relies on the GAO to supply it with useful and accurate information. Based on its own staff investigation, the subcommittee believes that the GAO report accurately identified problems at the FIA.

By disputing the essential accuracy of these perceptions, the FIA unfortunately avoided the real purpose of the subcommittee question which was to find out what criteria were then being used by FAIR plan officials in making day-to-day decisions about whether to insure certain properties.

This kind of response emerged again in the FIA's challenge to the GAO finding based on information from the same three officials, that Illinois FAIR denied coverage to fewer than one out of every 100 applicants. Attacking this claim, the FIA asserted that, "The Illinois plan declined about 10 out of 100 applicants for insurance in 1977, and thus far in 1978 about 22 out of 100 applicants, as contrasted with the one out of 100 cited by the GAO" (p. 277). Staff pursued this discrepancy, and Illinois FAIR officials reaffirmed that they told GAO that 1 percent was the approximate rate of denial in the underwriting process.⁴⁸

The FIA appears to have developed its figure from the proportion of applicants who receive coverage out of the total number of applications received and processed. Many applications are summarily rejected for being incomplete or for other technical reasons; for example, the property may be located outside of FAIR plan jurisdiction. These rejections have nothing to do with underwriting, and at least some of them are reversed when a properly completed application is resubmitted. The FIA-quoted figures are not helpful in determining the plan's diligence in screening out poor risks through the underwriting process. That agency's quotation of larger numbers suggests again an attempt to obfuscate the extremely serious matter of lax underwriting practices which invite increases in arson-for-profit.

Senator Percy's questions and the GAO report were both clearly concerned with underwriting practices. The FIA, in essence, failed to address the underwriting issue. In its eagerness to paint a rosy picture of FAIR plan efficiency, the agency chose its facts with little concern for relevance or materiality.

The FIA concluded its answer to Senator Percy's questions by stating "Apparently, serious misunderstanding by the GAO of the FAIR plan situation, as evidenced by the specific Illinois case, has led to erroneous extrapolations regarding the nationwide picture of FAIR plans" (p. 277). In light of what the subcommittee staff learned about the Illinois situation, this statement raises serious questions about the quality of communication existing between FIA and FAIR plan officials.

⁴⁸ Interviews by Cottin and Hager of Cliggett, Andrews, and Murphy.

Several other responses were not straightforward and demonstrated the FIA's continued reluctance to take the lead in prodding the FAIR plans toward greater caution with respect to arson. For instance, in question No. 1, Senator Percy asked whether the October 1977 letter to the Massachusetts FAIR plan indicated that the FIA views claims review and prosecution as a more worthwhile means to combat arson-for-profit than strict underwriting selectivity. As noted above, the FIA maintained that "arson-for-profit can be successfully attacked through post-claims review and prosecution, as opposed to attempts to oppose it through screening and selection practices." The FIA responded that this has never represented FIA policy, and claimed that the statement had been quoted out of context. FAIR plan officials in Massachusetts, however, told subcommittee staff that they interpreted the letter to mean what it said, and that the quotation in question represented FIA policy as they understood it.⁴⁹

The FIA's ambivalent attitude toward tighter underwriting emerged in its response to Senator Percy's question No. 3, which asked whether FIA believed that screening and selection should be taken much more seriously by insurers, and FAIR plans in particular, in light of testimony concerning the ineffectiveness of post-claims review and poor success rates in prosecution. FIA said it was "unable to follow the logic of particularizing the FAIR plans for screening and selection" (p. 279).

The FIA objected to having the FAIR plans adopt tighter underwriting procedures than are used in the private market which also sustains heavy arson losses. But the underwriting standards in the FAIR plans are now much looser than that which prevails in the private market. By utilizing stringent, yet fair arson underwriting standards, the plans could help (1) save money, (2) achieve the goal of urban revitalization, and (3) protect the lives and properties of endangered inner-city residents. Advancement of these goals should motivate the FIA to explore the problem of effective anti-arson underwriting and to better advise the plans on how to achieve it.

Despite its ambivalence, the FIA has shown some signs of responding to the need for revised FAIR underwriting policies. Meeting with the National Association of Insurance Commissioners (NAIC), FIA officials said they "agreed in principle to include anti-arson-for-profit provisions in the insurance policy" (p. 276). They also said that the FIA is now revising FAIR plan regulations "to encourage State insurance authorities to address the arson question without unduly restricting the availability of insurance for those who are in good faith entitled to essential property insurance" (p. 276). Though the agency does not specify the anticipated outcome of this activity, the subcommittee hopes that close attention will be paid to the need for tightened underwriting standards.

Other FIA responses highlight specific issues which call for bolder FIA leadership. In question No. 7, Senator Percy inquired about the practice of offering coverage to persons with a history of suspicious fire losses. In recent years, officials within some plans believed that FIA would oppose denying coverage to individuals based upon their

⁴⁹ Interview with Eugene Lecomte, op. cit.

histories of suspicious fires. The FIA answered that its regulations do not require plans to offer insurance to such individuals (p. 278).

This reply begged the question: If uncertainty exists on this matter, the FIA should move to dispel that uncertainty. The FIA notes that underwriters should consider a history of suspicious fires, "so long as a proper definition of 'suspicious fire' is used" (p. 278). But, the FIA does not state or indicate what it considers to be a proper definition of suspicious fire. It should do that promptly.

Similarly in its response to Senator Percy's question concerning coverage for persons under indictment for arson, the FIA states only that it would endorse a "State policy of denying coverage" to such persons. This response exemplifies the agency's hesitancy in tackling FAIR plan weaknesses. Again and again, the FIA has insisted that it will support State initiatives but has resisted taking a leadership posture. As a general rule, public policy would exclude offering coverage to accused arsonists. Yet, the FIA steadfastly refuses to assert itself on clear-cut policy issues such as this. This example illustrates the agency's extraordinary reluctance—repeatedly revealed in the course of the subcommittee inquiry—to make forthright policy judgments on matters of critical importance.

The answer to question No. 14 continued in that vein. Senator Percy inquired about the enormous financial losses in the FAIR plans and what could be done to reduce them. Rather than addressing how it might reduce those losses, the FIA asserted that the plans are needed, that they were not intended to earn profits, and that urban insurance losses cannot be eliminated solely by improving the FAIR plans. The question was not intended to dispute the need for the plans, nor does it claim or imply that the arson problem should be attacked solely through the FAIR plans. The FIA was silent on the crucial point raised in the question: Whether FIA has explored any ways in which losses could be reduced.

The FIA's position, as evidenced in its testimony, that the FAIR plans comprise a minor portion of the total arson problem, would carry more weight if it were borne out by some statistical support. Yet, the agency has failed to develop independent information showing the extent of FAIR plan arson-for-profit.

OUTLOOK FOR FIA ACTION

To the FIA's credit, the agency has recently taken some positive steps toward reducing arson-for-profit in the FAIR plans. A September 26, 1978 letter from Administrator Jimenez to insurance commissioners in the FAIR plan, after her appearance before the subcommittee, encouraged them to explore the advisability of seeking a waiver of the Federal regulation requiring a 30-day cancellation notice. Though the agency's record on this question has been equivocal, the letter indicates a growing awareness of a serious problem and a willingness to do something about it.

The FIA has also given some attention to the problem of over-insurance. For core-city areas, assigning proper coverage levels is problematic. If coverage is pegged to replacement cost (or actual

cash value) as the law requires in many States, it is often more profitable for the owner to burn a property than to operate it or to sell it at a depressed market value. On the other hand, if legitimate losses are covered only to market value, owners who wish to replace their properties may be unable to do so. FIA and NAIC officials met on October 24, 1978 to discuss the possible implementation of a new policy to resolve this difficulty. This policy would calibrate coverage to market values—but in cases where a market value pay-off would fall short of the needed replacement funds, the policy would provide full replacement funds to an owner who actually rebuilt his property. This arrangement could make insurance funds available for structural replacement, without providing a financial incentive for arson. The subcommittee is hopeful that the FIA will actively encourage the FAIR plans to adopt such policies.

Despite these encouraging signs, the FIA clearly has yet to make a full and active commitment to substantially reducing arson profiteering within the FAIR plans.

IX. FINDINGS AND RECOMMENDATIONS

LAW ENFORCEMENT

Finding

The subcommittee, after more than a year-long investigation of arson-for-profit, has found that this crime is virtually out of control. In 1978, insurance companies paid out \$1.6 billion for losses caused by arson. The absence of a unified effort to deal with it has helped to nurture an arson epidemic. Too many State and Federal law enforcement agencies have all but ignored the steadily increasing incidence of arson-for-profit. Prosecutors are not anxious to devote time and energy to these cases, primarily because of the difficulty in proving their allegations. Meanwhile, organized crime has moved aggressively to use arson as a regular source of income. Torches, knowing that law enforcement agencies historically have been weak in arson detection, freely burn down homes—and factories, farms, and stores—without fear of apprehension.

Arson detection has been traditionally a local law enforcement problem. Sadly, most local fire departments lag years behind the technology of a professional torch. They need substantial assistance from the Law Enforcement Assistance Administration (LEAA), the Bureau of Alcohol, Tobacco, and Firearms (BATF), and the FBI. While the BATF and the FBI have worked more diligently with local fire service agencies since the subcommittee's hearings last fall, local law enforcement agencies throughout the country report continuing difficulty in getting LEAA assistance.

As the hearings demonstrated, arsonists are waging a continual assault upon the country's financial and physical stability. Insurance companies must increase their premiums to help absorb the multi-billion dollar losses occasioned by arson. City welfare agencies, using Federal funds, must expend a considerable amount of money relocating burned-out families victimized by arsonists. They frequently must provide new furnishings and clothing for the homeless. Cities faced with reduced property tax revenue—caused by the elimination through arson of structures that were once taxable commercial enterprises—look to the Federal Government for assistance through revenue-sharing and other forms of aid. When rebuilding follows an arson, construction necessarily involves the use of America's dwindling national resources. These resources could better be used to increase the Nation's stock of housing and commercial structures. For them to be used instead to replace what has been so callously and recklessly destroyed is a tragic waste.

Recommendations

1. The excessive loss of life and property and its effect on the social and economic fabric of the cities caused by arson is a matter of national

concern. Therefore, the subcommittee recommends that Congress consider enacting legislation making arson a Federal crime.

Many local fire service agencies lack the technical expertise and manpower to deal appropriately with arson and the impact of this crime on the Nation as a whole. The involvement of the Federal law enforcement authorities is a logical national strategy to protect the commercial viability of the country, and to thereby start to reduce the outflow of Federal funds to rehabilitate lives and properties needlessly affected by arsonists who act with impunity.

2. The subcommittee commends the FBI and the BATF for moving decisively into the arson-for-profit area and recommends that those agencies step up even further their efforts in this field. The subcommittee requests these agencies to report to the subcommittee by February 1, 1980, on the number of investigations initiated, indictments, and convictions since the September 1978 subcommittee hearings.

3. The subcommittee notes with approval the appointment of Henry S. Dogin as the new Administrator of the Law Enforcement Assistance Administration. However, as evidence developed by the subcommittee demonstrates, LEAA has consistently failed to communicate directly with the fire service agencies; the subcommittee recommends that Administrator Dogin work to overturn this historic pattern of fire service neglect. Since problems still exist at LEAA, Administrator Dogin is asked to advise the subcommittee by February 1, 1980, what steps have been taken to:

Fund arson control programs and State fire service agencies;
and

Communicate directly with these agencies without going through police agencies, since in many cases these two units do not communicate closely.

INSURANCE INDUSTRY AND FIA

Finding

The arson "business" draws its profits from insurance payoffs. Easily available insurance money makes arson one of the most lucrative criminal enterprises. Insurers often provide coverage on properties for much more than their true value, thus making "torch" jobs profitable. Companies frequently extend coverage without checking either the physical condition of the property or the background of the applicant. Many in the insurance industry defend current practices, claiming that thorough prior-to-coverage risk review would be too costly.

Claims inspection practices help make it easy to get away with fraud. Insurers rarely challenge suspicious claims, permitting arson profiteers to operate with relative freedom. Insurers claim that State fair claims practices acts tie their hands, forcing them to pay benefits or prove fraud charges within a brief, specified period, at risk of heavy punitive damages for unwarranted delay in settling a claim. In addition, privacy laws prevent them from obtaining important evidence from law enforcement authorities, the industry asserts.

The insurance industry must share some of the blame for the arson problem. The subcommittee believes that the companies have, on the whole, not shown enough diligence in pre-coverage inspection of prop-

erties and in loss adjustments. Some State laws permit treble damage suits against companies that resist paying off fire damage claimants. Understandably, this practice—originally intended to protect consumers from delaying tactics by insurance companies—encourages these companies to make quick settlements. Unfortunately, this pressure to settle claims quickly too often impedes complete arson investigations.

The Federal Insurance Administration (FIA) has not risen to the challenge of reducing the attractiveness of arson as a reliable source of cash for landlords and businessmen seeking to liquidate their real estate holdings. In fact, that agency has been woefully lax in carrying out its legislative mandate for revitalizing America's cities.

The subcommittee finds that FIA has failed to communicate effectively with the FAIR plans and has provided little or no guidance to these plans. FIA officials have contended that they lack the legislative authority to take decisive action concerning suspected arson. Current legislation sponsored by Senators Glenn and Percy (S. 252)⁵⁰ will require the FAIR plans to solicit more information from insurance applicants concerning previous fire history and allow the FAIR plans to cancel policies more expeditiously when conditions warrant.

Recommendation

The subcommittee supports the provision in S. 252 which establishes an interagency committee on arson as an interim remedy for the apparent lack of coordination between all Federal law enforcement agencies with responsibility in the arson area.

It further supports the provision in S. 252 which requires the FBI to make arson a class I crime permanently under its uniform crime reporting system.

Conclusion

Above all, the subcommittee wishes to emphasize that the crime of arson presents a very real threat to the physical and financial stability of our Nation's cities. Unless this problem is brought under control, serious sociological and economic dislocations will continue to occur.

The subcommittee, through its investigation, hearings, and report, has tried to focus attention on the devastating nature of this problem. The legislation which has been proposed in the Senate attempts to address several of the most critical aspects of the arson epidemic.

What cannot be legislated, however, is the necessary will of all participants in the arson experience—the insurance companies, law enforcement agencies, and the FIA—to work together wherever possible against the arson profiteers who now exploit the institutional disarray and lack of coordination.

Unless and until all these organizations unite against arson profiteers, the crime will continue to be popular with persons of ill will. Until that time, arson-for-profit will wreak grievous damage both on private property and on human lives, especially in America's inner cities.

⁵⁰ Hearings on S. 252 were held on Apr. 26 and May 4, 1979 before the Subcommittee on Intergovernmental Relations. That subcommittee favorably reported the bill to the full Governmental Affairs Committee on May 9, 1979. S. 252 was ordered reported favorably by the full committee on May 10, 1979.

The Members of the Committee on Governmental Affairs, except those who were members of the Senate Permanent Subcommittee on Investigations at the time of the hearings, did not sit in on the hearings on which the above report was prepared. Under these circumstances, they have taken no part in the preparation and submission of the report except to authorize its filing as a report made by the subcommittee.

X. APPENDICES

APPENDIX 1

OCTOBER 31, 1977.

MR. EUGENE L. LECOMTE,
*General Manager, Massachusetts Property Insurance Underwriting
Association, Boston, Mass.*

DEAR MR. LECOMTE: It was extremely gratifying to note in the October 17 issue of the New York Times and Boston Evening Globe of arson probe undertaken by Attorney General Francis X. Bellotte involving 35 fires between 1973 and 1976. I would like to take this opportunity to congratulate you and your staff for your assistance to the attorney general.

The very real and ubiquitous problem of "arson-for-profit" can be successfully attacked, as you have so ably demonstrated, through post-claim review and vigorous prosecution of the culprits as opposed to attempts to combat it through screening and selection practices, the principal effect of which is to deny insurance to inner city residents who are themselves the innocent victims of arsonists.

Keep up the good work.

Sincerely,

HOWARD B. CLARK
(For J. Robert Hunter,
Deputy Federal Insurance Administrator.)

APPENDIX 2

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
Washington, D.C., October 6, 1978.

HON. GLORIA M. JIMENEZ,
*Administrator, Federal Insurance Administration, Department of
Housing and Urban Development, Washington, D.C.*

DEAR MS. JIMENEZ: As indicated to you during your appearance on September 14, 1978 before the Permanent Subcommittee on Investigations, the hearing record has been left open so that additional questions could be submitted to you concerning the FIA role in attacking FAIR plan arson-for-profit.

Enclosed are questions to which I would appreciate your earliest convenient response.

Thank you for your continued cooperation with the subcommittee.

Sincerely,

CHARLES H. PERCY.

Enclosure.

QUESTIONS SUBMITTED TO GLORIA JIMENEZ, ADMINISTRATOR, FEDERAL
INSURANCE ADMINISTRATION, FROM THE PERMANENT SUBCOMMITTEE
ON INVESTIGATIONS, OCTOBER 6, 1978

1. The subcommittee has heard four days of testimony on arson-for-profit, much of which focused on the lax attitude of many insurance companies with respect to claims review. In addition, an Aerospace Corp. study released last October showed that fewer than one out of every one hundred arsons results in a conviction. An October 1978 letter from the FIA to the manager of the Massachusetts FAIR plan stated, "arson-for-profit can be successfully attacked, through post-claims review and vigorous prosecution of the culprits, as opposed to attempts to oppose it through screening and selection practices."

Is this an accurate indication of FIA policy at the present time?

2. Do you feel that screening and selection must play a crucial role in efforts to eliminate arson-for-profit in the FAIR plans?

3. Considering what we have heard about the ineffectiveness of postclaims review and poor success rate in prosecution, would you say that screening and selection should be taken much more seriously by insurers—and by the FAIR plans in particular—as a way to combat arson-for-profit?

4. In a report to the Congress last May, the General Accounting Office recommended that the Secretary of Housing and Urban Development direct the Administrator of FIA to revise its regulations to require that all State FAIR plans adopt certain procedures to reduce the risk of arson.

- (a) Have the regulations been revised as GAO suggested?
- (b) If not, why not?
- (c) Will the regulations be developed?
- (d) When?

5. The underlying purpose of the Urban Property Protection and Reinsurance Act which originally authorized the FAIR plans, was to stem the tide of urban deterioration. FIA's responsibility under that act is to review FAIR plan operations and to identify any aspects of those operations requiring revision or modification in order to carry out the purposes of the act. Since the GAO report concluded that current FAIR plan practices may encourage arson-for-profit, thus contributing to serious urban deterioration, doesn't FIA have a responsibility to scrutinize FAIR plan practices closely and to encourage changes—such as tighter underwriting standards—necessary to reduce arson-for-profit?

6. The GAO report notes that arson-for-profit has skyrocketed partly because most FAIR plans issue coverage to almost anyone who requests it. Illinois FAIR plan officials told the GAO they refuse to insure only about 1 out of every 100 applicants. In general, they claim there are only three conditions under which they can refuse coverage:

- 1. If previous unrepaired fire damage exists;
- 2. If the property owner has been convicted of arson; and
- 3. If the property is vacant.

Does this attitude within the Illinois FAIR plan stem from guidelines or advice from the FIA here in Washington? If not, how is it that officials across the country feel that FIA opposes efforts to require greater selectivity?

7. According to the GAO, a Pennsylvania FAIR plan official feels that the plan could be obliged to insure an individual who applied to the FAIR plan following a suspicious fire.

- (a) Have you checked with this official?
- (b) What have you done to disabuse him of this view?
- (c) Are FAIR plans obliged to cover properties owned by individuals with previous suspicious fires?

(d) Should FAIR plans consider a past history of suspicious fires when deciding whether to issue a policy to a given individual?

8. Should FAIR plans use all the normal insurance industry criteria, except location, when considering whether to issue coverage?

9. Prior to issuing an insurance policy:

(a) Should FAIR plans explore information pertaining to the applicant's financial status, tax arrearages, housing code violations, or fire history?

(b) Do all FAIR plans gather such information as a matter of routine?

(c) Which FAIR plans do not gather such data?

10. (a) Have you checked out the case, cited by GAO, in which a State insurance authority ruled that the FAIR plan was bound to issue a policy to a particular individual even though that person was under indictment for arson at the time?

(b) What is your feeling about that action?

11. Are FAIR plans justified in denying coverage to persons under reasonable suspicion by law enforcement authorities of arson?

12. (a) What advice or guidelines, if any, has FIA issued to the individual FAIR plans concerning its interpretation of "reasonable underwriting standards"?

(b) Please provide copies of these guidelines.

13. (a) What specific information, if any, has FIA independently developed to identify the extent of arson-for-profit in the FAIR plans, and the extent of organized crime involvement in this crime?

(b) Please provide data compiled on this.

14. According to GAO, FAIR plan losses in just two States—New York and Michigan—have reportedly amounted to nearly \$130 million. While FIA has challenged the total figure, it has not denied that the losses are substantial.

(a) Since these losses are eventually passed on to consumers in the form of premium rate increases, what should State insurance officials do to reduce FAIR plan losses?

(b) Have you advised representatives of private companies participating in the FAIR plans what to do about them?

(c) What was your advice?

(d) What position or positions have they taken, and have you acted on any of their recommendations?

15. In response to GAO recommendations that FIA encourage FAIR plans to conduct background checks on insurance applicants, Secretary Harris has responded that the State officials are in a better position to establish criteria for these checks than FIA. Yet, the GAO reports that many FAIR administrators are confused about what they can and cannot do with respect to background checks.

(a) Why are they confused?

(b) How can they act intelligently if they don't know what FIA wants?

(c) Is there no way that FIA can assist these confused FAIR administrators so that they have some guidelines to follow on this crucial issue?

(d) Will FIA now provide guidelines to help avoid covering at least the most obviously unacceptable risks?

16. According to the GAO, an FIA official claimed that FIA had provided arson-related material to the FAIR plans and State insurance departments; however, FIA provided GAO with little arson-related information that had been seen by the FAIR plans. Furthermore, FAIR plan officials complained that the plans had no guidance from FIA on the arson problem.

(a) What is your explanation for the discrepancy between FIA's claim that arson information had been distributed and the fact that FIA could produce little such information to show GAO, while FAIR plans maintained they have received no guidance on arson from FIA?

(b) When will FIA provide guidance on this matter to the State FAIR plans and insurance departments?

17. Secretary Harris resists the GAO recommendation to reduce the notice of cancellation period from 30 days to 5 days, saying that some States already follow the 5-day rule.

(a) For the record, are you in favor or against the 5-day rule?
 (b) Do you not think that a 5-day rule would substantially reduce the chances for illegal fraud fires?

(c) What steps, if any, has FIA taken to encourage adoption of the 5-day rule among the individual Plans?

(d) Why can FIA not encourage the States to establish a 5-day rule, rather than stand by while the States flounder over this serious question?

18. Rather than paying cash replacement value, several FAIR plans have begun to limit coverage to the market value of the property. Will this help to reduce the risk of arson-for-profit?

(a) Why not encourage all States to do this?

(b) Has FIA taken the initiative on this?

(c) Will it?

19. The GAO report indicates that poor claims investigations by the FAIR plans may allow many arson-for-profit cases to go undetected. You have already described two States where you are satisfied with claims investigations. What about the rest?

20. Your testimony referred to a possible system whereby FAIR-insured fire victims choosing to remain in the community would receive enough money to rebuild, but those choosing to leave would receive a lesser amount, thus discouraging intentional arson.

(a) Has FIA taken any steps to submit such an idea, in concrete form, to State insurance authorities?

(b) If not, why not?

(c) When will FIA encourage adoption of such a strategy by the individual plans?

APPENDIX 3

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT,
Washington, D.C., August 29, 1978.

HON. ABRAHAM A. RIBICOFF,
*Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: I am writing in response to the General Accounting Office's report, "Arson for Profit: More Could Be Done To Reduce It."

Despite its broad title, the report does not discuss the entire problem of arson-for-profit, but concentrates on the extent to which it is a problem in State-established fair access to insurance requirements (FAIR) plans. Our primary concern about the report is that readers not conclude that arson-for-profit is extremely widespread in, and is essentially confined to, FAIR plans. The fact is that arson-for-profit is a prostitution of the insurance mechanism for purposes of greed and is an extremely serious crime involving all insurance. It should be emphasized that about 1,000,000 American families and businesses are insured through FAIR plans, and less than 5 percent of these have had claims of any nature, much less arson-for-profit. In any given year, 95 percent of policyholders in the various FAIR plans have no losses. A study of incendiary fire incidence in the metropolitan Chicago area shows that in 1977, FAIR plan arson-for-profit represented only one-half of 1 percent of the total number of fire claims. FIA insurance examiners, who have continually examined FAIR plan activity for many years, are of the opinion that under FAIR plans more examination of suspicious fires are performed than are generally done by the voluntary market. FAIR plans have a reputation of being tough on claims, using every procedure at their command to reduce the size of losses.

However, we agree with the GAO that there is room for improvement in the FAIR plans and that solutions to the Nation's arson problem must be sought at the Federal level as well as the State level. Ms. Gloria Jimenez, the Federal Insurance Administrator, has already begun to explore solutions to the complicated problems involved in providing insurance to the deserving while excluding those who would abuse the program. In the enclosed memoranda from Ms. Jimenez to the Executive Committee of the National Association of Insurance Commissioners (NAIC) (attachment No. 1 to enclosed FIA memorandum), many of the issues raised in the GAO report are included as areas of concern and problems to be solved. We intend to do all in our power to work with the State insurance agencies and the insurance industry to improve the effectiveness of the FAIR plans.

The GAO report makes four recommendations, three of which deal with FAIR plan administrative procedures requiring supervision by the State insurance authorities. Before addressing these recommenda-

tions, I would like to make some comments with regard to the limitation of FIA's authority and the roles of the Federal and State governments. The supervisory responsibility for the FAIR plans is clearly delegated to the States under the act and consistent with the McCarran-Ferguson Act's philosophy; Congress did not provide for a host of Federal investigators handling insurance regulatory matters. (In light of the importance of the respective Federal and State roles, we were concerned that the list of organizations contacted did not include even one State insurance department, the very authority which is responsible for the FAIR plan in each State.) The FIA has the responsibility for monitoring the effectiveness of the plans in making essential property insurance readily available at reasonable rates. The FIA does not at present have the statutory authority and staff resources to supervise day-to-day underwriting decisions to assure the availability of essential insurance to deserving FAIR plan applicants and exclude those intending to commit fraud.

Turning to the recommendations of the GAO, we have the following comments:

Recommendation 1

Require that all FAIR plans establish property value at the time of underwriting and eliminate the practice of giving property owners any amount of insurance desired.

HUD response

Many States already follow this practice. These are State sanctioned requirements and not FIA requirements; if these could be required of the total insurance market, which they are not, we would consider a revision of the FIA regulations. However, since there is disagreement over the most equitable way of establishing property value, a sweeping requirement could be used to limit adequate coverage of deserving risks. The same measure which serves as a disincentive to arson profiteers can also prevent homeowners from being able to rebuild their homes after a fire. The obvious result is neighborhood abandonment. As has already been stated, we will work with State agencies to eliminate any incentives for arson for profit that may exist in the FAIR plans without violating the interests of the 99 percent of the FAIR plan market who are there because they have no other recourse to insurance and not for the purpose of committing criminal fraud. We will also examine our regulations to see if there is any way that we can encourage the States to take further action to eliminate fraud.

Recommendation 2

Require all FAIR plans to obtain and consider information concerning the character of the property owner in its determination of insurability, as the insurance industry does.

HUD response

A few FAIR plans apply such criteria on a selective basis today. Rather than establish a blanket FIA requirement, we are of the opinion that States are in a better position than the FIA to determine which criteria are most appropriate within their respective jurisdictions. Where States have requested it, we have permitted different

underwriting criteria based on the collection of such data. We do not in any way, as the report itself points out, prohibit reasonable underwriting standards to be applied in any State. What we oppose, as our regulations state, is the application of standards which are not relevant to the risk against which insurance is being sought. When one considers that the FAIR plans receive approximately 450,000 new applications and 600,000 renewal applications a year, a blanket requirement to obtain the type of information which would make possible a reasonable judgment regarding a property owner's character would result in a tremendous cost burden on the FAIR plan system. Whereas the private insurance market can deny coverage on the most tenuous basis, the FAIR plan would be obligated to perform a much more in-depth analysis. Therefore, to suggest that the FAIR plan could do it as the private market does is misleading.

Recommendation 3

Permit FAIR plans to use a 5-day cancellation notice with State insurance department approval in each instance.

HUD response

FIA has, in fact approved every reasonable request by State authorities for underwriting flexibility or special cancellation prerogatives. Indeed, three States now are administering 5-day cancellation provision procedures. In the State of Illinois, the FIA and the Illinois insurance commissioner, working together, in 1974 established the pilot plan for constructive abandonment procedures providing for a 5-day cancellation notice. Subsequently, we were notified that the Illinois State Legislature had enacted into law cancellation provisions which, in effect, prohibited the director of insurance from continuing the 5-day cancellation agreement.

Recommendation 4

We also recommend that the Administrator discuss the desirability of adopting the broad evidence rule basis with State insurance authorities in those FAIR plan States that require insurance payments at actual cash value without consideration of market value.

HUD response

On July 12, 1978, the Federal Insurance Administrator, meeting with members of the NAIC Executive Committee, included fire insurance indemnification as an issue warranting FIA-NAIC attention (see enclosure). A factor which complicates action in this area is the differing interpretation given to the term "actual cash value" by the various States. For example, in New York, the meaning of "actual cash value" is controlled by New York law as interpreted by New York courts. From a very early date, the New York courts have construed the term in accordance with what is generally known as the "broad evidence" rule. That rule is to the general effect that the trier of fact is not confined by rigid rules of valuation in determining the actual cash value of property. Such value may be represented by market value, or by replacement value less depreciation, or it may be represented by some other basis which, under the circumstances of the individual case, provides a better measure for indemnifying the insured fairly for his loss.

Other States treat this matter quite differently. In some non-FAIR plan as well as FAIR plan States, the legislatures have enacted valued policy laws which require the insurer to pay the face amount of the policy upon the occurrence of a total loss. Obviously, coverage is vitiated by fraud; but absent fraud, it is the public policy of such States that the insured shall be entitled to recover the total loss on the same basis that he has paid premiums. We do not have the authority to substitute some other public policy for the policy adopted by those States.

However, as indicated above, FIA has initiated discussions with the NAIC on the fire insurance indemnification problem. The Federal Insurance Administrator has also requested insurance representatives to focus on revised policy language.

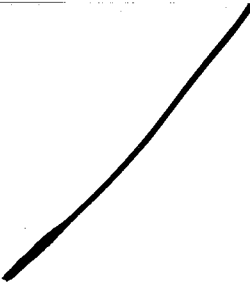
Let me assure you that the FIA will work with State insurance authorities and the insurance industry to improve underwriting mechanisms consistent with the objectives of the FAIR plan. The GAO report contains other specific points warranting clarification which are addressed in the enclosed FIA memorandum. If you have any additional questions regarding any of the issues raised, please let me know.

I am sending an identical response to Congressman Jack Brooks, chairman of the House Committee on Government Operations.

Sincerely yours,

PATRICIA ROBERTS HARRIS.

○



END

