

**ORGANIZED CRIME AND USE OF VIOLENCE**

**HEARINGS**  
BEFORE THE  
**PERMANENT**  
**SUBCOMMITTEE ON INVESTIGATIONS**  
OF THE  
**COMMITTEE ON**  
**GOVERNMENTAL AFFAIRS**  
**UNITED STATES SENATE**  
NINETY-SIXTH CONGRESS  
SECOND SESSION  
MAY 2 AND 5, 1980  
**PART 2**

Printed for the use of the Committee on Governmental Affairs



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<sup>2</sup> Retained in the confidential files of the subcommittee.

(III)

## ORGANIZED CRIME AND USE OF VIOLENCE

FRIDAY, MAY 2, 1980

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

The subcommittee met at 9 a.m., pursuant to recess, in room 5110, Dirksen Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. Sam Nunn (chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; Senator James R. Sasser, Democrat, Tennessee; and Senator Jacob K. Javits, Republican, New York.

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

Chairman NUNN. The subcommittee will come to order.

[Members of the subcommittee present at time of reconvening: Senator Nunn.]

Chairman NUNN. This morning we have presentations by Hon. G. R. Dickerson, Director, Bureau of Alcohol, Tobacco, and Firearms, Department of Treasury; Mr. Edward M. Owen, Jr., Chief, Firearms Technology Branch, Bureau of Alcohol, Tobacco, and Firearms, Department of Treasury; and Robert F. Dexter, Chief, Explosives Technology Branch, Bureau of Alcohol, Tobacco, and Firearms, Department of Treasury. Mr. Director, if you will introduce the other people at the table, we would appreciate it. I know you have Mr. Steven Higgins, Mr. Phil McGuire, and Mr. Miles Keathley with you. If you could tell us their positions we could begin.

Mr. DICKERSON. Thank you, Mr. Chairman. Mr. Higgins is the Deputy Director of the Bureau of Alcohol, Tobacco, and Firearms. Mr. Keathley is the Assistant Director for Criminal Enforcement, and Phil McGuire is the Chief of our Investigations Division.

Chairman NUNN. Thank you. If you will all stand and take the oath.

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

Mr. DICKERSON. I do.

Mr. OWEN. I do.

Mr. DEXTER. I do.

Mr. HIGGINS. I do.

Mr. KEATHLEY. I do.

Mr. McGUIRE. I do.

TESTIMONY OF HON. G. R. DICKERSON, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, DEPARTMENT OF THE TREASURY; EDWARD M. OWEN, JR., CHIEF, FIREARMS TECHNOLOGY BRANCH, BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, DEPARTMENT OF THE TREASURY; ROBERT F. DEXTER, CHIEF, EXPLOSIVES TECHNOLOGY BRANCH, BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, DEPARTMENT OF THE TREASURY; ACCOMPANIED BY STEPHEN HIGGINS, DEPUTY DIRECTOR, BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS; MILES KEATHLEY, ASSISTANT DIRECTOR FOR CRIMINAL ENFORCEMENT; AND PHIL McGUIRE, CHIEF OF INVESTIGATIONS DIVISION

Chairman NUNN. Before you begin, I want to thank you for your splendid cooperation with the subcommittee and for all of your help and assistance in putting together these hearings. You have gone out of your way to cooperate. We have had excellent communication with all of the people in your Bureau. For that we are grateful and we look forward to your testimony.

Mr. DICKERSON. Thank you, Senator Nunn. I have submitted for the record a rather detailed statement of the ATF activities. If it is all right with you, I would like to summarize rather than read my entire statement.

Chairman NUNN. Yes, sir. That will be fine.

Mr. DICKERSON. Mr. Chairman, it is our privilege to appear before you to explain the role which ATF plays in the coordinated Federal attack on organized crime. Earlier this week you heard testimony from FBI Director William Webster and DEA Administrator Peter Bensinger. They described the ongoing law enforcement efforts against organized crime and trafficking which those agencies spearhead. ATF's criminal statutes include the Gun Control Act, the Explosives Control Act, and the new Cigarette Bootlegging Act.

In the enforcement of these statutes, ATF also plays a major role against organized and violent crime. I might state in the beginning that cooperation among the agencies, between ATF and DEA, and between ATF and the FBI has never been better. Many of the cases that I discuss today will be cases worked jointly with those agencies and I think this cooperation has led to significant inroads against violent organized criminals.

Mr. Chairman, the common denominator of organized crime is violence. This violence is inflicted upon society through the use of legal and illegal firearms, explosive devices used for assassinations and destruction of property, incendiaries used for arson, murder, and intimidation of persons resisting advances of the criminals.

Examples of some of these weapons and destructive devices, commonly encountered in law enforcement have been prepared and are presented in this room for your information. Photographs of these exhibits are included in the blue notebook in front of you.

We have also prepared a short videotape presentation of these devices in use. It graphically shows the destructive capability of many of the explosives used for criminal acts. Since in my subsequent testimony I will refer to these weapons and devices I would like at this time to play the tape for your review. This will take approximately 4 minutes, Mr. Chairman.

Chairman NUNN. Go right ahead.

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

Mr. DICKERSON. Thank you, Mr. Chairman.

Mr. Chairman, violence and organized crime remain synonymous. If the motive of organized crime is profit the method is violence. And the tools used by organized crime are the ones that we have demonstrated here, automatic, sophisticated weaponry, as well as explosives, and incendiary devices. Organized crime today includes not only the traditional organized crime families but other groups such as narcotics syndicates, motorcycle gangs, ethnically organized groups, and other groups that I would categorize as hate groups. Through the statutes that ATF enforces, we maintain contact with this particular element of the criminal society and take an active role in the investigation and prosecution of professional criminals. Bombings, arson, and firearms violations are common to the range of crimes committed by the professional enforcers. ATF files include a total of 349 suspected professional contract killers and arsonists. They have been identified in ATF investigations as of February 19, 1980. These individuals are recognized as being professional criminals who have actively engaged in bombings, contract killings, or other violent acts intended to eliminate or intimidate competitors, gang members, informers, witnesses, union officials, noncooperative businessmen, police, prosecutors, and Federal officials.

Let me give you some examples of the violence with which we deal. Several years ago in Cleveland, a series of violent explosions began occurring. Before ending, five individuals were killed by explosive devices. At the conclusion of the labor-oriented investigation which was conducted jointly with the FBI, 20 people were indicted and arrested.

In Georgia, undercover agents were contracted to murder a district attorney and superior court judge by a well-known organized-crime figure, Burl Causey. Mr. Causey has received a 10-year sentence as a result of our investigation.

I previously mentioned that cooperation had never been better between ATF and other Federal law enforcement agencies. I am particularly pleased with the recent efforts which have been undertaken jointly with the Drug Enforcement Administration. I meet regularly with DEA Administrator Peter Bensinger and our agents work closely

in the field. DEA has provided us with a list of its class 1 narcotic violators. Where appropriate, ATF brings its enforcement effort to bear against these notorious criminals. We have enjoyed a great deal of success in recent months.

While many of these investigations are detailed at length in my prepared testimony, I would like to highlight several of these for you.

In April 1978, ATF and DEA initiated a joint investigation of Frank Ammirato, a prominent Florida organized crime figure and DEA class 1 violator for firearms and narcotics activities. In November 1978 Ammirato and five associates were arrested and ATF seized 500 guns, 2 machineguns, and 91 silencers. On May 25, 1979, Ammirato was sentenced to 25 years in prison on 21 counts of Federal firearms and narcotic violations.

In March 1980, ATF agents in New York City arrested a known narcotic trafficker, when he received a shipment of firearms which had been illegally purchased in Virginia for delivery to the Bronx section of New York. Approximately 60 handguns had been purchased and transported to New York by the smuggling ring during its year of operation. The principal suspect has been indicted and is awaiting trial.

We have also participated with DEA in the "Cocaine Cowboy" investigations which are centered in Florida. This operation involved the investigation of rival narcotic factions who have been waging a war of violence over control of narcotics traffic in that area.

The MAC-10 machinegun, which is displayed on the firearms board is manufactured to fire either a 9-millimeter or 45-caliber shell at a rate of over 1,000 rounds per minute. We saw the deadly operation of this weapon in the film slides which we have just shown.

During the past several months there have been numerous violent crimes committed involving the MAC-10 weapon. The largest problem, of course, occurs in south Florida, where the rival narcotic gangs arm themselves with MAC-10's. The "Cocaine Cowboy" war has thus far resulted in some 60 homicides, 9 of which have been directly linked to the MAC-10. Many of the other 51 homicides are suspected of having been committed with the MAC-10.

I realize that you will be hearing testimony next week from Dade County officials who have primary responsibility for the investigation of these murders but I have one picture here that I would like to show which graphically illustrates the effectiveness of this machinegun. It is a picture of one of the victims of a MAC-10 murder where the MAC-10 has been discarded after the murder.

Chairman NUNN. This will be entered as an exhibit. We will enter this on Monday.

Mr. DICKERSON. In June 1978, ATF and DEA in concert with the FBI and local law enforcement agencies formed a task force under the direction of the U.S. attorney's office in the northern district of California and initiated an investigation of the Hell's Angels motorcycle gang. Our collective investigations covered the gamut of organized criminal activity—violations of the Federal firearms and explosives laws, narcotic laws, murder, theft, rape, extortion. This investigation culminated with the indictment of 32 members of the Hell's

Angels and prosecution was brought under the RICO statutes. This case is currently in trial and additional arrests are expected.

We also worked jointly with the FBI in solving the recent organized crime arson, murder, and extortion cases in Tacoma, Wash. Our agencies had originally begun independent investigations of individuals responsible for this illicit organized activity. Numerous arson, threats, and bribery violations were uncovered. Undercover agents of both ATF and the FBI were hired to commit criminal acts to eliminate competition and intimidate competitors. During the investigation the sheriff of Pierce County, Wash., met undercover agents and solicited bribes to allow prostitution and gambling in the county. Ultimately, 15 defendants were arrested and charged. Sheriff Janovich received a 12-year sentence.

Mr. Chairman, as you are well aware, arson has long been a tool used by organized crime and labor racketeers for intimidation and profit. ATF has taken the lead in supporting State and local efforts to combat arson.

Nineteen task forces are working with local authorities to deal with this burgeoning problem. We are presently conducting with LEAA sponsorship, a series of 18 arson-for-profit schools for State and local arson investigators throughout the country in order to help States and local authorities improve their effectiveness with the problem. Arson is essentially a State and local problem, but we must recognize that many arson investigations are beyond the capability of these authorities. Many arsons involve complex, highly organized criminal rings which far exceed the jurisdictional boundaries of a State or a local investigative agency. For example, in Houston, Tex., in September 1979, ATF arrested an arsonist as he attempted to set fire to a restaurant. This initial arrest was the result of investigative efforts directed toward an organized group of criminals whose activities extended into several States. Subsequent investigation resulted in the arrest of Raymond Conti, the ringleader of the group.

On March 13, 1980, while providing protection to a key witness in this investigation, ATF arrested two men who had followed the witness from his place of employment. The two men were armed with a sawed off shotgun and a pistol. An investigation revealed that they had been hired by the operator of the Houston Cocktail Lounge to kill the witness. On April 2, 1980, the Harris County jury in Houston, Tex., found Conti guilty of attempted arson. He was sentenced under Texas criminal statutes on April 21, 1980.

Two hit men and the Houston Cocktail Lounge operator were indicted by a Federal grand jury in connection with the attempted murder of the Government witness.

Mr. Chairman, we have prepared mockups of various explosive devices which you see here in the hearing room. The criminal bomber is of particular interest to ATF. He is an indiscriminate killer, and a terror to our society. The investigation of criminal bombings is the principal priority of this Bureau.

In 1978, over 1,400 criminal bombings occurred in this country.

Exhibit 2 shows the mechanical delayed booby-trapped explosive bomb. Exhibit 5 demonstrates the incendiary time bomb. Exhibit 7 illustrates the clock-delayed explosive bomb, and exhibits 10 and 11

demonstrate the remotely controlled bomb that was used to murder Cleveland area teamster official John Nardi, and organized crime figure Daniel Green.

Chairman NUNN. Which exhibit was that?

Mr. DICKERSON. That was exhibits 10 and 11. The videotape highlights the destructive effect of these devices but I have a live example here of such a device.

With your assistance I would like to demonstrate the technology of the radio remote control bomb. The staff will hand to you the triggering device, which would be used to detonate the explosives in the briefcase. Our technicians have rigged the trigger mechanism to fire a flash bulb, but the same charge which will shoot the bulb can as easily activate a blasting cap and high explosives.

Chairman NUNN. Tell us what it is going to do when I push the button. [Laughter.]

Mr. DICKERSON. I was just whispering to him I hope they have this set right.

Chairman NUNN. Set it over there by the Director. [Laughter.]

Mr. DICKERSON. It is close enough. When you push the button, it will fire the flash bulb.

Chairman NUNN. That would automatically explode if it were—

Mr. DICKERSON. Had it been rigged to the dynamite with a blasting cap, it would trigger an explosive.

Chairman NUNN. Have you had explosives actually in a briefcase like that?

Mr. DICKERSON. Yes, sir.

Chairman NUNN. All right, here it goes.

Mr. DICKERSON. I am glad that our experts are as expert as they are. [Laughter.]

I might point out, Mr. Chairman—

Chairman NUNN. How far away can that remote device be triggered?

Mr. DICKERSON. The effective range of the triggering mechanism such as this can be as much as 2 or 3 miles.

Chairman NUNN. Two or three miles?

Mr. DICKERSON. Two or three miles. So the individual who actually triggers the murdering explosive could be miles away from the location of the explosive at the time it took place.

Mr. Chairman, we currently are applying modern technology to attempt to deal with the criminal problem. One of our research programs called explosive tagging is not yet complete, but it has advanced to the point where the results are very promising. The addition of small amounts of chemical contained in microscopic spheres forms a vapor trail when added to many commercial explosives. This vapor can be readily sensed by instruments. This detection taggant, as it is called, triggers an alarm alerting security officers to the fact that a tagged explosive is being carried through a protected area. This would be very effective now in controlling introduction of explosives, for example, into an airport area or another protected area.

It is not feasible to protect all the bombing targets. We are therefore developing a post-detonation identification taggant. Small amounts of this taggant can be added to commercial explosives providing an

identity to each lot of explosives. The taggants are designed to survive the explosion and can be recovered at the bombing scene thus providing the investigator with the key to the record of all legal purchasers of the lot of explosives from which the criminal bomb is made.

We think the utility of this valuable lead is obvious to everyone.

However, to underscore their utility, the facts in a recent criminal bombing would be helpful. Several years ago, ATF, in cooperation with the explosive manufacturers, distributed in commercial distribution channels 6 million pounds of explosives that had been tagged as part of the national pilot test. On May 10, 1979, Nathan Allen and a coworker were leaving work at the Bethlehem Steel Plant in Sparrows Point, Md. As Allen was driving his pickup out of the parking lot, a violent explosion occurred sending Allen to his death and injuring his passenger.

A bomb scene search was conducted. Physical evidence was sent to the ATF National Laboratory at Rockville, Md.

Taggants were discovered among the debris and later during a search of the crime scene. With the aid of these recovered taggants, ATF was able to successfully forward for prosecution Mr. James McFillin. The taggants were admitted as evidence in the trial. On December 18, 1979, Mr. McFillin was found guilty of the bombing and sentenced to 30 years in Federal prison.

Mr. McFillin had purchased tagged explosives from a small amount of explosives which had been placed in distribution as part of a demonstration project. This research and development effort is continuing. This promising tool for law enforcement has been endorsed by the FBI and the International Association of Chiefs of Police.

Mr. Chairman, I hope in this brief statement we have demonstrated to you the way in which firearms and sophisticated weaponry, automated weapons, destructive devices, and explosives are used by organized crime, by narcotic traffickers, by those engaged in violent crimes in this country today. This concludes my testimony.

I have with me experts in firearms and explosives and in our investigative techniques; and we will be happy to answer any questions which the committee might have.

[The statement of Mr. Dickerson follows:]

STATEMENT OF G. R. DICKERSON, DIRECTOR, BUREAU OF  
ALCOHOL, TOBACCO AND FIREARMS

Mr. Chairman and members of the subcommittee. It is a privilege to appear before you and to address this committee on the subject of violence connected with organized crime, labor racketeering, and narcotics trafficking. The Bureau of Alcohol, Tobacco and Firearms welcomes this opportunity to provide you with our comments, and we trust this appearance will be of benefit to your committee.

You have heard the testimony of Department of Justice officials, including that of Judge Webster of the FBI and Peter Bensinger of DEA. ATF joins these organizations in the fight against organized crime and narcotics trafficking in the United States. Cooperation among our agencies has never been better and has led to significant inroads into organized crime activities. To put ATF's role into perspective I would like to outline some ATF functions and show how they relate to organized crime activities.

Organized crime influence over the legal liquor industry was dominant prior to prohibition. Passage of the Volstead Act in 1919, providing for Federal enforcement of prohibition, was a milestone in the history of organized crime.

Prohibition institutionalized organized crime in this country. ATF's involvement in alcohol enforcement can be traced from our days as part of the Internal Revenue Service to the present. And today we continue to be alert against organized crime influence and public corruption in the legal alcohol industry and its distribution system.

Trafficking in contraband cigarettes results in a loss of revenue to the States as well as providing a source of funds to organized crime. ATF is responsible for enforcement of the Contraband Cigarette Act of 1978.

Firearms and explosives are the tools of organized crime and the instruments and common denominator in violent crime. Regardless of its sophistication, violence and organized crime remain synonymous. If the motive of organized crime is profit, the method is violence. With enforcement responsibility for explosives under Title XI Organized Crime Control Act and for firearms under the Gun Control Act of 1968, ATF becomes involved with organized crime. Arson is a burgeoning crime which is also used by organized crime for extortion and enforcement.

During ATF investigations of statutes we enforce, we often obtain intelligence, evidence, and direct testimony reflecting the infiltration, control and attempted takeover of legal and illegal enterprises.

These attempts are often associated with threats, intimidation, physical destruction of property, injury to individuals, and murder.

Labor racketeering is often facilitated via arson, bombings, shootings of labor rivals, destruction of properties of nonunion contractors, and the murder of union members or rivals.

On February 11, 1979, about 1:58 p.m., Walter Lewis McVey III was fatally injured by an explosion that destroyed the offices of the Tesoro Coal Company in Hazard, Kentucky. The victim, an accountant for the coal company was killed by an improvised explosive device that contained a quantity of high explosives, an electric blasting cap, a clock, and a six volt battery. The device was assembled inside a briefcase or small piece of luggage. Damage to the facility was estimated at \$50,000.

At the time of the incident, the Tesoro Coal Company was embroiled in a labor dispute over contract provisions.

An intensive investigation by Bureau of Alcohol, Tobacco and Firearms, in conjunction with State and local authorities, resulted in the arrest of eight Kentucky men and one New York man in March 1979, on violations of Title XI of Organized Crime Control Act and conspiracy.

Subsequent prosecutive actions in the United States District Court for the Eastern District of Kentucky were as follows:

1. Adams, Charles Dwight, pled guilty—5 years.
2. Adams, Timothy Joe, pled guilty (YCA)—80 years.
3. Baker, Lewis, found guilty by jury—10 years.
4. Hatton, Raymond, pled guilty—1 year and \$500 fine.

(The remaining five defendants were either (a) found guilty or (b) the charges were dismissed at the request of the United States Attorney).

Organized crime includes not only the traditional organized crime "families" but other groups such as narcotic syndicates, motorcycle gangs, and various hate groups.

By the nature of the statutes that ATF is empowered to enforce, we monitor those particular elements of criminal society and take an active role in the investigation and prosecution of professional criminals who are hired to commit various types of crimes.

The activities of the hired professional assassin involved in a variety of acts of violence and intimidation falls within our Class I priorities. Bombings, arson, and firearms violations are common to the range of crimes committed by the professional enforcers in pursuit of their varied criminal interests.

ATF has been an active participant in all strike forces throughout the country, and has presented a substantial number of cases to the strike force attorneys for prosecution.

ATF files include a total of 349 suspected professional contract killers who have been identified in Bureau investigations as of February 19, 1980. These individuals are recognized as being professional criminals who have actively engaged in bombings, contract killings, or other violent acts intended to eliminate, or intimidate competitors, gang members, informers, witnesses, union officials, noncooperative businessmen, police, prosecutors, or Federal officials.

In Cleveland, Ohio, two organized crime "enforcers", experienced in the use of remote control bombs utilized to "hit" identified individuals throughout the United States, made the mistake of providing two such remote control, home-made bombs to an ATF undercover agent. The subsequent arrest and conviction of the two suspects resulted in their being sentenced to 10 years in a Federal penitentiary.

In Georgia, narcotics violators hired an undercover ATF special agent to kill a prosecutor and judge. Two defendants received substantial prison sentences.

I would like now to take a moment to discuss our philosophy in Criminal Enforcement. Our objective in Criminal Enforcement is to have an impact on crime through the statutes we enforce. So, through our statutes, we are cooperating with other Federal, State and local law enforcement agencies. The objective of this cooperative mode of operation is to have the maximum impact on crime which our statutes are particularly suited to. Many of our investigative cases are joint investigations with the FBI since they involve extortion, public corruption, and other areas of primary jurisdiction of that agency. Judge Webster mentioned such a case in Tacoma, Washington, which I will discuss in more detail later.

Another example of this mode of operation is the excellent level of cooperation between ATF and the Drug Enforcement Administration (DEA) officials at the management and street levels. Joint investigations are common where mutual violations are found. Several of these joint investigations have involved major narcotics traffickers and organized crime figures. I would like to cite some examples of these cases and others involving violence and the organized criminal.

#### *Frank Ammirato*

In April 1978, ATF and DEA initiated a joint investigation of Frank Ammirato, a prominent Florida organized crime figure and a DEA Class I violator, for firearms and narcotics activities. In November 1978, Ammirato and 5 associates were arrested and ATF seized 5 handguns, 2 machineguns, and 51 silencers. On May 25, 1979, Ammirato was sentenced to 26 years in prison on 21 counts of Federal firearms and narcotics violations. His associates received commensurate sentences.

#### *Hells Angels*

In June 1978, ATF, DEA, FBI, and local agencies formed a task force under the direction of the U.S. Attorney's office and initiated an investigation of the Hells Angels motorcycle gang in California of Federal firearms and explosives laws, narcotics laws, and related violations. This investigation culminated with the indictment of 32 members for violating Racketeer Influenced Corrupt Organizations (RICO) statutes. ATF perfected a total of 24 firearms and explosives cases as a result of this joint effort. (This case is being prosecuted at this time.)

In a more recent case during March of this year, ATF executed a Federal search warrant on an individual who is cited by DEA as a Class I drug dealer, a convicted felon, and has been arrested on 37 occasions; with charges ranging from homicide to narcotics to gambling. Eighteen firearms, six cases of P<sub>2</sub>P (the main ingredient used in the manufacture of "speed"), and a large quantity of hard drugs were seized. The drugs were turned over to DEA for use as evidence, and the individual has been charged by ATF for possessing firearms with a felony conviction. This case is still pending.

#### *Firearms to New York*

In March 1980, ATF agents in New York City arrested a known narcotics trafficker when he received a shipment of firearms which had been illegally purchased in Virginia for delivery to the Bronx section of New York. The weapons had been purchased from licensed firearms dealers by a Virginia resident using fictitious identification furnished by the New York suspect. The firearms were then delivered to a courier for transport to New York where they were sold from a bar. Approximately 60 handguns had been purchased and transported to New York by the ring during its year of operation. The principal suspect has been indicted and is awaiting trial in Virginia. The purchaser and courier have entered guilty pleas.

#### *MAC-10*

In 1979, increasing numbers of Military Armament Corp. (MAC-10) machineguns were recovered by ATF, State and local agencies. This machinegun, manufactured in two calibers, is capable of firing 9mm or .45 caliber shells at a rate

of 1,090 to 1,145 rounds per minute respectively. This weapon was available in kit form, which included the lower receiver cut into pieces with a torch, and all the component parts needed to assemble the firearm. A person with only basic welding and machine shop skills can take the MAC-10 kit and assemble a fully automatic machinegun within 2 hours or less.

During the past several months, there have been numerous violent crimes committed involving the MAC-10 weapon.

The largest problem occurred in the South Florida area where rival narcotics factions armed themselves with the MAC-10, and began a violent war to control the narcotics traffic. This battle resulted in some 60 homicides, 9 of which were directly linked to the MAC-10. Many of the other 51 homicides are suspected of having a MAC-10 involved. In addition, ATF and various State and local police agencies have seized approximately 500 MAC-10 weapons and kits.

Following is a brief synopsis of selected criminal investigations involving the MAC-10, all of which are currently open and/or pending judicial action.

One investigation involves a subject who purchased large quantities of MAC-10 kits, provided the lower receiver, and subsequently sold many of the assembled weapons to various persons, including rival narcotics factions in South Florida. On January 18, 1980, ATF seized 340 MAC-10 machineguns and 224 silencers for the MAC-10. Investigations are still ongoing as a result of this seizure.

A Detroit, Michigan investigation centered on a subject who was engaged in the business of manufacturing and selling automatic weapons. Subsequent to undercover investigations, special agents served a search warrant on the subject and recovered weapons, ammunition, silencers, and 240 M-16 and MAC-10/11 receivers. This investigation is ongoing.

#### *Cocaine cowboys*

This operation involves the investigation of rival narcotics factions in South Florida who have been waging a war of violence over control of narcotics traffic in that area. This war has involved a large number of homicides, many committed with the MAC-10. One involved the killing of a gang leader with a MAC-10 in a busy shopping mall.

In addition to working with DEA, we have added our resources and expertise to that of the FBI and local authorities in cooperative efforts. The following cases are examples of such efforts:

In 1976, a series of violent explosions began occurring in the Cleveland area. Before ending, five individuals were killed by explosive devices and numerous property losses occurred. These violent acts evolved from attempts by Cleveland area Teamster official John Nardi, and Daniel Green to control various illegal rackets. Both were and revealed numerous attempts to murder Nardi, Green, and their associates. At least seven such attempts involved the use of explosives, firearms, and hand grenades.

In the end, 20 people were indicted and arrested. Thus far, eight people have been found guilty in the State Court and seven have been indicted in Federal court. This case reflects the tremendous results which may be achieved when Federal and local officials work hand-in-hand.

#### *Salvatore Gingello*

During April 1978, in Rochester, New York, a bomb exploded under the car of Rochester rackets underboss Salvatore Gingello. Two other individuals in the car were injured, Gingello was killed. Investigators determined that a remote control bomb was used to end the career of Gingello.

Investigators soon determined that this was part of an internal gang war in the Rochester area.

A series of violent acts had preceded the Gingello slaying. They included arson, fire bombings, attempting murders, and bombings.

On June 28, 1978, ATF arrested Rodney Starkweather, and Anthony Chirico on explosive charges as they attempted to conceal an explosive cache in the Rochester area. One week later, Thomas Didio, a principal figure, was machine-gunned to death.

On April 12, 1979, William Barton, Anthony Chirico, Rosario Chirico, Dominic Celestino, Frank Frassetto, Angelo Vaccaro, and Betti Frassetto were named in a 14-count Federal indictment. The indictment alleged violations of Federal firearms, explosives, and conspiracy statutes. Certain defendants were charged with RICO violations.

On January 30, 1980, all defendants were found guilty for all counts of the indictment. On March 11, 1980, William Barton was sentenced to 10 years imprisonment; Anthony Chirico to 15 years imprisonment; Rosario Chirico to 25 years imprisonment; Dominic Celestino to 30 years imprisonment; Angelo Vaccaro to 25 years imprisonment; and Betti Frassetto to 2 years imprisonment. Others are awaiting sentencing.

#### *Burl Causey*

In June 1978, undercover ATF agents in Georgia were contracted to murder a District Attorney and Superior Court Judge in Georgia. The subject who contracted the assassinations was Burl Causey, a well known Georgia organized crime figure. The alleged reasons for the murders was that the District Attorney was interfering in Causey's drug business.

Throughout the negotiations for the contract, Causey supplied firearms to the undercover agents. Causey, his son and daughter assisted in planning details of the murders. Causey and his son were subsequently convicted, with the father receiving a 10 year sentence, and the son a four year sentence. Both are currently free on appeal bond.

#### *Nite moves*

In November 1978, ATF began an investigation into organized crime activities in the Tacoma, Washington area involving arson, murder, and extortion. ATF first became involved when attempts were made to murder a Washington State Liquor Control Agent.

In the early part of 1978, ATF agents recovered a sawed-off shotgun in Kansas City which was used in the shooting of Agent Journey some six months earlier. The gunmen in the shooting of Journey were identified and they revealed that they had been hired by Robert Valentine to murder Journey over disputes involving liquor licenses.

Valentine had arranged for the murder under the direction of Richard Williams, who along with John Carbone was the alleged head of organized crime in the Tacoma area.

ATF and FBI commenced a joint investigation into the illicit activity of this organized group. Numerous arsons, threats, and bribery counts were uncovered. Undercover agents of ATF and the FBI were hired to commit criminal acts to eliminate competition and intimidate competitors. During the investigation, undercover agents met with the sheriff of Pierce County, Washington, Sheriff Janovich, through Ron Williams. The sheriff solicited bribes to allow prostitution and gambling in the county. Ultimately, 15 defendants were arrested and charged with a variety of Federal crimes relating to these charges.

On July 11, 1978, Judge Morell Sharp, U.S. District Court, Seattle, Washington, pronounced sentence on the following defendants regarding the arson of the Nite Moves Tavern in Tacoma and other related organized criminal activities:

	<i>Years</i>
Robert Valentine.....	12
Jackie Bentley.....	12
Michael Johnson.....	12
Harry Wilcox.....	12
William Pettit.....	5
Anthony Mladnich.....	2
John Carbone (\$163,000 fine and).....	25
Ronald Williams (\$162,000 fine and).....	25
Richard Caliquiri.....	18
Joseph Carone (\$38,000 fine and).....	18
Frank Mazzucca (\$30,000 fine and).....	15
Lamont Zemeck.....	12
George Janovich.....	12

Some of these defendants are now on appeal; others are awaiting trial, or currently serving prison sentences on related arson convictions in State Court.

#### *Kansas City*

On May 1979, ATF agents seized a remote control bomb which was believed to have been designed to kill a high ranking mob figure in the Kansas City crime hierarchy. This appeared to be another incident in the continuing gang war in the Kansas City area, which has claimed several lives. Informants reported the collection of arsenals by the various individuals involved, including machineguns, dynamite, sawed-off shotguns, and remote control bombs.

ATF became aware of a stolen vehicle in which an improvised explosive device had been placed. A search of the stolen automobile revealed a destructive device consisting of six sticks of dynamite and designed to detonate by remote control. The defendants have been arrested and are awaiting trial.

*John Paul Spica*

On November 8, 1979, an explosive device detonated under a vehicle in St. Louis and killed the driver. The victim was John Paul Spica. An investigation is being conducted by the St. Louis County bomb and arson squad, major case squad, and ATF.

*Dallas, Tex.*

ATF utilizes its firearms trace capabilities on a daily basis to gather leads against criminals, many of whom are organized and cross numerous state lines to gather weapons. On June 20, 1978, New York authorities arrested a suspected member of a Chinese street gang. Five handguns were recovered. An ATF trace of the firearms established that three of the weapons had been purchased in Dallas, Texas, by Mike K. C. Yee. Three additional firearms acquired by Yee were recovered in New York; one used in an assault of a Police Officer and one used in a gang shooting.

An ATF agent in Dallas documented the purchase of 32 handguns by Yee and his associates. Yee was contacted by undercover agents and admitted taking firearms to New York. The agents also documented an extortion scheme conducted by Yee of several restaurant owners in the Dallas area. Yee was indicted and convicted of Federal firearms and extortion charges. He received 15 and 20 years imprisonment respectively on the charges.

*Arson*

Arson has long been a tool used by organized crime and labor racketeers for intimidation and profit. ATF has taken a lead in supporting State and local efforts to combat arson and has found that arson investigations may be the "Achilles Heel" of organized crime. Many of the upper echelon racketeers do not adequately insulate themselves from the crime of arson. Our effectiveness in arson investigations and arson training has been recognized by State and local officials, FEMA, LEAA, and the Administration.

We are presently conducting with LEAA a series of 18 arson for profit schools for State and local arson investigators and laboratory training in the examination of arson evidence for crime/laboratory scientist throughout the country.

ATF investigative jurisdiction is limited to arsons involving destructive devices under Title II of the Gun Control Act and incendiary devices or explosive compounds under Title XI of the Organized Crime Control Act of 1970. Arson is a truly violent crime that requires a Federal response.

In Houston, Texas, in September 1979, ATF arrested an arsonist as he attempted to set fire to a restaurant. This initial arrest was the result of investigative efforts directed toward an organized group of criminals whose activities extended into several States. Subsequently investigations resulted in the arrest of Raymond Conti, "ring leader" of the group.

On April 2, 1980, a Harris County Jury in Houston, Texas, found Conti guilty of attempted arson. He was sentenced under Texas habitual criminal statutes.

*Explosive tagging*

One of the most heinous and indiscriminate criminal weapons is the explosives bomb. ATF is the lead Federal agency in the investigation of criminal bombings. In 1978, this country fell victim to over 1,400 bombings.

A major problem faced by law enforcement in dealing with explosives crimes results from the destruction of evidence. This is caused by the explosive force of the bomb, subsequent fire, and water often poured on the scene by firefighters. Compound this problem with the fact that the bomber need not be present at the scene at the time of the bombing, and one can quickly imagine the remoteness of the likelihood of a successful investigation and prosecution.

ATF is now developing a new technology called "Explosives Tagging." Research is not yet complete, but the results to date are very promising. Through the addition of small amounts of chemical-containing microscopic spheres, a vaporous tag can be added to many commercial explosives that can be readily

sensed by instruments. This predetonation detection taggant gives rise to an alarm alerting security officers to the fact that a tagged explosive is being carried into the protected facility. ATF is confident of the utility of this new and developing technology's ability to protect high value targets against criminal bombings.

However, it is not feasible to protect all bombing targets—such as the private automobile. Therefore, ATF is also developing a postdetonation identification taggant. Small amounts of this taggant can be added to commercial explosives providing an identity to each lot of explosives. This identifying code can be recorded in current dealer transaction records in a manner similar to that of the date/shift code which is currently imprinted on the explosives package. However, unlike the existing date/shift code, the taggant survives the explosion and can be recovered at the bombing scene, thus providing the investigator with a key to the record of all legal purchasers of the lot of explosives from which the criminal bomb was made.

The utility of this valuable lead is probably obvious to all. But to underscore its utility, the facts in a recent criminal bombing would be illuminating. On May 10, 1979, Nathan Allen and a co-worker were leaving work at the Bethlehem Steel plant in Sparrows Point, Maryland. As Allen was driving his pickup truck out of the parking lot, a violent explosion occurred sending Allen to his death and injuring his passenger.

Following a dousing of the area by the local fire department to flush away the spilled gasoline from the ruptured fuel tank, a bomb scene search was conducted and physical evidence was sent to the ATF National Laboratory at Rockville, Maryland. In subsequent searches, taggants were discovered among the debris. With the aid of these recovered taggants, ATF was able to successfully forward for prosecution Mr. Allen's uncle, James McFillin. The taggants were admitted as evidence in the trial and on December 18, 1979, Mr. McFillin was found guilty of the bombing and was sentenced to 30 years in Federal prison for his acts. The explosives Mr. McFillin used in this crime were part of over 6 million pounds of explosives that had been tagged as part of the National Pilot Test.

The research and development effort is continuing in the tagging program. This promising tool for law enforcement has been endorsed by the FBI and the International Association of Chiefs of Police. I do want to reassure the committee that any program of this nature which might be developed by ATF will be safe, economically feasible, and of clear utility before I will recommend its implementation. I am confident that this result can be achieved in the near future.

*Firearms tracing*

ATF is currently tracing approximately 60,000 firearms a year for all law enforcement agencies. A sampling of over 4,000 traces conducted since January 1, 1980, reveal that at least 60 percent were of value in solving crime, recovering stolen property, resulted in arrests, or the seeking of indictments. Of the 4,331, 126 were identified as assisting in the solution of murder investigations. Previous trace examples include: the identification of a suspect in the shooting of an Ohio State Highway Patrolman; provided valuable evidence in prosecution of the infamous Zebra Killers in California; and as recent as last month I received a letter from a prosecuting attorney in Louisiana commending ATF agents and tracers for the expeditious trace of a weapon which was crucial in a first degree murder prosecution.

Mr. Chairman, Federal, State and local law enforcement agencies are increasingly faced with advanced and sophisticated weapons and equipment. I would like to give you a few examples of what ATF and other law enforcement agencies are up against today.

On January 3 and 4, 1980, Officers of the Philadelphia Police Department conducted a search of the luggage of the three suspects which resulted in the recovery of a handgun, 10 fictitious drivers license, a telephone scrambling unit, and almost \$23,000 in cash. A search warrant was then executed on their hotel room and 5 pistols, a silencer, 11 fictitious drivers licenses, 4 stolen Texas license plates, a telephone scrambler and other electronic equipment were seized. All three suspects have been charged with violation of the Gun Control Act and were indicted for those violations on February 7, 1980.

Later, in a related incident, ATF agents assisted local police officers in serving a State search warrant on a self storage garage in Lexington, Kentucky, where

they recovered a .50 caliber machinegun, a Russian machinegun, 2 M-2 .30 caliber machineguns, 21 Taser guns, a 20mm recoilless rifle, 23 assorted firearms, camouflage clothing, body paint, and electronics equipment including monitors, transmitters and scanners.

*Legislative recommendations*

Allow me now to address the future. This committee has indicated an interest in developing several legislative recommendations designed to increase the impact of law enforcement upon the elements of organized crime. I welcome your concern and wish to encourage you in your efforts.

Two legislative proposals favored by the Treasury Department are needed in order to adequately deal with the violence and assault problem. First, 18 U.S.C. 1114 should be amended to specifically include ATF officers within the list of Federal officers protected by the assault statute. While we believe that the statute's reference to "Internal Revenue Officers" does include ATF personnel, this terminology is obsolete and should be updated to reflect our separation from Internal Revenue Service, and our becoming a separate Bureau within the Department in 1972. Secondly, 18 U.S.C. 924(c) should be amended to provide mandatory penalties for first offenders who carry or use a firearm in the commission of a Federal crime. Presently, such penalties apply only to second or subsequent offenders.

You heard extensive testimony several days ago from Assistant Attorney General Philip Heymann, FBI Director William Webster, and DEA Administrator Peter Bensinger, all of whom gave their views on areas which concern us all. They discussed protection of Federal witnesses, problems with the Freedom of Information Act and the Privacy Act, increased sentencing for violent offenders and persons committing murder and arson for hire. They presented to you our shared frustration with the bail/bond system which so often returns violent criminals to the mainstream of our society with no significant curbs on their criminal activities.

Rather than take the time of the committee to again review all of these issues, please be assured that ATF strongly supports their views. I wish to associate myself with their comments, and to thank you for your obvious concern. Any progress which can be made in these important efforts will be deeply appreciated by all of us who are responsible for elements of the total Federal effort against organized crime. Mr. Chairman, this completes my opening statement. We will be happy to respond to any questions the committee may have.

Chairman NUNN. Thank you very much, Director Dickerson. We will, without objection, introduce as exhibits the videotape, the book with the photos and displays and the letter of March 28 from Assistant Secretary Davis together with the enclosures. All of that will be part of our record as exhibits, without objection, and appropriately numbered.

[The documents referred to were marked exhibits Nos. 10, 11, and 12 for reference. Exhibits 11 and 12 may be found in the files of the subcommittee; exhibit 10 and excerpts from exhibit 12 follow:]

EXHIBIT No. 10

DEPARTMENT OF THE TREASURY,  
ASSISTANT SECRETARY,  
Washington, D.C., March 28, 1980.

Hon. SAM NUNN,  
Chairman, Senate Permanent Subcommittee on Investigations,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of January 25, 1980, requesting information concerning violence connected with organized crime, labor racketeering and narcotics trafficking.

Enclosed you will find the separate responses of the Bureau of Alcohol, Tobacco, and Firearms, the U.S. Customs Service, and the U.S. Secret Service. I would note that this is also in response to separate letters sent to BATF and Customs.

I appreciate the opportunity to furnish this information on behalf of the Treasury Department. Any further assistance or follow-up information which

you may need will certainly be made available. This matter will be handled by John Wynes of my office who may be contacted at 566-3047.

Sincerely,

RICHARD J. DAVIS,  
Assistant Secretary,  
Enforcement and Operations.

Enclosures.

DEPARTMENT OF THE TREASURY,  
OFFICE OF THE DIRECTOR,  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,  
Washington, D.C., March 19, 1980.

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

DEAR MR. CHAIRMAN: This is in response to your letter of January 25, 1980, requesting information concerning violence connected with organized crime, labor racketeering, and narcotics trafficking. The Bureau of Alcohol, Tobacco, and Firearms (ATF) welcomes this opportunity to provide you with our comments and we trust this information will be of benefit to your committee.

*Threats, assaults, and sentences for murder*

In response to your questions regarding the seriousness of threats and assaults on Federal enforcement officials, we are including a synopsis of the statistical data on file with ATF. This data includes an overview of total assaults and threats for 1976 through 1979, as well as a short synopsis of some of the more serious assaults on our agents. While we realize that the sentences permissible under current Federal statutes are equivalent to or exceed those allowed under most State statutes for similar crimes of assault, we believe that two legislative proposals favored by the Treasury Department are needed in order to adequately deal with the assault problem. First, 18 U.S.C. 1114 should be amended to specifically include ATF officers within the list of Federal officers protected by the assault statute, 18 U.S.C. 111. While we believe that the statute's reference to "Internal Revenue officers" does include ATF personnel, this terminology is obsolete and should be updated to reflect our separation from Internal Revenue Service, and our becoming a separate Bureau within the Department in 1972. Secondly, 18 U.S.C. 924(c) should be amended to provide mandatory penalties for first offenders who carry or use a firearm in the commission of a Federal crime. Presently, such penalties apply only to second or subsequent offenders.

*Assaults and threats on ATF agents*

1976

In 1976 assaults on ATF agents increased 400 percent over incidents in 1975. In 1975 9 agents were assaulted nationwide, while in 1976, 45 special agents were assaulted. A variety of assaults in 1976 involved firearms and personal assaults with lead pipes and other objects and numerous threats on the lives of ATF agents.

1977

In 1977 agent assaults again increased to 65 over the 45 in the previous year. The seriousness of the assaults also increased.

In August 1977, in an undercover operation in Oklahoma, a suspect shot two ATF special agents during the investigation. In August 1977, an ATF agent and a Drug Enforcement Administration agent were conducting an undercover investigation; at the conclusion, the suspect was advised he was under arrest. The suspect opened fire, hitting the Drug Enforcement Administration agent in the left shoulder. The ATF agent returned the fire killing the suspect.

In November 1977, at the conclusion of an undercover firearms purchase, a suspect was advised he was under arrest. The suspect opened fire on three special agents, wounding one agent three times.

In numerous other incidents, suspects attempted to employ firearms against special agents, but fortunately were thwarted in their attempts.

Undercover situations resulted in the serious injuries already noted, and in addition five special agents were robbed and assaulted by persons from whom they were attempting to purchase firearms and explosives.

1978

In 1978, 43 assaults were recorded against ATF special agents. Serious assaults included the throwing of blasting caps at pursuing special agents after a large explosive theft by two suspects.

Assaults by female suspects were also reported on special agents during 1978. One such assault was by a female suspect brandishing a straight razor.

Threats and assaults by motorcycle gangs and militant terrorist groups were also noted. In one situation, several anonymous phone calls were received by a special agent in which threats were made to murder and mutilate his wife and two children.

1979

In 1979, 38 assaults on special agents were reported. An attack on a special agent resulted in the burning of his van, believed to have been perpetrated by members of a well known west coast motorcycle gang investigated by the ATF agent.

One special agent was severely beaten by unknown individuals during an undercover assignment resulting in a broken nose, cracked cheekbone, and bone chips around his eye socket. The agent was hospitalized for these serious injuries.

In perhaps the most serious incident of 1979, three special agents were wounded by a suspect during the undercover purchase of firearms and explosives. The suspect opened fire, seriously wounding one agent three times, and the other two agents suffered wounds to their arms and legs. The suspect was wearing a bullet proof vest, and received a shoulder wound.

Agents subsequently recovered 5 hand grenades, a silenced-scoped rifle, 75 other firearms, 2000 rounds of ammunition, 100 pounds of explosive powder, and 3 silencers.

Numerous special agents received threats on their lives as the result of successful undercover cases. In the years 1975 through 1979, a total of 200 assaults were recorded in ATF files. The most alarming trend is the number of serious incidents involving shootings and firearms use against special agents, while agents were conducting dangerous undercover assignments.

This type of threat to Federal law enforcement must be dealt with harshly. The sentences given must be the maximum allowable under the law. The need for swift, certain, nonparolable sentences in these matters is imperative.

The increasing trend to employ deadly force by suspects in cases involving possession of firearms and explosives constitutes a serious threat to the effective law enforcement authority of the Federal Government.

## ASSAULTS

Weapons used (assaults)	1977	1978	1979
A. Firearms.....	16	8	14
B. Explosives.....	0	2	0
C. Knife.....	3	1	0
D. Vehicle.....	3	1	0
E. Blunt object.....	6	2	1

*Hiring professional killers*

During ATF investigations of organized crime violence, we often obtain intelligence, evidence, and direct testimony reflecting the infiltration, control, and attempted takeover of legal and illegal enterprises.

These attempts are almost always associated with threats, intimidation, physical destruction of property, injury to individuals, and even murder when all else fails.

The ultimate purpose of these violent acts is to gain money and exercise power and influence over regional, national, or international aspects of society. Often, without the threat of violence, corporations are able to resist the inroads of organized crime. Rarely when faced with the actuality of threats to families, friends, employees, and businesses, does the victim fail to succumb to some demand of organized criminal groups.

Labor racketeering is often facilitated via arson, bombings, shootings of labor rivals, destruction of properties of nonunion contractors, and even murders of union members or rivals. The use of professional muscle has become an

accepted way of doing business, both for self preservation and elimination of competition.

When murder and other acts of violence are committed by friends, relatives or persons known to each other, the responsible individual is normally brought before the courts. The use of strangers to commit such violent crimes often precludes the identification and hinders prosecution of the person directly responsible for these violent acts.

By the nature of the statutes that ATF is empowered to enforce, we maintain contact with this particular element of criminal society and take an active role in the investigation and prosecution of professional criminals who are hired to commit these types of crimes.

The activities of the hired professional assassin involved in a variety of acts of violence and intimidation falls within our Class I priorities. Bombings, arson, and firearms violations are common to the range of crimes committed by the professional enforcers in pursuit of their varied criminal interests.

ATF has been an active participant in strike forces throughout the country, and has presented a substantial number of cases to the strike force attorneys for prosecution.

ATF files include a total of 349 suspected professional contract killers who have been identified in Bureau investigations as of February 19, 1980. These individuals are recognized as being professional criminals who have actively engaged in bombings, contract killings, or other violent acts intended to eliminate, or intimidate competitors, gang members, informers, witnesses, union officials, noncooperative businessmen, police, prosecutors, or Federal officials.

This willingness by organized criminal elements to use professional violence requires a strong Federal response. There is a need to prevent further incursions into positions of power and influence by organized criminals who would employ professional killers to facilitate their goals.

In those investigations where evidence is available relative to individuals who are professional bombers or killers for hire, sentencing should allow for non-parole provisions which exceed those imposed in other types of Federal offenses. Those persons who are convicted of hiring professional "hit men" should also be liable for increased penalties.

Recent cases have shown that many of the individuals who have been convicted in these types of cases are repeat offenders with a substantial history of violent crimes over extended periods of time.

The following is a brief synopsis of some of the more significant cases developed by ATF either alone or in conjunction with other State and Federal enforcement authorities against individuals who were employed as professional killers, bombers or enforcers for hire.

## ORGANIZED CRIME INVESTIGATIONS

## SAMPLE CASES

*Ricci-Viccarone*

Between the years 1973-76, a series of bombings occurred in the Cleveland area. Numerous homes, vehicles, and commercial structures were destroyed by explosive devices. A similarity in the construction and use of these devices, transmitted a message to those contractors who were employing nonunion labor. Over 60 such bombings occurred which indicated that one or more individuals were manufacturing and employing these devices to intimidate the various construction trades in the Cleveland area.

Intelligence information from several informants indicated that two well known Cleveland area criminals who were affiliated with the Licavoli crime family were manufacturing and employing these devices on behalf of Cleveland area trade unions.

In 1976 an ATF undercover agent obtained an introduction to subjects Theodore Ricci and Richard Viccarone for the purpose of purchasing a remote control bomb to be used for the ostensible purpose of murdering three loan shark competitors in Chicago, Illinois. While negotiating for the purchase of the device the suspects indicated that they were professional "hit men" and would travel throughout the U.S. in this capacity. Subsequently, surveillance on these subjects revealed them traveling to Youngstown, Ohio, and Rochester, New York, meeting with other well known organized crime figures suspected of being professional bombers-enforcers.

The undercover agent eventually purchased two remote control devices, and one time delay device to be used on automobiles and buildings. A search of the suspects' residence after their arrest uncovered sophisticated burglary equipment, wiretapping equipment and a completed remote control device which had been ordered by the agent. The suspects were sentenced to 10 years in the Federal penitentiary.

A footnote to this investigation reveals that one subject exercised his FOI-Privacy Act request while in the penitentiary, and a second subject was up for parole in December 1979, only 3 years after sentencing for this offense.

#### *Frank Diecidue*

In 1975, in Tampa, Florida, ATF recovered and traced unexploded sticks of dynamite. While following various investigative leads, a pattern was established which linked the suspects to several bombings, a shooting in which a police officer was killed, and alleged contract murders.

Cooperation between numerous Federal, State and local agencies was initiated and a complex conspiracy case developed which resulted in the conviction of Frank Diecidue, underboss to Santo Trafficante, and 12 other suspects. Diecidue received a 45-year Federal sentence, based on RICO and other related charges.

#### *George N. Garrett*

In Miami, Florida, in 1977 George N. Garrett was arrested by ATF and charged with designing, building, and selling sophisticated assassination kits contained in brief cases. These kits employed silencer equipped Ruger pistols, and one such kit was believed to have been used in the murder of John Anderson in Riverside, California. Garrett received a 50-year sentence.

#### *Raymond Scharf*

In 1976, Raymond Scharf, a vending machine operator in St. Louis, Missouri, was convicted of hiring and using professional enforcers to bomb businesses who refused to use his vending machines, and engaging in a conspiracy with a city official to extort money from his competitors. Scharf was an identified associate of the Giordano crime family of St. Louis. He was sentenced to 10 years in prison for his part in the investigation.

#### *Columbus Day bombings*

In 1970 a series of bombings rocked the Rochester area. In 1975 an informant revealed information to ATF that led to the reopening of the unsolved bombings. Subsequently, several well known crime figures in the Rochester area were indicted in connection with these bombings. Subsequently, information as to murders and arsons was developed through testimony and cooperation of Angelo Monachino who became a relocated Government witness, and most recently testified before your Senate Subcommittee hearings.

#### *Burl "Dink" Causey*

In June 1978, ATF agents in Georgia were contracted to murder the District Attorney of Floyd County, Georgia, and the Superior Court Judge of that same district. The subject desiring the contract assassinations was Burl "Dink" Causey, a well known Georgia organized crime figure. The alleged reason for the murders was, that the district attorney was interfering in Causey's drug business.

Throughout the negotiations for the contract, Causey supplied firearms to the undercover agent. The contract was to be delayed until Causey traveled to Las Vegas, Nevada, in September 1978. During tape recorded negotiations, Causey talked of various bank robberies and killings. Subsequently, Causey, his son and daughter assisted in planning details of the murders. Causey and his son were subsequently convicted, with the father receiving a 10-year sentence in Federal court and his son 4 years in Federal court. Both men were released on appeal bond.

Subsequently, the Memphis, Tennessee, Narcotics Division received information that Causey had also put out a contract on the ATF undercover agent in the case.

#### *Nite moves*

November 1978, ATF began an investigation into organized crime activity in the Tacoma area involving arson, murder, and extortion. This was precipitated

by the attempted murder of a Washington State Liquor Control agent. Two unknown assailants shot and wounded Agent Melvin R. Journey, on November 17, 1977.

In the early part of 1978, ATF agents recovered a sawed-off shotgun in Kansas City. This firearm was tied back to the shooting of Agent Journey some 6 months earlier. The gunmen in the shooting of Journey were identified and subsequently cooperated. During questioning, the suspects admitted they had been hired to murder Journey by Robert Valentine over various liquor license disputes.

Valentine was the subcontractor for the murder under the direction of Richard Williams, a subject who controlled a number of licensed liquor establishments in the Tacoma area, along with John Carbone, the alleged head of organized crime in the Tacoma area. Subsequently, the FBI entered the case and assisted ATF.

Numerous arsons, threats, and bribery counts were uncovered. Undercover agents of ATF and the FBI were hired to commit criminal acts to eliminate competition, and intimidate competitors.

During the investigation, the Sheriff of Pierce County, (Tacoma) Washington, met undercover agents. Sheriff Janovich, through Ron Williams, solicited bribes to allow prostitution and gambling in the county. On November 9, 1978, Janovich accepted \$1,000 in bribe money to allow the illegal activities to proceed. Fifteen defendants were arrested and charged with a variety of Federal crimes relating to these charges.

On July 11, 1978, Judge Morell Sharp, U.S. District Court, Seattle, Washington, pronounced sentence on the following defendants regarding the arson of the Nite Moves Tavern in Tacoma and other related organized criminal activities:

	Years
Robert Valentine.....	12
Jackie M. Bentley.....	12
Michael Johnson.....	12
Harry Wilcox.....	5
William Pettit.....	2
Anthony Mladnich.....	2
John Carbone (\$163,000 fine and).....	25
Ronald Williams (\$162,000 fine and).....	25
Richard Caliquiri.....	18
Joseph Carone (\$38,000 fine and).....	18
Frank Mazzucca (\$30,000 fine and).....	15
Lamont Zemeck.....	12
George Janovich.....	12

Other defendants are awaiting trial, or currently serving prison sentences on related arson convictions in State court.

#### *Salvatore "Sammy" Gingello*

During April 1978 in Rochester, New York, a bomb exploded under the car of Rochester racketeer underboss Salvatore "Sammy" Gingello. Two other individuals in the car were injured along with Gingello, who was killed. Investigators determined that a remote control bomb was used to end the career of Gingello. Investigators soon determined that this was the major attack in an internal gang war in the Rochester area.

A series of violent acts were uncovered which had preceded the Gingello slaying. They included arson, fire bombings, attempted murders, and bombings. During this one year period, various remote control devices were obtained, and constructed by participants in the gang war.

On June 28, 1978, ATF arrested Rodney Starkweather, and Anthony Chirico on explosives charges as they attempted to conceal an explosive cache in the Rochester area. One week later, Thomas Didio a principal figure, was machine gunned to death in a motel room.

One month later, Starkweather was shot twice while on the streets of Rochester. Starkweather then agreed to cooperate with ATF. Shortly thereafter James Bates, another suspect also agreed to cooperate, and entered the witness protection program with Starkweather. As a result, six men and one woman were convicted in Federal court on charges stemming from the bombing murder and other related violent activities which rocked Rochester for two years.

*Nardi-Greene*

In 1976, a series of violent explosions began occurring in the Cleveland area. Before this ended, five individuals would die by explosive devices. Numerous other property losses would occur.

These violent acts evolved from attempts by Cleveland area Teamster official John Nardi, and Daniel "Mr. Patrick" Greene to control various illegal rackets. Both ultimately would be destroyed by remotely detonated destructive devices, which had been installed in cars parked adjacent to their vehicles, and both would die in public parking areas in broad daylight.

Four admitted "hit men" would cooperate with Federal authorities in the end, including the alleged west coast LCN enforcer, James "Jimmy the Weasel" Fratianno. Two other "hit men", Raymond Ferritto and Louis Aratari, would talk of numerous attempts to murder Nardi, Greene and their associates. At least seven such attempts occurred involving the use of explosives, firearms and hand grenades.

Aratari would reveal other plans to kill additional union and organized crime figures in the Cleveland area at his direction of union officials Anthony Libertore and John "Skip" Felice. He would provide leads to other individuals who would later be charged in various Federal firearms cases, including guns being supplied to organized crime figures which came from police evidence rooms.

The most damaging information learned was that an FBI informant list had been stolen and sold to the same organized crime figures who were involved in the contract murders. Violence and murder followed. In the end, 20 people would be indicted and arrested. This case accurately portrayed the activities of a hired enforcer. It also reflected the tremendous results capable when Federal (ATF-FBI) and local officials work hand-in-hand.

*Russell-Monhollan*

In May 1978, in Oklahoma, ATF became aware of attempts by area organized crime figures Russell and Monhollan to hire individuals to bomb Oklahoma District Judge William Bliss. The alleged reason for the bombing was interference in their criminal activities, which included receiving stolen property and political corruption.

*Spero*

On May 17, 1979, ATF agents in Kansas City seized a remote control bomb which was believed to have been designed to kill Carl "Tuffy" Deluna, a high ranking mob figure in the Kansas City crime hierarchy. This appeared to be another incident in the continuing gang war in the Kansas City area, which has claimed several lives. Informants reported the collection of arsenals by the various individuals involved including machineguns, dynamite, sawed-off shotguns, and remote control bombs.

The violence associated with organized criminal activity in the Kansas City area is reflective of the professional criminal activity which has occurred nationwide during the past several years. The accumulation of sophisticated weaponry, and remote control destructive devices, has become an almost everyday affair with the professional enforcer.

*John Miller, Sr.*

John Miller Sr., Holland (Toledo), Ohio, is reputed to be the head of the major portion of the production of illegal fireworks in the United States. Estimates range up to 70 percent of the total illicit production of fireworks being controlled by him.

Miller is reputed to be connected with various organized criminal groups in New Orleans, Detroit, New York, New Jersey, and Virginia. He has been known to operate in at least 20 States at varying times.

Analysis of Miller's financial dealings shows gross sales of these illegal products at \$50,000,000 for a 3-year period. Investigative officials have indicated that this may be a conservative figure.

In March 1978, Miller was arrested on multiple charges by ATF in Toledo, Ohio, and charged with violations of the conspiracy statute. As an outgrowth of this investigation, Miller became aware of the identity leads to other individuals who would later be charged. As a result, Miller contacted another individual in the community, a Federal firearms licensee, to negotiate a murder contract against the informant.

The intermediary contacted a third individual to carry out the contract; however, unbeknown to the intermediary, this subject was acting as an informant for ATF at the time.

Subsequent meetings and electronic surveillance resulted in admissions by Miller and the intermediary as to their desire to have the informant killed to prevent his continued cooperation with the Government.

Miller and the intermediary were arrested and charged with civil rights violations. The intermediary was convicted and received a 10-year sentence; however, Miller was acquitted of the attempt to murder the informant. Miller was found guilty of illegal manufacture and sale of explosives, and sentenced to Federal prison.

*Thomas Guerro*

From February 1978 until January 1979, 12 agents in New York led by their own "Mafia don" infiltrated New York's underworld. They purchased machineguns, bombs, sawed-off shotguns, stolen paintings, and narcotics.

Finally, when the agents revealed their true identity, they had already purchased 100 exotic, illegal firearms. The agents arrested 22 illegal firearms and explosive dealers who had believed they were underworld figures. One of those arrested was Thomas Guerro who supplied a bomb in a camera case to the undercover ATF agents. Many of the guns and silencers purchased by the agents are believed to have been used in activities of violence in New York including gangland murders.

ATF agents infiltrated the bomb-murder plot and subsequently the two defendants were arrested and convicted of conspiracy to violate 18 U.S.C. 844(i) of the Explosive Control Act.

A subsequent appeal to the Tenth Circuit Federal Appeals Court resulted in a reversal of their convictions on grounds that no interstate nexus existed to prove the violation.

*Sentencing considerations*

Sentencing consideration for defendants who cooperate has proven to be an effective enforcement tool. It is particularly effective when used in organized crime cases where violence is an element of the crime. The ability to accept lesser pleas for cooperation and testimony has proven vital in many instances to proving conspiracy on the part of defendants removed from the violent acts themselves, but who were actually responsible for hiring or directing the professional enforcer.

Cooperating professional criminals, who have been actively engaged in organized crime violence might be excellent witnesses for your proposed hearings. The testimony of these individuals in matters relating to organized crime, murder, threats, bombings, and intimidation is a matter of public record.

*Bail upon indictments*

The consideration of bail is of concern to our agency. In those instances where an individual is under indictment or has been arrested for a crime involving organized criminal violence, some opportunity should be afforded the judiciary to deny bail if the individual can be shown to have a propensity for crimes of violence; has been convicted of a crime of violence; has ever been convicted of an assault, bribery, intimidation of a witness or obstruction of justice. Potential danger to the community is an essential element of the bail process in the opinion of our agency.

*Freedom of Information (FOI) and Privacy Act*

The provisions of FOI and the Privacy Act are of concern to all enforcement agencies. Not only do they consume time and effort on the part of the Federal enforcement agencies, but they cause us to expose our techniques, methodology, and more importantly, potential and past sources of information. They can be a very real source of danger to witnesses and informants for Federal agencies. Increasingly we see requests by professional criminals, while incarcerated and after release, for FOI-Privacy Act requests for criminal investigative files. Often several related individuals request the same files, each apparently hoping for information to help identify informants and sources for potential retaliation. Certainly, the fear of some local enforcement agencies and informants to cooperate can be directly traced to potential exposure through FOI or Privacy Act requests.

We trust that the enclosed materials will be of assistance in your proposed public hearings. If we can be of further assistance, please do not hesitate to contact us.

Sincerely yours,

G. R. DICKERSON,  
*Director.*

Enclosures.

DEPARTMENT OF THE TREASURY,  
U.S. SECRET SERVICE,  
Washington, D.C., February 25, 1980.

To: Richard J. Davis, Assistant Secretary, Enforcement and Operations.  
From: H. S. Knight, Director, U.S. Secret Service.  
Subject: Senate Permanent Subcommittee on Investigations.

Reference is made to your memorandum dated February 13, 1980 in regard to the Senate Permanent Committee on Investigations.

I have reviewed the letter of Sam Nunn, Chairman, Senate Permanent Committee on Investigations in which he solicits comments on widespread violence connected with various types of crime. I would like to address some of these subjects, since they impact on our enforcement programs.

In regard to the Freedom of Information Act and the Privacy Act a substantial number of inquiries under the Freedom of Information Act have originated from prisoners and other persons, who have been the subject of investigation by this agency. It is suspected that one of the motivations of the requestor is to ascertain the identity of informants.

Section 552(b) (7) of Title 5 U.S. Code (FOIA) exempts investigatory records compiled for law enforcement purposes only to the extent that the disclosure of such records would interfere with enforcement proceedings; deprive a person of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of personal privacy; disclose the identity of a confidential source, and in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, confidential information furnished only by the confidential source; disclose investigative techniques and procedures or endanger the life or physical safety of law enforcement personnel.

Since the enactment of the amendments to the Freedom of Information Act in 1974, concern has been expressed by potential sources of information and by state and local law enforcement personnel about the possibility of the disclosure of information which would reveal the identity of informants or compromise sensitive investigative techniques and procedures.

The Privacy Act contains exemptions which permit the Secret Service to refuse access to criminal investigative files. However, the fact that the Privacy Act permits disclosure pursuant to requests under the Freedom of Information Act has the effect of nullifying the exemption.

The fact that an agency may reveal information under the Freedom of Information Act, which would compromise the identity of an informant or other source of information has had a deleterious effect to obtain information during the conduct of investigations. A legislative proposal which would preclude access to criminal investigative files and intelligence files for a period of 10 years from the date such files are closed would go a long way toward alleviating the problem of potential disclosure of confidential sources of information.

In regard to bail considerations, the Secret Service is of the opinion that Federal Judges, as well as U.S. Magistrates, are often hamstrung when it comes to a determination of bail because they can only properly consider a defendant's likelihood to appear. Certainly, the question of appearance is important, but there are a totality of circumstances which should be considered if a fair and equitable bond is to be set—fair and equitable to both the defendant and to society.

The Secret Service has not found it uncommon for defendants on bond to commit continuing acts of crime and violence. In a recent case a major distributor of counterfeit notes was arrested twice in a matter of days during the same investigation. The second offense was committed while the defendant was free on bond. Our experience has proven that defendants in this category are prone to commit more violent acts as they become desperate in their efforts to avoid apprehension.

Another example involves a manufacturer of counterfeit notes who was prolific, to say the least. After his initial arrest and while he was free on bond, he relocated his entire printing operation and began anew. He became a fugitive and it took a nation wide effort to effect his arrest. In the meantime his notes were distributed and passed to the extent that they became the most widely circulated in this Service. Not to be discouraged, the defendant, upon his second arrest, began to plot an escape from prison.

There are numerous cases which could be cited to support the argument that judges should have wider discretionary powers in the matter of setting bail. However, in summary, we feel that the totality of circumstances should be considered in the determination of bail to prevent the common occurrence, where society becomes a victim of the system. Our experience leads us to the following considerations, if a fair and equitable bail is to be set:

1. The extent of a defendant's criminal record with emphasis on overall convictions, but not to disregard prior arrests in cases of a similar nature.

2. The situation where a defendant has committed prior offenses while free on bond—clear evidence that the defendant has little regard for the conditions of bail.

3. The situation where intelligence information developed by our agency indicated the likelihood of a defendant expressing retribution toward an informant, co-defendant, or witness.

4. The situation where a defendant has the opportunity to flee prosecution because of his known association to Organized Crime. This opportunity would not necessarily be available on a routine offender.

5. Prior acts of violence where a defendant used a dangerous weapon during the commission of the crime.

6. Last, but not least, the seriousness of a crime.

We would also urge that consideration apply to pre-indictment arrests as well as post-indictment arrests.

The incidence of assaults directed against federal officials at all levels has been on the increase over the past several years. These assaults are generally directed against those lower echelon officials particularly federal agents. These assaults have now become increasingly common in other areas of the federal hierarchy to include prosecutors, judges, and others including elected officials. The number of these assaults which involve the use of weapons, also appears to be on the rise. It has been generally observed that more and more searches incident to arrest are yielding weapons as well as the actual commission of crimes where weapons were used. In our opinion assaults upon federal officials should be addressed by legislation when weapons are employed and that the absence of prosecutive emphasis has contributed to the escalating incidence of this type of crime.

It is also our view that greater emphasis should be placed upon the sentencing of individuals who have committed crimes of violence and threats against federal or public officials. An increased commitment on the part of our legal system to a substantial punishment of those offenders could serve as a deterrent.

I have not addressed some issues that are contained in the memorandum of Senator Nunn, such as, legislative considerations for prisoners who volunteer information and professional violence. I recognize these issues to be important, but we do not feel these issues to be substantive from a Secret Service jurisdictional standpoint.

I trust my comments will be helpful to you in your response to Senator Nunn.

H. S. KNIGHT, *Director.*

[U.S. Government Memorandum]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
March 17, 1980.

To: Richard J. Davis, Assistant Secretary, Enforcement and Operations.  
From: Commissioner of Customs.  
Subject: Congressional inquiry concerning violence.

This is in response to Senator Nunn's request dated January 25, 1980, for assistance in providing to the Permanent Subcommittee on Investigations, for proposed public hearings, information relative to violence connected with organized crime, labor racketeering and narcotics traffic. Because the Senator's request ad-

dresses three separate issues, this reply, for clarity's sake, will also be structured in a tripartite fashion.

*Violence connected with organized crime, labor racketeering and narcotics trafficking*

A review of information available to this office reveals that physical violence and/or the threat of physical violence plays a significant role in investigations of organized crime, cargo theft and infiltration by criminals of legitimate businesses which interact with the U.S. Customs Service. A number of cargo theft investigations have revealed that the motive for perpetrating the theft is to discharge financial obligations owed loan sharks. It is evident that the most successful collection technique available to the loan shark is the victim's fear of physical abuse.

On May 24, 1979, U.S. Customs Inspector Jerry Ward was brutally murdered at Lynden, Washington, by Artie Ray Baker and Marie Ferreboenf, members of the Wells Spring Commune, also known as the Tribal Thumb. Although this emerging group is more properly identified as radical or terrorist, they are involved in many criminal activities, including bank robbery and narcotics, to support their activities. They recruit many of their members in prisons and will support any antiestablishment cause.

Ward's murder was committed because Baker thought he would be identified and returned to prison. After Baker's arrest and conviction for the murder, he was involved in an attempted escape organized by members of his group. In the ensuing violence, two members of the Tribal Thumb were wounded; one inmate was killed and one Seattle police officer was wounded. Threats have been made against one of our special agents in this case.

In a joint investigation conducted with the Strike Force in Los Angeles relative to organized crime in the meat packing industry, violence surfaced in the destruction, by arson, of a meat packing company in Long Beach, California. An individual was locked in the building by his coconspirator and subsequently died of burns.

In another joint investigation concerning narcotics and currency, the wife of a Los Angeles-Las Vegas luxury automobile dealer died mysteriously in an automobile accident when it became known to his organized crime and racketeering associates that she was leaving him and "knew too much." A partner in this auto leasing agency was found murdered in the trunk of his Rolls Royce at Los Angeles International Airport.

In New York, one of our informants was able to situate himself in a position as an intermediary between a gun supplier and members of the Lucchese organized crime family. In order to ensure that he completed the transaction, an organized crime member confronted him with the fact that he had a picture of his family, knew where they lived, and harm would come to them if the informant did not complete the transaction. Precautionary measures had to be taken not only to secure the safety of our informant's family but also to instill enough confidence in him to allow him to continue in his intermediary capacity.

In an attempt to gain information relative to the activities of the Irish Northern Aid Committee (INAC), an alleged front for the Irish Republican Army (IRA), two Customs agents attended meetings of the INAC. The agents' identities became known during one of these meetings, and two males approached the agents and stated that if they did not leave they would be killed. This incident illustrates the fact that members of the IRA were prone to violence and the reason individuals are reluctant to come forward with information against this group.

During the course of an investigation into the alleged illegal transportation of \$400,000 in currency between Sicily and the United States, arrangements were made to have a Customs agent go to Italy to get firsthand information in this investigation by meeting with various police officials. On the day immediately prior to the scheduled meeting with a police chief, the police official was shot and killed. Subsequently, through another Federal agency, all Federal agents stationed in Europe were alerted that anyone connected with the victim was a potential target for assassination.

The above-cited cases serve as illustrations of the violent tendencies of those involved with organized crime, munition traffic and terrorist groups.

It is important to note that means other than violence itself are available to the organized criminal element. Our investigation of waterfront-related organized crime in the Charleston, South Carolina, area during the past few years has

resulted in several indictments for violations of Racketeer Influenced and Corrupt Organizations (RICO), tax evasion, mail fraud and the Hobbs Act. While there is little doubt that organized crime is involved with waterfront unions, we have witnessed no violence associated with that involvement. One standard method for keeping waterfront union personnel "in line" is simply not to hire them to work a particular job. If the member is suspected of being an informant, owes a shylock money, or has committed some other infraction, that individual is simply never selected to work. When a man does not work he does not get paid. Hence, economic pressure rather than violence is effectively used to coerce and control individual activity. Strikes, slowdowns, boycotts, refusal to service, and other such economic devices are effectively used against businesses.

Certainly there is ample evidence of the use of coercion and force against Federal officials. Most often, however, it has been directed against informants, witnesses, etc. There is generally adequate legislation to deal with such acts against both Federal officials and witnesses. However, title 18 U.S.C. 111 should be amended to specifically incorporate the 9th Circuit ruling in *United States v. Velarde* that the Federal officer need not be specifically engaged in the actual performance of assigned duties before provisions of the statute can be brought to bear against the assailant.

Title 18 U.S.C. 1505 and other similar statutes should be reviewed and amended, if appropriate, to ensure that informants actively assisting the Federal Government who are coerced, injured, or murdered as a result of that assistance are fully embraced by the statute's provisions, even though formal charges or other court proceedings have not yet been initiated or lodged against the subject(s) of the investigation. These statutes should also be amended, as appropriate, to encompass as principals anyone who causes, aids, or abets such crimes.

The sentences involved are generally not commensurate with the violence of the act. Sentences appear to be based solely upon the record of trial proceedings. The criminal justice system frequently appears to function with the belief that any definitive mention of the actual use and/or degree of violence associated with a crime is inherently prejudicial to the defense and therefore inadmissible (or severely restricted). As a result, some judges frequently refuse to allow companion charges (which specifically relate to the use of assault, coercion, etc.) to be tried with the substantive offense. Consequently, there is nothing in the trial record pertaining to the use or degree of violence associated with the crime. It is the opinion of some of our field offices that prosecuting attorneys also use violence charges during plea bargaining sessions and that the defendant is only infrequently tried for such violations.

Multicount trials, which would encompass the acts of violence along with the substantive charges, appear to be discouraged by many prosecutors and judges. The reasoning reportedly is that multiple counts make the trial much more complex and increase the potential for jury confusion.

Generally there are sufficient statutory provisions to cover both the investigation and prosecution of violence associated with Federal crimes. There appears to be, however, a significant lack of actual prosecution for such acts. Its presence appears also not to be a significant factor during sentencing or parole.

Department of Justice policy should require the specific prosecution of acts of violence associated with the commission of other Federal crimes. Such charges should be specifically excluded from the realm of plea bargaining. Judiciary policy should preclude sentences levied for acts of violence being made concurrent with those levied for the other "substantive" charges.

Mandatory minimum sentences for such acts of violence are strongly recommended. Exceptions to imposition of the mandatory minimum should be severely limited and strictly controlled.

*Sufficiency of bail upon indictment of an individual for violating a Federal criminal statute*

The present Federal conditions for release on bail are fundamentally debilitating to the criminal justice system. A basic tenet of our criminal justice system is that the punishment should fit the crime. Why then should not the amount and conditions of bail fit the crime and the alleged violator?

It is our experience that the judiciary either fails or refuses to recognize the vast amounts of money immediately available to large-scale criminal organizations—particularly those engaged in narcotic trafficking. Such organizations must offer protection to retain the loyalty of their membership. Every major

seizure of a marijuana-laden mothership or large aircraft load of cocaine and/or quaaludes is a loss of anywhere between \$500,000 and up into the millions of dollars to such organizations. Such losses have not appeared to diminish violations. Forfeiting a bail of anything less than almost \$1,000,000 for many such organizations is simply an inconvenient business expense. The number of narcotics defendants which have forfeited their relatively low dollar amount bails and fled prosecution in the South Florida and other areas is significant.

The number of defendants out on bail subsequently found to have either continued to engage in the same criminal enterprise or activity for which they were arrested/indicted or found to have committed similar crimes, even several times, after release on bail is legion.

Suspects engaged in organized crime and narcotics related activities, almost always their sole source of income and support, will, in many cases, continue to engage in such criminal activities if released on bail.

Frequently, such activity is directly related to obtaining monies to pay for both their defense and bail. The need and willingness to commit additional crimes is significantly aggravated by this situation. The length of time between arrest and actual incarceration, if ever, provides ample time for the violator to not only operate but to significantly expand his criminal operation or organization. Bail release restrictions rarely hamper such activities in any meaningful way.

The defendant's community ties, past criminal record, source of income, type and nature of the crime charged, and predisposition to commit additional crimes if released and the nature of these crimes should be considered before a defendant is released on bail. The dollar amount and strictly enforced conditions of bail must provide for the defendant's appearance for trial. If the defendant is likely to commit additional felonies, either state or Federal, the defendant should not be released.

Such restrictions to the use of bail should be offset by a more rapid trying of the charges alleged.

*The impact of the Freedom of Information Act and/or the Privacy Act on recruitment of informants and intra-agency exchange of information*

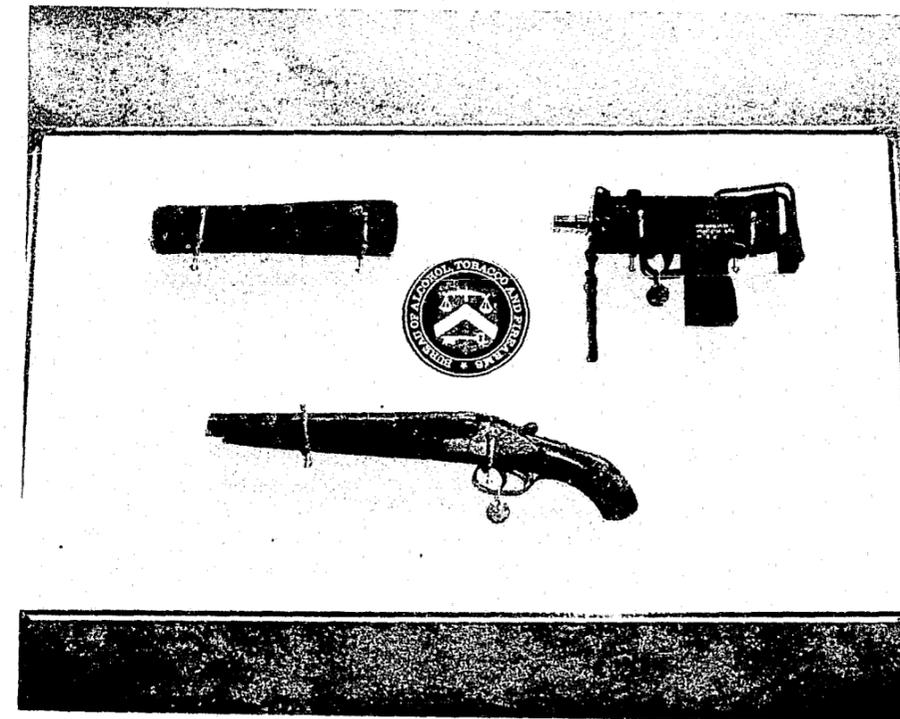
Perhaps one of the better sources of information about the detrimental effects to law enforcement of these acts is contained in the President's Reorganization Project Report of October 1978. Therein is contained a summary of the major problems encountered by several of the larger Federal investigative agencies. Generally, both acts have generated the same type problems. We, too, have encountered these same problems:

- (a) Difficulty in obtaining or timely obtaining information from other organizations.
- (b) Generally, informants must be advised that their confidentiality can no longer be guaranteed.
- (c) Delays in or incomplete investigations caused by suspects using both the Privacy Act and Freedom of Information Act.
- (d) Lack of cooperation by citizenry.
- (e) Delays in enforcement actions.
- (f) Differences in interpretations of the Privacy Act by the different Federal agencies.
- (g) Significant financial and personnel workload problems directly related to these acts.

The above situation has been even more aggravated by the Tax Reform Act of 1976 (26 U.S.C. 6103(i)) and the Financial Privacy Act. The sizeable resources available to the organized criminal element, including the very best in legal talent, has allowed them, via the use of this legislation, to significantly hamper law enforcement efforts.

Our current inability to protect confidential informants is considered to be the most severe ramification of this series of legislative actions. Informants are the single most important source of information to any investigative agency. Our ability to develop and use this source has been severely hampered. Legislative action must be taken to alleviate this situation.

EXCERPTS FROM EXHIBIT No. 12



Upper left, MAC 10 silencer caliber 9mm. made by RPB Industries, Atlanta, Ga. Sound reduction 20 dB, weight 1.2 pounds.

Upper right, MAC 10 submachinegun, caliber 9mm. made by RPB Industries, Atlanta, Ga. Rate of fire 1,000 RPM, weight 6.25 pounds.

Lower, weapon made from a shotgun, 20 gauge. Made by J. P. Sauer & Sohn, West Germany. Overall length 20 inches, barrel length 12 inches.

Chairman NUNN. I have many questions here and I think the other members do also. Has there been an increase in the use of explosives, automatic weapons, silencers, assassination kits and related weaponry by organized crime in recent years?

Mr. DICKERSON. Mr. Chairman, I couldn't answer that with specificity as to the percentage, but rather by the types of cases that we encounter. And we have found increasingly the use of sophisticated automatic weapons such as the MAC-10 in murders today.

This is reflected in our seizure statistics. For example, thus far in fiscal year 1980, some 606 machineguns, National Firearms Act type firearms, have been seized in the south Florida area alone. In April this year six fully automatic M-16's were seized in Massachusetts. Total explosives have increased about fivefold, from less than 3,000 pounds in fiscal year 1975 to over 15,000 pounds in fiscal year 1979. Requests for traces of weapons involved in murder investigations by State and local authorities which are processed by ATF have increased by about 50 percent, from 2,671 in 1976 to in excess of 3,900 in 1979. I

think, Mr. Chairman, that these results of law enforcement efforts are indicative of the substantial increase in the use of the explosives, explosive devices and automatic weapons by criminal elements in this country today.

Chairman NUNN. Thank you. Can the average citizen legally obtain a fully automatic weapon or silencer-equipped weapon?

Mr. DICKERSON. Yes, sir. The average citizen can obtain these weapons if he complies with the requirements for registration and payment of a transfer tax, and if he is not precluded from possessing the weapons by State law where he resides.

Chairman NUNN. What are the uses of a silencer? What are the legitimate uses of a silencer in this country? Why would an ordinary person want a silencer?

Mr. DICKERSON. Mr. Chairman, I've racked my brain, but I can't come up with a good reason as far as a legitimate use other than as a curiosity item by a collector who might be interested in some very specialized types of collector's items.

Chairman NUNN. Can a citizen legally purchase dynamite or plastic explosives?

Mr. DICKERSON. A citizen can purchase dynamite and plastic explosives in the State in which he resides by going to a legitimate outlet for explosives and by having his name recorded as the purchaser of the explosives.

Chairman NUNN. How about detonator caps? You could refer any of these questions to your assistants there, if you would like.

Mr. DICKERSON. Yes, sir. He would be able to purchase them.

Chairman NUNN. A commercially available magazine on improvised weaponry instructs readers that antipersonnel bombs can be easily constructed with polyester casing resin in order to avoid detection at airports and other controlled areas where magnometer checks might be encountered. In view of the possibility that bombs may be constructed containing amounts of metals too small to be detected by a magnometer would the tagging program be effective in deterring this?

Mr. DICKERSON. Yes, sir. I think the point here is that if vinyl were used as a cover for bombs, it would not be detectable to the magnometer. However, the principle of our tagging detection program is that the particles which were added to the explosives would give off a vapor which would be detectable by special sensing devices. So if the sensing device were available along with the magnometer, tagged explosives would be detected where they might not be detected by the magnometer.

Chairman NUNN. This same commercially available magazine lists sources of chemicals that are used in making explosive powder. Assuming these ingredients can be purchased by anyone, just how difficult is it actually to make explosives?

Mr. DICKERSON. Mr. Nunn, I am going to call on my experts on this because this is a fairly complex question. In one sense, it is very easy to make explosives from some readily available products. However, it is more complicated than that. It can be extremely dangerous and many people who do attempt to make explosives find that they themselves are the victim of the explosive because they have mis-

handled the products. In addition, such explosives, unless prepared by someone who is an experienced technician, are lacking in performance. They may or may not achieve the performance results of commercially available explosives. My own experience has been that most of the identifiable criminal uses of explosives in the United States today are from commercial explosives, not from homemade bombs.

But I would like to call on Mr. Dexter to explain a little bit more about some of the problems in attempting to construct homemade bombs.

Chairman NUNN. Mr. Dexter.

Mr. DEXTER. Yes, sir. There is various literature available throughout the United States in bookstores, libraries, through mail order, that do in detail illustrate the manufacture of improvised devices, bombs, weapons, that use explosives or explosive materials. However, there is a certain amount of skill required in following the directions and it pertains mostly to the safety and the hazard of mixing these particular chemicals together. Sometimes they can ignite or detonate—disintegrate—instantaneously when the two chemicals come in contact with each other. This happens all the time, especially with people in high schools or college or children who are experimenting with these chemicals and the directions that are contained in this underground literature, such as the "Hazardous Cookbook" or the "James Bond" book or what have you. Some of the instructions in there are not really in line or they do not provide for the safe manufacture or assembly of these chemicals.

And some of the directions have been left out, have been omitted intentionally, and some of it requires special equipment in handling.

Chairman NUNN. Then amateurs who pick up such magazines and goes out and experiments with explosives are creating great risk to themselves. Is that right?

Mr. DEXTER. They certainly are. However, the person who is trained in this, has had training in the military or some other source, they can be put together quite effectively and used.

Chairman NUNN. Can you describe how expensive or difficult it is to make some of the explosive devices we have on display here?

Mr. DEXTER. Anything that you see right here can be purchased in the District, in any drug store, hardware store. Most of the materials are readily available.

Chairman NUNN. Not very expensive?

Mr. DEXTER. No. You could manufacture a device probably for less than \$1, up to a very sophisticated device like this costing up to probably \$1,000 or more.

Chairman NUNN. What would you get for \$1. I didn't know you could get anything for \$1. [Laughter.]

Mr. DEXTER. A small piece of pipe and some matches. Paper book matches or a box of striking matches and other ingredients and assembling these together with the proper technique and you can manufacture a device that would probably kill somebody.

Chairman NUNN. Can a binary explosive such as Kinepak stick be tagged?

Mr. DEXTER. This particular question I am not fully qualified to answer. I believe there is somebody here who can answer that.

Mr. DICKERSON. I am sorry, Senator, I didn't hear the question. Kinepak is an explosive that is made up of two separate particles. You put them together and use them as an explosive.

Chairman NUNN. What, again, is a Kinepak stick?

Mr. DEXTER. It is a two-component explosive. I have a board I did bring here with me. It has pictures of particular binary explosives. Kinepak is one of them. If you would like, I can show you it.

The two components of Kinepak—as you can see, are a small can and this contains component A, a liquid component, and this particular component is component B, which contains a sodium nitrate material which has been processed to accommodate the liquid. When the two components are added together, component A is opened and poured into component B. Then you have a very high explosive, equivalent to dynamite.

Chairman NUNN. I understand the MAC-10 kit is illegal to possess unless it is registered; is that right?

Mr. DICKERSON. Yes. Originally an outlet was distributing these kits, and had taken the lower receiver, which is considered the essential part of the machinegun, and had cut them in three parts. A number of these kits were distributed. However, we found after the kits were used, as I pointed out, in a number of murders and illegal acts, that a good machinist could take these kits and reassemble them in approximately an hour or two of work and put them back into operating condition. In fact, the nine murders I mentioned, which took place in the Florida area, all were committed with the weapons which had been purchased in this kit form, rewelded and put back in operating condition.

Based on that information, we reclassified this kit as a machinegun subject to control under the NFA Act. We have gone around where we have been able to identify people with the kit and asked them to abandon them and stop further distribution.

Chairman NUNN. The parts are now controlled under your new regulation?

Mr. DICKERSON. They are now controlled, and I don't believe are available through legitimate channels.

Chairman NUNN. Pass that up here so we may take a look at it. Where is the MAC-10 manufactured?

Mr. DICKERSON. It is manufactured in Atlanta, Ga. It was originally manufactured by the Military Arms Corp.

Chairman NUNN. By whom?

Mr. DICKERSON. The Military Arms Corp.

Chairman NUNN. Where is that located?

Mr. DICKERSON. In Atlanta, Ga.

Chairman NUNN. Is it still being manufactured there?

Mr. DICKERSON. It is now being manufactured by RPB Industries in Atlanta, Ga., which is a legitimately licensed manufacturer for Federal firearms.

Chairman NUNN. So the MAC-10 is being legally manufactured in Atlanta, Ga.

Mr. DICKERSON. It is being legally manufactured.

Chairman NUNN. What are the requirements to purchase one of these legally?

Mr. DICKERSON. The requirement would be the payment of a purchase transfer tax of \$200.

Chairman NUNN. And registration?

Mr. DICKERSON. And registration.

Chairman NUNN. How many MAC-10's are purchased legally in the United States yearly?

Mr. DICKERSON. I can get that. I can show the number purchased. I do not have them now.

[The information follows:]

All MAC-10s are purchased legally from the manufacturer. However, subsequent transfer of these NFA weapons between the dealers, between the dealer and purchaser, or from a purchaser, or from a purchaser back to a dealer could occur numerous times during a year. As a result, while only 433 MAC-10s were reported as manufactured during FY 79, several times that number of forms covering the transfer of NFA weapons may have been processed during the year. A manual examination would have to be made of approximately 12,000 forms to determine if a MAC-10 was involved in the transfer, and this information still would not be directly related to the number of these weapons manufactured during the year. All the transfer activities reported to AFT involve legal transactions.

The following quantities of MAC-10s were reported as produced by the manufacturer on his Quarterly Firearms Manufacturing and Exportation Report that is submitted to the Bureau.

Fiscal year:	
1977	1,626
1978	259
1979	433
Total reported production	2,318

Chairman NUNN. Were the MAC-10's ever used in the Florida killings and other killings in the country? Were most of them purchased legally and registered, or were they purchased before the change in regulations?

Mr. DICKERSON. They were purchased in kit form before we changed the regulation. They were simple to reconstruct and manufacture. They were illegal weapons.

Chairman NUNN. Before the regulation, were the people manufacturing the kits within the law?

Mr. DICKERSON. No, sir; people who purchased the kit were within the law, but the actual reassembling of the kit would constitute manufacturing, that constituted an illegal act.

Chairman NUNN. Those who sold the kit were within the law before the regulation and those who actually bought the kit were within the law, but when they actually started converting and putting it together, they had violated the law.

Mr. DICKERSON. Yes, sir; that is correct.

Chairman NUNN. At what stage is the law violated now, when the kit is actually manufactured?

Mr. DICKERSON. Now, the law is violated at the point when the kit is sold, if it is not registered. They would be able to sell these kits, but they would have to be registered.

Chairman NUNN. The kit could be sold legally, but it has to comply with the registration acts.

Mr. DICKERSON. Yes.

Senator SASSER. Mr. Chairman, would you yield at that point for one or two questions?

Chairman NUNN. I will be glad to yield to you for whatever questions you need.

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

Senator SASSER. Director Dickerson, in your written testimony, which we have examined, you describe an incident at the Tesoro Coal Co. in Hazard, Ky. Can you tell us, is organized crime attempting to work its way into the coal industry? Have you seen any evidence of that? I am talking about the coal industry primarily in the southern United States.

Mr. DICKERSON. Mr. Sasser, this particular incident, and there have been others in the Kentucky area, were largely labor-oriented instances, resulting from labor disputes. Some of the individuals involved in the actual bombings may have been loosely associated with organized crime.

Senator SASSER. Has this occurred primarily in the coal fields in Kentucky or has it occurred in other areas in the southern United States? Most specifically I am asking about my State, Tennessee. Is there any evidence of persons associated with organized crime being involved in instruments of violence in the coal fields there?

Mr. DICKERSON. Senator Sasser, I do not have any specific information on that now. I will be glad to check with our people in that area and supply it for the record.

[The information follows:]

On March 24, 1978, the H&W Coal Company, in Devonia, Tennessee, was the victim of a bombing. Unknown perpetrators detonated one device damaging a utility pole and a second device, consisting of 6 sticks of dynamite and approximately 75 feet of detonating cord, was recovered from another utility pole belonging to the coal company.

The H&W Coal Company was a non-union firm. Although no suspects were ever identified in connection with this incident, the bombing was one of numerous similar labor related explosives incidents that occurred in Kentucky, Virginia and West Virginia during the 1977-78 United Mine Workers Strike.

ATF shares the concern of east Tennessee authorities relative to the potential for explosives related acts of violence. Consequently, in connection with the forthcoming "Expo-82" function in Knoxville, Tennessee, ATF will provide advance training to State and local officers reference bomb search/investigative techniques; laboratory techniques relative to the collection, preservation and examination of explosives/arson evidence; and further, provide on-site response personnel and equipment to assist in the investigation of any explosive-related incidents that might occur.

Senator SASSER. With regard to the MAC-10 submachine gun we have been discussing, how long has that weapon been in production?

Mr. DICKERSON. It has been manufactured since the late 1960's.

Senator SASSER. What was the purpose of that weapon being designed? Was this designed under a Government contract to be used for some sort of Government operation, or was this purely designed to be sold for profit in the private sector?

Mr. DICKERSON. I'll call on Mr. Owen to answer this question.

Mr. OWEN. Senator, the weapon was initially developed commercially in the hopes it could be sold to the U.S. military.

Senator SASSER. Is there a market for the weapon outside of the country? In other words, is the weapon being manufactured for sale to other foreign governments for use in their army or police forces, to your knowledge?

Mr. OWEN. There was much interest in the weapon outside the United States. The State Department blocked a great deal of the exportation.

Senator SASSER. Do you know why the exportation of weapons was blocked?

Mr. OWEN. No, sir, I do not.

Senator SASSER. Do you have a figure on the number of these weapons that have been sold within the continental United States?

Mr. DICKERSON. We believe that approximately 4,000 of these kits were distributed.

Senator SASSER. Are they available now?

Mr. DICKERSON. As I mentioned, we have stopped the further distribution of the kits, and we have advised those recipients we knew who purchased the kits that they were illegal and should be abandoned. In addition to law enforcement efforts by ourselves, FBI, State and local authorities, approximately 600 of the weapons have been recovered in search warrants and seizure actions. I am sure that there still are probably some 2,000 or 3,000 of these kits that are floating around in the United States.

Senator SASSER. If I wanted to buy a MAC-10 submachine gun now, could I find a gun dealer and order one and purchase it?

Mr. DICKERSON. Yes; you could legally purchase it by paying the \$200 transfer action and registering the weapon with the ATF.

Senator SASSER. And they are still manufacturing this gun for sale through gun dealers in this country, if they wish to stock the weapon themselves.

Mr. DICKERSON. Yes, sir.

Senator SASSER. And to be purchased in the fully automatic mode.

Mr. DICKERSON. It could be purchased in the fully automatic mode by complying with the requirements of the NFA Act.

Senator SASSER. Thank you, Mr. Chairman.

Chairman NUNN. Thank you, Senator Sasser.

Can your expert explain what is involved in converting a semi-automatic weapon such as the M-1 into a fully automatic weapon?

Mr. OWEN. Yes; basically two types of firearms are known as the M-1, both of which are military rifles. The M-1 Garand is fairly difficult to convert without extensive modification. However, the M-1 carbine was developed in World War II by the military. Shortly after its development, a kit was designed specifically for the purpose of altering the weapon to fully automatic fire. And any semiautomatic carbine can be very simply converted, merely by installing other component parts.

Chairman NUNN. We are aware that there is a considerable increase in trafficking in controlled weapons in the south Florida area commensurate with the drug traffic increase there. Is AFT taking any steps to intensify its enforcement efforts in south Florida?

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

Mr. DICKERSON. Yes, sir, Mr. Chairman, we are trying to recognize those situations which occur around the country where use of firearms and explosives becomes a major local problem and respond to that by increasing our efforts. I have authorized an increase, a minimum increase but an increase in staff, in the Florida area in an attempt to deal with this.

Chairman NUNN. What is your increase, what percentage, what number?

Mr. DICKERSON. I have authorized six additional criminal positions, 10 percent.

Chairman NUNN. You have about 60 there now, and you are increasing by 6?

Mr. DICKERSON. Yes.

Chairman NUNN. About a 10-percent increase in the south Florida area?

Mr. DICKERSON. Just about a 10-percent increase.

Chairman NUNN. When will that occur, the actual placing of agents in the field?

Mr. DICKERSON. We have placed some there, Mr. Chairman, but the additional moves will have to take place after October 1 of this year.

Chairman NUNN. Does ATF have the resources necessary to combat this increase in this kind of activity?

Mr. DICKERSON. We recently have been reviewing our priorities in the use of our criminal enforcement efforts, and in the last year have been targeting major traffickers as well as major criminal elements associated with organized crime and narcotics trafficking. We only started this redirection about a year ago. I think our efforts have been extremely successful. But I do not have any indication right now that this will require substantially increased resources. We believe with this type of targeting on specific organized crime figures, narcotic traffickers, major arms traffickers, that we are being very effective.

Chairman NUNN. You are saying you could not now know you need any additional resources?

Mr. DICKERSON. I certainly would like to see the direction we are going in now before I recommend any substantial increases.

Chairman NUNN. You mentioned a while ago that ATF agents participated in the investigation of a murder contract on public officials in the State of Georgia. When did that occur? Who was the intended victim, and what happened?

Mr. DICKERSON. In June 1978, ATF undercover agents were contracted to murder the district attorney and a judge of Floyd County—

Chairman NUNN. In Floyd County, Ga.?

Mr. DICKERSON. In Floyd County, Ga., yes, the subject desiring contract assassination was Burl Causey, a well-known Georgia organized crime figure.

Chairman NUNN. When you say "organized crime", what group did Mr. Causey belong to?

Mr. KEATHLEY. He was in a narcotics organized crime group, operating in Georgia and Alabama.

Chairman NUNN. When did this occur? You could refer this to one of your other people.

Mr. KEATHLEY. 1978.

Chairman NUNN. 1978?

Mr. McGUIRE. Yes, sir.

Chairman NUNN. What resulted as a result of that? Was there an undercover ATF agent approached to carry out the killing?

Mr. McGUIRE. Yes.

Chairman NUNN. Was there an indictment and conviction that grew out of this?

Mr. McGUIRE. Yes, there was.

Chairman NUNN. Who were the intended victims, the judge and district attorney in Floyd County? State officials?

Mr. McGUIRE. Yes, sir.

Chairman NUNN. What was ATF jurisdiction in this?

Mr. McGUIRE. There were title II weapons, sawed-off shotguns provided by Mr. Causey to our undercover agent.

Chairman NUNN. Was he convicted?

Mr. McGUIRE. Yes, he was.

Chairman NUNN. What was the sentence?

Mr. McGUIRE. Ten years.

Chairman NUNN. Is he in prison now?

Mr. McGUIRE. I think he is on appeal, bail, sir.

Chairman NUNN. Was anyone else convicted?

Mr. McGUIRE. Yes, his son.

Chairman NUNN. Senator Percy has introduced, and I have co-sponsored with him, as well as other members of this committee, an arson-for-profit statute which would make arson for profit a Federal crime. Director Dickerson, what is your view on this?

Mr. DICKERSON. Mr. Chairman, as I pointed out in my testimony, the crime of arson is largely a State and local problem. However, I think in many areas it is such a burgeoning problem that the State and local authorities have extreme difficulty in dealing with it.

I have visited cities, Chicago, for example, where the bomb and arson squad is just inundated by the size of this problem. Los Angeles would be another city.

I think that given the fact it is such a big problem, and given the fact that these arsons are committed in interstate commerce, there is a need for the Federal Government to provide some type of assistance. This does not mean that I believe the Federal Government should get involved in every arson that takes place. I think the magnitude of the problem is such we could not do that.

Chairman NUNN. Do you think you could draw up a set of reasonable rules and regulations under which your people would get involved if this kind of statute passed?

Mr. DICKERSON. Yes, sir, I believe we could. I believe we could concentrate on commercial-type arsons having some type of interstate connection where it went beyond the capability of State and local authority to deal with the problem.

Chairman NUNN. You mention in your statement that ATF agents are not included within the list of Federal offices protected by the Federal assault statutes. Have there been assaults on ATF agents in recent years that would demonstrate the need to extend the statutes to include your agents?

Mr. DICKERSON. Mr. Chairman, during the past 3 years, there have been assaults against 103 ATF special agents in the performance of their duties.

Chairman NUNN. How many?

Mr. DICKERSON. 103.

Chairman NUNN. During what time frame?  
 Mr. DICKERSON. Three years.  
 Chairman NUNN. During the last 3 fiscal years, or calendar years?  
 Mr. DICKERSON. I believe it is calendar years.  
 Chairman NUNN. 103 assaults on ATF agents during that time?  
 Mr. DICKERSON. During the past 3 calendar years there have been 103 assaults.  
 Chairman NUNN. The Federal Government does not have jurisdiction over that now.

Mr. DICKERSON. The jurisdiction is vague. We were originally part of the Internal Revenue Service, which is covered. We now are a separate bureau. We feel we still continue to be covered under that particular provision but it is questionable. I am afraid at some time we may get a bad ruling. We would like to see that clarified within the assault statutes.

Chairman NUNN. Thank you very much, Director Dickerson, and all of you people.

Senator JAVITS, I know, has some questions.

Senator JAVITS. Just one question.

I am very interested in the tagging question which you mentioned, I gather, before I arrived, but which you did expand on in your oral testimony. The investigative results are shown by your written testimony. You wish us to accept those as evidence of the usefulness of tagging, do you not?

Mr. DICKERSON. Yes, sir.

Senator JAVITS. Are there any other cases you would like to call to our attention?

Mr. DICKERSON. On the particular case you are talking about, I have a letter from the U.S. attorney which I think is indicative of the value of that case. I would like to submit that later for the record.

Senator JAVITS. May we have that, Mr. Chairman?

Chairman NUNN. Without objection, it will be made a part of the record when submitted.

[The information furnished follows:]

UNITED STATES ATTORNEY,  
 Baltimore, Md., April 1, 1980.

Mr. G. R. DICKERSON,  
 Director, Bureau of Alcohol, Tobacco, and Firearms, Federal Office Building,  
 Washington, D.C.

DEAR MR. DICKERSON: This office recently prosecuted James L. McFillin for the bombing murder of his nephew, Nathan A. Allen, Sr. He was convicted after a six week jury trial. The investigation and prosecution succeeded largely because of the discovery of taggants at the crime scene, which resulted in the prompt tracing of the purchase of explosives used in the bomb and enabled the ATF agents conducting the investigation to recover other evidence which might otherwise have disappeared or been successfully concealed.

On May 10, 1979, a bomb exploded in the cab of Nathan Allen's pickup truck, causing his death. No explosive material was found at the scene; therefore the explosive used could not be traced. On May 16 taggants were found in vacuum sweepings from the truck. The taggants identified the explosive as Tovex 220, a DuPont watergel explosive. By May 17 ATF agents learned that on March 10, 1979, in Martinsburg, West Virginia, McFillin, who was the uncle and neighbor of the victim, had purchased Tovex 220 which contained the same taggants as those found at the crime scene.

The explosives seller remembered that McFillin had placed the Tovex in his automobile, a fact that contributed to the establishment of probable cause for a

search of McFillin's car. A search warrant executed on the car on May 22, 1979, resulted in the discovery of wires matching those on the bomb harness. Those wires, plus the taggants themselves, were the critical evidence linking McFillin directly to the bomb.

Thus the taggants were essential to the conviction of the defendant, both as evidence and as leads to the discovery of further evidence. Certainly a program which produces such strong evidence and prompt investigative leads should be encouraged.

Very truly yours,

RUSSELL T. BAKER, JR.,  
 U.S. Attorney.

Senator JAVITS. I gather from looking over your testimony the use of tagging would occur in two ways: One, the possible identification of the presence of explosives if sought to be spirited into a secured site. That is experimental.

Mr. DICKERSON. Yes; we are attempting now to identify the type of product which could be safely inserted in an explosive and continue to give vapor release over the life of the explosive. I have with me Mr. David Williams, our explosives scientist, who could give a fuller report if you would like.

Senator JAVITS. I will be happy to hear from him, but I think you ought to answer this adequately. Your answer confirms what you have written in your statement, is that right; on this issue?

Mr. DICKERSON. Yes, sir.

Senator JAVITS. The other use of tagging is to trace the source of the explosives, and that is further advanced technically; is it not?

Mr. DICKERSON. Yes. One of the most difficult problems in an investigation of a criminal bombing is the fact that the nature of the crime itself destroys the evidence. For example, in the infamous LaGuardia bombing several years ago, the type of explosive used has never been identified. A residual taggant, which would remain after the explosion, would identify the type of explosive, would identify the distribution of the explosive, and would identify the last purchasers of that explosive. Those could be extremely valuable leads and certainly shorten the time of an investigation, making it easier for an investigator to do his job.

Senator JAVITS. Subsequently, that latter use of tagging is perfected; is that correct?

Mr. DICKERSON. Technically we have established the compatibility of the taggant with cap-sensitive explosives. We are continuing our research with detonators and some other products such as smokeless powder. We are continuing research in that area.

Senator JAVITS. Mr. Chairman, may I suggest the staff confer with the expert that Mr. Dickerson refers to. We may have an up-to-date explanation.

Chairman NUNN. Without objection.

[Additional information supplied by the Bureau of Alcohol, Tobacco, and Firearms follows:]

#### CURRENT STATUS OF THE EXPLOSIVES TAGGING PROGRAM

In the 3½ years that ATF has been conducting the explosives tagging program, we have spent \$6.9 million on identification tagging, detection tagging, and untagged explosives detection research and development. We can report that substantial progress has been made to date.

## IDENTIFICATION TAGGING

A major problem faced by law enforcement in dealing with explosives crimes is that little evidence remains after a blast to allow law enforcement officers to arrest and convict bombers. Identification taggants added to explosives during manufacture and recovered at a bomb scene would give investigators a means to identify the source of the explosive used in a bomb. That particular production lot of explosives can then be traced to the last legal purchasers. This provides the bomb investigator with a starting point for an investigation—an essential element he often lacks.

Identification tagging to help solve bombing crimes is well on the road to achievement. The basic research and scientific aspects are nearly done and could be completed in fiscal year 1981 if adequate funding is continued.

ATF has requested and received the cooperation of several explosives manufacturers in conducting safety and performance tests with identification tagged explosives. After extensive scientific testing in their own laboratories, explosives manufacturers successfully tagged and distributed through normal commercial channels over 6 million pounds of cap-sensitive high explosives under a pilot test program. The recent report on tagging issued by the Office of Technology Assessment (OTA) finds that "... the testing done to date creates a reasonable presumption that the 3M identification taggant is compatible with dynamites, gels, slurries, emulsions, and black powder."

Ongoing tests have demonstrated that the 3M identification taggant can survive detonation and be recovered by trained field and laboratory investigators. The OTA report concludes that "... taggants appear to be recoverable from bombings, with a modest, but coordinated, effort on the part of field and laboratory personnel."

The technical development of identification taggants is not yet complete, especially for use in other explosive materials. Studies on both the identification and detection tagging of detonating cord and fuse cord have been carried on simultaneously and center on attaching the taggants to the fabric liner using an adhesive. A simulated detonating cord line is being constructed to further study this approach.

The identification of blasting caps, a priority item, is a difficult problem. The approach of placing the taggants in an exterior label resulted in excellent survivability and resistance to removal; however, mechanical adhesion has been poor. Two promising approaches are now being studied that would place the taggants in the interior of the blasting caps. One approach involves tagging the polyethylene insulating sleeve used by one cap manufacturer, and the second method incorporates the taggants into the blasting cap rubber plug material or between two insulating plugs.

Further research is also required on at least one smokeless powder brand and one cast booster material as the result of a chemical reactivity when high concentrations of identification taggants were mixed with these materials and subjected to high temperatures. However, this reaction occurs only with one manufacturer's brand of smokeless powder and one cast booster type, and has no effect on other explosive materials. As OTA points out, no problems have been found with identification taggants and other explosive materials.

Additional tests are now being conducted by independent laboratories to determine the cause and extent of the chemical reactivity in the powder and booster material. The results of these tests will tell us what action is required to ensure that the tagging of explosives does not compromise the safety of these products.

Preliminary ballistics tests devised and performed by the sole domestic black powder manufacturer concluded that identification taggants have no adverse effect on the performance of black powder as a propelling charge in antique or replica weapons. A program to determine changes in ballistics, erosion, and fouling caused by tagged smokeless powder was developed in coordination with the Sporting Arms and Ammunition Manufacturers' Institute. The first stage of testing under "worst case conditions" is now underway.

## DETECTION TAGGING

Detection tagging would provide law enforcement and security personnel with a means to signal the presence of a bomb before it exploded. The OTA report determined that "Detection taggants would be very effective in protecting those high-value targets where protection by detection taggant sensors is feasible."

Detection tagging research and development is not as far advanced as identification tagging but shows great promise.

Detection taggants are microscopic "ping-pong balls" called microcapsules. Each microcapsule is filled with a vapor-emitting substance that can be detected by instrument sensors. Five vapor materials have been identified that present no health or environmental hazard, do not already exist in nature or the atmosphere, and are not absorbed or held back by clothing or items in luggage.

Safety and compatibility testing of detection taggants with explosive materials is in progress. Tests to date show that the addition of detection taggants does not increase the sensitivity of explosive materials.

Three different types of detection instruments—the continuous electron capture detector (CECD), the ion mobility spectrometer (IMS), and the mass spectrometer (MS)—are being developed to sense detection taggants. All are promising; however, R. & D. restrictions in fiscal year 1981 will require that we select one technique on which to concentrate future development efforts.

The detection instruments operate by taking a sample of air from the vicinity of the object of search, such as people, suitcases, and packages. This air sample is swept into an analyzer and an alarm signal is generated if tagged explosives are present.

We are even conducting research on the possibility of using animals to sense detection taggants. However, animals do not appear to be as effective as instruments.

## DETECTION WITHOUT TAGGING

No alternative technique for the identification of explosives without tagging is feasible today; however, ATF is investigating the feasibility of untagged detection of explosives based on bulk physical properties. The development of a breadboard system employing dual-energy computerized tomography is currently underway.

Other Federal agencies, the military, and some foreign governments (for example, Israel and England) have concentrated their research on techniques to detect explosives by mechanical means without the use of taggants. We would like to see one of the other Federal agencies with greater R. & D. capabilities in untagged detection incorporate the dual-energy computerized tomography project into its current development efforts.

Untagged detection programs to date, however, have not produced detectors capable of detecting a broad base of explosives or suitable for use in a wide range of search scenarios. The OTA report finds that "... none of the (untagged explosives detection) approaches, with the exception of non-tagged vapor detection, has progressed as far as the detection taggant research and most appear to be significantly more expensive. ..." The report further concludes that although commercial detectors for sensing some untagged explosive vapors, similar in concept to the U.S. Customs Service drug-sniffing detector, are now being developed and used, "... their sensitivities and flexibility fall far short of the taggant vapor detection devices."

Senator JAVITS. Where do we stand technically in the tagging business.

Chairman NUNN. We will make that a part of our record. I will ask the staff to inquire into that in detail.

Senator JAVITS. Fine. The other question I have is this: We get some gage of the likely success of investigations in respect of explosions where taggings are present. Would it be a fair analogy to consider the record in respect of the date shift code which is now stamped on the outside wrapper of each explosive?

Mr. DICKERSON. Currently we require each shift code be reported on the outside wrapper of the explosive. In some instances, the explosive does not completely detonate and we have been able to recover that date shift code.

That would provide us the same information we get through tags. We have found—this doesn't happen very often—but we have found in the limited experience we have with that, that our success rate in

investigations has just about doubled. The problem is, of course, in most explosives the date shift code doesn't remain in existence.

Senator JAVITS. But where you do have the date shift code, your ability to deal with a successful investigation is doubled?

Mr. DICKERSON. It has actually doubled. I have the specific figures on that. I will be glad to submit it for the record.

Senator JAVITS. You do have the figures?

Mr. DICKERSON. Do you want them for the record? Do you want me to read them?

Senator JAVITS. Yes, he has got them. It is very brief.

Mr. DICKERSON. We had 55 during one period in 1978, that is, we recovered the date shift code in 55 criminal bombings. At that time our ratio of cases forwarded for prosecution was 10.9 percent when we had that date shift code, and only 5.5 percent when we did not. I might point out that the success of investigative officers in investigating criminal bombings is extremely low because of the difficulties I have mentioned. To double that success rate would be a significant contribution.

Senator JAVITS. Thank you very much, and if there is any further data you would like us to have on this subject, will you furnish it for the record?

Mr. DICKERSON. We certainly will.

Chairman NUNN. Thank you.

Director Dickerson, I want to express our sincere appreciation for the excellent help and cooperation you provided the subcommittee during these hearings. Your staff has been most helpful. The film and displays you brought with you today are the examples of the excellent work your agency is doing, and I think demonstrate a commendable effort to make the Congress and public aware of the scope and threat that organized criminal violence poses to our society. We deeply appreciate your assistance and to all of those here today, we express our appreciation. To those who backed you up, and your capable staff, we ask you to convey our thanks.

Mr. DICKERSON. Thank you very much.

Chairman NUNN. Our next witness will be Ray Worsham, a member of our staff. He will be sworn for purposes of introducing certain exhibits.

#### TESTIMONY OF RAY WORSHAM, INVESTIGATOR, PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Chairman NUNN. Mr. Worsham, before you take your seat, would you please take the oath? Do you swear the testimony you give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. WORSHAM. I do.

Chairman NUNN. Please state your name and present position, Mr. Worsham, before we ask for your testimony.

Mr. WORSHAM. My name is Ray Worsham, an investigator for the subcommittee.

Chairman NUNN. Mr. Worsham, have you got certain publications which should be entered as exhibits before our committee, and if so, would you identify them?

Mr. WORSHAM. Yes; I have, sir.

Rather than state names of publications, sir, which would be a sort of advertisement, I will refer to the publication in general terms, if I may.

Chairman NUNN. If you could refer to it in general terms and tell us the relevance to this hearing.

Mr. WORSHAM. Yes, sir. This is a catalog published by a distributor of a wide assortment of magazines dealing with all types of improvised weaponry. It instructs its readers how to make bombs, how to purchase the precursors for the destructive devices, how to go into making mortars, bazookas, how to convert semiautomatic weapons to automatic weapons, how to make and purchase silencers.

If I could just very briefly read a couple of excerpts from it. One such advertised bulletin is the CIA field recipient preparation of black powders. "The methods of preparation are simple and crude but effective." I am quoting the catalog. It is a complement to the OSS Sabotage and Demolition Manual. It goes into the OSS Sabotage and Demolition Manual. It covers military, incendiary preparation of explosive cartridges, calculation, and placement of charges, bombs, homemade explosives.

Almost every page is replete with this type of stuff. CIA methods for explosives, unbelievable study on preparation of explosives from common and accessible terms.

Chairman NUNN. Without objection, that will be entered as an exhibit with the appropriate label.

[The document referred to was marked "Exhibit No. 13" for reference and may be found in the files of the subcommittee.]

Chairman NUNN. Have you got another publication?

Mr. WORSHAM. Yes; a member of our staff ordered and received this particular magazine. It is 230 pages; again, just virtually replete with information and instructions on how to make, purchase, or otherwise obtain an unlimited assortment of weaponry. I was going through trying to tag certain pages that contain items of particular interest. Just about every page has something horrible on it. So I will read a few of them, if you wish.

Chairman NUNN. Read them into the record if you could, very briefly.

We are pressed for time.

Mr. WORSHAM. One page goes into the assassination kit, diagram, suggestion for improvement by using an electric toothbrush instead of a manual triggering device on the thing. It makes a comment, "Cannot be bought in a gun store, but mob gunsmiths are available and willing to provide them."

An article here goes into some detail on the homemade mortar. There is an article on how to make homemade bazookas. It goes into giving alternate methods. Altering your rocket shells or equipping them with warheads, or similar explosive devices. "The firer can remain concealed, can easily carry and use the bazooka. You should treat your bazooka with respect because it is capable of devastating damage."

Chairman NUNN. What is the main use of a bazooka?

Mr. WORSHAM. Primarily in military, the bazooka would be used as an antitank weapon. There is one article here—I am skipping over a

lot of this. Here is an article on how to make a concealable zip gun. I believe this was brought up in earlier testimony. It is an article on making chlorine gas and plastic bombs. "Hand grenades can be easily and cheaply constructed from ADCPDC, shrapnel fragments, and are equal to the power of conventional bombs, but they do have two unique and noteworthy features. They are both nonmetallic and X-ray transparent for Government buildings and other controlled areas where a magnetometer check might be encountered.

"Plastic shrapnel filler can be coated with poison before adding to the bomb to increase the kill rate."

Chairman NUNN. Does that book also advise on how to avoid Custom laws?

Mr. WORSHAM. This particular book does not, but there is another book available over at the ATF library that does have reference on how one might pass through Customs with these various weapons.

Chairman NUNN. I will ask unanimous consent that that book be made a part of our record. Without objection it will be.

[The document referred to was marked "Exhibit No. 14" for reference and may be found in the files of the subcommittee.]

Chairman NUNN. Do you have any other exhibits?

Mr. WORSHAM. No, sir, I do not. I would like to note these books are available to everybody from the hardened criminal right on down to the curious teenager who might blow himself up attempting to put together some of these devices.

Chairman NUNN. Thank you.

Our next witnesses are Gregory Baldwin, Special Attorney, Organized Crime and Racketeering Section, U.S. Department of Justice; Neil Kern, Resident Agent-in-Charge, Bureau of Alcohol, Tobacco, and Firearms, Buffalo, N.Y.; Robert Hutt, Special Agent, Bureau of Alcohol, Tobacco, and Firearms, Syracuse, N.Y.

Gentlemen, could you please come up?

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

Chairman NUNN. Before you take your seat, if you could all raise your right hands. We swear in all witnesses before the subcommittee.

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

Mr. BALDWIN. I do.

Mr. KERN. I do.

Mr. HUTT. I do.

Chairman NUNN. Thank you. Have a seat.

Senator JAVITS. Mr. Chairman, I would like to put a statement in the record as this concerns, this investigation beginning now, concerns a city in my State. I would like my statement to appear.

Chairman NUNN. Without objection, your statement will appear, Senator Javits.

[The statement of Senator Javits follows:]

PREPARED STATEMENT OF SENATOR JAVITS

Mr. Chairman, today, the fifth day of the Permanent Subcommittee on Investigation's hearings on mob violence, we will hear evidence of brutal violence in my own state.

The extent of the violence is appalling. As we will hear from our distinguished witnesses, much of it is fostered by the warring factions within the mobs. But the victims often are unwitting- and unwilling-participants, as I believe we shall hear in testimony about what has occurred in the prospering city of Rochester.

Rochester is a wealthy and productive area, the home of Kodak, Xerox and other large corporations which employ thousands of people. Unfortunately, it appears that it is exactly a thriving community such as this that organized crime finds a particularly attractive target.

It is testimony to the proportions of the problem that for almost a decade two factions of the mob have been involved in a bloody war for control of the rackets in Rochester and there were so many participants that the news media began to identify the factions as Team A and Team B. Team A was comprised of the older mob faction. Their favorite means of gaining influence, it seems, was machine gunning. Team B, the "Young Turks," preferred bombings and remote control detonating devices.

Through the diligence of law enforcement officials, many of the upper echelon Team A members were convicted on various organized crime related charges. While they were imprisoned, Team B gained the upper hand. Before Team B had revealed in their new found power for long, however, the convictions of Team A were reversed, and its members were released from jail.

The bloody and violent mob war resumed with complete disregard for the lives of uninvolved citizens. Bombs have been detonated at churches and synagogues and radical groups blamed for the violence in order to divert attention from their true source. Arson is another favorite weapon. In one murder attempt by Team B, a remote control dynamite pipe bomb was placed under the intended victim's car. The device fell off the vehicle during a running gun battle and was later discovered by a 12 year old boy. The boy, unaware of the danger, dismantled the bomb in a public place. Only sheer luck prevented its explosion. Another blast caused by Team B threw glass and debris into a busy intersection, just blocks from an elementary school shortly before dismissal.

Mr. Chairman, the brutality and violence in Rochester and in other towns has been well documented. The police, the FBI, BATF and others should be commended for their efforts to fight the mob.

I hope we in Congress can be of service in the continuing attempts to control organized crime. The full Governmental Affairs Committee soon will consider legislation to require tagging of explosive materials to make it easier for law enforcement officials to track down those responsible for these horrible crimes. I hope that Congress will act favorably on this legislation so that this means of violence will no longer be an attractive one.

I look forward to the testimony of the law enforcement officials today, as well as that of those who have cooperated with them.

**TESTIMONY OF GREGORY BALDWIN, SPECIAL ATTORNEY, ORGANIZED CRIME AND RACKETEERING SECTION, U.S. DEPARTMENT OF JUSTICE; NEIL KERN, RESIDENT AGENT-IN-CHARGE, BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, BUFFALO, N.Y.; AND ROBERT HUTT, SPECIAL AGENT, BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, SYRACUSE, N.Y.**

Chairman NUNN. Mr. Kern and Mr. Hutt, are you going to make the presentation here this morning?

Could you give us a brief summary of what you do now?

Mr. KERN. I am Resident Agent-in-Charge.

Chairman NUNN. Give your full name.

Mr. KERN. Neil Kern.

Chairman NUNN. Go ahead.

Mr. KERN. I am the Resident Agent-in-Charge of the Buffalo office of the Bureau of Alcohol, Tobacco, and Firearms. In that capacity, I supervise special agents who conduct investigations of Federal explosive and firearms laws.

Chairman NUNN. Thank you, Mr. Kern.

Mr. Hutt?

Mr. Hutt. Yes, sir. My name is Mr. Robert E. Hutt, special agent with the Bureau of Alcohol, Tobacco, and Firearms, assigned to Syracuse, N.Y.

Chairman NUNN. Thank you.

Mr. Baldwin?

Mr. Baldwin. Mr. Chairman, my full name is Gregory A. Baldwin. I am a special attorney with the U.S. Department of Justice, Organized Crime and Racketeering Section. I am presently on leave without pay from the Department of Justice and am assigned as assistant district attorney to the Philadelphia District Attorney's Office.

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

Go right ahead with your presentation, gentlemen. We appreciate your being here and appreciate your cooperation.

Mr. Hutt. Mr. Chairman, Special Agent Kern and I have prepared a written statement which we would like to have placed in the record.

With the permission of the Chair, I would like to summarize my portion of the statement.

Chairman NUNN. Go right ahead.

Mr. Hutt. In preparation for this statement, the Bureau of Alcohol, Tobacco, and Firearms used the resources of information contained in the Treasury Department and various other Federal, State, and local law enforcement agencies.

Some of the information sources are as follows: Informants, mob member informants, witnesses, wiretaps, consensual electronic surveillances, telephone records, business and bank records, undercover operations, grand jury investigations, and the materials seized with search warrants.

On November 14, 1957, New York State Police and the Bureau of Alcohol, Tobacco and Firearms (ATF) discovered a convention of reputed high echelon organized crime members taking place in Apalachin, N.Y. It has been determined that this meeting was held to establish boundaries and set guidelines within which each of the organized crime groups represented would operate.

Identified participants at this conference were: Dominick Alaimo, Pittston, Pa.; Joseph Mario Barbara, Sr., Apalachin, N.Y.; Joseph Bonanno, Brooklyn, N.Y.; John Bonventre, Brooklyn, N.Y.; Ignatius Cannone, Endwell, N.Y.; Roy Carlisi, Buffalo, N.Y.; Paul Castellano, Brooklyn, N.Y.; Gerardo Vito Cateno, South Orange, N.J.; Charles Salvatore Chivi, Palisades, N.J.; Joseph Francis Civello, Dallas, Tex.; James Colletti, Pueblo, Colo.; Frank Cucchiara, Watertown, Mass.; Dominick D'Agostino, Niagara Falls, N.Y.; John Anthony DeMooco, Shaker Heights, Ohio; Frank Desimone, Downey, Calif.; Natale Joseph Evole, Brooklyn, N.Y.; Joseph Falcone, Utica, N.Y.; Salvatore Falcone, Utica, N.Y.; Carlo Gambino, Brooklyn, N.Y.; Michael James Genovese, Gibsonsia, Pa.

Also identified were: Vito Genovese, Atlantic Highlands, N.J.; Anthony Frank Guarneri, Johnson City, N.J.; James Vincent LaDuca, Lewiston, N.Y.; Samuel Lagattuta, Buffalo, N.Y.; Louis Anthony Larasso, Linden, N.J.; Carmine Lombardo, Brooklyn, N.Y.; Antonio Maggadino, Niagara Falls, N.Y.; Joseph Magliocco, East

Islip, N.Y.; Frank Thomas Majuri, Elizabeth, N.J.; Rosario Mancuso, Utica, N.Y.; Gabriel Mannarino, New Kensington, Pa.; Michele A. Miranda, Forest Hills, N.Y.; Patsy Monachino, Auburn, N.Y.; Sam Monachino, Auburn, N.Y.; John Charles Montana, Buffalo, N.Y.; Dominick Olivetto, Camden, N.J.; John "Big John" Ormetto, New York, N.Y.; James Anthony Osticco, Pittston, Pa.; John Profaci, Brooklyn, N.Y.; Vincent Rao, Yonkers, N.Y.; Alfred Rava, Brooklyn, N.Y.; Joseph Riccobono, Staten Island, N.Y.; Anthony Riala, West Orange, N.J.; Joseph Rosato, New York, N.Y.; Louis Santos, Havana, Cuba; John Scalish, Cleveland, Ohio; Angelo Joseph Sciandra, Pittston, Pa.; Patsy Sciortino, Auburn, N.Y.; Simone Scozzari, San Gabriel, Calif.; Salvatore Tornabe, New York, N.Y.; Patsy Turrigiano, Endicott, N.Y.; Costenze (Stanley) Peter Valenti, Rochester, N.Y.; Frank Joseph Valenti, Pittsburgh, Pa.; Emanuel Zicari, Endicott, N.Y.; Frank Zito, Springfield, Ill.

The discovery of this meeting resulted in the issuance of subpoenas to certain participants, requiring that they appear and testify before the New York State Crime Commission investigating the activities of those who attended the meeting. Stanley Valenti and Frank Valenti were found to be in civil contempt by this body for failing to answer questions, and subsequently jailed.

Stanley Valenti was incarcerated on August 22, 1958, and remained in custody for a period of 16 months. During Stanley Valenti's absence from Rochester, N.Y. Jake Russo assumed control of the mob organization in Rochester.

Subsequent to the release of the Valentis from prison, Frank Valenti began incursions into the Rochester, N.Y., area to assist his brother, Stanley. On July 17, 1959, Frank Valenti was indicted in the county of Monroe, city of Rochester, for violations of the New York State election law.

In January 1961, Frank Valenti moved from Pittsburgh, Pa., to Rochester, N.Y. Frank Valenti had attained the position of "capo" under Antonio Ripepi in Pittsburgh. Ripepi headed an organized crime operation under the auspices of John Sebastian LaRocca, who was in control of the organized crime operation in the city of Pittsburgh.

Stanley Valenti, brother of Frank Valenti, had married Antonio Ripepi's daughter. Frank Valenti had a reputation as being an "ambitious man" and was encouraged to join his brother in Rochester, N.Y. It was intended that Frank Valenti and Stanley Valenti would wrest control of the operations from Jake Russo.

On January 18, 1961, Frank Valenti was arrested pursuant to indictment filed in Monroe County Court on July 17, 1959, for election law violations and on April 4, 1961, Frank Valenti entered a plea of guilty to two counts of this indictment. On April 18, 1961, Frank Valenti was sentenced to 3 years probation, the conditions of that probation being that he return to Pittsburgh, Pa., and stay out of New York State for the term of the probation.

Informants allege that this arrest, conviction, and sentence were arranged to remove Frank Valenti from the Rochester, N.Y., area. As a result of this, Frank Valenti left Rochester, N.Y., and returned to Pennsylvania.

In September 1964, Frank Valenti and Angelo Vaccaro returned to Rochester, N.Y., and joined forces with Stanley Valenti.

Within 3 months of Frank Valenti's return—December 1964—Jake Russo, the current mob boss in Rochester, disappeared. The evening of Russo's disappearance, Frank Valenti was dining in "Eddie's Chop House," a well-known restaurant in Rochester, buying drinks and advising his guests that he was "the man to see in Rochester." It is apparent that Jake Russo disappeared during a power struggle initiated by Frank Valenti and Stanley Valenti; and to date Jake Russo, or his remains, have not been found.

During the period 1964 through 1970, Frank Valenti strengthened and greatly expanded the organized crime operations in Rochester, N.Y. In 1970, Salvatore "Sammy G" Gingello, a newly made "capo" under Frank Valenti, had custody of approximately \$100,000 of organization money. This money was ostensibly collected as "deposits" for a scheduled charter flight to Las Vegas on a gambling junket organized by local mob members.

Gingello reported this theft to the local police. The speculation by investigators, based on circumstances and informant information, was that Salvatore Gingello and underboss Samuel "Red" Russotti conspired to place the blame for the alleged theft on William Lupo. It is suspected that the organized crime hierarchy, thinking that Lupo was involved in this theft, ordered that Lupo be murdered.

In April 1970, William Lupo was shot to death in Rochester, N.Y. It is noted that Salvatore "Sammy G" Gingello immediately replaced Lupo as "capo" of the strong arm unit of the Valenti family, and the last vestige of the Jake Russo era was eliminated with the death of William Lupo.

During 1970 Frank Valenti, whose organization had grown considerably in comparison to that of Jake Russo, confronted Stephano Maggadino in Buffalo, N.Y., and advised him that the Valenti family would no longer be subordinate to Buffalo, N.Y., authority and that Frank Valenti's contacts and allegiance would be with John Sebastian LaRocca in Pittsburgh, Pa.

Due to the strength of the Valenti organization, the relationship (son-in-law) of Stanley Valenti to Antonio Ripepi and the failing health of Stephano Maggadino, this move remained uncontested.

Maggadino was allowed to retain 15 percent of the gambling operation in Rochester, N.Y., at the sufferance of Valenti, and Frank Valenti operated basically as an independent unit until his forced retirement in June of 1972.

The disappearance of Jake Russo, the murder of William Lupo, and the ever-increasing organized crime activity generated by Frank Valenti did not pass unnoticed. During the period 1967 through 1970, Frank Valenti and his associates became subject to intense scrutiny by Federal, State, and local law enforcement agencies. This pressure was accompanied by a high degree of local publicity, which resulted in making Frank Valenti pursue a course of action designed to remove investigative pressures, and the resulting publicity, from himself and his colleagues, and at the same time perpetrate acts of violence against individuals who proved uncooperative and resisted Valenti's attempts to influence their activities.

On October 11, 1970, Frank Valenti directed the manufacture of dynamite bombs by Eugene DeFrancesco, Angelo Monachino, and others. Once prepared, Frank Valenti directed that the bombs be placed and detonated at locations selected by him, with two purposes in mind; to direct law enforcement efforts toward terrorist groups and to intimidate selected individuals. The bombs were detonated at the selected locations, which included a Baptist church, the home of a union business agent, the Monroe County Office Building, the U.S. Courthouse and Federal building, and a Methodist church.

The explosions occurred during the early morning hours of October 12, 1970 (Columbus Day), and came to be identified by the local news media and subsequently the public and law enforcement personnel as the infamous "Columbus Day Bombings." The bombings effectively diverted the attention of law enforcement and news media to other areas. This series of bombings served to remove Valenti and his henchmen from the pages of the local papers, and resulted in a significant shift of investigative priorities for all law enforcement agencies in Rochester, N.Y.

As a result of this initial success, Frank Valenti directed that additional bombings take place; on October 27, 1970, explosions occurred at two synagogues.

On November 6, 1970, another synagogue was bombed.

On November 25, 1970 (Thanksgiving), a black Islamic mosque and black Baptist church were bombed.

On December 14, 1970, the residence of a Monroe County Court judge was bombed at Valenti's direction.

Again Frank Valenti's efforts were rewarded in that the frequency of the explosions, and the extensive damage which resulted, served to occupy the attention of the news media. The nature of the targets of the bombs caused the majority of investigative effort to be directed toward the various radical groups, known militants, and antiwar protesters, with a past history of violent activity.

Five years later, investigative efforts ultimately revealed the true source of the bombing incidents which occurred in Rochester during 1970. Frank Valenti, Anthony Gingello, Salvatore Gingello, Thomas Didio, Angelo Vaccaro, Dominic Celestino, Eugene DeFrancesco, and Rene Piccarreto were indicted on July 24, 1975, by a Federal grand jury in Rochester, N.Y., in connection with the bombing incidents. Frank Valenti sought and obtained, on the grounds of ill health, a severance and was not tried. Eugene DeFrancesco was found guilty of Federal charges relating to the bombings.

All other defendants were found not guilty. DeFrancesco was sentenced to 11 years in Federal prison. On February 15, 1979, Frank Valenti pleaded guilty to illegal possession of a destructive device (bomb) and was sentenced to serve 3 years' probation. Valenti is currently imprisoned as a result of unrelated Federal charges. This probation is to be served upon Valenti's release from Federal prison in June 1980.

During the Frank Valenti regime, there occurred a departure from what is considered the "normal" organized crime family structure. Valenti appointed an underboss, consigliere and capos, similar to other families. However, Valenti caused the formation of a personal cadre

of soldiers under "Capo" Dominic Chirico. Dominic Chirico and this group were responsible directly to Frank Valenti. The members of this unit are identified as Dominic Chirico, Thomas Didio, Dominic "Sonny" Celestino, Angelo Vaccaro, Ross Chirico, Vincent Massaro, Spike LaNoverra, Eugene DeFrancesco, and Angelo Monachino.

Each of the members had areas of responsibility within the group. Dominic Chirico served as "capo," as noted, but also acted as Frank Valenti's chauffeur and personal bodyguard.

Angelo Vaccaro and Dominic Celestino operated dice and card games. Spike LaNoverra, Eugene DeFrancesco, and Thomas Didio operated the loan sharking and extortion aspect, providing the "muscle." Angelo Monachino operated a construction company, involved with fraudulent contracts and influencing labor union members. Vincent Massaro operated generally as an arsonist. Rosario Chirico, although peripherally involved in counterfeiting and a loan-sharking operation, was primarily responsible for handling stolen cars and providing weapons for the entire Valenti operation.

From 1969 through 1972, Rosario Chirico removed, or caused the removal of, serial numbers from an untold number of rifles, shotguns, and handguns and distributed them throughout the Valenti organization. Additionally, Rosario Chirico directed the alteration of these firearms to accept firearm silencers manufactured at Chirico's place of business, Trolley Collision. These silenced and untraceable firearms were designed solely for the purpose of assassination.

Also during this period, Ross Chirico contracted for the manufacture of a device that would remotely detonate an explosive by radio signal. After much experimentation and modification, the radio signaling equipment was successfully used to remotely detonate explosives. On at least one occasion, a device of this nature was used to blow up motor vehicles.

During Valenti's tenure, this select group would commit crimes at the direct orders of Frank Valenti, and the proceeds of these crimes would be given to Valenti. Valenti consistently utilized this loyal group for his personal enrichment. For example, during the period 1969 through 1972, this group committed at least eight major "arson for profit" fires in the metropolitan Rochester, N.Y., area. The fires were arranged by Frank Valenti and the proceeds were retained by him and not contributed to the general fund of the organization.

During the period 1970 through 1972, Rene Piccarreto held the position of consigliere in the Valenti organization. In this capacity, Piccarreto was responsible for negotiations with other organized crime families on behalf of Valenti. In the course of these contacts, Rene Piccarreto established friendships and gained the respect of high-ranking members of the Joseph Bonanno family in New York City.

In 1972, Frank Valenti was confronted by Rene Piccarreto, Samuel "Red" Russotti, and Salvatore Gingello and was accused of skimming money from the organization for his personal use. It had been learned by the others that Valenti was buying property in Arizona, and investing in various businesses in the Phoenix, Ariz., area. Valenti readily admitted to keeping certain moneys for himself, but assumed that he would be supported by his associates in Pittsburgh, Pa., and that Dominic Chirico and his cadre of soldiers would protect him from any personal harm.

In May of 1972, Frank Valenti was arrested on Federal charges of extortion in Rochester, N.Y. He was subsequently convicted and sentenced to 20 years' imprisonment in a Federal correctional institution.

In May 1972, Frank Valenti was ordered by Samuel "Red" Russotti, Rene Piccarreto, and Salvatore "Sammy G" Gingello to turn over all moneys and records of the organization to Russotti. Valenti was also told that it was time for him to retire. Valenti surrendered the requested assets but immediately ordered the death of Russotti, Gingello, and Piccarreto. Dominic Chirico's soldiers made no attempt to murder Russotti, Piccarreto, or Gingello because they were aware of Valenti's misconduct and the superior strength of mob members who were loyal to Russotti, Piccarreto, and Gingello. Salvatore Gingello, upon his succession to the position previously held by William Lupo, and with the concurrence of Samuel "Red" Russotti, had recruited a large number of new members without the knowledge or consent of Frank Valenti. These new recruits, loyal to Gingello, greatly outnumbered those individuals loyal to Frank Valenti and were a viable factor in forcing Frank Valenti from power.

Subsequent events have led law enforcement officers to believe that Thomas Didio (a member of Dominic Chirico's group) advised his cousin, Thomas Marotta, a close associate of Gingello, of Valenti's intentions to have Russotti, Piccarreto, and Gingello killed. Upon learning this, Rene Piccarreto consulted with his contact in the Bonanno crime family and after advising him of Valenti's intentions, requested the support of the Bonanno family in removing Frank Valenti from power by whatever means necessary.

The murder of Frank Valenti was not sanctioned due to his seniority and influence with organized crime members in Pittsburgh, Pa., and throughout the United States.

On June 5, 1972, Dominic Chirico, the only "capo" loyal to Valenti, was shotgunned to death in front of his girlfriend's apartment. Witness testimony and subsequent changes in the structure of the Rochester organization allowed investigating officers to speculate with some degree of accuracy that this murder was perpetrated by soldiers directed by Salvatore Gingello, with the assistance of Thomas Didio. This killing was a message to Frank Valenti that he could be next if he did not accept retirement.

The following day, Frank Valenti was confronted at the Red Lion Inn, Rochester, N.Y., and ordered to leave Rochester, N.Y., by Samuel "Red" Russotti, Rene Piccarreto, and Salvatore "Sammy G" Gingello.

Shortly after these confrontations, Frank Valenti moved from Rochester, N.Y., to Phoenix, Ariz. With the removal of Frank Valenti, Stanley Valenti prudently removed himself as well, concerning himself with a flourishing produce business and select illegal enterprises outside the city of Rochester, N.Y.

Samuel "Red" Russotti assumed the position vacated by Frank Valenti and Rene Piccarreto retained the position of consigliere. Salvatore "Sammy G" Gingello was elevated to the position of underboss in the Rochester organization. With the support of the Bonanno crime family, Russotti, Piccarreto, and Gingello severed the tenuous ties that Pittsburgh organized crime members had over the Rochester organization when Frank Valenti was in power.

Angelo Vaccaro left the Rochester, N.Y., area shortly after the murder of Dominic Chirico and former soldiers of Chirico were separated and placed under newly designated "capos" by Samuel "Red" Russotti. Coincidentally, Thomas Didio, a former soldier of Dominic Chirico, was elevated immediately, and given additional responsibilities in the organization.

During the period 1972 through November 1973, Vincent "Jimmy the Hammer" Massaro (arsonist for Frank Valenti) continued to commit arson fires at the direction of the new leadership under Samuel "Red" Russotti.

In September and November 1973, Massaro complained to other organization members and some individuals outside the organization that he was not being paid for his efforts.

During November 1973, Samuel "Red" Russotti had a meeting at the residence of his sister in Rochester, N.Y. The participants at this meeting were: "Red" Russotti, Rene Piccarreto, Salvatore Gingello, Richard Marino, Thomas Marotta, Sam Campanella, Eugene DeFrancesco, and Spike LaNoverra.

A decision was made by the upper echelon to order the murder of Vincent Massaro. Eugene DeFrancesco and Spike LaNoverra were ordered to commit this murder, as a test of loyalty, since they had previously been soldiers under Dominic Chirico. DeFrancesco and LaNoverra were unable to accomplish the killing within the few days given to do so.

Another meeting was called and Angelo Monachino was ordered to attend. At this second meeting, Russotti, Gingello, Piccarreto, Marino, and Marotta ordered Angelo Monachino to assist LaNoverra and DeFrancesco in the murder of Massaro. Angelo Monachino was also a former Chirico soldier and a close friend of Massaro.

On November 23, 1973, with the aid of Angelo Monachino and Spike LaNoverra, Eugene DeFrancesco shot Vincent Massaro to death in the Bar-Mon Construction Co. garage, a premises owned by Angelo Monachino. Massaro was killed with a handgun, equipped with a silencer provided by Rosario Chirico.

During 1974 Dominic Celestino, a former Dominic Chirico soldier, was thrown out of the organization by Salvatore Gingello, having been accused of having an affair with another member's girlfriend.

During 1975, an investigation conducted by State and Federal enforcement agencies developed witnesses and sufficient proof to indict certain organized crime members for the murder of Ernest White, a local burglar.

Defendants in this case subsequently became Government witnesses, and provided proof against Eugene DeFrancesco, Spike LaNoverra, and Angelo Monachino, regarding their participation in the murder of Vincent "Jimmy the Hammer" Massaro.

Faced with murder charges, Monachino and LaNoverra considered their position. Although active members of the Russotti organization, their past association with Valenti and Dominic Chirico cast a shadow on their future in the Rochester, N.Y., area.

The former soldiers of Dominic Chirico, with the exception of Thomas Didio, were not trusted, and were relegated to minor duties. Considering their present lot in Rochester, and the potential life sen-

tence in prison, Angelo Monachino and Spike LaNoverra decided to cooperate with the Government and provide truthful testimony regarding the murder of Massaro. The testimony of LaNoverra and Monachino regarding the meetings with Russotti and the others, and the orders given by Russotti, Gingello, and the capos, resulted in a conviction for murder in the county of Monroe, State of New York, for defendants Samuel "Red" Russotti, Salvatore "Sammy G" Gingello, Rene Piccarreto, Richard Marino, Thomas Marotta, and Eugene DeFrancesco. On January 14, 1977, each defendant was sentenced to 25 years to life imprisonment.

The mob war in Rochester assumed such proportions and involved so many participants that the news media identified the two factions as team A and team B. Team A was the group that assumed control of the Rochester mob in May 1972, after forcing Frank Valenti from power. The upper echelon of this team was comprised of Samuel "Red" Russotti, Rene Piccarreto, and Salvatore "Sammy G" Gingello.

Insurgent team B mob members were led by Thomas Didio. For purposes of clarity, this statement also will adopt the team A and team B characterization of the opposing mob factions.

#### CHRONOLOGY OF A MOB WAR

On January 14, 1977, Samuel "Red" Russotti, René Piccarreto, Salvatore "Sammy G" Gingello, Richard Marino, Thomas Marotta, and Eugene DeFrancesco, upper echelon members of organized crime in Rochester, N.Y., were imprisoned for 25 years to life as a result of their conviction in Monroe County Court for the November 23, 1973, murder of Vincent "Jimmy the Hammer" Massaro. The incarceration of these individuals resulted in a virtual elimination of all vestiges of leadership in the Rochester mob.

Thomas Didio, a bodyguard, chauffeur, and confidant of Salvatore "Sammy G" Gingello, and a cousin of Thomas Marotta, was placed in control of the operation by Samuel "Red" Russotti and Salvatore "Sammy G" Gingello. Didio, previously a soldier under Thomas Marotta, was known primarily for his intimidating size and slow wit. It was believed that Didio's blood relationship to Thomas Marotta would insure that the wives and families of the defendants would be provided for and that Didio's allegedly limited mental capacity would allow the defendants to control Didio, and the organized crime operation, from their jail cells.

Once in power, Didio did not prove receptive to orders from Russotti, Piccarreto, or Gingello. Didio did not provide financial support for the defendants' families, despite his relationship to Marotta. Organized crime members loyal to Russotti and Gingello were reduced in status and removed from union positions and no-show jobs by Didio. This caused a great deal of resentment and dissension within the organization.

In the spring of 1977, a fund-raising event was held for the benefit of the imprisoned mob leaders. It is alleged that Didio diverted a large sum of the money raised for his personal use.

Sensing the discontent within the organization, Thomas Didio sought counsel with Stanley Valenti, and through him received guidance

from Frank Valenti, who was incarcerated at the Springfield Medical Center for Federal Prisoners, Springfield, Mo. It is believed that the Valentis viewed the current circumstances as an opportunity to regain control of the Rochester organized crime operations. In July 1977, Angelo Vaccaro returned to Rochester, N.Y., from Texas, at the request of Thomas Didio.

During midsummer 1977, Didio loyalists Samuel Campanella and James Canarozza were added to the list of persons allowed to visit with Frank Valenti, with the notation "to be allowed only when accompanied by Stanley Valenti." During approximately the same period, Gingello loyalist John Fiorino visited the imprisoned mob bosses in jail. Reliable information reveals that by the late summer of 1977, the imprisoned former mob bosses had decided to cause the removal of Thomas Didio from his position of power.

In September 1977, team B members Thomas Didio, Angelo Vaccaro and Dominic "Sonny" Celestino were confronted by a larger contingent of team A loyalists, including John Fiorino, Joseph Rossi, Thomas Taylor, and others not identified, at the Blue Gardenia Restaurant, Irondequoit, N.Y. At the direction of Gingello and the other imprisoned mob bosses, Didio and his followers were advised that they were "all done" and an altercation ensued. Didio, Vaccaro, and Celestino were severely beaten and ejected from the restaurant by the team A faction. Didio and his group were outnumbered and went into hiding.

Almost coincidental with this incident, there were indications that Russotti, Piccarreto, Gingello, Marotta, and Marino might be released from jail due to alleged discrepancies in witness testimony at their murder trial.

Commencing in October 1977 through January 1978, team B had almost daily clandestine meetings at the Vineyard Restaurant, Pittsford, N.Y. These meetings were attended by Thomas Didio, Angelo Vaccaro, Rosario "Ross" Chirico, Dominic "Sonny" Celestino, William Barton, and a small number of other participants who remain unidentified.

One of the unidentified participants—described as a small, elderly man—when in attendance, virtually controlled the conduct of the meetings. When he raised his hand, everyone would stop speaking, and he would point or nod to the participants when he wanted them to voice their ideas or opinions.

In December of 1977, Dominic "Sonny" Celestino, William Barton, Angelo Vaccaro, and Thomas Didio attempted to place a remote control dynamite pipe bomb under the vehicle owned by team A member Joseph Rossi.

While attempting to place the device, they were discovered by team A members, and a running gun battle erupted, including a high-speed car chase through the streets of Rochester. The explosive device fell off Rossi's vehicle and was later discovered and dismantled by a 12-year-old boy who subsequently reported finding the device to the police.

In late December 1977, team B member Rodney Starkweather approached Earl Merritt, a member of the Hell's Angels motorcycle club and told Merritt that he was attempting to purchase quantities of explosives. Shortly thereafter, Merritt took Starkweather to the resi-

dence of Timothy Ryan in Auburn, N.Y., where Starkweather purchased a quantity of Kinepak stick explosives and blasting caps from Ryan.

Ryan, a member of the Hackers motorcycle club, acquired the Kinepak stick and blasting caps along with a Hell's Angels club member in Georgia and Tennessee, and brought them back to New York State.

Kinepak stick is a binary explosive consisting of a two-part mix. The two parts do not constitute an explosive material until mixed together. Kinepak stick is not a regulated substance under the Federal Explosives Control Act of 1970, Public Law 91-452.

In January 1978, team B members Dominic "Sonny" Celestino, William Barton, and Rodney Starkweather ambushed a vehicle containing team A members Leonard Stebbins, Loren Piccarreto (son of Rene Piccarreto), and others unidentified. The vehicle was riddled by shotgun blasts and handgun fire but, miraculously, all occupants escaped injury.

In January 1978, the murder convictions of the imprisoned team A mobsters were reversed due to irregularities in trial testimony. Within weeks, Russotti, Piccarreto, Gingello, Marotta, and Marino were released from prison and returned to Rochester, N.Y., where they once again assumed leadership of an organization that was seriously divided and being subjected to outside influences.

After the release of the team A hierarchy from prison, almost daily meetings were conducted by team B members in Rochester, N.Y. Present at these meetings were team B members Thomas Didio, Angelo Vaccaro, Dominic "Sonny" Celestino, Rosario "Ross" Chirico, William Barton, Frank Frassetto, and Rodney Starkweather. It was during these meetings that the decision was made to kill Salvatore "Sammy G" Gingello. Gingello was selected for elimination because of the following reasons:

A. Gingello was at one time a favorite protege of Frank Valenti, and his position within the organization was enhanced by this relationship. Valenti's influence was responsible for Gingello's quick rise through the ranks to the position of "capo." Frank Valenti was greatly upset when he became aware that Gingello was one of the individuals responsible for the confrontation which forced him into retirement.

B. Thomas Didio and Stanley Valenti were aware that although relatively new as an underboss, Gingello had successfully succeeded in uniting various factions of the organizations. As a result of his personality and generosity to his underlings, Gingello commanded the loyalty of his subordinates. The untimely death of Gingello would create dissension within the team A ranks.

C. Gingello was a highly visible and readily identified member of organized crime in Rochester, N.Y. He reveled in playing the role of the "top mobster" in Rochester and surrounded himself with attractive women and bodyguards. Gingello spent lavishly and was chauffeured about in expensive cars, unconcerned that he was identified publicly as an upper echelon organized crime member. It was the consensus of opinion among team B that killing Gingello would most impress upon the gamblers and operators of illicit enterprises the courage and determination of the team B faction to retain control of the organization.

D. Individually, many of the team B members had personal motives for seeking the death of Salvatore "Sammy G" Gingello. Rosario "Ross" Chirico was the brother of Dominic Chirico, who was killed at the direction of Gingello in 1972. Anthony Chirico, the son of Rosario Chirico, was the nephew of Dominic Chirico. Angelo Vaccaro sponsored both Dominic and Rosario Chirico upon their entry into the organization and had strong personal ties to both men. At the direction of Gingello, Dominic "Sonny" Celestino had been beaten and ejected from the mob by Gingello in 1974, and was not allowed back into the organization until Thomas Didio assumed control.

Team B was unable to get sufficiently close to Gingello to enable them to effect his murder by conventional means (that is, gun or knife). Due to this problem, it was determined that explosives would have to be utilized and by constructing a device that could be remotely detonated, the team B members could remain far enough away to go undetected by Gingello or his bodyguards.

Among schemes proposed was a plan whereby team B would secrete a remote control explosive device in a child's toy, such as a "big wheel," and leave it on the walkway of Gingello's apartment. Upon seeing Gingello leave the premises and approach the toy, the device would be remotely detonated. This plan was abandoned for fear that a child might walk off with the toy and team B would lose the bomb. The concern for safety of the child was not paramount, but the loss of the device was inexcusable. Due to the expense of manufacturing the remote control device (the component electronic equipment cost in excess of \$350) the technical expertise required to modify the transmitter and receiver, and the scarcity of explosives, team B could not afford to lose any remote controlled explosive devices.

Another plan which was formulated involved lowering a remotely controlled device down the chimney of the Gingello apartment, and detonating it when Gingello was present. At the last moment, it was discovered that the Gingello apartment did not have a chimney into which a device could be lowered.

Also considered was filling a traffic cone with explosives and remotely detonating it when Gingello's vehicle approached. This plan was apparently abandoned because the possibility of damaging the car, but not killing Gingello, existed.

During February and April 1978, five unsuccessful attempts to kill Gingello by means of explosives were made. Salvatore "Sammy G" Gingello was known to frequent the Blue Gardenia restaurant in Irondequoit, N.Y., which was located in a busy suburban shopping center. Team B members hid remotely controlled devices in snowbanks surrounding the restaurant, with the intention of detonating the bombs as Gingello approached the premises. On two occasions Gingello failed to show up, and on the other occasion the devices failed to detonate.

On or about February 24, 1978, team B members Didio, Vaccaro, Celestino, Barton, and Frassetto devised and attempted to carry out a plan to kill Gingello inside the Blue Gardenia restaurant.

Frank Frassetto (who was not at that time identified as a team B member) entered the restaurant carrying a remotely controlled pipe bomb inside an attaché case. After determining that Gingello was present, Frassetto was to go to the pay phone inside the restaurant and

place a call to William "Billy" Barton and advise him that Gingello was present. Frassetto would then leave the attaché case by the telephone and proceed to the bar area of the restaurant. Barton would then place a call to Celestino, Didio, and Vaccaro, who were at a pay phone near the shopping plaza and could observe the front of the Blue Gardenia restaurant. Barton would advise the other team B members that Gingello was in the restaurant and they in turn would prepare to remotely detonate the explosives from the parking lot.

Barton was then to call the pay phone at the Blue Gardenia restaurant and ask for Gingello. Frassetto, upon observing Gingello approach the telephone, would then leave the premises as a signal for his cohorts to detonate the device which was left by the phone booth in the attaché case. If this plan proved successful, numerous patrons and employees of the restaurant would have been killed or severely injured upon the detonation of the device.

The plan, however, failed to work because when Frassetto attempted to telephone Barton, he consistently got a busy signal. It was later determined that this was due to Barton having an extended conversation on the telephone with his girl friend.

In late February 1978, team B members Thomas Didio, Angelo Vaccaro, Dominic "Sonny" Celestino, William Barton, Frank Frassetto, and Rodney Starkweather met with Stanley Valenti at his residence in Victor, N.Y.

The discussion centered around the fact that there would be no active involvement of other organized crime families in the current power struggle between team A and team B, but that if team B emerged victorious, they would have the support of organized crime interests in Pittsburgh, Pa.

On March 2, 1978, team B, returning to less elaborate plans, planted a remotely controlled device in a snowbank in front of the Blue Gardenia restaurant. Frank Frassetto was in the parking lot of the shopping center, with Dominic "Sonny" Celestino secreted in the trunk of the vehicle with the remote radio signaling device required to detonate the explosives. A hole had been drilled in the trunk of Frassetto's car so that the antenna for the radio device could be extended outside the vehicle to insure detonation of the device.

Salvatore "Sammy G" Gingello arrived at the Blue Gardenia in a vehicle operated by John Fiorino. Stepping in front of the restaurant, Gingello got out and approached the front door, at which time Celestino detonated the explosive device. Due to the manner in which the device was placed, Gingello was blown into the air but miraculously escaped serious injury. Shrapnel from the device caused damage to the front of the restaurant and adjoining buildings.

After this incident, Rodney Starkweather was directed by the other team B members to secure more explosives. Starkweather traveled to Auburn, N.Y., and purchased another quantity of blasting caps and Kinopak stick from Timothy Ryan.

In late March 1978, team B members Didio, Vaccaro, Celestino, Frassetto, and Starkweather met with Stanley Valenti at his residence in Rochester, N.Y. Stanley Valenti advised them that his brother, Frank Valenti, would be released from jail soon, and that "Rochester should be ready when Frank gets out."

Also discussed at this meeting was the group's displeasure with co-conspirator William Barton, who had been excluded from the meeting. The team B members were upset about Barton's absence from recent meetings, and his apparent propensity to foul up their attempts to kill Gingello. Additionally, it was believed that Barton had contacted Gingello and attempted to ingratiate himself with him.

The team B members feared that Barton would identify Frank Frassetto as a team B member, and divulge the participation of Stanley Valenti in the conspiracy. A vote was taken, and it was recommended that William Barton be killed. This task was assigned to Rodney Starkweather. During March and the early part of April 1978, team B members Didio, Celestino, Vaccaro, and Frassetto made trips to West Virginia for the purpose of acquiring explosives.

In the early morning hours of April 23, 1978, team B members Thomas Didio, Angelo Vaccaro, Dominic "Sonny" Celestino, and Frank Frassetto placed a remote control device under Salvatore "Sammy G" Gingello's vehicle, which was parked in a lot in front of Ben's Cafe Society, Main and Stillson Streets, Rochester, N.Y. At approximately 2:30 a.m., Gingello and his two team A bodyguards, Thomas Taylor and Thomas Torpey, returned to the vehicle. As Gingello and his associates entered the vehicle, the device was remotely detonated and the resulting explosion completely destroyed the vehicle and caused damage to surrounding vehicles and business locations. The force of the explosion amputated Gingello's right leg and nearly severed the left leg at the thigh. Within 20 minutes, Gingello died at Genesee Hospital as a result of the severe injuries suffered in the explosion. Thomas Tyler and Thomas Torpey suffered less extensive injuries. The following day Dominic "Sonny" Celestino was reputed to have stated that if he had placed the bomb properly, he would have "gotten all three of them bastards."

Within days after the death of Salvatore "Sammy G" Gingello, team B member Dominic "Sonny" Celestino met with team A representatives at Lloyd's Restaurant, Rochester, N.Y., in an attempt to negotiate a settlement between the two opposing factions. Apparently unhappy with the outcome of the meeting, Celestino and the other team B members decided to embark on a bombing campaign directed at gambling establishments operated by team A.

It was believed that if the team A gambling establishments could be closed down, the resulting loss in revenue would require team A to settle their differences with team B.

To further terrorize team A, Starkweather offered to furnish Ryan a dirt bike, bulletproof vest, and hand grenades, if Ryan would ride the motorcycle on the sidewalk and throw the grenades through the window of T. & T. Talent, 253 Lyell Avenue. T. & T. Talent is a theatrical booking agency operated by team A members Marvin Pizzo and Thomas Torpey. Starkweather said he would pay Ryan \$1,000, but Ryan refused the offer.

On or about May 11, 1979, team B member Anthony Chirico broke into an explosives magazine at Genesee Explosives, Rochester, N.Y., and stole a quantity of explosives. These explosives were delivered to Dominic "Sonny" Celestino and Frank Frassetto, at the Frassetto residence, Greece, N.Y.

On May 19, 1978, team B members Celestino, Starkweather and Bates threw a pipe bomb through the window of a team A gambling establishment located at 1264-1266 Clifford Avenue, Rochester, N.Y. Although the club was full of patrons when the pipe bomb detonated, there were no reported injuries.

On the evening of May 21, 1978, team B members Celestino, Frassetto and Starkweather placed a time bomb near the entrance of a team A gambling establishment located at 1455 University Avenue, Rochester, N.Y. This device detonated at about 5:30 a.m. on May 22, 1978, while the club was in operation and full of patrons. No personal injuries were reported, but extensive damage was done to the exterior and interior of the building.

On May 25, 1978, team B member Rosario "Ross" Chirico, while driving his vehicle near his residence, was fired upon by a sniper with a high-powered rifle. Chirico was only superficially wounded. The sniper escaped through a wooded area on a motorcycle.

On June 6, 1978, team B members Celestino, Frassetto, Chirico and Starkweather decided to place another device in the team A gambling establishment at 1264-1266 Clifford Avenue, Rochester, N.Y.

After a few aborted attempts to break into the basement of the premises, entry was finally gained and a timed device was placed in the basement directly under the office area of the operator of the club. This device apparently malfunctioned, and failed to detonate. On June 7, 1978, team B members Celestino, Frassetto, and Starkweather returned to the premises and placed a second timed device next to the device they had placed the night before.

On June 8, 1978, at approximately 1:30 p.m., the second device detonated, causing an immediate sympathetic detonation of the original device. The blast caused a volume of debris and shards of glass to fly into a busy intersection shortly before scores of schoolchildren were to be excused from a nearby grade school. Extensive damage was caused to the building, which contained commercial space on the street level and occupied apartments on the second floor.

The structural damage done to the building was so severe that the building was immediately condemned. A number of occupants in the gambling establishment were injured.

On June 18, 1978, local police officers conducting surveillances of team A and team B members in an attempt to curtail the violent bombings, observed team B members Dominic "Sonny" Celestino and Frank Frassetto in a vehicle. A surveillance was initiated, but apparently the police vehicles were spotted. The vehicle operated by Frassetto attempted to elude the surveilling officers and a high-speed chase ensued. The vehicle was finally halted, and Frassetto and Celestino were arrested for illegal possession of weapons, which were found in the car.

A sawed-off M-1 carbine was recovered along the route of the chase, and it is assumed that the firearm was thrown out of the vehicle by Frassetto and Celestino.

As a result of Frassetto's arrest, ATF special agents initiated a neighborhood canvass in the vicinity of the Frassetto residence.

Neighbors told investigators bizarre stories of unusual activities in and around the Frassetto residence. Carloads of men were seen entering the house at all hours of the day and night. A mysterious "Wise

Potato Chip" truck would appear at the residence from time to time, and men wearing brown gloves would remove and place items into the truck. A New York State transporter license plate was frequently switched from the Wise Potato Chip truck to numerous other passenger vehicles. Men apparently not related to the Frassetto's would live at the residence for periods of time.

Investigation subsequently identified the Frassetto residence as a focal point of team B activity. Numerous meetings were held there, and most of the explosive devices were manufactured in the basement. Prior to Frassetto's identification with team B, other team B members utilized his residence as a hideout.

The neighbors expressed great concern for their safety, due to Frassetto's apparent organized crime connections and the unusual activity around the Frassetto residence, and many were reticent to cooperate with authorities.

One family was so concerned for their safety that after testifying before a Federal grand jury, they sold their house and moved to a distant State.

ATF agents located the Wise Potato Chip truck parked at a nearby service station. Suspecting that the vehicle was used to hide the illegal cache of team B explosives and firearms, a 24-hour surveillance of the truck was immediately initiated. On June 28, 1978, after observing no activity around the suspect vehicle, special agents contacted the service station owner in the hope that this action would prompt team B to react.

Within a few hours Betti Frassetto, wife of team B member Frank Frassetto, arrived at the gas station and attempted to move the truck. Unfortunately, the service station personnel could not find the keys for the vehicle and Betti Frassetto left.

A short time later, team B members Anthony Chirico and Rodney Starkweather appeared at the gas station and surreptitiously removed from the truck a beer cooler and secreted it in the high grass close to a nearby nursing home. Chirico and Starkweather then returned to their vehicle and left the area, followed by an ATF surveillance team. Other special agents inspected the contents of the beer cooler and found it to contain a large quantity of explosives, blasting caps, timing mechanisms, batteries, remote radio transmitting devices and other miscellaneous component parts used to construct explosive devices.

ATF agents then arrested Rodney Starkweather and Anthony Chirico for violation of Federal explosives and firearm laws. Under the front seat of the vehicle they occupied were fully loaded handguns. It should be noted that no further bombings occurred after the seizure of explosives and related items in the Wise Potato Chip truck.

As the investigation continued, Timothy Ryan was developed as a suspect in connection with furnishing explosives to Starkweather. Extensive attempts to locate Ryan failed, until it was learned that a \$10,000 contract had been put out for the death of Timothy Ryan. Ryan subsequently cooperated with the authorities and was relocated into the Federal witness security program.

Information was also developed that Gary Haak may have been involved in the construction of the devices used in the bombings. Haak, a former business associate of Rosario "Ross" Chirico, was located and interviewed, but denied any knowledge of the bombing incidents.

Haak eventually admitted his involvement in the manufacture of destructive devices, firearms silencers and the alteration of firearms for team B members. Haak was also relocated in the Federal witness security program.

On July 6, 1978, team B member Thomas Didio was machinegunned to death at the Exit 45 Motel, Victor, N.Y. A short distance from the scene of the homicide, a Thompson submachinegun and two sawed-off shotguns were recovered. The Thompson was identified as the firearm used to kill Didio, and it is assumed that the three weapons had been abandoned by the perpetrators of the homicide. Near Didio's body in the motel room was a loaded handgun which he apparently was attempting to reach when he was gunned down.

On July 30, 1978, team B member Rodney Starkweather, who was out on bail on the pending Federal charges, was ambushed by two unidentified men wearing ski masks who approached him on a dark street and shot him three times. Starkweather was rushed to Strong Memorial Hospital in serious condition and eventually recovered from his wounds. The attempt on his life, and the awareness of the Government's case against him, convinced Starkweather to provide testimony against his coconspirators. Starkweather subsequently pled guilty to pending Federal charges and was relocated into the Federal witness security program.

Continued investigation determined the involvement of James Bates as a coconspirator with other team B members. Bates subsequently agreed to cooperate with authorities and render truthful testimony concerning his knowledge of team B activities. Bates pled guilty to Federal charges and was relocated in the Federal witness security program.

On August 29, 1978, ATF special agents executed a Federal search warrant at Trolley Collision, 5 Frömm Place, Rochester, N.Y., an auto collision shop operated by team B members Rosario "Ross" Chirico and his son, Anthony Chirico. Seized at the premises were a firearm silencer, literature on how to manufacture firearms silencers, assorted firearms, a quantity of safety fuse, and miscellaneous component parts utilized in the construction of destructive devices.

On March 14, 1979, officers of the Gates Police Department observed a suspicious vehicle in the vicinity of the residence of Angelo "Oskie" DeMarco. DeMarco, operator of one of the team A gambling establishments, had cooperated with Federal authorities in the bombing investigation. As police officers approached, the vehicle left the scene at a high rate of speed and a chase ensued. The vehicle was eventually apprehended and the two occupants were identified as team A members Anthony Oliveri and Anthony Columbo.

Retracing the route of the chase, police officers recovered a sawed-off shotgun, a loaded handgun, a ski mask and a pair of black leather gloves. Neither Oliveri nor Columbo had any identification on their person. It was later determined that the vehicle that they were operating was fictitiously registered, in that the person to whom the vehicle was registered is nonexistent. It is speculated that Angelo "Oskie" DeMarco was slated to be killed as a result of his cooperation with Federal authorities.

On April 12, 1979, team B members William "Billy" Barton, Anthony Chirico, Rosario "Ross" Chirico, Dominic "Sonny"

Celestino, Frank Frassetto, Angelo Vaccaro, Stanley Valenti, and Betti Fressetto were named in a 14-count Federal indictment. The indictment alleged violations of Federal firearms, explosives and conspiracy statutes. Additionally, certain defendants were charged with RICO (Racketeer Influenced and Corrupt Organizations) violations.

On September 10, 1979, defendant Stanley Valenti was granted a severance from trial due to ill health.

On January 8, 1980, the trial of team B defendants commenced before Hon. Lloyd F. MacMahon, in Federal Court, Rochester, N.Y.

On January 30, 1980, the jury returned a guilty verdict against all defendants for all counts of the indictment.

On March 11, 1980, Hon. Lloyd F. MacMahon sentenced William Barton to 10 years imprisonment; Anthony Chirico to 15 years imprisonment; Rosario "Ross" Chirico to 25 years imprisonment; Dominic "Sonny" Celestino to 30 years imprisonment; Frank Frassetto to 30 years imprisonment; Angelo Vaccaro to 25 years imprisonment; and Betti Frassetto to 2 years imprisonment.

Rodney Starkweather and James Bates, who testified at the trial against their coconspirators, are currently pending sentencing.

That concludes my portion of the testimony regarding the written statement submitted. Agent Kern is prepared to continue with his testimony regarding this investigation.

Mr. STEINBERG. Mr. Kern, you may continue.

Mr. KERN. The Bureau of Alcohol, Tobacco, and Firearms became involved in this investigation after the March 2, 1978, bombing attempt on the life of Salvatore Gimgello. Federal investigative jurisdiction was assumed under the provisions of the Federal Gun Control Act of 1968, which prohibits the manufacture, transfer, and possession of destructive devices—bombs—and the Federal Explosives Control Act of 1970, which prohibits the use of explosives to kill, injure or intimidate individuals or cause damage to property and vehicles.

Investigation of violations of these statutes falls within the investigative purview of the Bureau of Alcohol, Tobacco, and Firearms.

Additionally, as stated in the preamble of the Gun Control Act of 1968, the Bureau of Alcohol, Tobacco, and Firearms has the responsibility to provide support to Federal, State and local law enforcement officials in their fight against crime and violence.

As the bombings and acts of violence continued, it became apparent that the actual crimes and related criminal activities were occurring in a number of different police jurisdictions. The multijurisdictional aspect of this investigation necessitated the formation of an investigative task force, comprised of Federal, State, and local law enforcement agencies.

The task force consisted of investigators from the Bureau of Alcohol, Tobacco, and Firearms; Rochester, N.Y., Police Department; Brighton, N.Y., Police Department; Irondequoit, N.Y., Police Department; Greece, N.Y., Police Department; Gates, N.Y., Police Department; Monroe County Sheriff's Office; New York State Police; and the New York State Organized Crime Task Force.

This unique approach allowed the task force to combine the individual areas of expertise developed by the participating agencies. Consolidation of the local law enforcement agencies' knowledge of crim-

inal activities, general intelligence information, background data on the suspects and informant information, within the confines of their geographical jurisdictions, greatly enhanced the overall investigative capability of the task force. This cooperative investigative effort was essential to the successful completion of the investigation.

The formation of the investigative task force resulted in the effective unification of the manpower and resources of participating law enforcement agencies involved, and precipitated a more effective and comprehensive investigative effort.

The nature and scope of this investigation necessitates the involvement of Federal law enforcement. Of paramount importance was the public safety aspect and the necessity to curtail the rash of bombings and violence. In this instance, the infusion of Federal investigative manpower and resources into the Rochester area greatly accelerated the progress of the investigation and resulted in the complete cessation of the bombing incidents.

The Federal investigation participation, complemented by the utilization of an investigative Federal grand jury under the supervision of an attorney for the U.S. Justice Department Organized Crime and Racketeering Section, greatly facilitated the gathering of witness testimony and documentary evidence against the perpetrators of these violent crimes.

ATF's ability to pursue investigative leads through local ATF offices was an important factor. Witnesses residing out of State could be readily interviewed, and telephone toll records and business records could be subpoenaed and secured for presentation to the grand jury.

Our ability to conduct investigations of an interstate nature greatly enhanced the efficiency and effectiveness of the overall investigation.

Certain investigative techniques initiated and further developed by ATF, such as examination of bomb scene debris for explosives taggants, utilization of fixed-wing aircraft for surveillance purposes, and ATF's explosives tracing capability, assisted in the conduct of the investigation. Extensive use of ATF forensic laboratory capabilities was of invaluable assistance in identifying the type of explosives and other components used in the construction of the destructive devices.

The capability of Federal law enforcement agencies to place witnesses into the Federal witness security program proved to be a critical asset in this investigation.

Many crucial witnesses, peripherally involved in organized crime activities, were reluctant to cooperate with investigators for fear of jeopardizing their lives and the lives of their families. The very nature of the investigation itself, complete with constant overtures of death and violence, mandated that the Government be able to insure the personal safety of witnesses and their families.

It is unlikely that this cooperation could have been obtained if the Government had not been able to offer the promise of safety to the witnesses and their families. A total of 14 individuals were entered into the Federal witness security program and relocated during the course of this investigation.

Essential testimony was rendered at trial by ATF personnel recognized by the court as expert witnesses. A representative of the Explosives Technology Branch rendered expert testimony relative to the

construction of the destructive devices and the similarities between component parts recovered at the scene of bombings and component parts recovered from the Wise Potato Chip truck in June of 1978. A questioned document examiner rendered expert testimony which linked the defendants to hotel registrations, executed under fictitious names, in West Virginia and Ohio, which provided corroboration of testimony offered by other Government witnesses.

Since the inception of this investigation, ATF special agents have expended almost 35,000 man-hours in pursuing this investigation. Thousands of hours have been expended in conducting interviews of more than 700 potential witnesses; hundreds of hours were required to compile, examine and analyze thousands of telephone toll call records from throughout the United States.

Vast amounts of investigative time were utilized to examine business documents and financial records. The cost of this task has been enormous, with the expenditures of \$581,000 in salaries of ATF investigative personnel alone.

Travel costs and subsistence for ATF special agents was in excess of \$70,000. Furthermore, more than \$3,000 was expended to provide interim protection to Government witnesses prior to their actual acceptance into the Federal witness security program.

Indirect costs such as motor vehicle maintenance, gasoline costs, photographic work, office supplies, communications costs and clerical support costs cannot be accurately measured, and are therefore not included in the above figures.

The cost factor cited above does not include the salaries and expenses incurred by the participating State and local law enforcement agencies; the costs of Justice Department personnel; the costs of operating a Federal grand jury for a period of 1 year with the attendant expenses of witness fees and travel costs; the cost of protection and relocation of witnesses placed into the Federal witness security program; the cost of extensive laboratory examinations of evidence including the salaries of forensic personnel and ATF technical services personnel; and the cost of a month-long trial with a sequestered jury.

The financial cost of this investigation clearly exemplifies the necessity for adequate budgetary appropriations for Federal law enforcement agencies if investigations of this quality are to be successfully pursued. As a result of the extensive investigative effort, ancillary violations of Federal law were discovered, including but not limited to multiple conspiracies, perjury, obstruction of justice, mail fraud, income tax fraud, and violations of the RICO (Racketeer Influenced and Corrupt Organizations) statutes.

Senator JAVITS. Counsel will handle the questioning.

Mr. STEINBERG. Senator, with your permission, we have a slide presentation that the agents have prepared. As with the last slide material, Senator, the pictures are in some respects gruesome, grotesque, and unpleasant. The screen will be facing Senator Javits so that no one in the audience has to watch the screen if they don't wish to. However, members of the media who wish to watch the screen may.

Mr. Kern, would you explain the slides as they appear?

Mr. KERN. Yes, sir. We will.

This slide of the Blue Gardenia Restaurant is the focal point of a number of attempts on the life of Salvatore Gingello. This is the lo-

cation where the March 2, 1978, attempt failed to seriously hurt him. This is the March 23 bombing of Mr. Gingello's car which resulted in his death. As you can see, the extensive damage to the front of the vehicle is indicative of the force of the explosives utilized. That is a photograph of the front seat of the vehicle. Mr. Gingello, at the time of the detonation, was the operator of the vehicle.

This again is another photograph of the front portion of the vehicle.

That is the photograph of the driving area of the vehicle from the back seat. The other two occupants who were not seriously injured, one was in the rear seat and the other was in the passenger side of the vehicle. That is a post mortem photograph of Mr. Gingello reflecting some of the traumatic damage to his torso as a result of the bombing.

The next photograph depicted traumatic injuries to the lower body as a result of the detonation of the bomb.

This is an aerial photograph, the lower right-hand corner of the gambling establishment at 1455 University Avenue, Rochester, N.Y.

On May 21, a time bomb went off in the area of the entrance and did considerable damage to the fence and the front of the building. This is another view of the same violent incident.

This photograph was the establishment at 1264-1266 Clifford Avenue, Rochester, N.Y.

The photographs here were taken after the second bombing at that location. As you can see, there was extensive damage done to the front of the building.

This again is a photograph of the front of the premises at 1264-1266 Clifford Avenue. In this photograph, it depicts the basement area of the building where the device was placed. You can see extensive damage done to the ceiling which, of course, was the floor of the first floor.

The device was placed on the upper part of that photograph, on the "I" beam which supported the building. The device was placed on the "I" beam and the force of the explosion completely shattered it.

That is the Wise Potato Chip truck which had been previously parked at the service station, at the scene of the explosives, and the arrest of Mr. Chirico and Starkweather was consummated.

That is the beer cooler which we made reference to which was removed from the Wise Potato Chip truck. Those are some of the explosives which had been recovered from the vehicle.

That is Kinepac, as it is commonly referred to, which was also recovered from the vehicle.

Those are the portions of the electrical blasting caps which we recovered also. That is the timing device which has been modified and was utilized in the construction of time bombs. As you can see there is a switch on the upper part of it.

Those are boosters which had been stolen from Genesee Explosives on May 11, 1978. That photograph shows them in the original condition, which includes identification for the tracing of the explosives.

We recovered from the cooler more boosters which had the outside shell removed thereby negating the possibility of identifying the explosives or tracing them as to date of origin or purchaser.

They were subsequently wrapped similar to this where they would take six boosters, wrap them together and tape them and utilize that for any one particular device.

That is a photograph of a F-u-t-a-b-a transmitter recovered from the Wise Potato Chip truck. The transmitters and receivers similar to this were modified and utilized as remotely controlled bombs.

That is the photograph of Mr. Didio, who was machinegunned to death on July 6, 1978, at the Exit 45 Motel in Victor.

This photograph shows the damage of wounds inflicted by the rounds fired at Mr. Didio and subsequently caused his death.

Mr. STEINBERG. Did you prepare pictures of the slides we have seen for inclusion into the record.

Mr. KERN. Yes, sir. We do have photographs available.

Chairman NUNN. Without objection, that will be part of the record and appropriately numbered exhibit.

[The photographs referred to were marked "Exhibit No. 15" for reference and excerpts follow:]

EXCERPTS FROM EXHIBIT No. 15



FIGURE 5. Bombed automobile in which Salvatore Gingello, Rochester, N.Y., was killed.

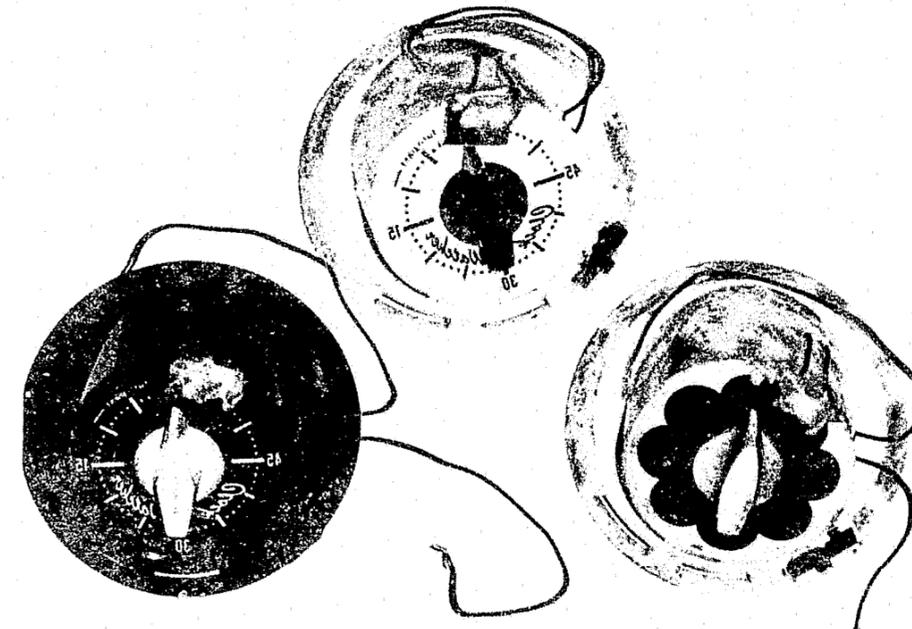


FIGURE 6. Timing devices, with safety switch, used in time bomb assembly, recovered from Wise Potato Chip truck referred to by Mr. Kern.

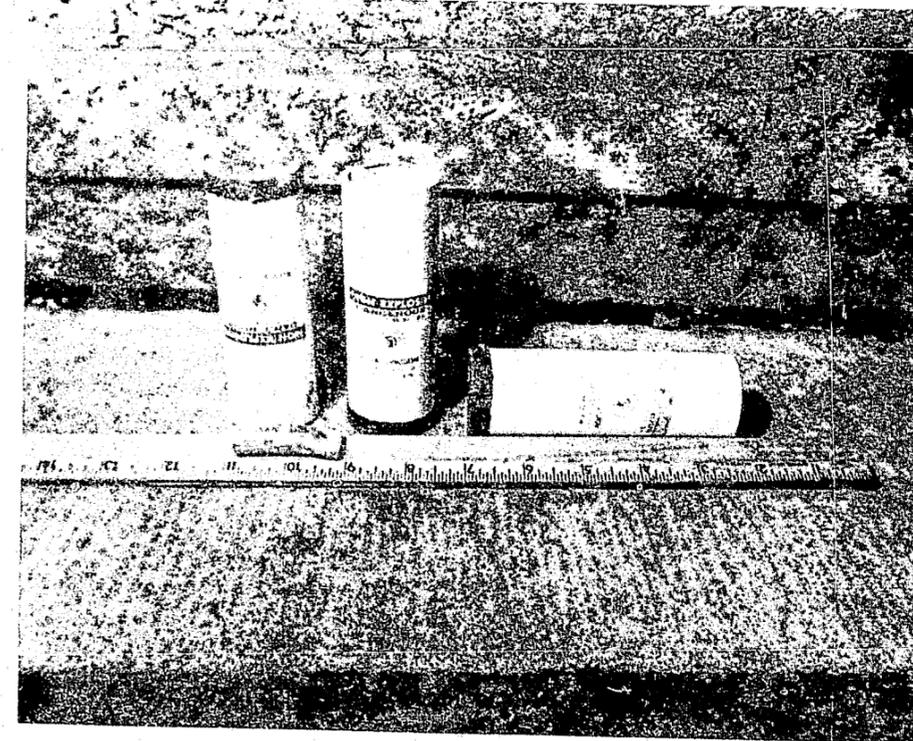


FIGURE 7. Dupont Boosters in original manufactured configuration, recovered from Wise Potato Chip truck referred to by Mr. Kern.

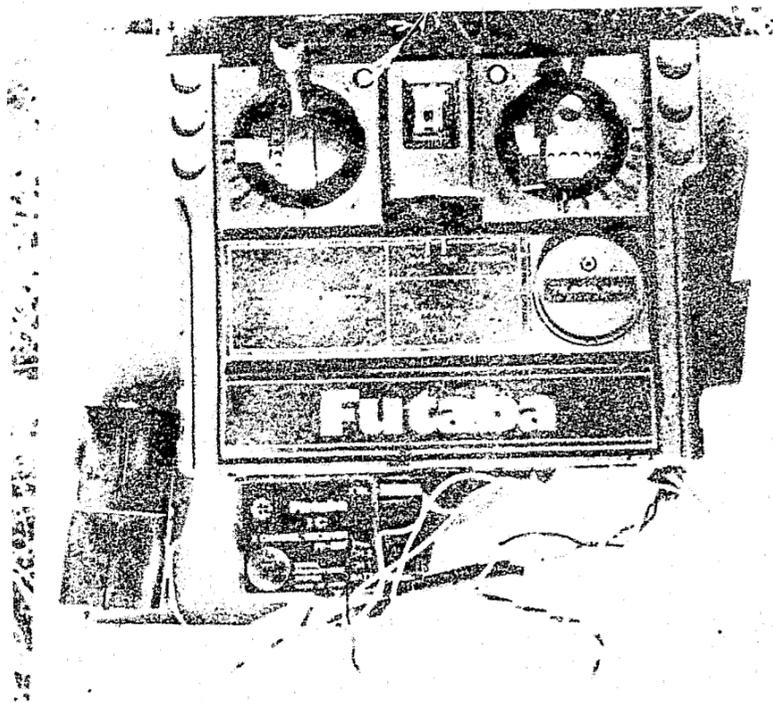


FIGURE 8. Futaba transmitter capable of activating remote controlled bombs, recovered from Wise Potato Chip truck referred to by Mr. Kern.

Mr. STEINBERG. As a result of this case and other similar investigations have you determined whether or not the mob employs motorcycle gangs to commit acts of violence?

Mr. HURT. Yes, sir. In the course of this investigation it was determined that organized crime, both organized crime factions involved had used members of motorcycle gangs to acquire firearms and explosives and to commit acts of violence in furtherance of mob activities.

Mr. STEINBERG. The cost of this investigation to the taxpayer is great. In terms of the violence, what were the investigative results?

Mr. KERN. The most important and immediate result of our investigative effort was the June 28 arrest of Mr. Starkweather and Mr. Chirico with the explosives. All bombing incidents were stopped immediately. The investigation ultimately resulted in the conviction of seven individuals for violation of Federal laws.

Additionally, numerous ancillary violations of Federal and State laws were discovered and referred to the appropriate agencies for prosecutive consideration.

Chairman NUNN. Senator Javits.

Senator JAVITS. Thank you very much. I just wish to thank the members at this time for their work and the work of the agents who are concerned. I agree with you that the prime result must be cessation of the bombing which is very dangerous to the people of the area, and, of course, that resulted in the elimination from the community of those that perpetrated it. Thank you for your public service and to

show appreciation also the people who came forward in this work to rid the community of this particular peril. We appreciate that very much.

My staff thinks it might be useful, if you would, to supplement your testimony. You have testified generally that the lethal character of these operations has resulted in the criminals being injured or killed. The peril to the public generally, of course, is very real because you pointed out it is indiscriminate. A bomb explodes and can hit anybody and you pointed out the peril, for example, to the children by the explosion of a bomb, destroying much of a building.

Is there anything you would wish to add from the point of view of the public? How is the public imperiled, any other details in addition to the fallout of these acts of violence which are represented by the testimony you have already given?

Mr. HURT. I can only add, Senator, that it is an absolute miracle that the only death involved in this entire operation was that of Mr. Gingello. At each of the bombing incidents there are any number of innocent civilians, bystanders, and in some perhaps—in the persons, the gamblers, but it is an absolute miracle that no one else was killed.

Certainly the opportunity is there for that to have occurred, particularly the bombing of the Clifford Avenue gambling establishment on June 8, 1978. It is a busy intersection, there were people driving through there, people on the street. There were a couple of individuals who were injured, with minor injuries.

But the potential, obviously, was there. It is just absolutely incredible that no one else was killed.

Senator JAVITS. And the attitude of the convicted criminals themselves—

Mr. HURT. Absolutely no regard whatsoever.

Senator JAVITS. Callous?

Mr. HURT. Callous disregard, I believe is the term most appropriate and I believe, or Judge McMahon made that quite clear.

Senator JAVITS. They were after every other—

Mr. HURT. Whoever got in the way, it didn't matter.

Senator JAVITS. Do you think that they were bred for the job or is that a natural insensitivity of this type?

Mr. HURT. I really don't know. Senator, to be honest with you. It seemed to be universal among the team B members and exhibited from time to time by the individuals involved in A team, involved with running gun battles in the street, high-speed chases, and other events that did occur that we are familiar with in Rochester; the result of the investigative situation. It seems to be reasonably universal, as far as the participants that we have had contact with, there seems to be little if any regard with anybody who seems to get in the way.

Senator JAVITS. The elimination of this kind of activity is a tremendous help in safeguarding the public.

Mr. HURT. The people in Rochester are breathing a little easier.

Senator JAVITS. You can't just kiss it off on the ground that, well, it is just one criminal killing another?

Mr. HURT. I would think not.

Senator JAVITS. Thank you.

Chairman NUNN. Thank you, Senator Javits. We thank Senator Javits for his tremendous cooperation and help in this whole investiga-

tion. You, of course, for many years have been a very valuable member of this committee of the U.S. Senate, and I certainly welcome your participation and both solicit and welcome your advice. We appreciate your participating.

Just one other question. You have convicted most of the members of team B. Is that right?

Mr. KERN. That is correct, sir.

Chairman NUNN. Most of them are now in jail for one charge or the other?

Mr. KERN. That is correct.

Chairman NUNN. What about team A? What is the status of team A? Have many of them been convicted?

Mr. KERN. Sir, they are still operating. Our investigation, unfortunately, only focused on the team B faction because they were involved in the violent bombing activities, et cetera. They are still in operation in Rochester.

Chairman NUNN. So team A is still intact and still operating in Rochester, N.Y.?

Mr. KERN. That is correct.

Chairman NUNN. The bombings haven't taken place in recent months primarily because one part of it, a large part of team B is already incarcerated. Is that right?

Mr. KERN. That is correct. We virtually eliminated the competition with the removal of team B and convictions.

Chairman NUNN. That doesn't mean that Rochester, N.Y. does not have problems in the control of an organized crime outfit. Is that right?

Mr. KERN. There seems to be some indication that the control is rather tenuous at this time; but not anything strong enough that I think will merit testimony before the subcommittee.

Chairman NUNN. It is still there, but the control is not as strong as it once was. Is that right?

Mr. KERN. That is our understanding, Senator, yes.

Chairman NUNN. Thank you very much for your cooperation with the subcommittee and your splendid testimony this morning. You can remain there if you would like, and we may have other questions for you. We will at this time ask Mr. Gregory Baldwin to give us his testimony.

Mr. BALDWIN. Thank you, Mr. Chairman. Let me first say it is a very real honor and privilege for me to appear today to testify before this committee. With your permission I would like to proceed with my statement at this point.

Chairman NUNN. You may proceed, Mr. Baldwin.

Mr. BALDWIN. Thank you.

The facts leading to the indictment and conviction are described in the statement of Special Agent Robert Hutt, Bureau of Alcohol, Tobacco and Firearms, and it is unnecessary to review them a second time, except to say that they are a shockingly blatant exposition of the complete, reckless disregard for human life and safety on the part of organized crime figures in the pursuit of their goals.

The vicious and brutal murder of Salvatore Giggello, the bombing of establishments frequented by innocent citizens, the random place-

ment of bombs—indeed, the terror which shook the community at the height of this violence—stand as mute monuments to mob violence in just one of the smaller cities of this Nation. It is unlikely that these convictions have ended this violence.

The Rochester, N.Y., bombings are part—the most visible part, but still only a part—of an attempt to remove the existing organized crime structure in Rochester and replace it with another. Investigation and intelligence analysis indicated that the established Rochester mob warlords are supported by one organized crime faction headquartered in New York City. It also indicates that the insurgent members of the Rochester mob—those convicted in January 1980—are supported by another powerful faction in Pittsburgh, Pa., and possibly Buffalo, N.Y. The January convictions removed from the scene only one arm of this second faction, the enforcement arm. It will be replaced. It will be replaced in the near future. It will be replaced by the still untouched leaders of the insurgents, and it will be violently resisted by the still untouched leaders of the existing Rochester syndicate.

The result is predictable: Further violence endangering the entire community. The reason is identifiable: Rochester, the home of Kodak, Xerox, and other thriving corporations employing tens of thousands, is a wealthy city, a ripe plum ready to be plucked by the strongest and most ruthless mob.

It is a formula as precise and certain as any mathematical computation, and equally unlikely to be altered unless additional factors are added to the equation. The Rochester bombing case contains some of those factors which can and did change the result from mob victory to mob imprisonment. These factors include a prosecutor to provide legal guidance, wholehearted Federal investigative agency cooperation, coordination of investigative direction and efforts, the recruiting and use of local law enforcement resources, and the intelligent, unhampered use of a number of available Federal law enforcement investigative tools.

It must be understood that these factors are not easy or cheap to find and use. It must also be understood that their use must be permanent and continuously supported. It took almost 2 years of intense and continuous investigation and trial work to secure the January convictions of seven individuals.

It required the full, uninterrupted time of one prosecutor, five special agents of the Bureau of Alcohol, Tobacco, and Firearms—and the part-time of up to 20 more—and full-time contingents from the New York State Police, the Rochester Police Department, and the suburban communities to conduct the investigation and prosecution.

It required the yearlong use of the grand jury, the issuance of hundreds of subpoenas for testimony and documents, the grant of use immunity, and the relocation of witnesses.

These factors were pulled together in Rochester and used to great effect, but the time and expense involved in such an investigation placed a great financial strain upon all of the departments and agencies involved.

One of the major lessons of the bombing investigation in Rochester is that organized crime simply cannot withstand a coordinated, continuing long-term investigation which effectively employs the factors

used in Rochester. While it is true that Rochester, like any other city, has its own full-time prosecutors and police, these personnel have their hands full keeping up with routine criminal activity. Moreover, they do not have available to them the financial and human resources necessary to take on organized crime.

Organized crime and mob violence can be fought effectively with the resources available to the Federal Government. These resources, however, must be employed in a particular way. They require a prosecutor who does not have to justify his existence by the number of indictments or convictions he secures. It requires a prosecutor who is familiar with the law, the area, the local law enforcement personnel, and the local organized crime figures. It requires a prosecutor who is not overloaded with dozens of cases and who is prepared to make a long-term commitment to his job and to the area to which he is assigned. The Organized Crime and Racketeering Section of the Justice Department comes closest to providing this type of prosecutor.

The resources needed to effectively combat organized crime also require a prosecutor with immediate access to all of the Federal investigative agencies such as IRS, FBI, Secret Service, and BATF. This access ideally provides a symbiotic relationship. The investigating agent has available to him legal advice and counsel from the commencement of an investigation to its conclusion. The availability of legal expertise helps to prevent mistakes which can destroy an investigation or lose a trial.

It also provides continued legal guidance to investigators, guidance which will keep the ultimate goal of the investigation in focus and which will insure that the investigators concentrate on gathering relevant information which will meet the legal elements of proof with admissible evidence. It is absolutely necessary, especially in the long and complex cases characteristic of organized crime investigations, that an attorney be readily available to make the legal decisions in an investigation from its very outset, and to foster the case along with the ultimate goal of trial and conviction in mind.

This relationship between the prosecutor and the investigative agencies serves the prosecutor as well by making immediately available to him agency intelligence information, a vast amount of investigative expertise and the investigative resources necessary to effectively probe and prosecute organized crime. The first two benefits—access to intelligence and to expertise—presume that the various Federal agencies are willing and capable of cooperating together in a spirit of professionalism and trust. Indeed, this capacity is virtually a sine qua non of successful organized crime investigation.

The third benefit, investigative resources, refers to such areas as laboratory analysis, expert testimony and polygraphing. More specifically, however, it refers to those areas of expertise attributable to particular investigative agencies, expertise which relates directly to the agencies' jurisdictional fields and which are the product of years of experience. As an example, the ability of BATF experts to actually reconstruct an exploded bomb from mere fragments, or the ability to identify with certainty the precise explosive used in a detonated device based upon minuscule scraps of paper or minute traces of chemical residue are invaluable tools in preparing a case such as the Rochester bombings.

Beyond scientific expertise lies more mundane but equally difficult capacities such as "link analysis" or explosives tracing.

In the Rochester bombings, BATF's Albert Gleason was able to conclusively establish that all of the remote control bombs used from December 1977 through April 1978 were "linked" by design and manufacture to the same group of people, and from there to "link" those devices to the explosives cache which was discovered on June 28, 1978.

Also, and thanks to the Federal regulatory and statutory requirements relating to the maintenance of explosive manufacture and inventory records by private business, the BATF was able to rapidly trace the manufacture, sale and use of 32 cases of Trojan booster explosives and to document it, with nothing more than a date shift code appearing on a number of those boosters recovered on June 28. This capability enabled the Government to prove conclusively that the boosters discovered in the Rochester explosives cache on June 28, 1978, had been stolen from one particular company: This was done by tracking every single booster made with the appropriate date shift code from the very day of manufacture, December 5, 1976, to the date of an explosives theft, May 11, 1978, and accounting for the sale, use or storage of each one except those stolen.

Every agency has its own particular areas in which it excels and which are unique to that agency. Focusing the agencies and their multiple talents into one joint cooperative effort coordinated by one prosecutor arrays all these talents against the common foe. This is basically the function of the organized crime strike forces.

Wholehearted agency participation requires extensive financial support. This sort of program is expensive in terms of salary and manpower. While the cost of one properly conducted organized crime investigation is substantial, the hundreds of thousands of dollars expended on the Rochester bombing case demonstrates the worth of such an expenditure.

A quantitative measurement of organized crime control, that is, the conviction of seven individuals in this case, cannot portray its true impact because a monetary amount cannot be assigned to saving any one life or to preserving the safety of any one community. And how can the prevention of future violence or crime be measured? The reduction of mob violence and the control of mob activities do not in any way lend themselves to a quantitative success criterion. There is no way to possibly justify an organized crime investigation and prosecution in terms of the numbers of cases opened, the number of defendants indicted or convicted or the number of syndicate figures jailed.

It is extremely destructive of any agency or prosecutor's office to require that their expenses be justified in terms of such quantitative results. There simply is no such thing as a \$50,000 or \$500,000 investigation; some investigations will cost this much and more, and some investigations costing this much will yield no indictments or convictions at all.

Yet thorough, coordinated long-term investigations must be undertaken and even encouraged, regardless of expense, if mob violence is to be stopped, if legitimate businesses are to be preserved, if lives and property are to be protected. Mob violence is a form of war. It strikes

blindly at the innocent bystander as well as the syndicate soldier and chieftain. And just as the Armed Forces cannot be required to justify their expenses in terms of the number of wars won or victorious battles waged in the last fiscal year, investigative agencies cannot be required to engage in this form of self-justification.

While the combination of prosecutorial and agency resources is one of the basic concepts of the Organized Crime Strike Forces, the investigation of mob violence and its successful prevention often entails the successful combination of three elements.

The first element incorporates State- or city-wide resources with the Federal investigative and prosecutive effort. This task force concept combines Federal and local law enforcement in the most effective manner, and the Rochester bombing case is a prime example of how successfully such a concept can be employed. Such a task force requires much more than a mere announcement of its existence. It requires an enormous amount of trust, patience, and coordination. Often the formation of a task force must first overcome years of suspicion, mistrust, and downright hostility between Federal and local law enforcement at the highest and lowest levels—problems often created initially by an absurd and misdirected competition between agencies and prosecutors on all sides for the glory of successful investigation and prosecution.

While similar competition sometimes exists between Federal agencies, it is often between the Federal and local elements that it achieves its most virulent and destructive proportions. Yet each element has enormous advantages to offer the other, as the Rochester case reveals. Local prosecutors have more access to and can utilize more effectively the vast resources of local governments. Federal prosecutors, on the other hand, often have access to more effective criminal legislation, less crowded courts and more sophisticated investigative tools.

Federal agencies often have at their disposal more capabilities for computer analysis and storage of voluminous information, scientific analysis, laboratory examinations, money, and time.

Local enforcement, confining its work to one geographical area on a daily basis, has a thorough knowledge of the day-to-day activities of the mob element. The union of these advantages in a coordinated and careful manner can be particularly effective, as in Rochester, where nine agencies and departments worked together as one unit with one common goal.

One of the most effective steps taken in the Rochester bombing case was the assignment of the Monroe County district attorney's chief trial assistant, Donald Wisner, as a special assistant U.S. attorney for that case. His trial expertise and thorough knowledge of law proved absolutely invaluable and developed the lines of communication and mutual respect essential to the successful operation of the task force.

One of the initial problems facing the Rochester task force was the question of Federal jurisdiction over the criminal activity taking place. It is worth noting that if the Rochester mob insurgents had secured permission in some way to manufacture these bombs and had paid a nominal tax for their manufacture, or if they had simply shot

it out on the streets and never used bombs, the Federal Government would have had much less jurisdictional basis to commence an investigation or join a task force. One defense attorney even criticized a defendant for having used bombs: It only provided the Feds with the chance to get involved with the investigation.

As it turned out, certain Federal provisions relating to the explosives statutes were critical in developing the Government's case.

In July 1978, Rodney Starkweather was indicted for the receipt in commerce of explosives knowing and intending that they would be used to kill another person. This charge, 18 U.S.C. 844(i), provides the penalty of life imprisonment or death if another was killed, and Starkweather was accused of securing in commerce the explosives which killed Gingello.

Starkweather, therefore, faced the death penalty, one of the extremely rare instances when such a charge was lodged by the Federal Government. The effect of this charge and penalty prompted Starkweather's ultimate guilty plea and testimony in an effort to mitigate his punishment.

However, if the explosives had been manufactured in New York and then bought or even stolen by him there—if the explosives had not physically crossed a State line—Starkweather could not be charged with this crime and a major impetus to his cooperation and testimony would have been lost.

The explosive involved was a chemical compound known as "kinestick." Kinestick, a binary explosive, is manufactured and sold in two parts, and it is not until one part—a red liquid chemical—and another part—a white chemical powder—are mixed that it legally constitutes an explosive. It is manufactured, sold and transported in commerce in its unmixed state without any regulation at all. But it is only a 20-minute step to mix both parts, insert a blasting cap and attach a fuse—in short, to have an explosive as dangerous as dynamite.

While Federal jurisdiction over the precise criminal activity of bombing based upon the Federal explosives statutes was an initial question, that jurisdiction became much clearer under the terms of the RICO statute, 18 U.S.C. 1962. The bombings themselves were, under New York law, considered as arson, and arson in violation of State law is one of the predicate crimes which constitute "racketeering activity" under the RICO statute.

Once it was established that the series of bombings were connected together and thus formed a pattern of racketeering activity, initial Federal jurisdiction under RICO was clear. At the earliest stages of the investigation, however, there was no such pattern. The investigation began in March 1978, but it was not until late April of 1978 that a second bombing—arson, under New York law—took place and a pattern could be shown.

By far the most serious jurisdictional problem arose in July 1978, when Starkweather was shot and almost killed. Starkweather, through his attorney, had already been approached by the Government in an effort to obtain his testimony in the case. He was then under Federal indictment. The obstruction of justice statutes do not specifically cover a situation where a prospective witness or informer is murdered for the express purpose of preventing his testimony.

In most cases one must be a witness for a Federal crime to have been committed. The lesson to the practitioner of mob violence is clear: Kill a potential Federal witness before he is subpoenaed before the grand jury or before he agrees to cooperate with the Federal Government. Had Starkweather died in July 1978, it is almost certain that the investigation would have died with him.

Chairman NUNN. What is the official definition of a witness according to the Federal statutes as interpreted by the courts? At what stage do you become a witness as opposed to being a potential witness?

Mr. BALDWIN. One becomes a witness when one is subpoenaed before a grand jury. I believe in some cases under the statute initial discussions or conversations with the prospective witness will suffice. But as to the details of the case law, I am afraid I can't enlighten you with any real specificity at this time.

Chairman NUNN. Could you furnish any information on that for the record?

Mr. BALDWIN. Yes, sir, but I don't believe I could do it at this moment.

Chairman NUNN. Not now. I mean later?

Mr. BALDWIN. Certainly. I would be happy to.

Chairman NUNN. We are going to talk about possibly considering amending this law. We will need to know how it is interpreted as best we can.

Mr. BALDWIN. I would be happy to do that.

[The information, when received, will be found in the files of the subcommittee.]

Chairman NUNN. Thank you.

Mr. BALDWIN. Once the question of Federal jurisdiction is resolved, however, the task force may undertake to employ the numerous investigative tools at its disposal. As with the Rochester bombing task force, one of the most basic prosecutive tools is the grand jury.

The term grand jury itself includes a host of techniques which are so absolutely necessary to successful law enforcement that they are virtually second nature to experienced prosecutors and investigators.

In the Rochester bombing case, for example, five people were present at the Blue Gardenia Restaurant when the bomb was detonated there on March 2, 1978, in an unsuccessful attempt to kill underboss Gingello. Not one of those people was willing to admit to an investigator that they even heard an explosion, let alone that Gingello was there at the time.

When served with subpoenas to appear before the grand jury, however, they were forced to face several alternatives squarely. They could refuse to appear or refuse to testify; this, though, would certainly have resulted in being jailed for contempt. They could continue to deny they saw or heard anything; but this would be so ludicrous under the circumstances that they would be in jeopardy of a perjury indictment.

Finally, they could answer the questions precisely—volunteer nothing and answer as reluctantly as possible all questions. In the face of these alternatives they all chose the third. They provided information, albeit reluctantly, which they would by no means have provided

under any other circumstances. Whether their reluctance to talk was based upon fear of the mob or outright hostility is irrelevant. The point is that the grand jury subpoena power and the threat of punishment for contempt provided the task force with the leverage necessary to secure information and testimony otherwise unavailable and to continue the investigation.

During the Rochester investigation hundreds of persons were called before the grand jury. The reluctance and hostility encountered with the Blue Gardenia witnesses was symptomatic of at least 50 percent of the witnesses. In one instance the passengers in Gingello's car when it was bombed refused to give a voluntary statement. Their testimony was crucial to the ATF bomb expert, who had to determine precisely when the bomb detonated in order to determine whether the bomb was a remote control device. Only by grand jury subpoena—and ultimately immunity orders—was this essential information finally obtained. In other words, without sufficient subpoena power the most knowledgeable witnesses would have withheld information or lied, and the case most certainly would never have reached indictment, let alone conviction. The bombers would still be hard at work in Rochester.

Two hundred years ago the institution of the grand jury stood as a bulwark for innocent persons against unscrupulous prosecutors and unjustified prosecution. It can and must continue to perform this function. The grand jury serves another equally important yet often overlooked role today, however. It serves as an investigative body standing as a bulwark for innocent citizens against the criminal elements seeking to bomb, steal, infiltrate and murder.

The Rochester grand jury acted in this second capacity for over 1 year in conjunction with the task force. The January convictions would not have been possible without the grand jury, and the Rochester community owes a great deal to the enormous amount of time and effort its fellow citizens devoted to their work as grand jurors.

Chairman NUNN. Was there any attempt on the part of the mob to influence or intimidate the grand jury or any members of the grand jury that you know of?

Mr. BALDWIN. No, not that we are aware of. There was no such attempt.

The subpoena power was used to secure documents and records as well as testimony. Literally hundreds of telephone toll records were subpoenaed from a number of telephone companies.

These records revealed patterns of telephone calls which enabled the task force to locate suspects and to establish relationships which revealed the existence, scope, and reach of the conspiracies in this case. There were documents which could not be explained away by the defendants. If their availability had been limited, restricted or prohibited in any way, or probable cause had been required to secure them in the first place, highly relevant evidence could have been lost forever.

The mere issuance of a subpoena does not guarantee that a witness will testify. A number of constitutional or common law privileges may be invoked by a witness, but most frequently it is the fifth amendment privilege that is asserted.

In a case involving widespread organized crime activity, and especially in a case like the Rochester bombings which at its core con-

cerned a mob war, this privilege is frequently asserted, and with good cause. The refusal to testify, however, frequently prevented the investigators and grand jury from securing corroborative testimony of crucial witnesses like Starkweather whenever that testimony touched upon any criminal activity.

Whenever such testimony was crucial in the Rochester bombing investigation, use immunity was conferred upon the witness pursuant to the Federal law—title 18, United States Code, sections 6002, 6003. About 20 grand jury and trial immunities were conferred in that case, and it is a simple fact that each and every one ultimately served in the search for the truth, and each and every one served to expose a crime more heinous and brutal than that for which use immunity was conferred. It is also a fact that every immunity furthered the investigation in a substantial way.

It is common experience in organized crime investigation, and it was an everyday occurrence in the Rochester case, that all the subpoenas and immunities in the Federal arsenal cannot persuade or force testimony in the face of overwhelming fear.

One of the greatest obstacles in the Rochester case was the fact that some witnesses feared the threat of violence used to retaliate for testimony given against the mob. In many cases no amount of persuasion or reasoning could overcome fear. One example of this in Rochester was a crucial witness who was so terrified that he or his family would be murdered for providing testimony that he moved his entire family at his own expense from the Rochester area. Witnesses, caught between subpoena and fear, often chose to hide or refuse to testify rather than incur the wrath of a mob. If Gimgello was not safe from his own mob, who could be? Faced with this situation the Rochester task force employed a most effective tool: The Federal witness protection program.

Many witnesses and their families were relocated during the course of the Rochester bombing investigation. Without their testimony, the leaders of the bombing group would never have been indicted or convicted. Their silence was worth a great deal to their coconspirators. Without the witness protection program, they would have chosen silence.

The witness protection program is expensive and its critics are many. Nevertheless it works, and it has been continually improving for the past 5 years. The U.S. Marshals' Service is to be highly commended for its efficient work and its rapid response in the Rochester case. Without the service, the program, and the funding, the Rochester bombings could not have been solved or prosecuted.

Chairman NUNN. You are saying the U.S. Marshals' Service did a splendid job as far as what they did in the Rochester case?

Mr. BALDWIN. Yes, sir. Indeed, without any hesitation I would characterize it as splendid all the way through.

Chairman NUNN. Have you followed through on that and talked to the people under that program and what their results have been since they have been part of the program?

Mr. BALDWIN. Yes, sir. I have. In this case in particular of several witnesses, one, after he was relocated found gainful employment in a very trusted position at a very good salary, requiring a great deal of travel. His employers are very, very pleased with the kind of work

he is doing. He has become a responsible and productive member of the community where he is. Two other individuals, Starkweather and Bates, both settled in their places of relocation, have become employed and settled down and have at this time established themselves as useful and productive members of the community in which they are relocated.

Chairman NUNN. It would be helpful to the subcommittee, and certainly we wouldn't ask this if it would in any way jeopardize their identity, if we could have a followup of these people entered in the program. We had testimony yesterday from a witness under that program who said he had a very difficult time securing a driver's license, he had a very difficult time securing his passport and he had never been able to get a birth certificate from the Marshals' Service and that he also had found it impossible to get credit and he found it impossible to get a home because he couldn't get credit. He was having to deal primarily with cash and was not able to have any credit rating. He said that the people in Washington—the Marshals' Service—were very well meaning but the people he dealt with in the field were simply not professional and he felt the program needed improving.

If you could, follow up on those individuals in the Rochester case who were part of that program and still are, on those particular questions, to determine if they have had any similar experience or any other complaints. I think it is important to put this whole thing in perspective. I know many of the marshals do a splendid job, and there may be areas in the country where they are not as well trained, and there may be a lot of corrections that need to be made in this program. So that kind of information submitted for the record later would be very helpful to the subcommittee.

Mr. BALDWIN. I would be happy to try to secure that information and provide it to this committee.

Chairman NUNN. Thank you.

Mr. BALDWIN. The bombing case, Mr. Chairman, is just one success story in the ongoing story of mob violence. Like most successful investigations and prosecutions, the success cannot be attributed to any one person, agency, or investigative tool. The Rochester case is merely the product of the effective use of the strike force concept and the employment of the law enforcement tools provided by Federal law. In truth, a full-time prosecutor, cooperating Federal agencies, professional and dedicated local law enforcement, the grand jury, subpoenas, immunities, witness protection—all of these are indispensable factors which, when added to the formula for mob violence, will alter the equation and provide, in the long run, a very different result. The Rochester case can be repeated if the necessary factors are supplied and supported. If they are not, it is nothing more than a lesson ignored and lost at a great expense, an expense which will prove to be greater in the long run than that which would be incurred in supply and support.

Once again, I thank you and the members of this committee for this opportunity to testify. I hope that in some way I have been of service and assistance to you and to this committee.

I will be happy to answer any questions that you or the members of the committee may wish to ask me at this time.

Chairman NUNN. Thank you very much, Mr. Baldwin. I have several questions in addition to those already asked, and those I asked for the record.

You have been very helpful to the subcommittee and we are grateful for your testimony. You have described the Federal grand jury as an invaluable tool in your investigation. There have been recent proposals in the Congress to alter grand jury procedure. One such proposal would permit the presence of counsel for each witness. Your views on that would be helpful and particularly your views as to how this would have affected your investigation in the Rochester case, if this law had been on the books at that time.

Mr. BALDWIN. Quite frankly, Mr. Chairman, I think that that type of law if it had been in effect during this investigation would have impeded the investigation substantially. As I mentioned, the principal function of the grand jury is as an investigative body. This function would have been, I think, severely damaged by giving the defense counsel access to the witnesses as they appeared before that grand jury, and I think very few witnesses would have testified as freely or as fully as they did in the presence of individuals or lawyers who they might believe or who would be free in fact to report their testimony to whatever mob figure might be under investigation or involved in the investigation.

So in short I think it would have hampered the investigation.

Chairman NUNN. On a scale of 1 to 10, how important would this kind of change, in terms of detriment to law enforcement, particularly as it is related to organized crime—in other words the closer to 10 you get the more detriment it will be to prosecuting organized criminals successfully. How would you rate that?

Mr. BALDWIN. I think you could easily rate it a 9, if not a 10 itself. I think it would be a very serious detriment.

Chairman NUNN. In cases of violence that you have described here today and that we have heard testimony from other witnesses on, why is the task force concept important?

Mr. BALDWIN. In cases of violence of this type it is imperative to stop the violence as soon as possible, to prevent further injury, further death, and property damage. The task force concept is important in this regard because it brings to bear a combination of all of the available talent in an area, all of the expertise that is available, and all of the intelligence information combined all together to achieve one goal, which is to stop the violence. It is the unification of those talents and those resources that make it particularly important and effective.

Chairman NUNN. Thank you very much, Mr. Baldwin. Senator Javits?

Senator JAVITS. I have just one question, about counsel and the grand jury. I understand what you are saying from the point of view of the prosecution, but what about the fact that it is now claimed that grand juries are nothing but rubberstamps for prosecutors, generally prosecutors are very friendly with the grand jury and that they just run indictments through when they ask for it and that there is really not the preinvestigation that is the classic role of the grand jury? If the lawyers were there, would there not be a much more respect-

able screening of the evidence, at least to see if there actually is a prima facie case?

In addition, the legal opinion would not be solely that of the prosecutor as to whether it made a criminal case in law. What do you say to that?

Mr. BALDWIN. Based upon my experience, Senator, the investigating grand jury in Rochester was anything but a rubberstamp. They were very actively involved. They very freely gave their opinion. They formed their own opinions and on a number of occasions questioned me quite closely as to why we were proceeding in any given manner and were very careful as to what the law was that they were proceeding under.

I have never been involved, quite frankly, with any grand jury that could even remotely be called a rubberstamp.

As to the use of a defense attorney for the purpose of screening evidence, I think it would, quite frankly, hamper a grand jury's true function as an investigative body. To begin to screen evidence would thereby limit the information or the evidence that they could and do in fact hear on occasion, and this is evidence the Supreme Court itself has characterized as acceptable evidence for a grand jury to consider in the conduct of the investigation. To prevent the grand jury from having any evidence or relevant information would seriously hamper, I think, the investigative process of the grand jury.

Senator JAVITS. What do you say about the view of the law which the prosecutor may give the grand jury?

Mr. BALDWIN. I think the grand jury should be told or explained precisely the statute that is involved. I don't think it is necessary to editorialize it any further than it is necessary to answer any question that the grand jurors might have in regard to how the evidence might fit into the law itself.

Senator JAVITS. That is solely at the discretion of the prosecutor, isn't it?

Mr. BALDWIN. Yes, sir, subject, of course, to review of the Federal judge who is in a supervisory capacity and subject, of course, to review of the indictment itself and attack upon the indictment by the defense.

Senator JAVITS. What about the grand jury's requests, getting advice on the law from the judge? In other words, would there be objection to that? Suppose we gave the grand jury a right, any grand jury, could ask that the grand jury be permitted to appear before the judge and get his advice on the law?

Mr. BALDWIN. I would find no great difficulty with that, Senator, except for the fact that you probably would often become involved in a situation where the judge not being aware of all of the evidence or testimony that has been heard would have a great deal of difficulty trying to relate any particular law to the testimony or put it into context for the grand jury.

Senator JAVITS. Of course, the prosecutor could put it in context when he appeared before the judge, the grand jurors would hear him and the judge would hear him and the judge could ask questions of both him and the grand jury. You might think about that, Mr. Baldwin.

Mr. BALDWIN. Yes, sir. I will.

Senator JAVITS. Thank you. Thank you, Mr. Chairman.

Chairman NUNN. Do you have any idea about the national statistics as the relationship between indictments and convictions in Federal court? What percentage of indictments end up in convictions?

Mr. BALDWIN. I am really not certain, Mr. Chairman, and for me to answer that would be just a guess.

Chairman NUNN. We will ask staff to research that and put it in the record. I think that would be an interesting statistic. Would staff furnish that information for the record at this point, without objection?

[The information follows:]

U.S. DEPARTMENT OF JUSTICE,  
Washington, D.C.

Mr. MARTY STEINBERG,  
Chief Counsel, U.S. Senate, Committee on Governmental Affairs, Senate Permanent Subcommittee on Investigations, Washington, D.C.

DEAR MR. STEINBERG: This is in answer to your inquiry of May 30, 1980, concerning the conviction rate in Federal Courts. We have been advised by the Administrative Office of the United States Courts that of 41,175 persons charged in Federal Court in fiscal year 1979, 32,913 were convicted. Of 45,922 charged in fiscal 1978, 35,505 were convicted. Thus, roughly 80 percent of those charged are convicted. We are advised that this figure hit an all-time low in the Viet Nam era and has been rising ever since.

Our figures in organized crime cases are kept in a much less scientific manner, but they indicated about an 84 percent rate of conviction with an occasional aberration down to as low as 79 percent and up to a high of 96 percent.

We hope this information supplies your needs.

Sincerely,

DAVID MARGOLIS,  
Chief, Organized Crime and  
Racketeering Section, Criminal Division.

Chairman NUNN. We appreciate very much your appearance here and your splendid cooperation with the subcommittee. We thank you for your testimony.

Mr. BALDWIN. It has been my pleasure.

Chairman NUNN. We thank all of you for your help and we appreciate the work you do on behalf of the Government.

Our next witness is Mr. Dominic Celestino.

Mr. Celestino, before you have a seat, we swear in all of the witnesses. Would you please hold up your right hand.

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

Mr. CELESTINO. I do.

TESTIMONY OF DOMINIC CELESTINO, ROCHESTER, N.Y.,  
ACCOMPANIED BY JOAN De R. O'BYRNE

Chairman NUNN. Thank you, sir.

Mr. Celestino, I would like to advise you of your rights and obligations as a witness before this subcommittee. First, you have the opportunity to consult with an attorney prior to answering any question or questions.

Second, under the rules of procedure for the Permanent Subcommittee on Investigations, your attorney may be present during your testimony.

Do you have an attorney present with you this morning?

Mr. CELESTINO. Yes, I do.

Chairman NUNN. Would your attorney please introduce herself for the record?

Ms. O'BYRNE. Yes, thank you, Senator. My name is Joan de R. O'Byrne. I am an attorney, counselor at law, and I represent Mr. Dominic Celestino.

Chairman NUNN. Thank you.

Senator JAVITS. Do we know where the lawyer is from?

Ms. O'BYRNE. I am from Rochester, N.Y.

Chairman NUNN. Thank you.

Mr. Celestino, is Ms. O'Byrne representing you as your attorney here?

Mr. CELESTINO. Yes, she is.

Chairman NUNN. The record should reflect that the witness is being represented by an attorney.

As I have indicated, Mr. Celestino, in addition to your rights as a witness, you have an obligation while testifying before this subcommittee. You have sworn to testify truthfully. If you do so testify, you are obligated to provide truthful responses so as not to subject yourself to the laws and penalties regarding perjury.

Mr. Celestino, do you understand your rights and your obligations as a witness before this subcommittee?

Mr. CELESTINO. Yes, I do.

Chairman NUNN. Mr. Celestino, could you give us your full name, please?

Mr. CELESTINO. Dominic Celestino.

Chairman NUNN. Could you give us your address?

Mr. CELESTINO. It is Montgomery Detention Center, it is 1307 Seven Locks Road, Rockville, Md.

Chairman NUNN. Is that a Federal detention center?

Mr. CELESTINO. I really don't know. I don't think so.

Chairman NUNN. What was your most recent address before your incarceration?

Mr. CELESTINO. I take the fifth amendment.

Chairman NUNN. Would you give us your address before you were incarcerated?

Mr. CELESTINO. I take the fifth amendment to that, sir.

Chairman NUNN. Could you tell us what crime you were convicted of?

Mr. CELESTINO. I take the fifth amendment to that.

Chairman NUNN. Mr. Celestino, have you ever been a member of an organization known as the La Cosa Nostra?

Mr. CELESTINO. I take the fifth amendment to that.

Chairman NUNN. Mr. Celestino, in the recent mob war in Rochester, N.Y., were you associated with either the team A or the team B faction as we have commonly heard those terms used?

Mr. CELESTINO. I take the fifth amendment to that.

Chairman NUNN. Do you know Salvatore Gungello, also known as "Sammy G"?

Mr. CELESTINO. I take the fifth amendment to that.

Chairman NUNN. Mr. Celestino, during the period of October 1977 through January 1978, did you attend any meetings at the Vineyard

Restaurant in Pittsford, N.Y., to plan bombings in the Rochester area?

Mr. CELESTINO. I take the fifth amendment to that.

Chairman NUNN. Mr. Celestino, during the late summer or early fall of 1977, were you and other members of team B involved in a fight with team A members at the Blue Gardenia Restaurant in Irondequoit, N.Y.?

Mr. CELESTINO. I take the fifth amendment.

Chairman NUNN. Mr. Celestino, one other question: Have you traveled to Ohio and West Virginia in the past 3 years to obtain explosives?

Mr. CELESTINO. I take the fifth amendment to that.

Chairman NUNN. Mr. Celestino, what is the membership of organized crime in the Rochester area?

Mr. CELESTINO. I take the fifth amendment to that.

Chairman NUNN. Mr. Celestino, we had numerous questions we wanted to ask you this morning about your own involvement in events in the Rochester area. We, of course, would like your testimony. You have chosen to exercise your constitutional rights before this subcommittee. This subcommittee recognizes and acknowledges your constitutional rights with respect to those. We will continue your subpoena.

Senator JAVITS. Mr. Chairman, can I ask one question?

Chairman NUNN. Certainly.

Senator JAVITS. We heard today, Mr. Celestino, about the bombings of churches and synagogues, the home of the judge, a mosque, other acts of violence. We heard that a 12-year-old child, only by a miracle, was spared from serious injury or death while playing with a mob-planted bomb. We heard of the reckless use of violence by organized crime in Rochester, N.Y., the callous disregard for death or injury for many innocent people who had nothing to do with the struggle in this respect in Rochester.

Can you tell us, what do you think are the lessons to other people as to what would drive any person to have such a total disregard for human life?

Mr. CELESTINO. I take the fifth amendment to that.

Senator JAVITS. Thank you, Mr. Chairman.

Chairman NUNN. Do you have any other questions?

Senator JAVITS. No.

Chairman NUNN. As I said, we had many questions we would like to ask you that were directly relevant to these hearings and the legislative purpose of these hearings. We do respect your constitutional rights.

I want to thank your attorney for appearing this morning with you and we appreciate her representation this morning.

The subcommittee will be adjourned until Monday morning at 10 o'clock in room 6226, at which time we will go into cases involving the Cocaine Cowboys in Florida.

Thank you very much.

[Whereupon, at 11:45 a.m., the subcommittee was recessed to reconvene at 10 a.m., Monday, May 5, 1980.]

[Senators present at time of recess: Senators Javits and Nunn.]

## ORGANIZED CRIME AND USE OF VIOLENCE

MONDAY, MAY 5, 1980

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

The subcommittee met at 10:04 a.m., pursuant to recess, in room 6226, Dirksen Senate Office Building, under authority of Senate Resolution 361, dated March 5, 1980, Hon. Sam Nunn (chairman of the subcommittee) presiding.

Members of the subcommittee present: Senator Sam Nunn, Democrat, Georgia; Senator Lawton Chiles, Democrat, Florida; and Senator William S. Cohen, Republican, Maine.

Members of the professional staff present: Marty Steinberg, chief counsel; W. P. Goodwin, Jr., staff director; Michael Levin, deputy chief counsel; Don R. Zell, investigator; Myra Crase, chief clerk; Joseph G. Block, chief counsel to the minority; Lynn Lerish, executive assistant to the minority; Peter Levine, general counsel, Intergovernmental Relations Subcommittee; Peter Roman, investigator, and Janet Studley, counsel, Federal Spending Practices and Open Government Subcommittee; Alan Bennett, counsel to the minority, Governmental Affairs Committee, and Rick Farrell, office of Senator Chiles.

Chairman NUNN. The subcommittee will come to order.

[Members of the subcommittee present at time of reconvening: Senator Nunn.]

Chairman NUNN. Our first witness this morning is Mr. Thomas Clifford, group supervisor, district intelligence unit, Miami district office, Drug Enforcement Administration.

Mr. Clifford, we have all our witnesses sworn before they begin testimony. So would you stand and raise your right hand, please? Do you swear the testimony you give before this subcommittee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. CLIFFORD. I do, so help me God.

### TESTIMONY OF THOMAS CLIFFORD, GROUP SUPERVISOR, DISTRICT INTELLIGENCE UNIT, MIAMI DISTRICT OFFICE, DRUG ENFORCEMENT ADMINISTRATION

Chairman NUNN. Mr. Clifford, you don't have a prepared statement this morning; is that correct?

Mr. CLIFFORD. No, I don't have a statement.

Chairman NUNN. Give us a brief background of your experience in law enforcement.

Mr. CLIFFORD. I was hired by the Bureau of Narcotics and Dangerous Drugs in New York in 1970. I served 3 years in the New York area in the international operations division of the New York regional office, where I worked in international cases involving French heroin and Latin American cocaine. I was transferred to Washington, D.C., and worked in the international operations division at DEA headquarters in 1973, where I worked as a staff assistant for Latin America, Central America and the Caribbean. In 1976, I was transferred to the Caribbean division of the Miami regional office, where I have been serving. I was recently transferred to a supervisory position in the unit in Miami.

Chairman NUNN. You have been in Miami since 1976?

Mr. CLIFFORD. Yes, that is correct.

Chairman NUNN. You now have a different position. Would you give us the position you currently hold?

Mr. CLIFFORD. I am the group supervisor of the Intelligence Group for the Drug Enforcement Administration. The responsibilities include the collection of intelligence related to the international narcotic trafficking in the Florida area. It also includes liaison responsibilities with the State, local and other Federal agencies involved in our drug effort.

Chairman NUNN. Would you summarize your experience in the various positions that you have already named, just a brief summary of what experience you have had in international narcotics trafficking?

Mr. CLIFFORD. Yes, Mr. Chairman. During my tenure in New York, I worked on various international groups involved in French heroin coming into this country from Europe and also worked undercover with various Colombian organizations who were sending cocaine to the New York area. In my staff responsibilities in DEA headquarters, I traveled throughout Central and South America and the Caribbean area. This involved intelligence collection and enforcement activities relating to drugs imported into this country. I have traveled through the Caribbean and Florida in that effort.

Chairman NUNN. Is there any one country today that is the principal source of narcotics that flow into the United States, or are the drugs coming from many different countries? If you can enumerate one or two, which would be the principal source?

Mr. CLIFFORD. The principal source country today that affects the United States, in relation to cocaine and marihuana, is Colombia.

Chairman NUNN. Can you tell the subcommittee what your experience has shown concerning the structure and operations in the United States and Colombia?

Mr. CLIFFORD. I would like to structure this presentation into the following areas: The first area I would like to discuss is a description of the problem that exists in the Florida area. I believe by using Florida, we can understand the problem as it exists in other areas of the country. Second, I would like to give a description of the historical development of Colombia as a source country and a description of the Colombian trafficking organizations—its operating principles, func-

tions, and role and finally a discussion of an existing Colombian smuggling organization. In an attempt to understand the immensity of the drug problem and distribution problem in Florida, one must consider the unique geographical makeup of the area, the proximity of the source areas, and the population expansion over the past 15 years.

The tremendous increase in marihuana and cocaine abuse has attracted drug merchants from all parts of the United States to south Florida. It is estimated at least 90 percent of the marihuana and cocaine shipments from South America and particularly Colombia, regardless of where they are delivered, in some way affect Florida. Even if the actual delivery takes place elsewhere, the negotiations, arrangements, and payments do take place here.

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

Mr. CLIFFORD. With respect to the organization and control of the smuggling and distribution network, Florida is plagued not only with traditional organized crime families, but also with elements from Latin America, dominated by the Colombians and Cubans and those groups described as the "Dixie Mafia." The general topography of Florida is the major asset to the drug groups. The tidal shoreline alone, 8,246 miles, permits any of the 200,000-plus privately registered pleasure boats in Florida to offload contraband with little fear of discovery. There are in excess of 9,000 privately registered aircraft in Florida and the Federal Aviation Administration recognizes more than 250 registered airports in Florida. This figure includes commercial airports such as the Miami International and private landing strips on farms and ranches throughout the State.

Geographically, Florida is the closest point to South America; point to point, Miami is only 1,100 miles from Barranquilla, Colombia. This distance is well within the nonstop capability of cargo aircraft, merchant and fishing vessels and with refueling stops in the islands, it is within the capability of most privately owned aircraft and pleasure boats.

South Florida is quickly taking a prominent position as an international trade center with the overwhelming majority of the trade originating from or originating in southern drug-source countries. Miami International Airport handles more import-export air cargo than any other airport in the United States, and the Ports of Miami, Tampa, Fort Lauderdale and Jacksonville are heavily involved in the importation-exportation of various goods from and to Colombia. This type of trade offers the drug trafficker two assets: A method of smuggling drugs into the country and a method of having goods purchased with drug dollars returned to South America, or stolen goods to be delivered to traffickers in payment for drugs.

Due to the international trade and international tourism, south Florida has become an international banking center. The fact that Miami is an international banking center, that it is very convenient to travel by air to South America source countries, and that the majority of the Miami banks have Spanish-speaking employees has provided South America drug traffickers with a convenient and comfortable means of handling their finances. Accounts in Miami banks have been used to convert currency to a more convenient form, to provide traffickers with local bank accounts to handle high-level finances, to

provide a conduit through which moneys can be legally transferred to banks in other countries and to provide the means through which black market money exchanges can exchange U.S. currency on the international money market for money more desirable to the drug traffickers.

While there is some representation of all types of illicit drugs in Florida, the primary trafficking problems are marihuana, cocaine, and recently, counterfeit Quaaludes. Colombia is the source of the majority of these drugs with some traffic from other South and Central American countries. Present intelligence indicates that approximately 10 to 15 million pounds of marihuana and approximately 30,000 pounds of cocaine are available for consumption from Colombia. The dollar value of this illicit commodity is staggering.

Colombia's spectacular rise to the position of chief source of both marihuana and cocaine and recently Quaaludes was aided by a number of factors.

First, of course, as I have indicated is the geographical position of Colombia. Second, a large and aggressive criminal underworld and superior business methods. Colombian criminals dominate the South American criminal element. The third reason is the existence in the United States of a large Colombian colony, many of whose members were or are illegal aliens and had criminal or family ties with traffickers in Colombia. This Colombian colony is concentrated in New York, Miami and Los Angeles, which are the principal distribution centers for cocaine.

During its rapid development in Colombia, drug trafficking has passed through several stages. It now shows signs of passing into the final development of a professional big business. From available information, we can infer that until about the mid-1960's, drug trafficking in Colombia was apparently confined, for the most part, to importing and supplying cocaine for their domestic market and to supplying marihuana for the domestic market and for export to neighboring countries. However, toward the end of this period, Colombia was supplying some cocaine to U.S. and Mexican customers.

The second stages began in the mid-1960's, when Colombian traffickers expanded their connections with Cuban traffickers in the United States and with Mexicans. By acting as middlemen and couriers for cocaine traffickers in other countries and by producing their own cocaine from imported paste, Colombians became much more active in trafficking cocaine to the United States.

During this stage, trafficking remained largely in the hands of the old line criminal underworld. With a vastly increased demand for cocaine in the United States in the early seventies, the Colombians rapidly became more active in not only trafficking, but the mass production of cocaine. During this same time, marihuana trafficking to the United States began on a modest scale.

At present, the traffickers appear to have reached the least vulnerable stage of development and that basically is the quasi-industrial stage. It is an industry providing a commodity as well as a service. It responds more accurately to the laws of supply and demand than do Government regulated industries. It generates substantial cash profits,

much of which is used as reinvestment capital. Finally, it has a substantial ripple or spillover effect in many sectors of Colombian life.

Coincidental with the rise of the cocaine trade in Colombia has been the development of various operational principles. These principles are basically: One, expertise. The individuals or groups must be thoroughly acquainted with all aspects of the product being marketed. The second factor is efficiency. The individual or group must maintain close and continuing relationships among and between sources of supply of the marketed product. This is important because in case of disruptions of the source, options are available to limit the damage and cut losses off at acceptable levels.

The third factor is solvency. The individual or group involved in clandestine cocaine trafficking must maintain a steady cash flow as with merchandise. Money must be handled expertly and controlled tightly to enable operations to run at peak efficiency.

The fourth operation principle is discipline. The individual or group must maintain a degree of self as well as, group discipline.

In many instances cooperating with police means death. However, it is also known that if arrested, noncooperation with police assures financial or other assistance to the individual or family during the period of incarceration.

Chairman NUNN. Do you have any evidence as to how much money people are paid by narcotics dealers in general, or in particular, while they are incarcerated?

Mr. CLIFFORD. We do have evidence as to the amounts of money depending on the role of the individual who is incarcerated. His living expenses, livelihood, how many family members he has determine payment. For instance, a courier, who was not married, had no family, bringing cocaine into the United States would be paid maybe \$2,000 or \$3,000 less than another person on a higher level in the chain. It can go up to \$10,000, depending on the type of activity involved.

Chairman NUNN. \$10,000 over what period of time?

Mr. CLIFFORD. \$10,000 for the initial lawyer fees and more payments as expenses would come up. It is a variable factor. There is not usually one payment, agreed upon, for instance \$50,000 or \$60,000 a year. It would be over a period of time for expenses. As you go higher up the chain, of course, the amount of money becomes much higher.

Security is the fifth operational principle. The group or individual must know police and police methods.

The last operational principle that has developed is the use of violence. Incidents of violence, which cocaine trade generates both in Colombia as well as that which has been exported to the United States, is currently reaching an all-time high simply because of the frequency and savagery which characterizes it. The violence in cocaine trafficking has punitive aspects to it, some of a regulatory or disciplinary nature. The dramatic increase of homicides in the south Florida area is basically due to two reasons: money and narcotics.

The situations which cause homicides, narcotics or currency related, are basically these situations. The first is a ripoff situation whereby the buyer or seller plans to rip off narcotics or money without an exchange. The second would be territoriality, situations where the seller attempts to move in on another seller's territory or customers. The third would

be revenge or retaliation for a past ripoff situation or for a past homicide.

The fourth is money or drugs not delivered by the courier, source or buyer. Fifth would be a battle for ascendancy within a group or the organization.

Sixth, the belief that the victim was a cooperating individual or informant for a Government agency.

The next is the elimination of witnesses to the crime and innocent citizens who happen to come upon a scene of the crime by chance and the last seems to be in the area of hijacking.

The phenomenon that recently has resulted is the Cocaine Cowboy, which has been well publicized. In their midstage of development, Colombian narcotic trafficking groups changed their role from sources of supply to becoming actively involved in selling their illicit wares in the south Florida area. As a result in the shift in roles, Colombian traffickers came in conflict with the Cuban traffickers who traditionally held the south Florida market. This was at the same time the American traffickers were attempting to eliminate the middlemen in their attempts to find direct sources for the cocaine and marihuana.

This situation resulted in the phenomenon of the Cocaine Cowboy, which was coined by newspaper writers for their descriptive role of the violence that was taking place in the area. The Cocaine Cowboy is one who boldly executes an American, Cuban, or Colombian trafficker for the situations which I have described earlier. The situation can be directly paralleled to the violence of the 1920's pursued by the traditional organized crime families.

Today the traditional organized crime families would generally attempt to conceal a homicide from detection. The Cocaine Cowboys would not take any unusual steps to conceal the crime.

Given the perspective of these operational principles, how is the typical operation structured? Colombian trafficking groups vary in size. Most groups start off as a small wildcat operation, usually consisting of up to five members, smalltime operations in search of big money.

In the workaday world of narcotic trafficking, the small operations have neither the power nor the resources to make a lasting impression on the market, although a small number eventually go on to achieve some degree of success. As in many legitimate industries, power and resources come with size. The clandestine cocaine traffic in Colombia is a quasi-industry which is dominated by syndicates. These syndicates consist of individuals or groups of individuals, compartmentalized in areas of specialized expertise. Despite their size, however, only the upper echelon of these operations are actually involved in directing and financing the group's multifaceted trafficking activities. This helps insulate the principals from compromise or immobilization by law enforcement, while simultaneously concentrating wealth and influence in their hands.

Many of the specialized talents and services now possessed by the members of the group are often obtained from independent operators or specialists working for various trafficking organizations rather than one particular organization.

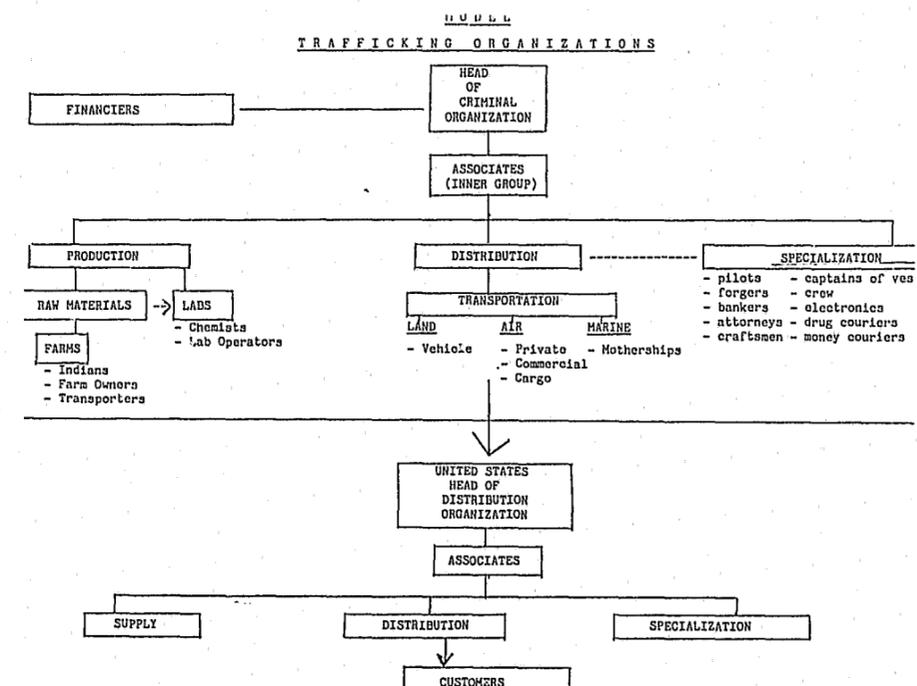
Among the many types of operatives, which may be employed by large trafficking organizations are some of the following: A group or

individual specializing in procurement of cocaine paste or cocaine base, in the smuggling and delivery of the paste and base loads and/or the stockpiling of loads of cocaine paste prior to processing. An individual or group of individuals specializing in cocaine processing at the clandestine laboratory sites. An individual or group of individuals who act as brokers or go-betweens. They do not buy or sell commodities, but concentrate on assisting dealers and making connections to other dealers or entrepreneurs. An individual or group of individuals who specialize in arranging and providing various modes of transportation, legal services, false identification, official documents, courier and other means to smuggle narcotics, travel needs, financing of various sorts, money moving, laundering facilities as well as other services. Virtually the entire spectrum of criminal activity is accessible to trafficking groups in need of a special skill or talent on a permanent or temporary basis.

As trafficking groups become more affluent and entrenched, they are able to employ more and more sophisticated talents, thus branching into areas not previously associated with their clandestine activities. The wealth and affluence of Colombian trafficking groups is largely due to their versatility and flexibility of their composition. As alluded to above, this makes them formidable opponents. I believe we have a chart here which has been prepared by the Drug Enforcement Administration which will illustrate what we believe are the common characteristics of all Colombian groups. I would like to preface my remarks with the fact that this is basically a sterile model trafficking organization. Some organizations on smaller bases would only be involved—

Chairman NUNN. Why don't you read that out as you go.

[The chart referred to follows:]



**CONTINUED**

**1 OF 3**

Mr. CLIFFORD. Basically, at the top of a model trafficking organization, we have the head of the criminal organization and off to the side are the financiers. In many instances, the head of a criminal organization will be the financier and will not have people who are just interested in financing. As we go up in size, I would have to consider this as the largest cocaine smuggling group or marihuana smuggling group in Colombia. As we go down in degree of sophistication, some of these areas are deleted. Just to describe for the Senators—

Chairman NUNN. In other words, what we are seeing is the ultimate in a comprehensive organization; you are not saying all of them have this?

Mr. CLIFFORD. Yes; this is the ultimate. Just to show what I was talking about, the roles and operational principles would vary from group to group.

If I was to take one of DEA's investigations, I probably could slot people into these various areas. In the inner group, the criminal head of the organization has associates, these are the inner group or the people he trusts most. Many times they are family members he keeps around him to insure he is not immobilized or compromised. Of the associates, many have different functions in the group. The group could be involved in a certain phase of production, distribution, and specialization. In the production area from the very beginning, we need the merchandise. We need cocoa leaves, which may be brought in from Peru or Bolivia. Those have to be produced into a paste and base and further processed into cocaine hydrochloride, therefore, a need for a chemist. In the area of raw materials, this is provided by the farmers, the Indians, farmowners, and the transporters. After the cocaine paste and base is processed into cocaine hydrochloride, the next problem becomes transportation and distribution. Transportation requires it be brought from the site of the chemist's lab and determines how it is going to be sent.

Is it going to be sent by land? Is it going to be sent by air or will it be sent by sea? This is a transportation problem; we need vehicles, people who drive the cocaine to the area where it is supposed to be loaded onto boats or ships. It depends on a number of smuggling organizations who use various means. Some groups utilize their contacts in air transportation and that may be commercial or they may need private aircraft or they may get involved in the commercial cargo area. This would depend on each given group having whatever expertise or the associates he has at the time. On the northern coast of Colombia it seems the popular mode is the mother ship. Therefore we need a captain, a crew, and also the people to deliver it out to the boat.

In the area of specialization there are many roles and functions to be played by other people. We have pilots, we have forgers, we have bankers, we have lawyers, we have craftsmen who may prepare Samsonite suitcases for smuggling two kilos of cocaine by commercial air. We may have captains of vessels, crew, the electronics people who would get involved with scanners to immobilize law enforcement efforts, radar, pilots, sophisticated sonar equipment. Also in this area of specialization we need drug couriers and money couriers. This chart, whether we were to talk about the major group or the smallest

group, has some elements of roles, functions, and organization of the smuggling group.

As we pass from the coast of Colombia, as we will, we go to the U.S. distribution head and, therefore, there are other people. The middlemen, maybe the close associates, have made their contacts with U.S. distribution heads who could be Colombians, and in the majority of the cases they are. There may be instances where there is a Cuban or American head of a U.S. distribution unit. He has, basically, the same problems. The only problem he does not have is that it is in the country now and he must avoid detection. He has the same type problems as the Colombian had. He has a problem of getting his supply, distributing it and also specialization—where do I put my money. In case one of my men is arrested, whom do I have to hire as an attorney? Who are the attorneys who will work with me. Then at the end of the chain we have customers in the United States. We know 40 million people in the United States have tried marihuana. We know approximately 6.5 million have tried cocaine. We know we have less than a million people involved in heroin abuse. Then there are the other dangerous drug abusers. That basically would be the model structure.

Chairman NUNN. When you say specialist, how do they go about recruiting those specialists?

Mr. CLIFFORD. In the recruitment of specialists, generally in Colombia, the major groups seem to have family members. They have associates and people who know other people. But the primary and critical factor is money. People will do it for the highest bidder. If there is a lot of money involved and if you were able to make a Samsonite suitcase to bring in two kilos, you can be paid up to \$5,000. If you can make 20 Samsonite suitcases, that is \$100,000 which is very peculiar for a craftsman to be making 20 suitcases in Colombia and come out with a salary of \$100,000.

Chairman NUNN. How many people on that chart would be carrying out their function without committing a crime? It seems to me there might be many people who could perform a function that would not be a per se violation of criminal law, and yet really be a part of the overall conspiracy.

Mr. CLIFFORD. Senator, I believe there are very few. In the area of specialization, you may have that. You may have an attorney that has nothing to do with the organization but is merely defending one of the people that are arrested. In that area, of course, there would be no crime involved. There may be bankers who are handling money. They may have knowledge of it but then again their crime may not be revealed since they are just handling money.

Chairman NUNN. How about people who make, for instance, suitcases with concealed pockets and that kind of thing?

Mr. CLIFFORD. They have full knowledge, they have full knowledge of what they are doing and it is part of the crime.

Chairman NUNN. That would be part of the crime?

Mr. CLIFFORD. Yes, it would be part of the crime.

We can generally see the picture; namely, the sophisticated effort on the part of domestic and international organized crime organizations to subvert our society. What is needed, and over and above any

legislative and judicial action, is commitment—not complacency on the part of the citizens of this country—that we will solve this problem or at least bring it to a controllable level. Once again, I thank the committee for letting me appear today. Any questions you have, I will be very willing to answer.

Chairman NUNN. Thank you very much, Mr. Clifford. I have several questions.

Are there any particular groups of narcotics dealers that are more violent than other groups?

Mr. CLIFFORD. Yes, definitely, Senator. We have a major problem in New York and the south Florida region, which I described to you before of the Colombian trafficking groups. They are quite violent. Just recently, about 8 to 9 months ago, we had an arrest situation in Florida in the Hialeah area where our cars converged on two individuals who were Colombian traffickers.

We were going to arrest them. At that time, a gun battle ensued and two of our agents were struck down; they were wounded. When the Colombians were arrested, we discovered that they were 19- and 17-year-old Colombian aliens.

This is very characteristic of what is happening now. The "Cocaine Cowboy" is very blatant. He does not care about law enforcement. It is a displaced violence from their own country brought to the shores of this country.

Chairman NUNN. Have you had any instances where narcotics groups have recruited any other groups like the bikers to carry out acts of violence.

Mr. CLIFFORD. With reference to the bikers, no, we have not seen any relationship. While the bikers would use cocaine and marihuana, they seem to be centered around the area of dangerous drugs. They have not recruited anyone else for their own violence. Nor has the Colombians recruited them.

The Colombians do it themselves. It doesn't seem like there is even a tendency to hire hit men. It just seems blatant that any member of the group, regardless what his role is, will go out, and do, as we call it, the "hit."

Chairman NUNN. Do the top echelon members of the Colombian-based organizations to which you referred travel in the United States?

Mr. CLIFFORD. The top members, we have identified approximately 3,000 individuals who we consider the core of trafficking in Colombia. Many of these members will travel to the United States.

Generally, the head in the most sophisticated organizations, of which we have approximately eight families that are related in various sections of Colombia, will not travel to the United States. But family members lower down on the inner associate level travel to the United States to make connections here.

I can provide names of the eight families who we consider the primary movers of the Colombian traffickers.

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

Chairman NUNN. We would like to have that and that will be sealed "exhibit No. 16."

[The document referred to was marked "sealed exhibit No. 16" for reference and is retained in the confidential files of the subcommittee.]

Chairman NUNN. What kind of business do these top echelon members do when they come to the United States?

Mr. CLIFFORD. Basically, their business is narcotics. They have the need to channel their money into other areas. That is where you see the involvement of other businesses. It seems to be the majority of them, to give some examples—there is a political figure, if you wanted to say, in the early sixties who is no longer in the Government of Colombia, who is now in the north of Colombia, who travels to the United States, first for his narcotics business and, second, because he wants to buy horses, he raises horses and that to him is his hobby. So he travels to the United States. We have other individuals who travel for the import-export business, to bring commodities back to Colombia. Basically, we find all the other businesses that they are involved in is related to the attempt to hide money. This is the reason for the business because it is a major problem for them—where do they put their money? Their business interests seem to be involved with the money coming from narcotics.

Chairman NUNN. Are they bringing back a large amount of this money, and investing it in the United States in legitimate businesses?

Mr. CLIFFORD. We found in the south Florida area, that Colombian traffickers are now coming into real estate establishments and buying houses outright for \$150,000 to \$200,000 and making cash payments. They are also coming back and buying yachts in cash.

We have a recent instance in an investigation where a woman brought in \$38,000 in a brown paper bag to buy a 1980 Mercedes Benz.

Chairman NUNN. When you get this kind of information, where can you go from there in terms of any kind of possible prosecution? Do you turn it over to the Internal Revenue Service? Have they committed any tax law violation?

Mr. CLIFFORD. We work very closely with IRS since the Psychotropic Substance Act of 1978 gave us the authority to seize assets, things of value. We now are looking very closely at when we have our narcotics investigations that we will go ahead and look in the area of how can we seize this money, based upon the fact it came from an illegal narcotic transaction.

If we cannot link it with the illegal transaction in narcotics, then we will give the information to IRS.

Chairman NUNN. Has the Internal Revenue Service had much success in pursuing these leads you give them?

Mr. CLIFFORD. Basically, in only certain areas. If they question anyone concerning the money, if the person says it is not mine—these people are generally not taxpayers in this country and they do not have jurisdiction over them. We would in our cases such as a major organization involving a corporation, work with them and tell them what the areas of assets that we cannot seize under 881 and ask them to move forward with their investigations.

Chairman NUNN. What success have you had recently in seizing assets belonging to narcotics traffickers in the Miami area?

Mr. CLIFFORD. Since the beginning of this fiscal year, we have seized approximately \$11 million. Previous to this time, without the aid of the act, we were very limited in this area. We feel, based upon predictions by the end of this fiscal year, the Miami office only, which covers the State of Florida, will seize approximately \$20 million.

This is about 10 percent of the whole DEA budget. I believe the Administrator has established that in fiscal year 1981, at the end of that year, that we were going to match our budget and I believe that it is very possible that we may do it this year.

Chairman NUNN. The list you gave us, which will become a scaled exhibit, how was that list arrived at?

Mr. CLIFFORD. This is based on reliable information from informants both in the organization and near it. We also have a number of other investigative techniques which provides very reliable information to us and traditionally over the last decade, these families have come to the forefront in our investigations as being involved as the major families in the cocaine and marihuana traffic.

Chairman NUNN. Would you describe in more detail what this list actually represents?

Mr. CLIFFORD. On the list are eight families—

Chairman NUNN. When you say "families," how are you using that term, in terms of kinship?

Mr. CLIFFORD. Generally, the inner core is generally family members. There is also intermarriages and close associates involved.

The first family in northern Colombia has three intermarried family groups involved, as the head, the prime mover who makes decisions that move down the chain in order to effect the movement of cocaine and marihuana being brought into this country.

Chairman NUNN. Is this an official DEA list of Colombian families involved in narcotics chains or are these both Colombians and people in the United States?

Mr. CLIFFORD. These eight families I have given you are strictly Colombian trafficking organizations.

Chairman NUNN. Is this the official position of DEA on this?

Mr. CLIFFORD. Yes, this is a list made by DEA headquarters of the eight major families. We must remember, these are not the only ones. This represent approximately 50 members of the 3,000 people involved in trafficking.

But we consider these the primary movers that we have to concentrate our law enforcement on.

Chairman NUNN. How up to date is this?

Mr. CLIFFORD. This is a list compiled on Thursday of last week.

Chairman NUNN. How far up the chain of command does it go in terms of approval? Does DEA Administrator Bensinger approve this list before it becomes official DEA—

Mr. CLIFFORD. Yes, it would be an official list.

Chairman NUNN. Is this something that was recommended from your office and your operation and worked its way up from Miami?

Mr. CLIFFORD. Yes, this is a question that was put to us in just preliminary consultations with committee members to get an idea of the number of people involved. This is one of the responses we felt would be appropriate.

Chairman NUNN. The principal source of this information is through informants?

Are you personally familiar with the list?

Mr. CLIFFORD. I am personally familiar with a number of the names on the list.

Chairman NUNN. Not all?

Mr. CLIFFORD. Not all of them, no. In my area of south Florida, I generally come in contact with the north central Colombia activities where I see most of my activity. There are many areas such as the east and west coast of the United States, which these trafficking groups would affect.

Chairman NUNN. Could you furnish us for the record the names that you are personally familiar with on this list?

Mr. CLIFFORD. Yes, I would do that in executive session.

Chairman NUNN. In executive session, for the record, that is what I mean.

Mr. CLIFFORD. Yes.

Chairman NUNN. We will put it in the record as part of this exhibit.

Mr. CLIFFORD. Yes.

Chairman NUNN. The names you furnished, how certain are you, in general on those on a scale of 1 to 10 that they are engaged in narcotics trafficking?

Mr. CLIFFORD. Based upon the expertise of our intelligence sources, I would put it on the highest scale of 10.

Chairman NUNN. Would you identify the scale of your certainty when you furnish those names? Some you are 40 percent certain of; some you are 90 percent certain of. Can you differentiate between them?

Mr. CLIFFORD. I believe we could even supply to the committee a description of how we came about arriving at these eight families.

Chairman NUNN. That would be very helpful. We have to decide what to do with this material and I want full information there when we discuss it in subcommittee.

Mr. CLIFFORD. Yes.

Chairman NUNN. We would like you personally to identify those that you are familiar with and then we will probably, in future executive sessions, have some of the other agents identify others.

Mr. CLIFFORD. Yes.

Chairman NUNN. While in the United States, do these upper echelon Colombian narcotics traffickers contact representatives of the narcotics rings? Do they come to invest their money or do they really get involved in the—

Mr. CLIFFORD. At the highest echelon of the organization, I would say generally no, they are allowing other members on down the scale, such as the inner associates, to make the contacts.

They always are very cognizant of the fact of U.S. law enforcement authorities watching them such as lookout systems. So they try to take steps to avoid actual involvement in the negotiations. The primary area is to come here for commodities, to reinvest their money, to change money and to send it to different countries.

The lower members, the inner door members, would contact the U.S. distribution heads.

Chairman NUNN. Do they enter the country illegally in most cases?

Mr. CLIFFORD. Generally, they do in many instances, we have an indication where people come into this country under false documentation. Colombians, by nature, have a very great expertise in counterfeiting things. They counterfeit U.S. dollars; they counterfeit Seiko

watches; they counterfeit emeralds; they counterfeit diamonds; and they counterfeit papers.

They have a very good expertise in manufacturing different passports from different countries, U.S. drivers' licenses, U.S. social security cards. So there is an indication they would come to the United States under false documents, especially if they have any suspicion that there is a lookout system on them and that being the basic Customs and INS lookout systems.

Chairman NUNN. If you used this chart you showed us, to develop an informant who would name the individuals in a hypothetical case, at what level would the informant have to be, to be fully informed of the whole operation?

Mr. CLIFFORD. The inner group associates would be the most opportune to eliminate or immobilize the head of a criminal organization. Generally, we arrest people in a specialized area.

The specialized area we would have problems in because the man or woman may only have knowledge of that particular chain of events in the Colombian organization. We would have to get at the inner core, the inner associates in some way, an informant at that level to immobilize the whole—

Chairman NUNN. At what level?

Mr. CLIFFORD. Below the head of the criminal organization.

Chairman NUNN. The second box?

Mr. CLIFFORD. The second box, which we need an associate involved in probably the distribution area to go after the head.

Chairman NUNN. We heard a lot of testimony last week about La Cosa Nostra, and updated the previous information this subcommittee has had on that subject. Is this the kind of family operation you described; is it self-perpetuating? In other words, if the head of the organization is killed or becomes incarcerated or incapacitated, would the organization go ahead; is it something that will be with us for a long time to come in one form or another?

Mr. CLIFFORD. Yes; that is our greatest dilemma. If the head is knocked off, put in jail or dies, the organization is self-perpetuating. One of the other family members would step in. Even if he is incarcerated, in many circumstances, the head would still control by policy or direction from jail.

Chairman NUNN. Are the organizations and families built up similar in nature as to what has been known over the years as La Cosa Nostra?

Mr. CLIFFORD. The La Cosa Nostra, I see it more organized, not as fragmented as the Colombian groups. I would not compare them in sophistication to them, but I see the same principles used in the La Cosa Nostra traditional families being applied in Colombian trafficking groups.

Chairman NUNN. What would you say would be the major distinction, based upon your experience?

Mr. CLIFFORD. I would think probably discipline, within the La Cosa Nostra, I believe, discipline seems to be much more sophisticated than in the area of the Colombian trafficking groups.

Chairman NUNN. In other words, controlled by the people at the top?

Mr. CLIFFORD. Control of his inner associates and control by the top.

Chairman NUNN. This is more of a free lance operation, free swinging?

Mr. CLIFFORD. Yes; it is not as compartmentalized and sophisticated, I feel, as the traditional organized crime families.

Chairman NUNN. Do you know whether people involved in this can get out of this if they want to without losing their life?

Mr. CLIFFORD. In many instances they can; yes. Geographically, they can move and they can move also through different organizations.

Chairman NUNN. So it is much more flexible and less organized.

Mr. CLIFFORD. Yes; I would believe so.

Chairman NUNN. Less disciplined, less structured.

Mr. CLIFFORD. Yes.

Chairman NUNN. We have heard testimony from the FBI that approximately 20,000 people, described as a conservative figure, are members of or closely associated with La Cosa Nostra.

Approximately how many people do you estimate are engaged in narcotics trafficking in the United States and Colombia and what do you base your information on?

Mr. CLIFFORD. The information we have, the recent information is from the NIDA, National Institute of Drug Abuse, where we, in a cooperative project, attempted to work with projected statistics and get some ideas of how many people we are talking about.

In Colombia, we feel there are 3,000 people involved in narcotics trafficking at an upper level. There are approximately 65,000 at lower levels, meaning the farmers, the Indians, truckdrivers. I believe an estimate of 68,000—

Chairman NUNN. In Colombia?

Mr. CLIFFORD. In Colombia, with 3,000 being really the primary object which we should go after. The farmers and truckdrivers are at such a low level, it would really have no impact if we put resources to it. The 3,000, I believe, the Government of Colombia, and we should put our resources there.

In the United States, I have a very difficult situation in attempting to arrive at some statistics with people involved in drugs. As you know, we see statistics coming from the National Institute of Drug Abuse, 40 million Americans have in some way used marihuana, 6.5 million people used cocaine and many more in drugs and another 750,000 in heroin.

To arrive at a figure is very difficult. From my expertise, in the State of Florida, I can indicate that our class 1 and our class 2 violators, which we consider to apply our resources against, we have a number right now of 424 people who we feel are in the class 1 and class 2 category.

Chairman NUNN. In south Florida?

Mr. CLIFFORD. No, in the State of Florida. This figure we cannot say—we believe there are many more people involved, but these are the people we have, according to our qualitative and quantitative criteria, have put as class 1 and class 2 violators that we should spend our resources on.

Chairman NUNN. Is this an estimate of numbers or do you have names to go with the 400 people?

Mr. CLIFFORD. We have a computer writeout of our class 1 and 2 violators in Florida. We do have names for them. The list is quite lengthy. Of the 424, we have 118 figures that are Hispanic. The majority of those 118 are Colombians, vast majority, probably 90 percent. I don't have the exact figure. This is what we are applying our resources to and looking at our resources in the class 1 and 2 category in the United States.

The 424, of course, are class 1 and 2, that means they are heads of distribution, financiers; they may be laboratory operatives in the dangerous drug area, but these are not people just as we would classify as class 3, couriers, people who do things for the group.

Chairman NUNN. Senator Chiles.

Senator CHILES. You said you hoped to seize, is it \$100 million this year?

Mr. CLIFFORD. From my experience, we have seized right now in this fiscal year in the State of Florida, \$11 million. We hope to, we believe by prediction, we can come to the \$20 million figure for this fiscal year, the end of September.

Senator CHILES. Can you give me an estimate of what percent of the assets or the cash would be traveling through Florida if you seized \$20 million?

Mr. CLIFFORD. What percentage of that \$20 million would be the total percent of all the money going through Florida?

Senator CHILES. Right.

Mr. CLIFFORD. Very small; very, very small.

Senator CHILES. Five percent; less?

Mr. CLIFFORD. The figure used at the retail level of narcotics is \$7 billion.

Senator CHILES. That is a 1978 figure, I believe?

Mr. CLIFFORD. That is basically where our last statistical chart is. The new figures for 1979, they believe, are a 5-, 10-percent increase, but I have not seen them, Senator. It is very insignificant.

If you look at \$20 million to \$7 billion, of course, you would consider it insignificant. We do not because we did not have the asset law. We are, for instance, now involved in intensive training. To apply this law you need certain amount of expertise, which the agent force really did not have.

For example, tomorrow and the next 3 days, 100 agents in south Florida will be trained in Miami, Fla., in financial investigation school. The supervisors in south Florida will be coming up to DEA headquarters on May 19 to receive a week of financial investigative training.

So, I believe it will be an accumulative effect, once we get the expertise in the agent force by 1981, working with the IRS and Customs that the figure will significantly increase.

Senator CHILES. How are you able to work with INS, Immigration authorities if you see some of these key people coming through illegally to Florida, even though they have false documentations, or something else, how are you able to work through INS?

Mr. CLIFFORD. If we have previous knowledge that a courier—in many instances the crewmembers on the boat, they have been seized on mother ships, eight, nine times, the same crewmembers, they are always deported back to Colombia.

As far as a courier is concerned, if we have information she is using a false passport, we have a violation there and she can be arrested. We provide names through our El Paso Intelligence Center that goes into the INS Soundex System. That appears at every port in INS. All the names we have who have used false documents, or real, go into their system.

Senator CHILES. There is no crime, even though these people are seized eight or nine times, they are deported again so there is no reason for them not to keep trying.

Mr. CLIFFORD. There was no deterrent with the crewmembers, and that is a problem. We are hoping the high seas legislation that will come through the Congress will provide the authority to prosecute them. Of course, we are going to have another problem of prosecuting every one.

The other problem of the couriers coming through is another monumental problem because they are not receiving sufficient sentences. Bail is too low. We understand the reason for the Bail Reform Act, but it is not acting as a deterrent effect. People have enough money to bond out of court; they pay the bond and he is gone.

Senator CHILES. What kind of sentences are the couriers receiving?

Mr. CLIFFORD. I was a supervisor of the airport detail in 1978 to beginning mid-1979, I found that the female couriers were getting approximately 24 months and that the male couriers were getting 36 months.

Of course, considering good time behavior, they are out fairly quickly. We have a problem of deterrence. They come through once, twice, because they are being paid \$10,000 to \$15,000. They never had money like that before.

Senator CHILES. Does DEA, in your statistics, in your computer, follow up the cases and what sentences are given out in particular cases so you can see that?

Mr. CLIFFORD. Yes; the Statistical Division of DEA performs a study, I believe, every year on sentences around the country; yes, Senator.

Senator CHILES. I wonder if you would make available to us information that you have in regard to sentences, convictions and sentences?

Mr. CLIFFORD. Yes; I will make it available to the committee.

Senator CHILES. Besides narcotics trafficking, what other illegal activities do these particular groups engage in?

Mr. CLIFFORD. Narcotics is their main business. There have been instances of other businesses but I do not want to make this a significant activity. Narcotics is the significant activity, that is their main business, but we do see front groups involved in different types of counterfeiting, very specific cases; we see them involved in movement of various types of currency and blackmarketeering.

We see them involved in stolen merchandise in the south Florida area which they move down to Colombia because of the increased need of the country now for various commodities. They become involved in vehicles, exporting the vehicles and they also steal vehicles. These are not as significant as the narcotics trafficking. That is their main business.

Senator CHILES. What success has your district had in identifying persons who specialize in providing the money laundering expertise to these narcotics organizations, or who participate in the laundering?

Mr. CLIFFORD. There is a particular operation which we are conducting with the Federal Bureau of Investigation. We have established Operation Banco. You probably have heard of this in the south Florida area, in which we have detected that 11 major groups are using various banks.

It is a very difficult job when you try to trace the commingling of money. Operation Banco does have indictments pending against various individuals who have used banks and laundered money. There is another—

Senator CHILES. Did you use this in the Black Tuna operation?

Mr. CLIFFORD. Yes, the Black Tuna operation is an operation that came out of the exact same group that is handling Operation Banco, but there were very little asset seizures. It was the immobilization of a major organization which was part of Operation Banco.

Robert Platshorn and Robert Meinster were the heads of this organization called the Black Tuna ring. We know it involved 35 runs, meaning when I say runs, loads that came into this country over a 2-year period. We estimate that they were netting a half a million dollars a week out of this operation. They employed approximately 35 to 60 people. The immobilization of this group, we feel, is very significant, especially about the sentence, the recent sentences that have been given in this particular case. There even have been various threats on the life of Federal Judge King.

There was also jury tampering. When the sentence came out, Mr. Meinster received 54 years which means he will spend at least 31 of them in jail and Mr. Platshorn has not been sentenced but will be sentenced shortly. The other sentences came down, 33 years for E. G. Meyers, Randall Fisher got 9 years, Richard Elliott got 13 years. So we feel that was a significant case.

Senator CHILES. What kind of dollars were being generated in the Black Tuna?

Mr. CLIFFORD. The figure, to answer specifically, was \$500,000 a week is what we estimate the group was bringing in, was making.

Senator CHILES. Off of 35 runs?

Mr. CLIFFORD. Off all of their activities. This is a cumulative figure, not just the 35 runs.

Senator CHILES. How many weeks were they in business?

Mr. CLIFFORD. We figure it was 24 months. We were basing the operation from the first overt act.

Senator CHILES. \$300 million?

Mr. CLIFFORD. \$30, \$35 million in a 2-year period.

Senator CHILES. \$500,000 a week?

Mr. CLIFFORD. 104 weeks times half of a million dollars a week, that comes up as quite a significant figure. I believe \$50 million, if my math is correct; 104 weeks times approximately half of a million dollars a week.

Senator CHILES. In your arrest and search situations, do your agents frequently encounter firearms?

Mr. CLIFFORD. Yes; there is an increase. We noticed that in the early seventies, we had the same problem with Cuban violators when an

arrest situation would take place. They usually would have a gun. We noticed an increase in this. We have noticed a dramatic increase when we now arrest the Colombians. As I mentioned two agents were shot recently involving an arrest situation.

We find, for instance, in the investigation called CENTAC 21, involving Colombians in New York and south Florida, which is still continuing on south Florida, there were close to 80 guns seized in that case. The type of guns are automatics, even machineguns with silencers.

Senator CHILES. Where do you think they are getting these guns?

Mr. CLIFFORD. We have a special program now with ATF. I cannot answer that directly because of confidentiality. I feel there are multiple gun burglaries. Also, I believe there are hijacked shipments that are stolen from the international airports. We have a new project with the Alcohol, Tobacco and Firearms Bureau in south Florida to work on this particular problem, which is a new approach we are taking.

Senator CHILES. Do you frequently encounter narcotics groups utilizing sophisticated surveillance in their operation?

Mr. CLIFFORD. Our Technical Operations Division—I am not a technical expert—have looked at the equipment that have been seized on boats and planes involved in smuggling. They utilize scanners which are the best equipment that can be bought. As a matter of fact, it is probably better than some of the equipment we have.

Senator CHILES. Are they monitoring some of our radar and monitoring our surveillance?

Mr. CLIFFORD. They are monitoring our radio systems. I can give you a particular example. In a recent smuggling case in Louisiana—there was a seizure 2 weeks ago. When the police went out to the farmhouse, they had police scanners for every police agency in the area—the Louisiana State Highway Patrol, the local police department—which they were monitoring. They got away, actually, because they were monitoring. A little girl was lost in the area and the police car happened to come down looking for her. The traffickers obviously monitored that. They ran into the bushes. The load of marihuana, 30,000 pounds of marihuana, was seized from the barn. They are right on top of us. We do not have a secure communications system. It would cost too much. The last estimate was \$7 million to make DEA's radio system secure.

Senator CHILES. They are able to monitor DEA's monitor system today?

Mr. CLIFFORD. We have to talk on our radio systems in code. We have to use a coding system and we still have problems when we get into moving surveillances. When we go down different streets, we have to tell the other units where we are. The trafficking groups usually know if we are in the area. They then know that we are either here for them or somebody else.

Chairman NUNN. How about the counter of that, are you monitoring theirs? Aren't they doing some talking, too?

Mr. CLIFFORD. Yes; as a matter of fact, there is an interesting story about one of our agents going home. He was listening to the Bearcat scanners, the 40-channel CB's. He happened to hear a strange conversation. It was a mother ship talking to the offloaders. He listened to their conversation, went to a nearby location and called other police

units who came in and the operation was stopped and everyone was arrested. The trucks were seized.

We do not make a conscious effort to have people sit at radios with Bearcat scanners or 40-channel CB's and monitor it. It is a matter of lack of resources that you just cannot apply to monitoring CB channels. Even local police departments only monitor one.

Chairman NUNN. Do they do a better job of monitoring you than you do in monitoring them, in communications?

Mr. CLIFFORD. Sometimes I feel they do.

Chairman NUNN. They don't have secure communications either, do they?

Mr. CLIFFORD. No; they have bought recently—on the market—a number of small systems they use which are not that sophisticated but can scramble their words. We have had seizures where they have bought these, which we call unsophisticated, but at least it scrambles some of the information in a two-way conversation.

Senator CHILES. That is all.

Chairman NUNN. Senator Cohen.

Senator COHEN. I have just a few questions. Mr. Clifford, when the Iranian revolution resulted in the expulsion of the Shah, much criticism was directed toward the Central Intelligence Agency for a failure to predict this. A complaint we have is that we had very few people in Iran who spoke the Iranian language. It is my understanding that only 15 percent of our agents in the Miami area speak Spanish; is that correct?

Mr. CLIFFORD. I think that is a reasonable approximation.

Senator COHEN. Is it also correct that many in this hierarchy speak Spanish?

Mr. CLIFFORD. Yes; they do.

Senator COHEN. Do you think it would be wiser policy to have more of our agents learning to speak Spanish or does the language barrier present no problem to you?

Mr. CLIFFORD. That creates no problem. I have been in undercover situations with Colombians who could not speak Spanish but use various interpreters. In actuality, it aids us because we have attempted to elicit more information from them because we don't understand them. In one particular instance, I spent 5 days with one Colombian trafficker on a Caribbean island. By the time I was done with him—I never spoke Spanish, he didn't speak English, we had an interpreter—I knew about his whole business. Through numerous conversations, I found out what the organization was. That has not been a stumbling block to our effectiveness. The Spanish-speaking agents, some of them are undercover agents and some of them are not undercover agents.

Senator COHEN. As far as their communications capability, is the communications carried out in Spanish?

Mr. CLIFFORD. No; in many instances, on wiretaps there are Spanish communications. We have agents who speak Spanish to monitor the equipment. We only come into problems when we get involved in other languages. That is where we have a problem. Many times we will have certain Italian families talking. That is where we really come into a problem. Spanish has not really been a problem to us as of now.

Senator COHEN. The philosophy is, the less language you know, the harder you try?

Mr. CLIFFORD. You learn an awful lot of information when you make believe you don't know it. You could learn more if you knew how to speak Spanish, but I don't think that has been a stumbling block to our effectiveness.

Senator COHEN. It is my understanding a new law has been passed in Colombia, effective January 1981, which would shift the burden of proof to the individual to show how he or she acquired his or her assets.

Mr. CLIFFORD. Yes; we were very happy to hear about this. Attorney General Hugo Escobar, the attorney general of Colombia, came to Washington, D.C. When he returned to Miami, he met with officials there in DEA and I was one of them. He discussed two portions of two laws we were concerned about. The first law involved conspiracy. Under Napoleonic Law, the word conspiracy was never interpreted as conspiracy, it was association. Now they have a new particular law, that we call conspiracy, they are calling illegal association. We now can provide information to them that they can use in their court. The second area, which your question was directed to, was "illegal enrichment." They have a new law now—they are very concerned about their currency. There is a significant amount of U.S. dollars around Colombia. This places the burden of proof on the Colombian citizen who they feel has been illegally enriched. It may be just an observation that one person is much richer than he was 2 years ago. He may have a house, two cars, Mercedes, and no visible means of support.

He will be brought forward and he has the burden of proof to provide to the Government of Colombia proof.

Senator COHEN. It is only prospective, it is not retroactive?

Mr. CLIFFORD. No; it is not retroactive.

Senator COHEN. A final point. Senator Chiles asked you about other related criminal activities. I believe you indicated to the staff that recently there is at least one case in which a Thunderbird, which cost roughly \$8,000 here, was sold for \$30,000 in Colombia. Is there a significant trafficking of automobiles from this country into Colombia?

Mr. CLIFFORD. Yes; there is. We find through surveillance many of the trafficking groups of Colombia go to car dealerships. The activity involves the exportation of four-wheel drive vehicles, Broncos and various other cars to Colombia. They add on a significant value when they come into Colombia. Of course, there is an import tax on them which is very substantial. After they are sold down there, because money seems to be plentiful in Colombia, they can actually sell it.

There is also an ulterior motive, in that they are putting money into cars and sending it back into Colombia. There is one place in Dallas where they took the panels off, as in the old French heroin days, they actually put in money, they would have it built, welded and shipped to Colombia.

Senator COHEN. This would tie in with our chop shop hearings, my staff reminds me that a section of the proposed bill would pertain to giving more authority to Customs officials to prevent that kind of trafficking. That is all I have, Mr. Chairman.

Chairman NUNN. Mr. Clifford, just one other question. Has IRS, based on your experience—I am not asking you to speak for them—

based on your knowledge of people involved in narcotics traffic, living very high, expensive homes, cars, et cetera, is the Internal Revenue Service using the net worth case very often these days against that kind of target?

Mr. CLIFFORD. No; I don't see that. We provide the information to them. They claim based upon information—first of all, they have many restrictions, they say, "Sorry, we can't give this information back because we are restricted." Then when we give the information to them we really don't have the capability of getting too much feedback from them. We hear about the prosecution end of it, but they have many restrictions that causes a barrier between us in getting information back. I do not hear them doing that many investigations. We know right now we are working with them and the U.S. Customs Service in an operation which I could tell you about later. In this operation we are going to target people for that specific purpose. We only target two groups at a time because of resources.

Chairman NUNN. What is the potential of that kind of investigation, if the Internal Revenue Service is given and uses and allocates the necessary manpower—I know cases take a lot of manpower, but if you went after high-level people—but is the potential of doing something really significant in terms of narcotics traffickers, say in Florida?

Mr. CLIFFORD. Particularly in Florida, because of the volume of money going around the area, it would be a specific help to drug trafficking, at least to immobilize some of these people. Many of the inner group we have not been able to immobilize. If the IRS could go on that approach, maybe we could immobilize them.

As I say, right now through my contact there, they are very limited in what they can really do.

Chairman NUNN. Again not asking you to speak for the Internal Revenue Service, let's say, hypothetically, Internal Revenue Service was given 100 people to work on just the net worth cases in Florida, and really go after the people down there that are living very high with no means of income, who you know to be involved in narcotics trafficking, and IRS works very closely with you. Let's assume they were given that kind of resource. How much real effect would they have over a 2- or 3-year period?

Mr. CLIFFORD. The present operation we are doing now, I would use that as an example. We are going to target one organization, and we are targeting the head. The Internal Revenue agent involved, there are three supervisors in the area of management and there are 13 revenue agents that are involved in this operation. I believe six Customs agents with IRS are going to work on one target and it should take approximately, I think at least a year to 18 months to immobilize through the Currency Act statutes.

Chairman NUNN. Sixteen persons to work one person for one year. You are talking 16 man-years to work one net worth case against a high-level narcotics head?

Mr. CLIFFORD. With 100 people, we could take five or six major heads. We are talking about major heads. We are doing this because we are targeting at the highest level. If we go down the chain, it can be done in a more simple manner.

Chairman NUNN. If, hypothetically, you had unlimited manpower in the Internal Revenue Service and hypothetically you could direct

them toward the net worth cases that you in the narcotics end, think would be the most significant, how many good net worth targets would you have in Florida at very high levels?

Mr. CLIFFORD. Identified, we would probably, through a cooperative effort right now, we have identified eight targets we would like to go after in that particular area that you are talking about, but because of resource manpower we only do one.

Chairman NUNN. If you had 8 times 16, approximately, if you had 128 agents, additional agents, you could go after all 8 of those targets?

Mr. CLIFFORD. Yes, surely. But I can't speak for IRS, but they could probably do it with even less because there is a lot of cross work that can be done by other people, not only just in one group. Revenue agents might be able to do other things—

Chairman NUNN. How much effect would it have if you were to successfully go after eight net worth cases in narcotics, eight people at the top in Florida?

Mr. CLIFFORD. On a percentage impact?

Chairman NUNN. Yes; what impact would it have? Would it be so negligible that it is not worth contemplating or would it have a significant impact?

Mr. CLIFFORD. I believe it would have a significant impact. It would not be negligible. The nature of the smuggling activity, as we find, as the head goes out, another one stepped in, so we have a self-perpetuating problem. We could immobilize the eight, of course, there is going to be someone there to step in and start working it again. We have a continual problem.

Chairman NUNN. Doesn't narcotics traffic become less attractive to people if they know those at the top are subject to possible net worth cases on a very frequent basis and are not able to live lavishly with the profits they are making?

Mr. CLIFFORD. Yes, no doubt about it.

Chairman NUNN. So the deterrent effect—

Mr. CLIFFORD. The deterrent effect could help us.

Senator CHILES. Something like that could complement what the Colombians are doing. We don't go so far in our law that the burden of proof is on you to show where you came up with the money. The Colombians have a much more superior law than we to deal with this.

Mr. CLIFFORD. Yes; this would definitely complement them and also would aid the interchange of information which we would need. If you are going to go after a U.S. distribution head, you are going to need some feedback out of Colombia.

Senator CHILES. I think it is important to know, Mr. Chairman, one of the problems is that there are a lot of people in Colombia who would like to see the growing of marihuana legalized down there and make it a good cash crop especially because they say, we don't have a problem in Colombia with marihuana, in the use, and the United States is using it, so why don't we legalize it. We have a significant movement in the legislature in Colombia in that regard.

What those people say, though, those that want to legalize and some of them perhaps are well meaning and some of them are simply being supplied funds by this tremendous millions of millions of dollars that are being generated down there, but what some of them

are saying is, after all, look at the United States, it is not even illegal to have the paraphernalia. You have shops that are on the main streets in which you sell the paper, you sell the pipes, you advertise, and if you don't go after the tops of the organizations, you give very light sentences, they know all of that and they play it back and back and back. They use it effectively down there. Where we now see for the first time Colombia taking some strong steps, setting up a special police department, setting up special forces under the Attorney General, again, agreeing to an extradition law with us, agreeing to the exchange of information for evidence with us, very significant treaties and now going for a law that allows them to seize assets and to make you prove where you get your money, I think if we aren't taking steps to strengthen our laws, then I think we are playing right into the hands of the elements that would like to legalize it in Colombia, and we would have a heck of a time if they do that.

Chairman NUNN. I agree with you completely. Good point. Mr. Clifford, just one other question I have. If you could name the areas that would be of most help to law enforcement in Florida from your perspective, as far as what the legislative or executive branch could do from Washington, what three or four or five things would you name and where would that net worth, additional net worth manpower targeted in Florida for a while, where would that fall on the list if it was on the list?

Mr. CLIFFORD. It would fall very high. I believe it is a positive step. With our present operation working right now, manpower became one of our major problems with IRS and the U.S. Customs Service. They are giving a significant amount of manpower, but we cannot. DEA could not apply that many people to it. IRS is applying 13. It would be very high on the list.

I believe one of the major areas is the deterrent factor. They are flagrant—they really don't care for law enforcement. There is no deterrent effect to it. There is a lot of money to be made, millions of dollars. A kid 20 years old can make millions of dollars, even if he has to go to jail for 2 or 3 years, his attitude is changing.

The area of deterrent in sentencing seems to be our major concern. I still feel sentencing is too low. In the second area, I believe, another deterrent area, is the high seas legislation. We hope to see that effected because the U.S. Coast Guard and DEA and U.S. Customs have a major problem even processing people who stand there and smile at you and know they are not going to be prosecuted. They get a free ticket back to Colombia, and have a nice meal on the plane—there is no deterrence. You can even see the smirks on their faces when they come off the boat. An area, of course, as a personal observation, is more resources, more manpower. That, of course, is a management problem. That is my personal problem.

Chairman NUNN. How many agents do you have in Florida?

Mr. CLIFFORD. I believe we are at the 134 agent level. I believe that is the latest figure, 134 agents. We sympathize with the State and local officials, they state, they feel we should have many more people there and we told them, well, we could have more people but the problem is also we have a number of countries we are in and we have to be in every State, so 134 is the strength that can be applied now. I believe we are getting more, Mr. Bensinger has recently issued the

fact he is putting additional people in Fort Myers, Panama City; the Miami office is going to be beefed up. We are really looking forward to that, because we need it.

Senator CHILES. What is the approximate financial cost of 134 agents?

Give me a figure.

Mr. CLIFFORD. Very difficult. I know it can be supplied to the committee because we work on a modular basis. Every agent costs so much. They have itemized. We can supply—

Senator CHILES. Give me a ball park—

Mr. MELOCIK. \$50,000.

Senator CHILES. \$50,000 apiece?

Chairman NUNN. That would be about \$6 million.

Senator CHILES. You expect to seize \$20 million in Florida?

Mr. CLIFFORD. I have not communicated with the Administrator in any way concerning this, but just looking at the financial area, because we didn't think it was going to be that significant. We didn't know we were going to get involved with that amount of assets we were going to seize. If total effort is made by all of us in DEA out in the field level, we could probably match Administrator Bensinger's prediction before a year. We hope to do that. We didn't realize it was even so significant, \$20 million by the end of the year, just for this one DEA office.

The activity generated over the whole United States in all DEA offices, will be a significant figure. We may seize the equivalent of our budget this year. We would like to, just as a goal.

Chairman NUNN. Thank you very much, Mr. Clifford, for your very helpful testimony. We appreciate your cooperation. We look forward to continuing to work with you. We hope you will express our appreciation to all the people who are working with you and under you in Florida.

Mr. CLIFFORD. I will. Thank you, Senators. I appreciate it.

Chairman NUNN. Our next two witnesses, Capt. Kelly England, commander, Crimes Against Persons Division, city of Miami Police Department, Miami, Fla.; and Capt. Marshall Frank, commander, Homicide Unit, Dade County Public Safety Department, Miami, Fla. Gentlemen, if both of you could hold up your right hand before you take your seats, we will swear you in.

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

Captain ENGLAND. I do.

Captain FRANK. I do.

**TESTIMONY OF CAPTAIN MARSHALL FRANK, COMMANDER, HOMICIDE UNIT, DADE COUNTY PUBLIC SAFETY DEPARTMENT, MIAMI, FLA.; CAPTAIN KELLY ENGLAND, COMMANDER, CRIMES AGAINST PERSONS DIVISION, CITY OF MIAMI POLICE DEPARTMENT, MIAMI, FLA.**

Chairman NUNN. Thank you very much.

I know both of you have statements this morning and we will be pleased to take those statements in whatever way you prefer. Captain

England is on the right and Captain Frank on the left, is that correct?

Captain FRANK. Yes, sir.

Chairman NUNN. Which of you would prefer to go first this morning?

Captain FRANK. I will go first.

My name is Marshall Frank. I am a captain with the Dade County Public Safety Department, and for the past 1½ years I have served as commander of the homicide section.

I supervise the activities of 30 investigators, 7 sergeants, and 2 lieutenants within this unit.

I have been with the Dade County Public Safety Department for approximately 20 years and have previously served as a supervising lieutenant in the crime scene search section and a detective sergeant for 7 years in homicide.

The Dade County Public Safety Department consists of approximately 1,450 deputies serving about 1½ million residents of Dade County, Fla.

Dade County, covering about 2,000 square miles, is comprised of 26 municipalities, of which the public safety department maintains jurisdiction in homicide investigations in all but three, Miami being one.

In 1979, the Dade County Public Safety Department investigated 189 homicides, an increase of 23 percent in just 1 year and an overall increase of 81 percent since 1976. Of those 189, 42 were determined to have been drug related in one fashion or another.

Twenty were directly associated with the trafficking of cocaine by Colombian organized-crime groups and represent some of the most bizarre and ruthless killings in the history of south Florida. Several other drug-related homicides still under investigation may yet turn out to be linked to Colombian organized-crime activities.

These trends not only continue, but are spiraling at an alarming rate. Based upon the first quarter of 1980, we may well expect to investigate over 250 homicides this year. Of the 65 murders investigated during January, February, and March, 22 were deemed to be drug related, several involving Colombian organized crime suspects.

It appears that the major escalation of these crimes began approximately 1½ to 2 years ago, which correlates with information received that it was about that time that the Colombian organizations embarked upon total domination of cocaine distribution in the United States, thus eliminating ties with Cuban and other organized crime entities.

What is particularly frightening both to law enforcement agencies and the community in general is the rampant and savage nature of these crimes. Some have drawn an analogy between the "Cocaine Cowboys" and the Mafioso killing of the roaring twenties.

I would venture to say that the Mafia might well have taken lessons from this more contemporary band of criminals. The Colombian organized crime groups are more prolific; better armed, and equally, if not better organized and financed. Their catalyst is one common goal: The production, importation and distribution of cocaine. Human life, in quest of their mission, has no value. Some examples:

On April 23, 1979, an Audi vehicle occupied by four Latin males was being chased at high speeds by a Pontiac on a south Dade ex-

pressway in broad daylight. Occupants of two cars were exchanging machinegun fire. A uniformed police car entered the chase and was also shot at.

Civilian cars pulled off the roadway. The Pontiac got away, while the Audi was apprehended. Two of the four occupants, and an arsenal of weapons, were taken into custody while the other two escaped on foot. Shortly thereafter, the body of an illegal Colombian, hog-tied and strangled, was discovered in the trunk.

Also discovered in the vehicle was 60 pounds of white powder, thought to be cocaine, but later determined to be milk sugar. This victim, Jaime Suescun, was suspected of the hog-tied strangling homicide of a Colombian woman a week earlier. The two Colombians apprehended were charged with murder, but later released due to a lack of prosecutorial evidence. They have since disappeared.

In the afternoon hours of May 29, 1979, a Cuban male suspected of drug traffic involvement was driving his red Mustang past a small shopping center in a South Dade suburb, when another vehicle suddenly drove along his side, pointed a .45-caliber machinegun out the passenger window, and fired at least 15 rapid fire rounds.

Jesus Hernandez died immediately, and his vehicle careened into several parked cars in the mall. Many of the bullets passed through store front windows where passersby could easily have been killed. This case remains unsolved.

On July 11, 1979, again in midday, German Jimenez Pannesso, a Colombian kingpin in narcotics traffic, and an accomplice entered the liquor store in a major shopping center in South Dade. Moments later, a van camouflaged as a legitimate business vehicle, drove up and at least two males exited, followed their prey into the store, and proceeded to fire nearly 100 rounds of ammunition from .45-caliber Ingram (MAC-10) machineguns.

Pannesso and his friend died and two other innocent civilians were wounded, one of which was a teenager hit by gunfire as he ran from the store. The suspect also sprayed the crowded parking lot with machinegun fire to keep potential witnesses away.

The van was found abandoned nearby. It contained 11 automatic weapons (all fired) and had been converted into a "war wagon," with reinforced steel bulletproof plating, bulletproof vests, and gun port-holes. It had slightly over 100 miles on the odometer.

In the following months, we managed to identify three of the occupants of the van by fingerprints, primarily as an offshoot of other murder investigations. The killers remain uncharged.

Chairman NUNN. Let me ask you one question. When you find somebody going down the expressway shooting a machinegun in a high-speed chase between two cars, and you stop them, and two of them run, and two of them are apprehended, and a body is in the trunk strangled; wasn't there a crime committed?

Captain FRANK. Yes, sir. I believe there was a crime committed and two people in the car were charged with murder, but the State's attorney's office felt like it was not enough to prosecute. There was no evidence that the persons in that car actually killed the person in the trunk.

Senator CHILES. What about all the shooting?

Captain FRANK. They were charged with aggravated assault and have bonded out and since disappeared.

Chairman NUNN. They did what? They bonded out? So they are fugitives under that charge?

Captain FRANK. Yes.

Chairman NUNN. They were charged with aggravated assault?

Captain FRANK. Yes, as far as other miscellaneous crimes, but they managed to make bond and have never been seen again.

Chairman NUNN. Is there any such crime as unauthorized possession of a dead body?

Captain FRANK. No, sir. We thought of that at the time, but we couldn't find it on the books.

Senator COHEN. Ninety percent of possession is ninety percent of title?

Chairman NUNN. Something like that.

Captain FRANK. Approximately eight homicides thus far involving Colombian organized crime are attributed to this MAC-10 machine-gun and, as a matter of fact, as I called my office this morning I discovered over the weekend we just had another one in Miami in North Dade in which a Venezuelan victim was killed in front of a small warehouse in which there was paraphernalia for the manufacturing of Quaaludes. This person was shot at least seven times and the MAC-10 was left on the scene.

On January 21, 1980, the bodies of Patricia Gonzalez and Jose Cardenas (illegal Colombians) were found shot to death in a North Dade house. They were killed with the same gun that was used in the homicides of another Colombian couple on October 14, 1979. These cases are unsolved.

Of the 22 drug-related murders encountered thus far in 1980, two cases involved multiple killings of four. On January 8, 1980, four male bodies (one Colombian) were found stuffed in a vehicle along the entrance ramp to I-95 in North Dade. Each was tied, beaten, and shot. Autopsies revealed two of the victims had used cocaine. On March 26, 1980, three men and a woman were found tied and shot in another North Dade home. There are many more.

Although drug traffic is quite obviously the nucleus of the overall crime problem, direct motives tend to vary for each act of violence and murder. Common among these is the "drug rip-off." This is where the buyer or seller, with premeditation, kills the other and walks away with both the dope and/or the money.

Another common motive is simply to silence a potential, or believed informer. Retribution is another which sets off internal crime wars. There are cases in which simple "folly" seems to be a basis for murder.

Less than 30 percent of drug-related murders result in arrest. The conviction ratio is half of that. In almost every respect, the criminal justice system is ineffective in either combating the volume of violent crime or the trafficking of narcotics itself. These criminals are bound by no rules, they observe no rights of others and are the first to exercise these rights if confronted with the law. They make mockery of our constitutional system.

By comparison, Federal, State, and local law enforcement cannot match the cohesive and clandestine nature of their operations, their

financial backing, or their vast arsenal. In contrast to the gang wars of years past, these criminals, generally illegal Colombian aliens, have no roots in the community and cannot be identified.

Their organizations are tightly structured with a chain of command and with direct links to seemingly legitimate business. The crime network extends into many other forms; extortion, bribery, auto theft, forgery, and more. Many of them are nomadic in nature, roaming from place to place, using large amounts of cash to subsist.

Setting high bonds when they are incarcerated is almost ludicrous. Cash bonds are invariably met and the subjects disappear forever, usually back to Colombia. They easily obtain drivers licenses, passports, car titles or any other document or form of identification they need.

Attorneys are on retainer at all times, and seem to virtually remain "on call." If found with large amounts of cash, they will generally disclaim it, regardless of the quantity. Immigration authorities are nearly powerless in their role of enforcing laws.

The illegal Colombians involved in the organized crime networks are apprised of every trick in the book in order to avert prosecution or deportation and remain at large with impunity.

To say that law enforcement efforts are frustrating is an understatement. We operate within a fishbowl. Every tactic and every move that an officer makes is, or will be, under the closest of scrutiny, either by the media, the courts, special interest groups, the department administration, and even other law enforcement agencies. We are expected to perform every function picture perfect. If not, criminals go free and the police are publicly criticized.

To solve these crimes and obtain convictions, there must exist one or more of three essential elements: a confession; a reliable and voluntary witness; or undisputable physical evidence. In these times, it appears that we must totally rely on the availability of evidence which is in itself a rare commodity.

These criminals never confess, and voluntary witness testimony is rapidly becoming obsolete. Not only are we faced with a witness' fear of reprisals from the underworld, but the public exposure they experience through the Freedom of Information Act has had a chilling effect on investigations, inhibiting even further our capabilities in bringing criminals to justice. In short, the few remaining tools law enforcement has left are gradually being chipped away.

A kilo of cocaine base which is purchased from Peru at a cost of \$3,500 will be refined and sold 90 percent pure in the United States for \$50,000. After that kilo is cut and distributed, it will yield up to \$250,000 on the streets. Kilos of pure cocaine are being smuggled into this country by the hundreds every month.

The profits are astronomical. People from all walks of life use it. It is not a ghetto drug. It would be pure ignorance to believe that police and public officials are uncorruptible in light of the tremendous cash flow drugs produce.

Ideologically, we would like to think corruption can be averted. However, those small percentages of rotten apples in every barrel, so inclined, will succumb to the overwhelming temptations of drug money.

So long as immigration laws are designed as they are; so long as law enforcement is bound by existing rules of restraint; so long as there are no fears, or respect for the law; and so long as the advantages to the criminal far outweigh the capabilities of law enforcement, we will continue to be stifled in our efforts to protect society. Violent crime associated with drug trafficking is inevitable. Consequently, if conditions outlined herein remain as they are, and as long as illegal narcotics render such high profit margins, we will not see an end to this tragic dilemma.

I would like to submit for the record a brief summary of 64 homicide cases investigated by this department.

Chairman NUNN. Without objection, we will receive that into the record.

[The document referred to was marked "Exhibit No. 17" for reference and follows:]

#### EXHIBIT No. 17

##### SUMMARIES OF ORGANIZED CRIME AND DRUG RELATED HOMICIDES INVESTIGATED BY THE PUBLIC SAFETY DEPARTMENT BEGINNING JANUARY 1978

###### January 10, 1978—8761-Y—Armando Garcia and Silvestre Cardenas

On January 11, 1978, the bodies of Latin males, Silvestre Cardenas and Armando Garcia, were found on a dirt road in a remote field area of southwest Dade County. Both victims had been shot to death with an unknown make .38 calibre revolver. Investigation revealed that victim Cardenas had previously been closely associated with an influential narcotics trafficker. Motive was determined to be drug related.

###### February 1, 1978—26190-Y—Oscar Perez

On February 1, 1978, the body of Latin male, Oscar Perez, was discovered shot to death from a shotgun blast to the stomach and a .38 calibre gunshot wound to the back of the head. Victim was discovered lying on the grounds of the Miami Springs Golf Course. Investigation revealed the victim had recently been released from the Atlanta Federal Prison after serving time for drug related charges. Additionally, the victim had last been seen at the home of an associate and was in possession of an unknown amount of cocaine. Case is open pending.

###### February 11, 1978—11931-V—George Weber

On May 17, 1978, the body of white male, George Weber, was discovered deceased in the trunk of a car in a rockpit-lake located in south Dade. Although the victim had been dead for approximately two years, the cause of death was determined to be a gunshot wound to the back of the head. Investigation revealed the motive was organized crime related (massage parlor, prostitution, and narcotics). One white male subject was subsequently arrested and charged with First Degree Murder.

###### March 3, 1978—54618-Y—Alberto Estevez

On March 3, 1978, local hunters discovered the body of Latin male, Alberto Estevez, shot to death and dumped in a remote field area in west Dade County. The victim had suffered gunshot wounds to the head from a .38 calibre or .357 calibre revolver. Investigation revealed the victim was murdered over a \$10,000.00 debt and had had a "nit" placed on him by the associate who owed him the money. Motive was determined to be drug related. Case is open pending.

###### March 21, 1978—70273-Y—Carlos Juarez and Edelberto Sandoval

On March 21, 1978, the bodies of Latin males, Carlos Juarez and Edelberto Sandoval, were discovered, both shot in the head in the citrus grove yard of one of the victims' homes in south Dade. Drugs were later determined to be involved as a motive.

###### March 28, 1978—76483-Y—Jack Cohen

On March 28, 1978, the body of white male, Jack Cohen, was discovered shot to death in his bedroom at the Rio Mar Shipping Terminal. Victim had suffered a

gunshot wound to the head from a .357 or .38 calibre weapon. Investigation revealed victim had had numerous organized crime-underworld connections in Phoenix, Arizona, Las Vegas, Nevada, and Detroit, Michigan. Additionally, the victim had previously cooperated with the F.B.I. as an informant. Case is open pending.

###### May 31, 1978—137010—Guadalupe Paul Gonzalez and Geraldine Schafer

On May 31, 1978, the badly decomposed bodies of Latin male, Guadalupe Gonzalez, and white female, Geraldine Schafer, were discovered shot to death as an apartment complex maintenance man detected a foul odor emanating from within an apartment. Investigation revealed that victim Gonzalez had been a primary figure in the importation of large shipments of narcotics into the area for subsequent distribution as well as the manufacture of counterfeit quaaludes. Case is open pending.

###### June 9, 1978—145701-Y—Jose Sanchez

On June 9, 1978, the body of Latin male, Jose Sanchez, was discovered shot to death and dumped on a roadside in northwest Dade County. Victim had suffered a gunshot wound to the upper left chest from a .38 or .357 calibre weapon. Subsequent investigation revealed drugs were involved as a motive for the killing. Case is open pending.

###### June 27, 1978—161325-Y—Manuel Antonio Rodriguez

On June 27, 1978, the decomposed body of Latin male, Manuel A. Rodriguez, was discovered floating in a southwest Dade canal. Victim's body had been wrapped in a sheet and weighted down with a plastic bag tied over his head. Investigation revealed the victim was involved in narcotics trafficking and made frequent trips to Santo Domingo and Colombia. Case is open pending.

###### July 7, 1978—166561-Y—Anna de LaTorre

On July 3, 1978, the body of Colombian female, Anna de LaTorre, was discovered deceased from multiple gunshot wounds to the head and neck in a southwest Dade Apartment. Investigation revealed the victim had been involved with a Colombian male suspect for whom she was running narcotics. The suspect was identified as an international narcotics dealer wanted by the D.E.A. on a fugitive warrant, but who had dropped out of sight since the homicide. Case is open pending.

###### July 18, 1978—181153-Y—Julio Chavez

On July 18, 1978, two Negro male subjects went to the residence of Cuban male, Julio Chavez, to purchase 13 ounces of cocaine. While there, the subjects forced the victim and his girlfriend to undress and lay down on the bed, at which time they robbed them of all jewelry and ransacked the home. Victim Chavez was shot in the back with a .38 calibre revolver and his girlfriend, a Latin female, was raped by one of the subjects. Follow-up investigation led to the subsequent arrest of one of the subjects who was ultimately located in Washington, D.C.

###### July 18, 1978—181157-Y—Christine and Ronald Wright

On July 18, 1978, the bodies of white female, Christine Wright, and white male, Ronald Wright, were discovered in the trunk of a vehicle located in a wooded area in northwest Dade. Accompanying the bodies was a briefcase containing "bogus" money with evidence indicating the victims had died of gunshot wounds from an unknown type shotgun and a .357 or .38 calibre weapon. Investigation revealed the victims had come to the Miami area to "rip off" a group of people known as the "gorillas" over some type of marijuana deal. Case is open pending.

###### September 11, 1978—231642-Y—Julio Echeverry

On September 11, 1978, four gunshots were heard coming from victim, Julio Echeverry's apartment, located in southwest Dade. Two Latin male subjects were soon after observed fleeing the area while four to five other subjects fled the scene shortly thereafter. Investigation revealed large amounts of cocaine located within the apartment and it was determined that all the suspects and witnesses who fled the scene were illegal Colombian nationals. Case remains open pending.

###### October 10, 1978—25885-Y—Walter Arbogast

On Tuesday, October 10, 1978, white male, Walter Arbogast, was discovered shot to death alongside a canal bank in south Dade. Investigation revealed

that the victim had become involved in an argument with two white male subjects over a drug-related transaction. A white male subject was subsequently arrested and charged with First Degree Murder in August of 1979.

*October 12, 1978—261417-Y—Maria Hernandez*

On October 12, 1978, the body of Cuban female, Maria Hernandez, was discovered floating in a canal in the deep south area of south Dade County. Victim had been shot with a .25 calibre twice in the head. Investigation revealed that the victim was a prostitute and heroin addict over the past three years and was most recently working for two Cuban madames who took care of making the arrangements for her to meet her "clients." Case is open pending.

*October 26, 1978—27344-Y—Loren Needles*

On October 26, 1978, white male, Loren Stacy Needles, was shot to death with gunfire from a .30 calibre M2 carbine semi-automatic as he was driving his vehicle during a marijuana deal which resulted in a robbery "rip-off" attempt. Two white male subjects were ultimately arrested and charged with the murder and attempted robbery.

*October 29, 1978—27633-Y—Jesus Rivera*

On October 29, 1978, Puerto Rican male, Jesus A. Rivera, was discovered floating in the Atlantic Ocean a mile southeast of Soldier Key. Victim's hands and feet had been handcuffed and his body had been placed inside a zippered sleeping bag which had additionally been weighted down with five "weight-lifting" plates. Investigation revealed the victim had been a licensed pilot, unemployed for several months, but most recently working for two Cuban male brothers importing large quantities of marijuana. Case is open pending.

*November 8, 1978—28771-Y—Oscar Carvajal*

On November 8, 1978, the body of Cuban male, Oscar V. Carvajal, was discovered shot to death from a gunshot wound to the head. Victim had been found lying on the side of the road in a remote rural area of southwest Dade. Police inquiry later revealed the victim had been involved in drug trafficking in the Keys area and had transported drugs for some local narcotics trafficking groups. Information, developed throughout the investigation from confidential sources, indicated the victim was attempting to get out of the business prior to his demise. Case is open pending.

*November 23, 1978—302085-Y—Jerry Spivey*

On November 23, 1978, two fishermen discovered the body of white male, Jerry Spivey, floating in the waters of a canal in south Dade County. Victim had died of asphyxia. Subsequent police investigation revealed victim had dealt heavily in narcotics and had been involved in several drug "rip-offs" in which he had taken money from clients without supplying the narcotics. Case is open pending.

*November 29, 1978—307980-Y—Domingo Herrera*

On November 29, 1978, the body of Cuban male, Domingo Herrera, was discovered in a trash dumping area in northwest Dade. Victim had suffered a gunshot wound to the neck from an unknown type weapon. Further investigation revealed the victim was an ex-resident of Union City, New Jersey, who had left that city three months prior. Additionally, information developed during the investigation linking the victim with two other Cuban males, who had been involved in several drug-related "rip-offs" for which a contract was placed on the victim's life. Case remains open pending.

*December 1, 1978—309877-Y—Unknown white male*

On December 1, 1978, the body of an unknown white male was discovered with a gunshot wound to the head as it lay floating in a canal in southwest Dade. Post mortem examination of the victim revealed the body had been in the water approximately four to five days, during which time it was determined the victim's missing left arm had been removed by an alligator attack. Among the remaining fingers of the victim's right hand, only the thumb and index finger were suitable for fingerprint comparison. To date, the victim remains unidentified and no suspects have been developed. Case is open pending.

*December 12, 1978—321413-Y—Armando Fiallo and Susan Ramirez*

On December 12, 1978, the bodies of Cuban male, Armando Fiallo, and Cuban female, Susan Ramirez, were discovered deceased from multiple gunshot wounds as they lay in their South Miami residence. Victims' wounds were inflicted by a

.38 or .357 Magnum and a .380 calibre automatic weapon with explosive ammunition. Police inquiry revealed the male victim had been heavily involved in large-scale narcotics dealings involving marijuana and cocaine. Case is open pending.

*December 25, 1978—335213-Y—Antonio Arles Vargas*

On December 25, 1978 (Christmas Day), the body of illegal Colombian male, Antonio A. Vargas, was found in a field area located near a southwest Dade apartment complex. Victim had suffered multiple gunshot wounds to the head and torso from a .38 or .357 calibre weapon. Police investigation revealed the victim was involved in a large-scale Colombian narcotics operation originating from Nassau in the Bahamas. Case is open pending.

*December 27, 1978—337215-Y—Unknown white male*

On December 27, 1978, the body of an unknown white male was discovered by two fishermen as it lay on the canal bank in southwest Dade. Victim suffered two gunshot wounds to the head behind the right ear and had been dead for four to five days. Victim's legs were cut off at the knees and the arms were severed at the shoulders. Furthermore, an attempt to cut off the victim's head had proved unsuccessful. Victim's legs and one arm were subsequently recovered on Grassy and Duck Keys in Monroe County. Suspected motive for the homicide is drug related or involving organized crime. Case remains open pending.

*December 31, 1978—341148-Y—Manuel de la Cruz*

On December 31, 1978, the body of Latin male, Manny de la Cruz, was discovered stabbed to death in his residence in northeast Miami. Subsequent investigation revealed the victim had previous to his demise become involved in a verbal altercation at a party of a friend. Information later obtained indicated the motive to be drug related. Case remains open pending.

## 1979

*January 7, 1979—6548-Z—Diario DeJesus Flores*

On Sunday, January 7, 1979, the body of Latin male, Diario DeJesus Flores, was found in a field west of a landing strip at Richmond Airfield in south Dade County. The victim had suffered gunshot wounds to the head and torso. Initial police inquiry revealed victim was an illegal alien from Colombia who had resided in the United States for approximately four years, living intermittently in the New York City and Miami areas. The victim dealt in cocaine on a small to moderate scale; motive determined to be drug related. Case is open pending.

*January 9, 1979—8086-Z—Shawn Crowder*

On Tuesday, January 9, 1979, an off-duty police officer heard several gunshots in a wooded area near his home and subsequently discovered the body of Anglo male, Shawn Crowder, shot to death. Investigation revealed the victim had an extensive criminal past, most recently dealing in narcotics (marijuana and quaaludes) and stolen vehicles. Additionally, the victim was alleged to owe numerous people large amounts of money. Case is open pending.

*February 16, 1979—46444-Z—Barbie Hall*

On February 16, 1979, the body of white female, Barbie Hall, was discovered in a field in southwest Dade. The victim died of gunshot wounds and was believed to be originally from Virginia. Investigation revealed the victim was murdered for her knowledge of various fire bombings and narcotics deals. A male and female were subsequently charged and convicted for the homicide.

*January 18, 1979—17671-Z—Ruben Echeverria and Julio Arzuza Gaona*

On January 18, 1979, the bodies of Ruben Echeverria and Julio A. Gaona, were discovered in a remote field area of west Dade County. Both victims' bodies had been placed inside a large T.V. box and appeared to have been dead for two to three days. The victims had suffered multiple gunshot wounds from a .32 calibre weapon equipped with a silencer. Investigation revealed victims were both illegal Colombian nationals with evidence indicating they were heavily involved in drug smuggling (possibly cocaine). A suspect was questioned in relation to the case, however, insufficient evidence prevented any further prosecution. Case is open pending.

*February 27, 1979—59203-Z—Joseph Perchetti*

On Tuesday, February 27, 1979, two white male brothers, Joseph and John Perchetti, became involved in a domestic quarrel over narcotics when one brother was shot once in the back of the head. The surviving brother refused to cooperate or assist the police with the investigation. Case is open pending.

*March 3, 1979—64125-Z—Steven Alvarez*

On March 3, 1979, the body of a Latin male, Steven Alvarez, was discovered by a friend, lying on the living room floor of his south Dade residence. The victim had been shot several times in the head. When last seen by his sister, the victim was en route to see another friend who allegedly owed the victim money for a marijuana deal. Case is open pending.

*March 13, 1979—72010-Z—Anthony Mangiameli*

On March 11, 1979, police were summoned to the parking lot of an apartment complex in west Dade where several residents had heard a gunshot and subsequently discovered the body of Latin male, Anthony Mangiameli, deceased. Information developed during the investigation indicated the victim had been involved in drug deals with another Latin male who, when interviewed, denied any connection with the homicide. Sufficient evidence was not possible to obtain further prosecution. Case is open pending.

*March 21, 1979—62267-Z—Rudolph Billings*

On March 21, 1979, a black male victim, Rudolph Billings, had just completed purchasing 100 lbs. of marijuana, paying in cash for same, when upon leaving the residence, as he was seated in his vehicle, he was shot in the abdomen by another black male during an attempt to rob the marijuana. Based on an eyewitness identification of the subject, a warrant was issued for First Degree Murder and a subsequent U.F.A.P. was issued by the F.B.I. in July 1979.

*March 27, 1979—89240-Z—Bertie Diaz*

On Tuesday, March 27, 1979, the body of Cuban male, Bertie Diaz, was discovered by a business associate shot to death in his office in Coral Gables. Investigation revealed the victim had been a main subject of the Florida State Attorney's Office "Sting Operation" for his involvement in the importation of narcotics from Colombia. Additionally the victim had a previous criminal past for possessing counterfeit U.S. bills. Case is open pending.

*April 3, 1979—96940-Z—Domingo Vior*

On April 3, 1979, Colombian male, Domingo Vior, was shot to death by two Latin males as he entered a southwest Dade supermarket. The victim suffered gunshot wounds to the head, neck, and back from a handgun and a 12 gauge shotgun. The motive was later determined to be cocaine-related. One subject was subsequently identified and arrested but witnesses needed for testimony disappeared shortly thereafter and prosecution was terminated.

*April 17, 1979—112189-Z—Esther Ramirez Rios a.k.a. Estrella Ollos*

An April 17, 1979, an area farm worker discovered the body of illegal Colombian female, Esther Ramirez Rios, lying in a rural field area in south Dade County. The victim had been bound at the feet and neck with a rope; her hands were handcuffed at the back; and her mouth had been taped. Additionally, victim had been stabbed in the chest three times. However, victim's manner of death was determined as asphyxia. Initial attempts to identify the victim proved futile until a related homicide occurred whereby it was believed the victim's killer had himself been murdered, suffering an identical manner of death. Information was received that the victim had been working for several Colombian males who were involved in large-scale narcotics trafficking (cocaine) from Colombia. Case is open pending.

*April 23, 1979—118696-Z—Jaime Suescun*

On April 23, 1979, a uniform police unit became involved in a high speed chase of two vehicles as they were southbound on the Florida Turnpike in south Dade. The two vehicles exchanged machine gun fire with each other as well as at the pursuing police vehicle. Two illegal Colombian males attempted to flee, on foot, after abandoning one vehicle, but were soon apprehended. A search of the trunk of the abandoned car produced the bound, gagged, and handcuffed body of a third illegal Colombian male, Jaime Suescun, who had been heavily involved in

narcotics trafficking. The motive for the murder was later determined to have been the result of a narcotics deal gone bad between two rival cocaine smuggling groups. It is this victim which was later suspected of having murdered the Colombian female, Esther Ramirez Rios. Case is open pending.

*April 28, 1979—124855-Z—Oscar Alvarez*

On April 28, 1979, Cuban male, Oscar Alvarez, was dropped off at a southwest Dade county hospital, suffering from gunshot wounds. Investigation revealed the victim had been released from prison three months prior and had since been actively dealing in local drug transactions involving cocaine. Accordingly, it was revealed that the victim had possibly met his demise as a result of a narcotics robbery rip-off. Case is open pending.

*May 19, 1979—147637-Z—Oscar Penagos-Rios*

On May 20, 1979, the body of Colombian male, Oscar Penagos-Rios, was discovered dumped by the roadside in Miami Springs. Victim suffered two gunshot wounds to the rear of the head and was in possession of a large amount of United States and Colombian currency. Investigation subsequently revealed the motive was drug related. Case is open pending.

*May 25, 1979—152412-Z—Jorge O'campo and Vincente Vidal*

On May 25, 1979, the bodies of illegal Colombian males, Jorge O'campo and Vincente Vidal, were discovered shot to death in a Key Biscayne apartment. Victims had been shot in the head and were later determined to have been involved in various narcotics transactions. A Puerto Rican female subject was subsequently charged with the homicides while the identity and whereabouts of a remaining Colombian male accomplice are still undetermined. The motive was drug-related and the case is open pending.

*May 27, 1979—154722-Z—Gerardo Arraque*

On May 27, 1979, the body of illegal Colombian male, Gerardo Arraque, was discovered dumped by the roadside in an upper middle class residential area in Coral Gables. Victim had been shot in the head with a .38 calibre weapon. Police inquiry later revealed the victim had been murdered at the apartment residence of an illegal Colombian female who heads a powerful narcotics smuggling group, operating in Dade County. One Colombian male subject was ultimately charged and arrested, however, insufficient evidence was available at trial to convict. Information has since been received by investigators that this subject has himself been murdered in Colombia.

*May 29, 1979—156880-Z—Jesus Hernandez*

On May 29, 1979, Cuban male, Jesus Hernandez, was driving on a street near a busy shopping center in southwest Dade, when two Latin males in another vehicle fired a burst of gunfire from a .45 calibre Ingraham machine gun into the victim's car. Victim was struck and killed by the gunfire and his vehicle came to rest in a parking lot after hitting two citizens' vehicles parked in the vicinity. Investigation revealed that the victim was involved in local drug related transactions within the Dade County area. Case remains open pending.

*July 8, 1979—199801-Z—Jesus DelaVega*

On July 8, 1979, the body of Negro male, Jesus DelaVega, was discovered in a wooded area in southwest Dade shot to death. Investigation led to the subsequent arrest in October of 1979 of a white male who had committed the homicide as a "contract murder" with drug implications.

*July 11, 1979—202941-Z—German J. Panesso and Juan C. Hernandez*

On July 11, 1979, Colombian male, German Jimenez Panesso, and companion, Juan Hernandez (from Santo Domingo), entered the Crown Liquor Store at a southwest area shopping mall. The two victims were immediately followed by two Latin males who opened fire upon them with .45 calibre Ingraham machine guns and various other handguns. Both victims were killed inside the store and two eyewitness employees were injured. One of these employees attempted to take cover in the parking lot under parked cars, whereupon he was struck by rounds from a .30 calibre carbine as the subjects and a third accomplice waiting outside the store sprayed the parking area in an attempt to keep witnesses from viewing them as they fled the scene. Subjects fled in a 1979 Ford step-van which

they later abandoned at the rear of the shopping mall. Investigators recovered a total of eleven (11) weapons left on the scene, all of which had been fired. A total of seventy-three (73) projectiles were recovered from within the liquor store and parking lot areas and at least eighty-five (85) rounds total were determined to have been expended. Police inquiry revealed that victim Panesso was a high ranking member of a Colombian based narcotics ring. Case remains open pending.

*August 23, 1979—246642-Z—Vera Osteen*

On August 23, 1979, the badly decomposed body of white female, Vera Osteen, was discovered in the trunk of a vehicle parked in a shopping center lot used by private citizens for displaying cars for sale. A prospective buyer detected foul odor emanating from the trunk of the vehicle and summoned police. Investigation revealed the motive to have been drug related.

*August 23, 1979—246870-Z—Phillip Hubbard*

On August 23, 1979, a hotel employee discovered the body of white male, Phillip Hubbard, in a Miami Beach hotel room. Victim had suffered a beating and three gunshot wounds from a .22 calibre automatic weapon equipped with a silencer. Subjects had also shot twice at the victim's girlfriend and thereafter fled the area. Investigation revealed that victim and his girlfriend, both from the State of Virginia, had arrived in Miami to collect a debt from an associate who was a central figure in a narcotics trafficking ring operating out of Pittsburgh, Pennsylvania. The girlfriend was not able to identify any suspects. Case remains open pending.

*August 27, 1979—249669-Z—Fernando Perez*

On August 27, 1979, illegal Colombian male, Fernando Perez, was shot to death in a Miami Springs apartment by two Colombian males armed with a sub-machine gun and handguns. Victim's associate, illegal Colombian male, Jorge Piza, also suffered nine (9) gunshot wounds for which he was listed in critical condition at a local area hospital. Investigation revealed that the victim and subjects were all involved in narcotics trafficking and had become engaged in a dispute over some personal property and a narcotics related "rip-off" involving \$35,000.00. The Colombian male subjects were apprehended and charged with First Degree Murder and Attempted First Degree Murder and are presently awaiting adjudication.

*September 4, 1979—258950-Z—Eladio Rios*

On September 4, 1979, illegal Colombian male, Eladio Rios, was discovered shot to death on a paved roadway near a construction site in southwest Dade. Victim had been shot at least twice through the head with a large calibre weapon. Information was received that victim was killed by members of a Colombian narcotics related trafficking group who suspected the victim of having cooperated with the police. It should be noted that the victim had been in the company of the two subjects involved in the homicide of Fernando Perez (which had occurred six (6) days prior) at the time of their apprehension. No suspects have been identified and the case is open pending.

*September 8, 1979—263858-Z—Jose Luis Garcia*

On September 8, 1979, the nude body of Latin male, Jose Luis Garcia, was discovered in the trunk of a vehicle parked at Miami International Airport. Victim was shot once in the head with a .380 calibre weapon. Investigation revealed the victim had a prior criminal past for narcotics violations and was currently active in drug dealings. Additionally, the victim had been involved in the shooting death of another Latin male in 1976 (Case No. 226973-V). No suspects were identified and the case is open pending.

*September 8, 1979—264079-Z—Everald Stephens*

On September 8, 1979, Negro male victim, Everald Stephens, went to the home of a friend in northwest Dade County whereupon he became involved in an argument with another Negro male subject. As a result of the ensuing struggle, the victim was shot to death by a 9 millimeter automatic produced by the other subject. Investigation revealed the victim went to the residence for a pre-arranged narcotics transaction about which he and the subject argued.

*September 5, 1979—270983-Z—Robert Gayle Mahoney, Luis Marzan, Roy E. LeDoyen*

On September 15, 1979, a thirty foot boat was observed circling the waters off-shore at Haulover Beach in northeast Dade. Marine Patrol units who responded to the scene discovered the body of white male, Robert G. Mahoney, deceased from a gunshot wound to the head. Additionally, a fatally wounded second white male, Roy E. LeDoyen, was transported to North Miami General Hospital suffering gunshot wounds to the head and chest from which he subsequently expired. A third Latin male, Luis Marzan, was retrieved from the ocean near the vicinity of the craft. Investigation revealed the victims met their demise as a result of a marijuana smuggling operation gone sour. Case is open pending.

*September 30, 1979—287434-Z—Edward Forcer*

On September 30, 1979, Negro male, Edward Forcer, was found shot to death in his home in north Dade County. Victim had been handcuffed at the back and had suffered two gunshot wounds to the head and leg from a .22 calibre automatic pistol equipped with a silencer. Investigation revealed the victim was a well known kingpin in the black community drug market and was at the time of his demise under federal indictment for his involvement in both cocaine and heroin drug industries. Case is open pending.

*October 6, 1979—293155-Z—Alberto Cabrisas*

On October 6, 1979, Cuban male, Alberto Cabrisas, was shot to death with a .380 calibre automatic weapon by two Latin males during an altercation which occurred at the victim's business. Investigation revealed the victim had been heavily involved with local Cuban and Colombian narcotics smuggling groups and was ultimately linked to figures in the "Black Tuna" gang through his export-import business of vehicles. Case is open pending.

*October 10, 1979—297383-Z—Jorge Torres*

On October 10, 1979, the skeletal remains of Cuban male, Jorge Ramon Torres, were found by workers clearing a wooded area in northwest Dade. It was determined that Victim Torres had been deceased for at least one year. Police inquiry revealed the victim had been involved in illegal activities involving narcotics and distribution of firearms. Case is open pending.

*October 11, 1979—298024-Z—Guillermo Gonzalez*

On October 11, 1979, Latin male, Guillermo Gonzalez, became involved in an altercation with another white male subject in the parking lot of a local disco club. Victim was shot five times by a .380 calibre automatic produced by the subject as the argument escalated. Investigation revealed the victim and subject were involved in narcotics deals and had argued over some type of transaction. The suspect and a white female accomplice immediately fled the area and have since not been located. Case is open pending.

*October 14, 1979—301372-Z—Maria Ceballos*

*October 15, 1979—302759-Z—Edgar Higuera*

On Sunday, October 14, 1979, the body of illegal Colombian female, Maria Ceballos, was discovered dumped by the roadway in southwest Dade County. Victim had been shot multiple times in the head with a .45 calibre weapon equipped with a silencer. The following day, October 15, 1979, the victim's boyfriend, Colombian male, Edgar Higuera, was discovered deceased inside an apartment within three miles of the scene of his girlfriend's death. Ballistics tests confirmed that Ceballos and Higuera were killed by the same weapon and it was later learned through investigation that both had been involved in narcotics trafficking. Case is open pending.

*November 14, 1979—334316-Z—Rodovaldo Suarez*

On November 14, 1979, Cuban male, Rodovaldo Suarez, was admitted to a local hospital in west Dade, suffering from gunshot wounds inflicted by a .38 calibre handgun and a shotgun. Although victim had been wearing a bullet-proof vest, he subsequently died of his injuries. Investigation revealed victim was involved in the buying and selling of used cars, counterfeiting and small time drug deals. Victim additionally was in the habit of carrying large amounts of money. Case is open pending.

*December 30, 1979—383017-Z—Jebb Moore*

On December 29, 1979, white male, Jebb Moore, died of injuries sustained as he jumped from the trunk of a vehicle traveling westbound on Tamiami Trail in west Dade. Investigation revealed that victim and a friend had previously responded to the residence of an associate for the purpose of purchasing a large quantity of marijuana. Victim and his companion were then robbed and placed in the trunk of the subject's vehicle. One subject was later apprehended and warrants have been issued for the second subject.

1980

*January 1, 1980—442-A—Kevin Turney*

On Tuesday, January 1, 1980, the body of white male, Kevin Turney, was discovered dumped on a remote dirt road in a wooded area in south Dade County. The victim had been shot in the back of the head with a .38 calibre revolver. The victim was a 24 year old resident of Redlands, California who had flown in from that state to consummate a \$40,000.00 purchase of marijuana. When last seen by companions, victim was dropped off in a lower income neighborhood of Miami to conclude the narcotics transaction. The male and female suspect have since departed and allegedly moved back to their native country.

*January 5, 1980—4973-A—Marc Lemieux*

On Saturday, January 5, 1980, two white male gunshot wound victims, Marc Lemieux and Gerald Robertson, were admitted to Veteran's Hospital, one dead on arrival, the other admitted in critical condition. Approximately four days later on January 9, 1980, a Negro male was arrested and charged with Second Degree Murder and Attempted Robbery. Investigation revealed the homicide resulted from a narcotics robbery rip-off attempt by the deceased and the Negro male upon a third Latin male subject.

*January 8, 1980—7055-A—Ayan, Bennett, Jernandez, Merino*

On Tuesday, January 8, 1980, the bodies of four white males were discovered inside a parked vehicle off of the Interstate 95 entrance ramp in north Dade County. Victims had all suffered blunt trauma and multiple stab wounds in addition to being taped, gagged, and wrapped in miscellaneous bed sheets and towels. Victims were from miscellaneous nationalities; Anglo-American (1), Cuban (2), Colombian (1). The victims met their demise as a result of a narcotics (cocaine) rip-off which had occurred at a nearby residence. Three (3) subjects were subsequently arrested and charged with Four Counts of First Degree Murder and Armed Robbery.

*January 20, 1980—21170-A—Patricia Gonzalez and Jose Cardenas*

On January 21, 1980, the bodies of a white female, Patricia Gonzalez, and white male, Jose Cardenas, later identified as illegal Colombian nationals, were found shot to death in the bedroom of a residence in northwest Dade County. Police inquiry revealed the two had recently arrived from Colombia and were engaged as "mules" for one of the local narcotics trafficking groups dealing in marijuana and quaaludes. Ballistics tests from the scene revealed the same weapon was used in a previous double homicide which had occurred in October 1979. Case is open pending.

*January 21, 1980—22359-A*

On Monday, January 21, 1980, two Cuban male subjects engaged in a narcotics transaction with a third Negro male subject, Ronald Scippo, as they were seated in their vehicle in a residential area of South Miami. The victim was standing outside the vehicle when an altercation ensued causing the two subjects to speed away from the scene, and in so doing, caused the victim to fall to the pavement sustaining blunt trauma to his head. The following day, the victim died as a result of injuries. Two juvenile subjects turned themselves in to Homicide Investigators shortly thereafter and were charged with Second Degree Murder.

*February 3, 1980—34974-A—Juan Guillermo Velez*

On Sunday, February 3, 1980, Juan Guillermo Velez, an illegal Colombian national, collapsed in a neighbor's front yard in a quiet South Dade residential area suffering from multiple gunshot wounds. Information was received that

six of approximately eight eyewitnesses fled the scene to the New York area. Amongst them was the mother of a two year old child abandoned since no efforts have been made to contact Florida local authorities. During the investigation, police recovered several automatic weapons, including a .45 calibre Ingraham sub-machine gun. Police inquiry revealed the victim had had some form of disagreement over the ownership of an associate's vehicle in an alleged narcotics deal. Case is open pending.

*February 29, 1980—63524-A—Oscar Humberto Roldan*

On Friday, February 29, 1980, illegal Colombian male, Oscar Humberto Roldan, was shot to death by two unknown Latin males as he left a cafeteria in a south Dade shopping mall. Victim suffered three gunshot wounds to the head and torso from a .38 calibre weapon fired at close range. Victim was known to investigators as having an extensive criminal past for burglary, robbery, kidnapping, and narcotics dealings and was an active member of a Colombian narcotics group connected to various other homicides which have occurred within the past year in Dade County.

Chairman NUNN. Thank you very much, Captain Frank.

We want to ask you questions but I think it would be better to go ahead with Captain England's statement first and then we will ask questions of both of you.

Captain England, we are pleased to have you with us this morning and we would like to have your statement.

Captain ENGLAND. Thank you very much, Mr. Chairman.

On behalf of myself and Captain Frank, and our respective departments, we appreciate the opportunity of having to come before you to give whatever information we might have of value and we appreciate your efforts and assistance to law enforcement.

My name is Kelly England. I am presently a captain with the city of Miami Police Department, and for the past 2 years have commanded the crimes against persons division which consists of the robbery and homicide units. In this position, I supervise approximately 38 police officers, 22 of whom are assigned to the homicide unit.

I have served with the Miami Police Department for 24 years and have held the positions of commander of the crimes against property division, patrol shift commander and tactical units commander. I have also held the position of sergeant and lieutenant in the narcotics and vice units.

The city of Miami Police Department consists of approximately 600 police officers serving about 380,000 residents. The city of Miami covers approximately 34 square miles and is situated in Dade County, Fla.

The Greater Miami area is experiencing an era that parallels the prohibition days of the "roaring twenties." As a result of the widespread violence that has been generated from the enormous amount of narcotic trafficking in the Miami area, the past decade has earned the infamous title of the "roaring seventies" by the law enforcement community.

The number of narcotic-related murders within the city of Miami alone has escalated from 6 in 1975 to 35 in 1979.

As of mid-April this year, the city of Miami has experienced an additional 11 narcotics-related murders. Of the 46 murders in 1979 and 1980, about 10 are definitely tied to Colombian organized crime operations in south Florida. Several others are believed to be connected to Colombian organized crime, but information is still insufficient to make positive links.

Another 20 murders are connected to other forms of organized narcotics operations such as Cuban, black, Dixie Mafia and traditional organized crime groups.

The nature of narcotics-related homicides does not lend itself to an easy solution. For example, witnesses will seldom come forward to furnish information or testify even though the well-being of innocent bystanders is affected by these violent crimes.

The blatant and callous disregard for human life exhibited by the Colombian organized crime groups, descriptively called the Cocaine Cowboys is well known to the entire south Florida community. In most cases the fear of this criminal element far outweighs the desire of witnesses to help law enforcement further an investigation.

In order to illustrate the viciousness and reckless abandon exhibited by the killers involved in these narcotic-related cases, permit me to describe a few of our more recent investigations.

On March 17, 1979, Emilio and Aristides Diaz sat with a person believed to be their boss in a large-scale narcotic import operation, conducting a social business meeting. The setting for the meeting was in one of Miami's most fashionable disco lounges, on Biscayne Bay.

The meeting ended around 3 a.m. and the Diazes walked two blocks to their car, a new Cadillac Seville purchased that day for cash. The Diazes drove away, followed by two carloads of unidentified people. Having driven approximately two blocks with these two other carloads following, another car came alongside, stuck what we believe to be a MAC-10 automatic weapon out the window and shot both Diazes, shot up their car, the house in the background and another car a block away.

The trailing cars were able to give only sketchy information as far as the suspects.

Subsequent investigation revealed that both Diazes were active dope dealers in the Puerto Rico-New York and Miami market. Aristides Diaz was also a reputed hit man and had shot—nonfatal—a Carlos Pazos Santana in New York City 3 years prior on a reported contract hit.

Three distinct but equally creditable motives (all narcotic inner related) were pursued in the investigation. One motive included retaliation for the previous contract hit on Santana by Aristides Diaz while another motive related to the possibility that the Diaz boys had become uncontrollable within the organization in which they were involved. Our investigation is continuing.

On September 13, 1978, Calixto Izquierdo drove away from a Latin shopping center followed in another car by his wife, daughter, son-in-law, and grandchildren, ages 2 and 4 years old. After both cars had driven some 14 blocks they were overtaken by a Cadillac which forced the Izquierdo car to the curb.

The driver of the Cadillac emerged and started firing with a handgun while the passenger did the same with a shotgun. Mr. Izquierdo was mortally wounded. His family, who had been forced to stop immediately behind, witnessed the execution but were not wounded.

On August 14, 1978, a 61-foot shrimping boat, named the *Simba*, was captured in Tampa, Fla., with 18,833 pounds of marihuana aboard. Twenty-four Latins were arrested as a result of this seizure.

Motives for Izquierdo's death, all narcotic related, varied from a suspicion that Izquierdo had been somehow responsible for the Tampa boat seizure to a simple 2,000-pound marihuana ripoff by Izquierdo against Rodriguez.

One of the shooters, Isidro Rodriguez, was identified and a warrant obtained. Background on Rodriguez revealed that in 1979 in Palm Beach County he had been arrested for first degree murder for killing a Tom Fedorchak and burying him in a wooded area. This killing was dope related. The charges were later dismissed against Rodriguez when an essential witness failed to testify.

It was strongly believed, but unprovable, that the witness had been harassed and intimidated out of testifying by persons friendly to Rodriguez' cause.

Rodriguez was charged on our warrant for first degree murder on November 10, 1978 when he was arrested at a New Jersey turnpike toll station for having 218 pounds of marihuana in his car trunk.

He has subsequently been sentenced to life in the Izquierdo killing.

On June 15, 1979, Enrique Gato parked his new Cadillac at the curb in the heart of Little Havana, emerged and walked across the street to a popular sidewalk Cuban coffee shop. He was sighted by a rival narcotic group who drew guns and commenced firing at him.

Gato ran down a crowded residential street pursued by two gunmen firing away. He was hit as he turned into a private driveway. As Gato lay mortally wounded some eight feet from terrified residents, one of the gunmen stood over him and fired a coup de grace into Gato's head.

Some eight innocent but terrified persons in the street and house miraculously escaped injury.

Another narcotic trafficking dispute had been settled violently with indifference to surroundings.

On October 18, 1979, Juan Delgado and his girl friend were fired upon while riding in their private vehicle. The suspects blocked the victims' way with three cars. The suspects fired 50 to 60 shots with rifles, shotguns and handguns at the victims before speeding away.

Delgado was hit in the face with a shotgun blast and lost an eye. His girl friend was uninjured. Twenty-eight .45-caliber shell casings were recovered in the street. Two bullet holes pocked the walls of a nearby apartment building while the first-floor window of another building was shattered.

"It sounded like a war. I was shaking," said an 18-year-old woman who lived in the area. "It was just like the Wild West. We thought it was the 'Cocaine Cowboys,'" said the mother of four children.

As previously mentioned, the fear created by these savage murders has caused witnesses and informant information to all but dry up. This serious impediment to effective law enforcement diminishes any realistic chance of curbing the escalating violence in the Miami area.

The following cases clearly demonstrate the problem of witness cooperation:

On December 26, 1979, Angel Luis Colon was shot to death in Oscar's Lounge. This is a notorious Colombian hangout. When investigators arrived, the only person in the bar was the victim, dead on the floor. Even the bartender was gone.

On October 27, 1979, Osvaldo Morejon was killed in the same bar, Oscar's Lounge. Again witnesses offered little in the way of assisting the investigators although there were approximately 18 people in the bar at the time of the shooting.

On April 3, 1979, Daniel Quintana was shot to death in the men's room of the Sportsman's Bar. Cooperation from the patrons was practically nonexistent.

On October 12, 1979, Ruben Rivera was shot to death at the Sportsman's Bar. Passersby in the area heard several shots coming from the bar. They also saw 15 to 20 people run from the bar, get into their vehicles and drive away. When the responding police units arrived on the scene, the officers found the bar empty except for the victim who was lying on the floor dead from two gunshot wounds to the chest and one to the head.

On October 17, 1979, Rafael Nunez was shot to death by two men inside the Quinto Patio Bar. Most of the witnesses fled before the police units arrived.

All of the above cases are representative of most of the narcotic-related shootings that this department has had to investigate. Most of them are motivated by an attempt to control the huge narcotic traffic flourishing in the Miami area and the enormous profits that go with it.

Individual motives for each of the homicides fall principally into one or more of the following categories: territorial disputes, forming and restructuring alliances, revenge and retaliation, internal power struggles, narcotics ripoffs, inability to deliver drugs or money and elimination of witnesses or informants.

The escalation of narcotics-related murders in Miami is consistent with the movement of organized Colombian cocaine traffickers into the domestic distribution networks in south Florida. Historically, Colombian traffickers were the major sources of supply operating generally in Colombia and supplying other traffickers who put the merchandise into domestic channels.

During the past several years, Colombian organized crime groups have been increasingly successful in taking over a major share of domestic traffic bringing them into direct conflict with other Colombian organizations as well as Cuban, black, Dixie Mafia, and traditional organized crime operations.

As the Colombian organizations become more influential in the domestic distribution of cocaine they relocate to south Florida, in ever increasing numbers; hence, the increased necessity and opportunity for violence.

Unfortunately, there is no reason to believe that the proliferation of violence in Miami related to organized narcotics trafficking will subside or level off in the foreseeable future.

In closing, I would like to briefly discuss a few areas where Federal assistance could possibly have a significant impact both directly and indirectly on the city of Miami's efforts in investigating these homicides.

First, I would suggest that this subcommittee explore legislation dealing with the hiring of professionals to threaten, coerce, harm, and murder victims, witnesses, or competitors. If legislated, this would obviously bring an increased Federal presence in the investigation of

professional hit men, particularly those who contract on behalf of large national and international organized crime operation, and travel freely.

I believe that the Freedom of Information and the Privacy Act should be carefully reviewed to determine the impact of law enforcement. It appears that the Freedom of Information Act and the Privacy Act have had a chilling effect on the sharing of information between Federal and local law enforcement agencies. It is evident that more definite lines of communication need to be established between the various Federal and local law enforcement agencies in order to exchange information that would help to solve not only the increasing number of violent crimes but other crimes as well.

It also appears that the Freedom of Information Act and Privacy Act have had a negative effect on the ability of police agencies to recruit and develop informants. Potential informants fear that law enforcement agencies can no longer insure their complete confidentiality.

[At this point Senator Cohen withdrew from the hearing room.]  
Captain ENGLAND. I feel that the agency and strategy that has been the least used in this fight and in the fight against other forms of organized crime in recent years is the Internal Revenue Service.

It is my strong recommendation that the Internal Revenue Service again be permitted to participate in the fight against organized crime as it did during the prohibition era and in the early 1970's, against narcotic traffickers.

Further, that the Internal Revenue Service be permitted to share intelligence information of a criminal nature with other law enforcement agencies who have a need for that information.

I might also suggest a review of bail procedures, specifically the establishment of the criteria of being a "danger to the community" when considering postindictment bail for defendants in narcotics trafficking when the proof is evident and the presumption is great that the defendant will commit additional crimes while free on bail.

Such a criteria does exist under Florida law in felony cases carrying life sentences and should be welcomed by the Federal law enforcement community, particularly in the area of narcotics trafficking. It is not uncommon for many violators to continue their drug trade when out on bond and awaiting trial.

I would also recommend the consideration of legislation dealing with statutory relief for persons serving prison sentences who volunteer to assist the Government in solving crimes of violence. It would seem that such consideration may well prove to be a valuable avenue of investigation providing that the Government receives more than it gives and the prisoner's past crimes are carefully taken into account.

For the benefit of this subcommittee, I have prepared a supplemental report summarizing the details of 28 murders in Miami relating to narcotics trafficking, which I will submit for the record.

Chairman NUNN. Without objection, that will be part of the record.  
[The document referred to was marked "Exhibit No. 18" for reference and follows:]

## EXHIBIT No. 18

TWENTY-EIGHT EXAMPLES OF NARCOTIC RELATED MURDERS, MIAMI, FLA.,  
MAY 1, 1980

(By Capt. K. England, Persons Crimes Commander)

On January 31, 1978 at 11:30 p.m., the body of Roberto Hernandez was dumped in the street of a fashionable residential section of Miami. The body had been riddled with bullet holes. Victim was a casualty of a narcotic transaction gone sour. Case unsolved.

On June 12, 1978 the bodies of Nelson Lopez and Jackie Bain were discovered in a classy condominium on Biscayne Bay. Lopez had received numerous gunshots and was lying in approximately 20 pounds of marijuana scattered on the floor. It is believed Bain had been shot in the ear while asleep in bed. Case unsolved.

On August 5, 1978 Carlos Arteoga and Angel Lubriel were shot numerous times by a hitman for one of the major narcotic distribution hierarchys. One was arrested but charges were dismissed. The hitmen have allegedly continued their enforcement activities to date.

On September 13, 1978 around 7:00 p.m., as Calixto Izquierdo was driving through a busy intersection in "Little Havana" followed in another auto by his wife, daughter, and son-in-law, he was forced to the curb by another car. Two occupants got out of the other auto, one armed with an automatic pistol, the other with a shotgun and proceeded to brutally gun down Izquierdo in front of his family. There were conflicting motives. Izquierdo owned a large boat previously involved in transporting tons of dope and a falling out of its capture was one motive. The other possibility was that Izquierdo was an informer for some law enforcement agency, unconfirmed. One shooter was arrested while going thru a toll gate in New Jersey with 218 pounds of marijuana sticking out of his trunk.

On September 15, 1978 when Juan Gutierrez parked his car in front of his house and emerged, he was promptly gunned down by someone with an automatic pistol. Gutierrez was involved in narcotics and was possibly an informer for some law enforcement agency. This motive was unconfirmed. Case unsolved.

On September 18, 1978 around 10:00 p.m., Juan Valencia was shot to death and dumped unceremoniously from an auto into the middle of historic and busy Flager Street. Victim was a Colombian national involved in narcotics. An arrest was made, however offender dismissed. Case was ruled justifiable.

On December 4, 1978 following a dispute over narcotics four Latin males drove up to a group of approximately 10 young black males. The Latins blazed away with pistols and shotguns killing two fleeing blacks. Arrests were made.

On January 27, 1979 the piano player of a fashionable restaurant/lounge was shotgunned down in the parking lot in a dispute over narcotics. Before the offender could be arrested, on February 22 while a patron in a Latin night club, two men entered, shouted for all other patrons to stand back, and gunned down Rafael Sosa, the offender in the January 27 murder.

On February 6, 1979 while seated at a table in a restaurant/bar with friends Hamid Marrero was gunned down by an unknown person who burst in the door blazing away. The victim had narcotic involvement as well as the establishment in which he was shot. Case unsolved.

On February 18, 1979 Jose Bedit was shot in a bar office, his body was drug out back and dumped in the alley. All present were heavily into drug trafficking. Case unsolved.

On February 18, 1979 Jose Azpeita was gunned down in the same bar in which Sosa was killed February 22. Narcotic motive. Case is unsolved.

On March 9, 1979 the body of Antonio Lopez was discovered in the trunk of his car which was parked in the lot of a family restaurant. Lopez was active in narcotics for years and had been previously arrested in the Eagle operation. Case unsolved.

On March 17, 1979 Emilio and Aristidos Diaz drove away from a high society disco in their new Cadillac Seville. On a busy street while being followed by a carload of uninvolved revellers another car drove along side the Diaz Cadillac. Machinegun fire erupted riddling the Diaz car, the Diaz cousins and a home a block away. Heavy narcotic involvement. Case unsolved.

On March 24, 1979 three black males entered the home of Jose Gutierrez to conduct a narcotic ripoff. Mrs. Gutierrez grabbed a pistol and started firing. When all the firing stopped, Jose was dead in his house and one of the black males was dead in the street of this quiet middle-income neighborhood. Arrest made.

On April 3, 1979 Daniel Quintana went to the bathroom of a bar noted as a narcotic dealer meeting place. Mr. Quintana was discovered on the floor of the bathroom with a gunshot to his ear. No one heard nor saw anything. Case unsolved.

On April 30, 1979 Eliezer Gonzalez left a bar noted for narcotic transaction. As he drove from the parking lot he was shot dead. His car continued down the usually busy thoroughfare crashing into a fence. Case unsolved.

On June 15, 1979 Enrique Gato parked his car across the street from a sidewalk cafe in Little Havana. Killers spotted Gato, chased him on foot down a residential street blazing away. Fatally wounded, Gato ran into a residential driveway and before innocent residences, one pursuer standing over Gato shot him again. Motive was a narcotic dispute. Arrest made.

On August 24, 1979 a suspect wearing a mailman's uniform entered the home of Jesus Bellver. The suspect terrorized Bellver's 15-year-old daughter at knife point while searching for narcotics and narcotic money. When Mr. Bellver came home the suspect shot him in front of his 15-year-old daughter and 8-year-old son. (A few months prior, Bellver's stepson had been dumped from a Cadillac at the doorstep of Baptist Hospital dead. The motive for that murder was reported to be a \$200,000 rip-off. The Bellvers were reported to still be in possession of this money at the time of Mr. Bellver's death.) Case unsolved.

On September 19, 1979 during yet another narcotic transaction gone sour Jose Rodriguez and his sister Rosa Mendez were gunned down. Case solved.

On October 12, 1979 Rubin Rivera was gunned down in the same bar in which Mr. Quintana met his demise in the bathroom on April 3, 1979. All patrons, barmaids, bar manager, etc. fled leaving Mr. Rivera alone, dead in the middle of the floor. Half glasses of cold beer and lited cigarettes in ash trays were present upon police arrival. "No one saw anything." Motive—narcotic dispute. Arrest made.

On October 12, 1979 Lonnie Upshaw was gunned down at a narcotic/whorehouse by Spencer Snell. Spencer was arrested and released on \$2,000 bond. On February 5, 1980 while on bond for murder Mr. Snell shot and killed Mr. Dixon. Narcotic motive.

On 18 October 1979 as Mr. Delgado and his girlfriend were driving down a quite residential street, three vehicles surrounded him blocking his way. Approximately 5 or 6 shooters blasted away with shotguns and automatic weapons seriously wounding Delgado. A few nights later one of the offenders in the assault was gunned down in a popular Miami Beach disco. All involved in narcotics.

On November 6, 1979 Orlando Calzado argued with Ismael Garcia over a narcotic transaction. They subsequently shook hands and had a drink together. As Garcia was leaving the bar, he turned and shot and killed Mr. Calzado who was seated at a crowded bar. Case solved.

On January 12, 1980 Armas Hermes was gunned down outside a cemetery entrance in a narcotic deal gone sour. Case unsolved.

On January 25, 1980 as Pedro Cabejjon lay in bed with his wife, Wilton Ruiz attempted to discuss narcotic business. Mr. Cabejjon advised Mr. Ruiz he didn't wish to discuss the business at that time. Mr. Ruiz shot and killed Mr. Cabejjon and left. Case pending arrest.

On January 26, 1980 during a narcotic transaction gone sour Roman Colmenares was shot and killed. His friends drove him to a residential neighborhood and dumped him on a lawn. Case unsolved.

On February 6, 1980 Alberto Ortiz bullet-riddled body was found beside a major Miami expresway. Mr. Ortiz was a long time narcotic dealer. Case unsolved.

On February 28, 1980 as the Don Quiote Bar was closing, gunfire erupted outside. When the shooting ceased, one person had been shot in the leg and another person was dead. Four Colombians were arrested in this narcotic related shootout and seven (7) guns were confiscated.

Chairman NUNN. Captain Frank, do you have any suggestions for legislation in addition to those that Captain England just named?

Captain FRANK. I support every suggestion that Captain England made. I think they are very viable. I think they would be of great assistance to investigations. I strongly suggest that we do look into the bail bond procedures and possibly pass the kind of legislation to assist us in keeping persons who we know to be migrant people in prison or in jail while they are pending trial. I do know for instance that the illegal Colombian aliens that come into the area and commit crimes and go to jail as long as there is a bondable offense, no matter what the bond is, they will make that bond and eventually be on the way back to Colombia.

Chairman NUNN. What you are both saying, as I understand it, is if we are serious about doing something about narcotics trafficking we are going to have to have a consensus in this country and legislation that gives law enforcement more effective tools than we have now. Otherwise what we are doing is simply not effective. Is that right?

Captain ENGLAND. Exactly.

Captain FRANK. Yes, sir.

Chairman NUNN. Senator Chiles, we have some photographs to be introduced in the record, then I will turn the questioning over to you.

Captain ENGLAND. Yes, sir. We do have some representative photographs taken of these violent crimes. I have extracted from the album a couple that will be presented to you.

Chairman NUNN. Could you describe each one of them for the record? Briefly, we will have them all admitted for the record, without objection?

[The photographs referred to were marked "Exhibit No. 19" for reference and may be found in the files of the subcommittee.]

Captain ENGLAND. Yes; in this instance here this gentleman was killed, is lying on approximately 20 pounds of marihuana, a closed door was shot open to gain entry. They disregarded taking the marihuana which had some considerable value to it. A woman who we believe was lying asleep in the bed in the next room was shot in this instance, inside the room is the cache of weapons. This is an example of one.

Chairman NUNN. Would the clerk hand those up front and let us take a look at them? Go ahead and describe those.

Captain ENGLAND. This is another shootout. The first picture will depict a typical Cuban, Latin shopping center in Miami, of which there are perhaps hundreds. The entire front, storefronts were riddled with bullets in this shootout. ~~There will~~ see pictures of a couple of their automatic weapons, there is a picture of a dead person who we believe may have been an innocent victim. This was a rather typical Colombian shootout which occurred recently.

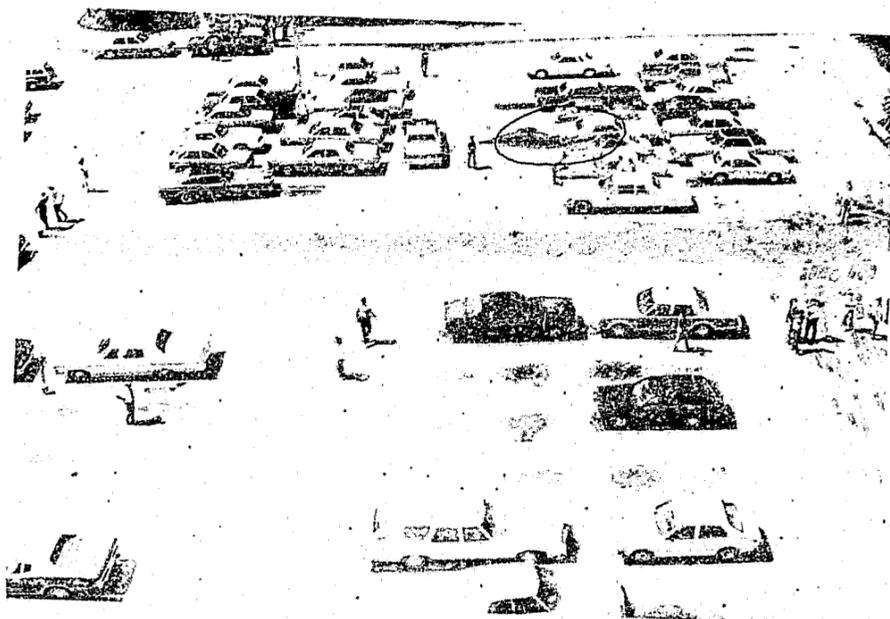
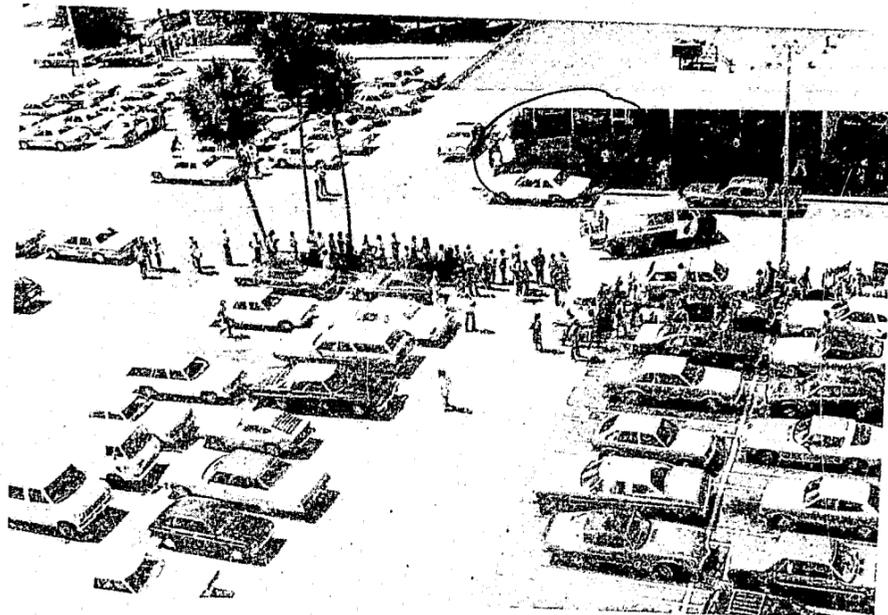
Captain FRANK. I also have some photographs that I would like to show you that I have extracted. The first two are from the Dadeland shooting, a major shopping center in south Dade, one of the most major. The photographs were taken of a view of the shopping area to show you, this happened in the middle of the day and thousands of people around. Some of the vehicles were struck, some of the police cars were there, one particular car had a gas tank rupture and gas

spilled all over the pavement. The interior photographs depict the spray of bullets, actually almost 100 rounds of ammunition fired in this case and the deceased lying in the liquor store.

Further on, the photographs of what we call the van that was converted into a bulletproof vehicle with portholes, the war van, was discovered not far from the scene afterward. The last photograph depicts all the weapons found, 11 automatic weapons found inside the van.

Senator NUNN. The photographs will be admitted as an exhibit, without objection.

[The photographs referred to were marked "Exhibit No. 20" for reference, and may be found in the files of the subcommittee. Excerpts follow:]



FIGURES 9 and 10. View of Crown Liquor Store, scene of double homicide at Dadeland Shopping Center, and vehicle struck (circled) causing ruptured gas tank

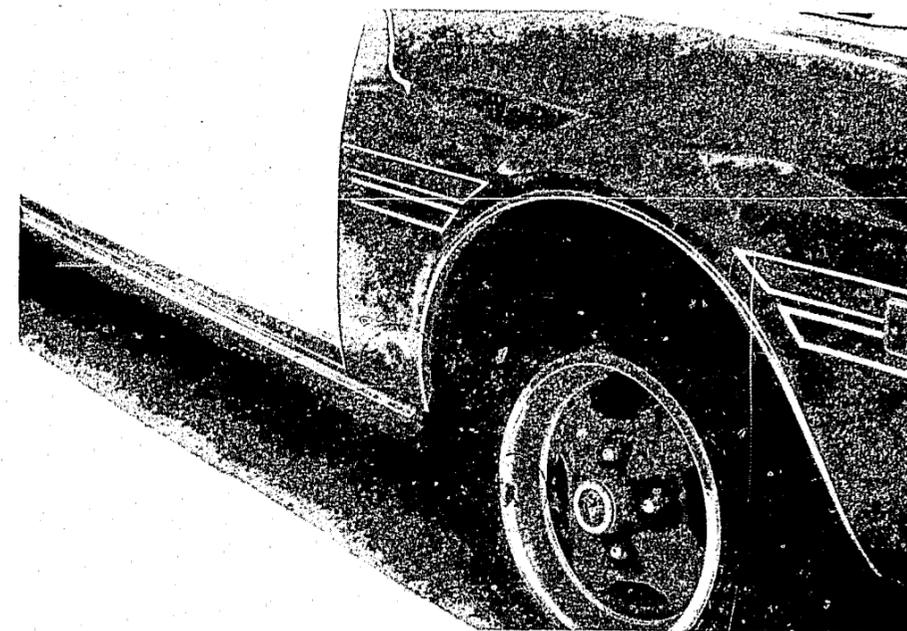
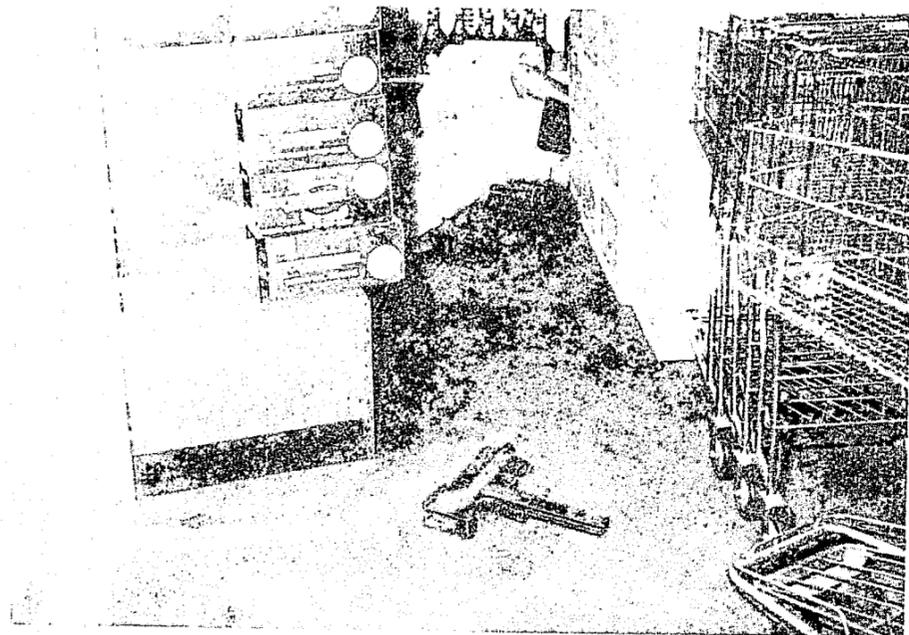
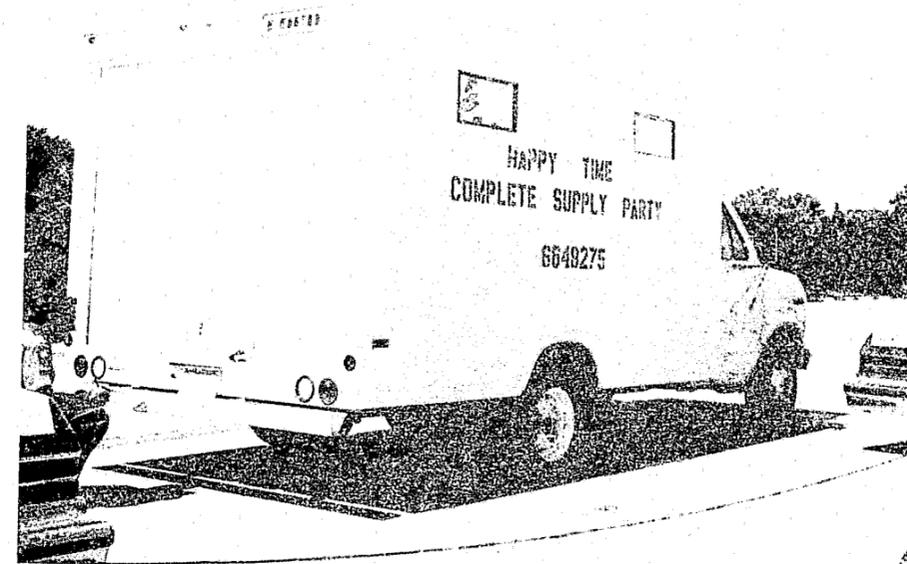
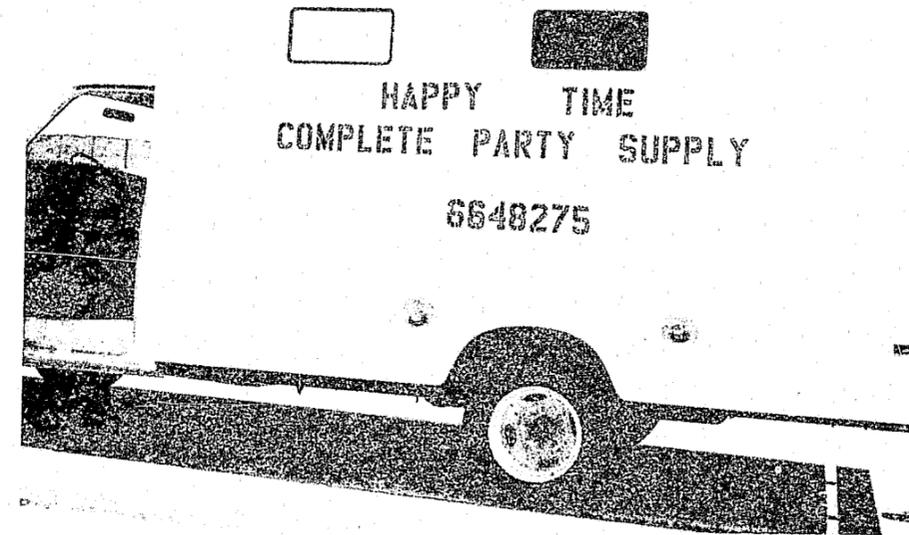
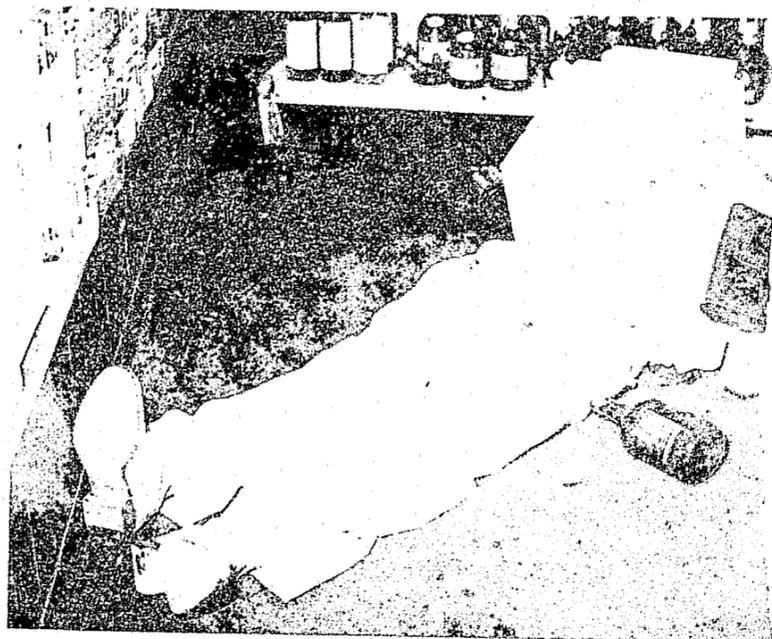


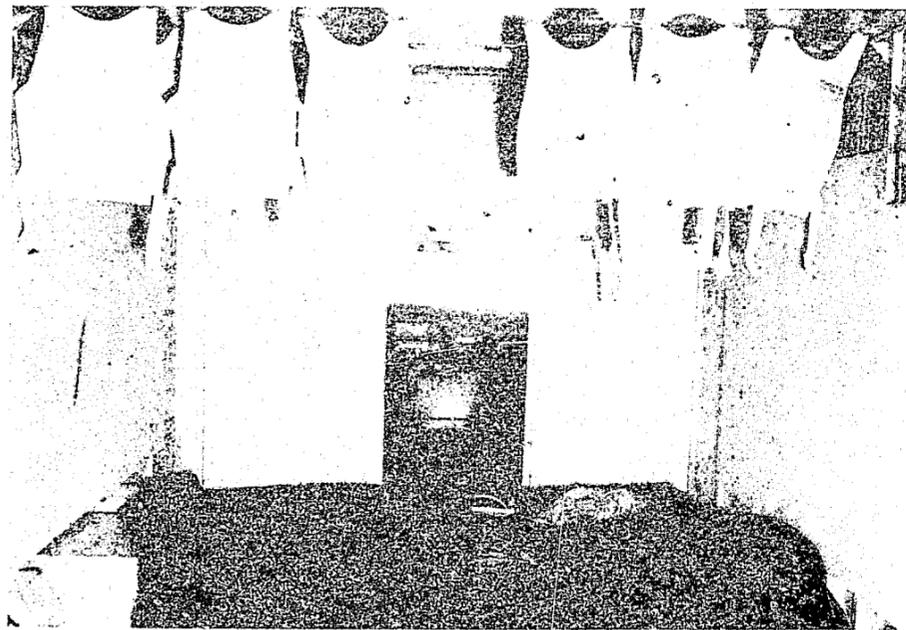
FIGURE 11. View of vehicle in Dadeland Shopping Center parking lot struck by gunfire



FIGURES 12 and 13. View of victim inside Crown Liquor Store, with abandoned MAC-10 machinegun



FIGURES 14 and 15. Steel reinforced "war wagon" abandoned after double homicide at Dadeland Shopping Center. Visible are one-way windows and gun portals. Note difference in "company" name on left and right side of vehicle



FIGURES 16 and 17. Weapons left in "war wagon" and interior view of "wagon" with bulletproof vests used to provide additional protection for sliding rear door

Senator CHILES. Do you have any information as to the source of the firearms used by these narcotics traffickers?

Captain FRANK. We have some information, Senator. Some of the information is that the firearms are stolen during hijackings, somewhere else in the country, a large quantity of them are imported into the United States and a few of them are actually stolen in burglaries. We haven't found one yet that was legitimately registered and purchased.

Senator CHILES. Have you encountered any instances in which explosives have been used by individuals in narcotics trafficking?

Captain FRANK. Not in recent years. Explosives seem to be at this point on the downgrade in use in criminal activity, especially in regards to narcotics trafficking. We have not yet encountered a Colombian case in which explosives were used.

Senator CHILES. Have you identified particular individuals as functioning as hit men for the organization?

Captain FRANK. Not necessarily. We have learned that the Colombian illegals that are involved in the narcotics traffic are each as coefficient as each other and trained in the capabilities of handling these weapons.

Senator CHILES. So they don't necessarily have to have just one?

Captain FRANK. No, sir. Once in a while one or two or three names may surface more than others. We had a fellow that we arrested, as a matter of fact, in a Colombian shootout who is now charged with first-degree murder and 2 or 3 months prior his fingerprints were found on the inside of the war van that I described to you a little while ago.

Senator CHILES. Have you been able to identify the positions in the trafficking organizations that these murder victims hold?

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

Captain ENGLAND. Yes. Usually we find that there are more of the lower- and middle-level management as it were. The last hit of an absolute head of a narcotics organized crime group we had in the city of Miami was in 1976. We had an attempt last year on a head. It was unsuccessful, one of the rare attempts that has been unsuccessful.

Senator CHILES. How about the Dadeland shootout? What was the rank of the victim?

Captain FRANK. In that particular case which was unique, I think, it was a high-ranking member of the narcotics traffic organization, but that is the exception rather than the rule.

Senator CHILES. Based on all of this information, it appears that there is no effort whatsoever to conceal the murder? I mean, they don't operate secretly. That is a little different from contract killings that we are used to, even with the La Cosa Nostra, there is usually more effort to conceal.

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

Senator CHILES. Why is that? They just don't care?

Captain ENGLAND. I have an opinion on that. First of all, their nature and the element that they come from is one consideration as to why they are as violent. They have very little or no respect for the laws. The opinion is that in the past, Cosa Nostra, Mafia, has had the

pressure, exerted pressure and the alarm of the community and the press and the Government and I think that is one reason these—

Senator CHILES. They don't care at all about public opinion?

Captain ENGLAND. They have not experienced that. They have no ties here. So, consequently, they don't feel that pressure.

Captain FRANK. They certainly feel like if one is going to testify against them, that the fear has been bestowed in the witnesses. They have no fear of the law and, as a matter of fact, in many of these cases it appears as though there is nothing more than displaced Colombian homicides that just happen to occur on American soil.

Senator CHILES. So the way they do commit the crimes certainly handicaps your ability to cultivate informants?

Captain FRANK. Definitely.

Senator CHILES. Or witnesses?

Captain FRANK. Yes, sir; definitely.

Senator CHILES. Have you had any experiences in which individuals merely suspected of being informants are killed?

Captain FRANK. Yes, sir. We suspect that a number of witnesses that we had were killed because it was thought they were talking to somebody who they should not be talking to. We know of one particular case specifically in which we brought a fellow in for questioning shortly after a homicide in August and during the questioning he as much told us just because he is in the office with us talking to us that he was going to be marked as a dead man. I believe in early February of this year he was found killed in front of a small shopping center in south Dade.

Senator CHILES. That is a good reason for bringing quite a few in for questioning, is it not?

Captain FRANK. One might think so.

Senator CHILES. Do you have any examples in which narcotics groups have directed violence against police officers?

Captain FRANK. Yes, sir; we do. A shootout in which the body was found in the automobile is a good example of that in which they don't have any qualms whatsoever about shooting at police officers. I know for a fact that one of the detectives that works in my unit was supposedly marked for a hit and this information came from two independent sources and to our knowledge this has, the hit has not been lifted at this point in time.

Chairman NUNN. What do you do to protect an individual like that? I don't mean to go into great detail, but do you put extra people with him?

Captain FRANK. As a general rule, yes; especially if he is going to go into that particular area of the community.

Senator CHILES. Captain England?

Captain ENGLAND. Just one as far as detectives, we have such limited resources in so many areas, this is one area that affects us also. We had one officer that had an alleged contract out on him and in this instance you do furnish some protection in the first few days, but in his case, he had to sell his car at a loss, he moved twice at a loss in moving and reestablishing himself because of the fear, because of, frankly, our lack of ability to protect him. So the officers themselves, it does cost them money when these things happen.

Senator CHILES. So in addition to a shootout in which a police car might be involved, they will actually use the intimidation of marking somebody for a hit which is completely different than something the La Cosa Nostra did.

Captain FRANK. That is happening; yes, sir.

Senator CHILES. So again they have no fear of the old rule that you never shoot a policeman?

Captain FRANK. If they did have any kind of fear the war wagon is a good example of what lengths they will go to, to prepare themselves for a combat situation.

Captain ENGLAND. These people's profits are so huge that sophistication is lacking and they really have the instincts of a hyena. They have the means of a millionaire; sophistication is at the gutter level.

The same thing as the pressures that ordinarily affect someone with ties to the country, it does not seem to have any effect on them at all.

Senator CHILES. The Colombian organization is the most violent. Is there a difference between the other organizations that you have down there, the Dixie Mafia, the black organizations, the Cubans?

Captain ENGLAND. We have lots of violence in other Latin-organized crime, narcotic trafficking also, lots of violence.

Captain FRANK. I believe the Colombians are a little more distinct in that they have no qualms about making their violence public.

Senator CHILES. How many local narcotics organizations have you all been able to identify?

Captain ENGLAND. In just our homicide investigations we have or are able to identify seven. I need to qualify this statement because I heard Mr. Clifford's testimony and I am aware of narcotics and intelligence information. It goes beyond this in number. So when I say that we have been able to identify seven, this is just in our homicide investigations that have led us to it, because we have somewhat tunnel vision to the extent that we are pursuing a case to arrest the murderer and we just don't have the time, resources, and manpower to go beyond that, identifying the intelligence information.

Senator CHILES. How many of those do you regard as Colombian organizations?

Captain FRANK. The last time that we explored that we knew there was a minimum of four. There could be many more. As Captain England said, we are pretty much confined to the investigation of homicides and do not have an intelligence-gathering unit. So I am sure our figures are not totally accurate.

Senator CHILES. Have you been able to identify any of the heads of the local Colombian organizations or of the seven organizations?

Captain FRANK. We have identified some heads at some particular time or another, but in most cases we are not comfortable that we do know who the ultimate heads are.

Senator CHILES. Tell me some of the legitimate businesses to which these organizations are linked.

Captain ENGLAND. The range is very wide. It goes all the way from a small coffee shop, supermarkets; a trade they are particularly fond of is the construction trades, like the little carpet and tile shops. They can wash money of a small nature, but in addition it gives them an opportunity when they are questioned to say they are employed by this place

or that place. But the range goes all the way up to and including probably banks. Captain Frank has had some experience particularly in that, I believe.

Captain FRANK. Yes. We have learned recently that they are also involved in auto dealerships and auto paint body shops which are used for conversion of stolen cars and new VIN numbers, new identification and titles, and as Mr. Clifford said earlier, being sent to South America or Colombia for various reasons.

Senator CHILES. Give me some idea of the financial resources that are available to these organizations.

Captain FRANK. Sir, it appears to us on the surface without being an intelligence unit that their financial resources are infinite. We had information at one point that one of these smaller Colombian organized crime groups was working with an extraneous budget of about \$1 million, just for their day-to-day expenses, not to have anything to do with narcotics. We have had occasions to find people with large amounts of cash in their possession and discarded it and say the cash was not theirs. One classic example was a fellow who inadvertently got into an automobile accident and left the scene. He wasn't injured too badly and the vehicle was identified to him and we went to his house later and asked him if the \$300,000 in cash in his trunk was his. He said he never saw it or heard of it. Didn't know anything about it.

We have had other occasions where we would approach Colombian people and they just throw an envelope—brown envelope—under the car, in the trash and then we will retrieve it and it will contain \$25,000 or \$35,000 which they will not acknowledge possession of it or knowledge of. They move—when I referred to them as nomadic in nature—they move from house to house at times on a moment's notice, they will rent houses in the most exclusive neighborhoods for \$2,000 a month or more, putting up 6 months in advance and they will buy the most expensive equipment, Betamaxes, various furniture that goes into the house. When things get a little hot they will disappear overnight and leave everything behind.

So money doesn't seem to be a problem to them.

Senator CHILES. Do you have any insight as to how they acquire false documents?

Captain FRANK. Based on the information that we have received, some of the people in the organizations are hired and exclusively work in obtaining these false documents. For instance, a passport, I understand, can be sold in Colombia for \$200 apiece. There is one particular station in Dade County which most driver's licenses the Colombians have seem to be emanating from. Car titles, as I said, are no problem because they have people who specifically do that for them.

Senator CHILES. Do those documents look authentic?

Captain FRANK. Yes. They look authentic.

Senator CHILES. What has been your problems with the U.S. Immigration and Naturalization Service in handling and processing of illegal aliens when you locate them?

Captain FRANK. First, I would like to qualify and say that I am not an expert on the immigration laws and I don't know all that much about them. All I can say is I feel for the immigration people who are sworn to uphold and enforce the laws that are brought to their atten-

tion. I know that there are times that we bring illegal aliens to their attention, they seem to be powerless to do anything about it. Obviously there are some loopholes in the law which the Colombian illegals are well aware of and are advised of when they get here. I know that there are occasions when we might approach a Colombian illegal and they will claim that they are Puerto Rican and refuse to answer any more questions. Others have visas which expire and when they are asked about anything else, they simply say they are looking for a family member somewhere in Florida and that seems to be enough. So I don't know what the laws are, but obviously there are loopholes in the laws.

Senator CHILES. What problems have you encountered as a result of the Freedom of Information Act or the Privacy Act in dealing with Federal law enforcement agencies?

Captain ENGLAND. We have seen a tendency for the informants to dry up. They don't come forward. We have difficulty in soliciting their cooperation. They feel, and rightly so, that their confidentiality can't be protected.

Senator CHILES. Are freedom of information requests filed with you? Do you get these requests?

Captain ENGLAND. In the city department?

Senator CHILES. Yes.

Captain ENGLAND. Yes, sir. And it is not the same as the Federal, but we still have that problem. The informants are more concerned with the release of the information from the Federal agencies, although they are at our level.

Senator CHILES. You are not getting the information from the IRS now?

Captain ENGLAND. No; IRS, none whatsoever.

Senator CHILES. Captain Frank, you said attorneys seem to be retained at all times. Is there a pattern or are they the same attorneys?

Captain FRANK. Sometimes they are the same attorneys. As I said, they seem to be on retainers all the time. I do know we have had them in the offices at various hours of the day or night, Saturdays, Sundays included. We may be talking to them at 3 in the morning and the first thing they want to do is make one call. They make one call and obviously it is to an attorney's house. On a few occasions the attorneys that they do call are in the station within an hour.

So I am not saying that that is something unethical to that, but it is obviously—

Senator CHILES. Even though a lot of these illegal aliens supposedly don't know anybody, but they can always get an attorney?

Captain FRANK. They always have a number to call.

Chairman NUNN. Let me ask one question here. On the Freedom of Information Act, you have a State freedom of information act in addition to the Federal. Is that right?

Captain FRANK. Yes.

Chairman NUNN. Why would the Federal act affect informants for the Dade County public safety or the City of Miami Police Department? Why would the Federal act have an effect on your informants?

Captain ENGLAND. Why would their act—

Chairman NUNN. Why would the Federal act have an effect on your informants? Is it just the atmosphere, the word is spread that no information is confidential in law enforcement anymore, is it the general atmosphere or is it more specific in that possibly the informant might feel that the information that you get might find its way to the hands of the Federal Government and then find its way into the freedom-of-information request? I am just trying to get the relationship between your informants and the Federal Freedom of Information Act, if there is one.

Captain ENGLAND. Yes, sir; it is both. They fear our releasing the information, but it is more probably general fear and feeling created. There is some concern, though, when you are dealing with an informant and you are dealing with them in narcotic-related murders, you most often have to communicate with the Federal agency and, for instance, if it is a new informant, check out the veracity, things like that. In order to do that, you present his name to a Federal agency and it becomes a part of their record at that time. Then they are also subject to giving the name out. So it is probably the fear and at most fear that is created in a potential informant's mind is more overpowering than anything.

Chairman NUNN. Have you specific instances where informants, to your knowledge, have been identified through freedom-of-information requests?

Captain ENGLAND. I cannot—no, no, sir.

Chairman NUNN. But it is the general atmosphere under which you are operating and the feeling by people on the street that their names are no longer capable of being held confidential by law enforcement?

Captain ENGLAND. That is correct. We have had a couple of informants, we have had a couple of people killed that we feel were informants on a scale of 1 to 10, about 9/10 and in two cases, two other victims were killed that we feel was a possible motive. But that was maybe a 50-50 chance. But in those two cases of informants, where we feel the dead were informants—the cause of their deaths was because they were informants, we don't know how the information got to them. That is why I seem a little hesitant, when you ask me do I know where a situation where an informant was killed because of this I don't know for a fact but that is one of the possibilities because we just cannot track it down.

Senator CHILES. Do you have sufficient resources to investigate all of these homicides that you are describing to us today?

Captain FRANK. No, sir; definitely not. As a matter of fact, the resources in the public safety department are actually declining. As of today, I believe our department is approximately 160 sworn personnel less than it was about 2 years ago.

Senator CHILES. Is that decline at all related to the volume of the work or to the crime?

Captain FRANK. Well, the department has actually declined due to the budgetary constraints within the county government. Our department right now has 160 personnel less than there were police officers on the department 2 years ago. I know that 113 of those positions have not been funded for the coming year. So the volume of crime is increasing by leaps and bounds. As I said, 81 percent in the last 4 years. In this

coming year, it will be another 40 percent higher. We just can't keep up, keep our heads above water.

Senator CHILES. So the number of crimes is increasing and you expect another 40 percent?

Captain FRANK. Yes.

Senator CHILES. But the budgetary constraints mean that the manpower to try to combat this have actually been decreasing?

Captain FRANK. Yes, sir; they have.

Senator CHILES. Can you tell me, is it the budgetary constraints or why was there a downgrade of the organized crime force in Dade County?

Captain FRANK. I mentioned to you the 160 positions in the department is a good example. As a local law enforcement agency, I believe the director felt the first obligation of the police department is to provide the police officer's service to a citizen when he calls for one. We are shortest mostly on the road where the police officers are supposed to answer calls. So the decline in the organized crime bureau and some of the other specialized units was necessary in order to supplant the vacant positions that were occurring in uniform.

Senator CHILES. Right now, you don't have the assets that the bad guys have?

Captain FRANK. No, sir.

Senator CHILES. Either in equipment or money or even manpower?

Captain FRANK. That is correct. I am sure Captain England feels the same way.

Captain ENGLAND. My answer is similar. If you consider narcotic traffickers have \$100,000 in suitcases in cash, it is not an uncommon occurrence for instance in our detective bureau the amount of funds we have available for fiscal year for investigative resources such as out-of-town investigations, supplementing informants' information, those sorts of things, \$5,000.

And in addition to the investigating of the 147 homicides last year, my 25 investigators also had to investigate approximately 700 natural deaths.

Senator CHILES. Money that is seized or abandoned, some of this money, is that just turned into the general funds down there?

Captain FRANK. It is turned into the property bureau. I don't know exactly what the law is. Over a period of time, if it is not claimed, it eventually goes into the general fund; yes.

Senator CHILES. It doesn't stay necessarily in the department?

Captain FRANK. No, it doesn't decompose; no, sir.

Senator CHILES. That is all the questions I have. I want to thank you both, along with Senator Nunn, for your testimony and the fight that you are trying to make and we are delighted to have your views as to what can be done at the Federal level. I think it is interesting to note that it used to be considered that murder was strictly a State crime and no one wanted the Federal Government butting in on that. That doesn't seem to be your views today. You seem to be wanting the assistance of the Federal Government. I well understand the reason for it. But I think you don't find that there is any resistance from the State level, considering this a Federal crime?

Captain FRANK. No, sir. I know I would welcome that. The citizenry, I think, would welcome that.

Senator CHILES. What kind of cooperation are you getting now with the Federal law enforcement agencies? You have talked about IRS. What about DEA, Customs, FBI?

Captain FRANK. We work on a case-to-case basis. We don't—again, speaking of the homicide unit—go into the field of intelligence. So the interaction between ourselves and the Federal agencies are fairly well limited. If a homicide comes to our attention, contacts are made, initial information is exchanged, and then it is pretty much we are on our own.

Captain ENGLAND. We have cooperation, there is no lack of cooperation, except of what might be legally prohibited by the Freedom of Information Act.

Senator CHILES. Do you feel that these agencies, FBI, DEA, or Customs will share information with you if it is relevant to an investigation that you have?

Captain ENGLAND. If they are not restricted by the Information Act, or the Privacy Act; yes.

Chairman NUNN. I want to thank both of you on behalf of the subcommittee. I know you have had a very busy schedule and we can understand and appreciate more now than before the tremendous problems you have in the homicide area and we have known a long time about the tremendous problems in narcotics in Florida.

Captain Frank, I understand you are presently involved in a trial and the court interrupted your testimony so you can be here today. I hope you will convey our appreciation to the court and to the Dade County State attorney for their thoughtfulness and accommodation. We hope it didn't interrupt you too much. But your testimony will be very helpful and I am hoping we can begin adding back some strength and tools to law enforcement that you have so successfully described here this morning as being chipped away at. That is the purpose of the bill that I have and I believe that is shared by most members of the subcommittee. I know it is shared completely by Senator Chiles and I know Senator Percy shares that view.

So we do thank you and we hope you will stay in touch with us and we look forward to continuing to work with you.

Captain FRANK. Thank you for the opportunity of having us, sir.

Chairman NUNN. Thank you. On this set of hearings we may very well have a phase two in the violence hearings at a later point. In the meantime, we will in all likelihood have one executive session, perhaps two, taking other testimony related to names, the names that have been taken involving organized crime last week and again today will be carefully examined by our staff. We will have meetings to determine the final disposition of these names in terms of what will be made public and, of course, we will at some appropriate point not only make whatever information we decide is appropriate to be made public, we will make that public, but also explain our reasons and our criteria for doing so.

The subcommittee at this point will stand adjourned.

[Additional material submitted was marked "Exhibit No. 21" and appears in the appendix.]

[Whereupon, at 12:30 p.m., the subcommittee was recessed, to reconvene subject to the call of the Chair.]

[Members of the subcommittee present at time of recess: Senators Nunn and Chiles.]

## APPENDIX

## EXHIBIT No. 21

May 12, 1980

## MEMORANDUM

TO: The File  
FROM: Marty Steinberg  
RE: Organized Crime and Mob Violence File

Three California cases concerning murder "contracts" point out the weakness in current federal law and the need for a "murder-for-hire" statute. The cases were presented to the Subcommittee by Assistant U. S. Attorney Robert Perry at the direction of U. S. Attorney Andrea Sheridan Ordin.

MS/kd  
Attachments

1. U. S. v. Morton

A narcotics organization out of Detroit ran narcotics couriers to New York City. During one of these runs, couriers were caught and arrested. Upon being released, both couriers were taken to a defense attorney's office. Morton, the head of the organization, showed up to quiz the couriers (both female) to see if they would resist efforts to "turn" and testify for the Government.

One of the girls evidenced a reluctance to "do time" and she and Morton got into a violent argument. The girl fled and went to Los Angeles. She was talking to authorities and had tentatively agreed to cooperate when she was killed.

Morton hired McKnight to fill a contract hit on the girl for \$2,500. McKnight traced the girl to Los Angeles, grabbed her at her brother's house and took her out and shot her.

An industrious L.A.P.D. Homicide Detective and his wife, working nights and weekends in his off-hours, linked the killing to McKnight. McKnight, facing Murder 1 charges, cooperated and fingered Morton.

Morton has been charged federally with a civil rights conspiracy violation.

This case is good because it points out weaknesses in federal jurisdiction in murder-for-hire cases.

There is no federal murder statute. Moreover, state rules of evidence which preclude uncorroborated testimony of accomplices inhibits these cases from being tried in state court where the major testimony will be that of a co-conspirator. Also, the civil rights statute is an awkward tool to use. First of all, the penalties may not be appropriate. Second, you must prove a specific civil right was denied to a person under 18 U.S.C. 241, such as the right to vote or to be a witness. In this case, the victim had not formalized her agreement to be a witness and federal jurisdiction is threatened.

Morton was recently convicted and sentenced to life but has appealed his conviction.

AUSA Perry and USA Ordine think that a federal murder-for-hire statute, which would include solicitation to murder, would be an appropriate solution.

2. U. S. v. Godoy

To further illustrate the problem of federal jurisdiction in murder-for-hire cases, we should have testimony on the Godoy case.

Godoy was a pharmacist-narcotics pusher. He sold large quantities of quaaludes.

One of Godoy's runners was arrested. Godoy sought to put out a contract. Unfortunately, he picked an informant as his "hit man." The murder solicitation was charged as a racketeering act under RICO.

The technical problem is that, while RICO has murder as a predicate act, it does not speak in terms of solicitation or attempt. Thus, the need for a murder-for-hire statute.

The case is now on appeal and this issue has been raised.

3. Harvey Dail - Al Moore

This case involved a marijuana smuggling ring out of Texas. The head of this ring, Harvey Dail, broke a contract killer out of jail in Beliz to perform a contract killing on a witness against the gang.

The witness happened to be the most decorated war hero in California history.

The hit man, Al Moore, decided to cooperate. The "feds" hid the witness in his basement and wired Moore for sound. Dail delivered various weapons to the killer. The "feds" dressed the "victim" in bloody clothes and took pictures of him "dead" for Moore to show Dail. Dail paid Moore the \$16,000 contract fee.

This case is also good to point out the jurisdictional problem in federal court. Since Moore was a "Government agent" in his role as informant, no conspiracy existed, so the civil rights law couldn't be used. Moreover, the RICO-murder problem of not specifying solicitation exists.

The factual matter is complicated by Moore's decision to offer not to testify if Dail paid him a certain sum. Moore was also prosecuted and convicted.

Another example Perry gave of jurisdictional problems was a situation where a narcotics dealer solicited federal agents to perform a contract killing. Because there was no federal jurisdiction, the federal agents could not follow through.

The problem is that the narcotics dealer may have hired someone else and actually accomplished the murder.

An added problem is that in California (for example) the state murder-solicitation statute has a 5-year maximum sentence.

Perry went on to explain why the civil rights statute, 18 U.S.C. 241, will not work for murder-for-hire. First, the Government must prove a conspiracy under 241. If the person solicited is an agent or informant, no conspiracy exists [you need at least two independent actors to form a conspiracy]. Second, the Government must show that a specific civil right, such as the right to vote or be a witness, was denied a person to create jurisdiction.

#### Strike Force Interview

Strike Force Chief Jim Henderson agreed with Perry re the need for a federal murder-for-hire statute. He pointed out that, after the trial is over, the federal government has no statute to retain jurisdiction in cases where witnesses are threatened, harmed or killed.

He stated that he is presently investigating a case in which over 8 years after the trial a defendant approached undercover FBI agents to perform a contract murder on a witness at that 8-year-old trial. Henderson states that his jurisdictional basis to pursue the case is weak. He also states that the federal government cannot depend on the state and local government to pursue investigations on federal witnesses.

1 ANDREA SHERIDAN ORDIN  
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2 ROBERT L. BROSIO  
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9 UNITED STATES DISTRICT COURT

10 CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,	)	NO. CR 79-395-RMT
12 Plaintiff,	)	<u>TRIAL MEMORANDUM</u>
13 v.	)	[18 U.S.C. §241: Conspiracy
14 HAROLD MORTON,	)	to Violate Civil Rights]
15 Defendant.	)	
16	)	

17 COMES NOW the plaintiff, by and through its counsel of record,  
18 Assistant United States Attorney Robert S. Brewer, Jr., to file with  
19 the Court its Trial Memorandum. This Memorandum consists of a  
20 statement of the facts and law pertinent to the indictment.

21 Respectfully submitted,

22 ANDREA SHERIDAN ORDIN  
United States Attorney

23 ROBERT L. BROSIO  
Assistant United States Attorney  
Chief, Criminal Division  
24 *Robert S. Brewer, Jr.*  
25 ROBERT S. BREWER, JR.  
Assistant United States Attorney  
26 Controlled Substance Unit

27  
28 ISB:ban

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## TRIAL MEMORANDUM

## I.

## STATUS OF THE CASE

- A. Trial is set for Tuesday, March 25, 1980, at 9:00 A.M., before the Honorable Robert M. Takasugi, United States District Judge
- B. Estimated time for presentation of the Government's case-in-chief is four to five days.
- C. The defendant is in custody.
- D. Trial by jury has not been waived.
- E. An interpreter will not be required for the defendant or any Government witness.
- F. The Government expects to call approximately fifteen witnesses in its case-in-chief.
- G. The indictment is in one count. A copy of the indictment is attached to the Court's copy of this Trial Memorandum.

## II.

## APPLICABLE STATUTE

The indictment charges a violation of Section 241 of Title 18 of the United States Code.

Section 241 provides in pertinent part as follows:

"If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; . . .

\* \* \*

"They shall be fined not more than \$10,000

-2-

1 or imprisoned not more than ten years,  
 2 or both; if death results, they shall be  
 3 subject to imprisonment for any term of years  
 4 or for life."

## III

STATEMENT OF FACTS

5 The Government expects the evidence in this case will establish  
 6 all elements of the offense and will show the following:

7 1. On November 15, 1977, Gloria Roe, Sandra Jones and HAROLD  
 8 MORTON were driven to the Detroit, Michigan airport. At the airport  
 9 Jones and Roe purchased tickets to New York City with funds provided  
 10 by MORTON. All three boarded a plane and flew to New York City,  
 11 arriving before noon.

12 2. After deplaning at JFK Airport, all three individuals were  
 13 transported to Manhattan by taxi, where Roe and Jones purchased in  
 14 cash roundtrip tickets to Amsterdam, the Netherlands. Again, the  
 15 airfare was paid for by MORTON. Roe and Jones then obtained passports,  
 16 pursuant to instructions from MORTON.

17 3. MORTON, Jones and Roe were then transported by taxi to JFK  
 18 Airport and boarded a KLM flight to Amsterdam. Once in Amsterdam  
 19 all three were transported to the Amsterdam Marriot Hotel, where two  
 20 rooms were obtained in the names of Roe and Jones. Roe and Jones  
 21 spent November 16 and 17 sightseeing and shopping.

22 4. On November 18, 1977, Gloria Roe was summoned into Jones'  
 23 room where she was shown a package and was instructed to secrete it  
 24 under her girdle in her crotch area. Roe observed that Jones had  
 25 also concealed a similar package on her body in the same fashion.

26 //

1 After the package was concealed, MORTON requested Roe to walk in  
 2 front of him and he commented, "it looks fine." All three then took  
 3 a taxi to the airport and boarded a flight to New York City.

4 5. On the same date (November 18, 1977) Roe, Jones and MORTON  
 5 landed at JFK Airport and presented themselves in different lines  
 6 for the routine customs search. Both Jones and Roe were detained,  
 7 and after a secondary search was performed on both the concealed  
 8 packages were discovered. A field test of the substances found in  
 9 the packages revealed that each was carrying over one-half pound of  
 10 29% pure heroin. HAROLD MORTON was also detained but no contraband  
 11 was found on his person or in his luggage.

12 6. After the packages were found both Jones and Roe were  
 13 interviewed separately by Drug Enforcement Administration (DEA)  
 14 agents. Both waived their constitutional rights and stated that  
 15 they were carrying the heroin for HAROLD MORTON. Jones said she  
 16 would cooperate with the agents and that she was willing to testify  
 17 against MORTON. All three were arrested and transported to the  
 18 Metropolitan Correctional Center in New York City.

19 7. On November 23, 1977, HAROLD MORTON was released from  
 20 custody on a \$100,000 personal recognizance bond secured by property  
 21 in Detroit, Michigan.

22 8. On December 5, 1979, both Gloria Roe and Sandra Jones were  
 23 represented in Federal Court for the Eastern District of New York by  
 24 Ms. Gail S. Benson, Esq., who was employed by S. Allan Early, Esq.,  
 25 from Detroit. On that date their bonds were reduced to \$25,000  
 26 personal recognizance and both were released from custody. Roe and  
 27 Jones were provided airline tickets by Ms. Benson and on December 5,  
 28 1977, all three flew to Detroit. Upon arriving in Detroit Ms. Benson

1 told Roe and Jones she would meet them at her office on the following  
2 day.

3 9. On December 6, 1977, Roe and Jones went together to the law  
4 offices of S. Allan Early at 810 Buhl Building in Detroit, Michigan.  
5 Ms. Benson took them into a conference room and departed. HAROLD  
6 MORTON then entered the room.

7 10. After greeting each of the women, MORTON inquired whether  
8 each was willing to "do time" on her pending charges. Roe stated  
9 that if MORTON would take care of her family she was willing to go  
10 to jail. Jones replied she did not want to be confined. MORTON  
11 then told Roe to leave the room.

12 11. Approximately fifteen minutes later both Jones and MORTON  
13 departed. Jones was observed to be extremely upset and asked Roe to  
14 take her to Roe's apartment. Jones confided to Roe that she was  
15 afraid and wanted to leave town immediately. Later that same day,  
16 Jones contacted her sister in Montgomery, Alabama to wire her some  
17 money for an airline ticket.

18 12. At 2:55 a.m. on December 7, 1979, Sandra Jones departed  
19 Detroit, Michigan enroute to Montgomery, Alabama to visit her  
20 sister and her mother who was there attending a funeral. Between  
21 the evening of December 8, 1977, and the early morning of December 9,  
22 1977 Sandra Jones and her mother flew from Montgomery, Alabama to  
23 their home in San Diego, California.

24 13. On the evening of December 6, 1977, the day MORTON had met  
25 with Roe and Jones at Early's office, MORTON and HILDA SINGLETON  
26 checked into the Michigan Inn, in Southfield, Michigan.

27 14. On the morning of December 7, 1977, Thornell McKnight  
28 received a telephone call from HAROLD MORTON requesting McKnight to

1 meet with him at the Michigan Inn as soon as possible. Sometime  
2 between eight and ten o'clock in the morning McKnight met with  
3 MORTON in his room at the Michigan Inn. During this meeting MORTON  
4 explained to McKnight that he had been arrested in New York City  
5 with two of "his girls" and they were caught carrying heroin that he  
6 had purchased in Amsterdam. MORTON expressed that he was very  
7 worried about one of the girls, a "Miss S.," who he felt had "talked"  
8 to the authorities and who would probably testify against him in his  
9 pending case. MORTON told McKnight that he needed McKnight to do a  
10 "job" for him. During the majority of this conversation SINGLETON  
11 was present.

12 15. MORTON and McKnight discussed various strategies to  
13 insure that Jones would not testify against MORTON. The alternatives  
14 raised included bribing her with money, having her voluntarily go  
15 "underground" and leave the country, threatening her family, or  
16 killing her.

17 16. MORTON told McKnight that he wanted to talk with Jones  
18 before he decided for sure what alternative would be adopted. He  
19 stated he wanted McKnight to take him to Gloria Roe's house since he  
20 knew Jones was staying there.

21 17. After the conversation, MORTON went into the restroom.  
22 While he was there McKnight asked SINGLETON if she would insure that  
23 MORTON paid McKnight for what he was going to do to Jones. She told  
24 him not to worry, that she would "guarantee" McKnight would be paid.

25 18. McKnight and MORTON departed the Michigan Inn and McKnight  
26 drove MORTON in his Checker Cab to Gloria Roe's residence at 2674  
27 Richton in Detroit, Michigan. At her residence, MORTON told McKnight  
28 to get Jones and bring her to the cab. McKnight went to the door and

1 asked Roe if Jones was there. Roe informed him that Jones had  
 2 departed for Alabama earlier that same morning to visit her sister.  
 3 McKnight returned to the cab and relayed this information to MORTON.  
 4 MORTON then went into Roe's residence and talked with her alone for  
 5 approximately ten minutes.

6 19. When MORTON returned to the cab he was visibly irritated  
 7 and told McKnight that "Miss S" had "run out on him" and that  
 8 McKnight must kill her. After further discussions MORTON agreed to  
 9 pay McKnight \$3500 to murder Jones. MORTON then provided McKnight  
 10 with Jones' telephone number and address in San Diego.

11 20. In the early evening of December 7, 1977, McKnight met  
 12 with MORTON and SINGLETON at Ciro's Motel in Detroit. In SINGLETON's  
 13 presence, MORTON paid McKnight \$1500 in cash as a down payment for  
 14 killing Jones.

15 21. After receiving the money McKnight went to Detroit Office  
 16 Equipment, Inc., and paid a \$200.00 down payment on an \$800.00 order  
 17 for furniture for his wife.

18 22. On December 8, 1977, McKnight bought a .38 caliber snub-  
 19 nosed revolver which contained two bullets.

20 23. On December 10, 1977, one day after Sandra Jones arrived  
 21 in San Diego from Alabama, Thornell McKnight departed Detroit for  
 22 San Diego. After he arrived he checked into the Holiday Inn and  
 23 called Sandra Jones. McKnight informed Jones he was sent by "the  
 24 man" and lead her to believe he had some money for her. She then  
 25 agreed to meet him at her mother's house.

26 24. Upon arriving at the house McKnight introduced himself as  
 27 "T" to Jones and the other members of her family and asked to talk  
 28 with Jones alone. They both went to a bedroom where McKnight

1 again informed Jones that he had some money for her from MORTON. He  
 2 also asked her numerous questions concerning her intentions and soon  
 3 perceived that she was planning to cooperate with the Government and  
 4 testify against HAROLD MORTON. McKnight attempted to dissuade her  
 5 from cooperating.

6 25. McKnight informed Jones that the money he had for her was  
 7 in Los Angeles and that they must obtain it there. Jones stated she  
 8 would drive to Los Angeles the following day and agreed to pick  
 9 McKnight up at his hotel the next morning. McKnight departed the  
 10 residence and returned to the Holiday Inn.

11 26. On December 11, 1977, Sandra Jones, her brother Robert  
 12 Collins and her four-year-old son picked up McKnight near his hotel  
 13 in her 1969 Lincoln Continental and drove north. Once in Los Angeles,  
 14 McKnight told Jones that his "contact" with the money refused to  
 15 give it to Jones with anyone other than McKnight present. Reluctantly,  
 16 Jones left her son at Collins' ex-wife's house and her brother at a  
 17 motel. McKnight then directed Jones, who was driving the car, to an  
 18 alley near the corner of Venice and Cattarraugus Boulevards. He had  
 19 her stop the car and while they talked he shot her at close range  
 20 twice in the chest. Jones died instantly as she fell across the  
 21 front seat.

22 27. McKnight exited Jones' vehicle, ran north down the alley  
 23 and threw the pistol into a trash bin. He then ran north on Venice  
 24 Boulevard two blocks to the Venice Hotel where he asked the desk  
 25 clerk to call a taxi for him. The cab arrived in a few minutes and  
 26 took McKnight to Los Angeles International Airport where he immedi-  
 27 ately boarded a flight to Detroit, Michigan.

28 28. On December 12, 1977, McKnight called SINGLETON, told her

1 he had killed Jones in Los Angeles and demanded his final payment.  
 2 SINGLETON balked at first stating she had no money but agreed to  
 3 provide McKnight with \$1,000. McKnight and SINGLETON drove to the  
 4 IBM Federal Credit Union in Southfield, Michigan where SINGLETON  
 5 obtained a \$1,000 cashier's check. They then went to a bank where  
 6 SINGLETON cashed the check and gave the money to McKnight. They  
 7 both then drove to the Detroit Office Furniture Company where McKnight  
 8 paid the balance on the furniture he had previously ordered. McKnight  
 9 then left SINGLETON off at her residence and proceeded to the City  
 10 National Bank where he made a cash deposit of \$540.00 in his checking  
 11 account.

12 29. On December 12, 1977, Assistant United States Attorney  
 13 Rhonda Fields of the Eastern District of New York dismissed all  
 14 pending charges against HAROLD MORTON.

15 30. On December 15, 1977, MORTON and SINGLETON went to McKnight's  
 16 house. McKnight told MORTON, in the presence of SINGLETON, the  
 17 details of how he had killed Jones. MORTON asked McKnight if he had  
 18 done or said anything that would implicate MORTON and McKnight  
 19 assured him that he had not. MORTON then cancelled a \$500.00 debt  
 20 that McKnight owed him and he and SINGLETON departed.

21 IV.

22 PERTINENT LAW

23 A. 18 U.S.C. §241

24 1. Title 18, United States Code, Section 241 protects the free  
 25 exercise of rights "secured by the Constitution or laws of the United  
 26 States." The Supreme Court has long made clear that certain rights  
 27 are implicitly conferred by the Constitution's establishment of a  
 28 national government intended to be "paramount and supreme within its

1 sphere of action."

2 United States v. Pacelli, 491 F.2d 1108, 1113  
 3 (2nd Cir. 1974);

4 In Re Quarles, 158 U.S. 532, 15 S.Ct. 959,  
 5 39 L.Ed. 1080 (1895);

6 Logan v. United States, 144 U.S. 263, 12 S.Ct. 617,  
 7 36 L.Ed. 429 (1892).

8 2. One of the rights secured is the right to testify at a  
 9 federal trial in response to a request or command.

10 Foss v. United States, 266 F.2d 881  
 11 (9th Cir. 1920);

12 United States v. Guillette, 547 F.2d 743  
 13 (2nd Cir. 1976);

14 United States v. Pacelli, *supra*.

15 3. A citizen's right to inform federal authorities concerning  
 16 violations of the federal laws is secured by the Constitution even  
 17 though it is not specifically mentioned in any of the amendments.

18 ". . . [T]o leave to the several  
 19 states the prosecution and punishment of  
 20 conspiracies to oppress citizens of the  
 21 United States, in performing the duty  
 22 and exercising the right of assisting to  
 23 uphold and enforce the laws of the United  
 24 States, would tend to defeat the independence  
 25 and the supremacy of the national government."

26 In Re Quarles, *supra* at 536-537.

27 See also: Motes v. United States, 178 U.S. 458,  
 28 20 S.Ct. 993, 44 L.Ed. 1150 (1900).

1 Foss v. United States, supra.

2 B. CONSPIRACY

3 1. The essential elements which must be proved in order to  
4 establish a conspiracy are: (1) An agreement or understanding by  
5 two or more persons to combine for an illegal purpose; (2) the  
6 membership of the defendant in the agreement; (3) an overt act; (4)  
7 which overt act must be in furtherance of that agreement or under-  
8 standing.

9 United States v. Fontenot, 483 F.2d 315, 321

10 (5th Cir. 1973);

11 United States v. Jit Sun Loo, 478 F.2d 401, 407

12 (9th Cir. 1973);

13 United States v. Jacobo-Gill, 474 F.2d 1213, 1215

14 (9th Cir. 1973);

15 United States v. Jones, 425 F.2d 1049

16 (9th Cir.), cert. denied 400 U.S. 823 (1970);

17 Diaz-Rosendo v. United States, 357 F.2d 124, 129

18 (9th Cir.), cert. denied, 385 U.S. 856 (1966).

19 2. The elements of conspiracy can be and usually must be  
20 proved by circumstantial evidence alone.

21 United States v. Jones, supra;

22 Diaz-Rosendo v. United States, supra;

23 United States v. Cole, 448 F.2d 415, 416

24 (9th Cir.), cert. denied 405 U.S. 927 (1971).

25 3. An overt act for purposes of a criminal conspiracy is an  
26 outward act done in pursuance of the conspiracy and with an intent  
27 to design to accomplish the criminal objective.

28 //

1 Chavez v. United States, 275 F.2d 813

2 (9th Cir. 1960).

3 4. The order of proof in a conspiracy case is a matter committed  
4 to the sound discretion of the trial judge.

5 United States v. Castanon, 453 F.2d 932, 934

6 (9th Cir.), cert. denied, 406 U.S. 922 (1972).

7 5. It is not necessary to show that each co-conspirator was  
8 aware of all the details of the conspiracy.

9 Blumental v. United States, 332 U.S. 539, 557

10 (1947);

11 Chavez v. United States, supra.

12 6. Nor must it be shown that each participant in the conspiracy  
13 had contact with all other participants or knew what the other  
14 participants were doing or why.

15 United States v. Jones, supra.

16 7. The evidence need not even show that each co-conspirator  
17 knew of the existence, number, location or identity of all his  
18 co-conspirators.

19 United States v. Friedman, 445 F.2d 1076, 1080-1081

20 (9th Cir.), cert. denied, 404 U.S. 958 (1971);

21 Esco Corporation v. United States, 340 F.2d 1000, 1006

22 (9th Cir. 1965).

23 8. The key element of proof is the showing as to any specific  
24 co-conspirator that he knew, or had reason to know, of the partici-  
25 pation of others in the illegal plan, and that he knew, or had reason  
26 to know, that the benefits to be derived from the operation were  
27 probably dependent upon the success of the entire venture.

28 //

1 United States v. Baxter, 492 F.2d 105, 158

2 (9th Cir.), cert. denied, 416 U.S. 940 (1973).

3 9. One who joins a conspiracy which is already formed and in  
4 existence is bound by all that has gone on before in the conspiracy.

5 United States v. Knight, 416 F.2d 1181, 1184

6 (9th Cir. 1969);

7 Marino v. United States, 91 F.2d 691, 963

8 (9th Cir.), cert. denied, 302 U.S. 764 (1937).

9 10. An unlawful purpose must always be alleged in a conspiracy  
10 indictment, and criminal intent on the part of the conspirators must  
11 be shown.

12 United States v. Root, 366 F.2d 377, 382

13 (9th Cir.), cert. denied, 386 U.S. 912 (1966).

14 11. The intent must be at least that degree of criminal intent  
15 which is required for the substantive offense which is the object or  
16 purpose of the conspiracy.

17 Ingram v. United States, 360 U.S. 672, 678 (1959);

18 United States v. Roselli, 432 F.2d 879

19 (9th Cir. 1970), cert. denied, 401 U.S. 924 (1971).

20 12. Declarations of one conspirator may be used against another  
21 conspirator not present on the theory that the declarant is the agent  
22 of the other, and the admissions of one are admissible against both  
23 under a standard exception to the hearsay rule applicable to the  
24 statements of a party.

25 28 U.S.C. §801(d)(2)(e);

26 Dutton v. Evans, 400 U.S. 74, 81 (1970);

27 Lutwak v. United States, 344 U.S. 604, 617

28 (1953).

1 13. It is not necessary that the defendant have been present  
2 at the time of the declaration.

3 Dedmore v. United States, 322 F.2d 938, 946

4 (9th Cir. 1963);

5 Parente v. United States, 249 F.2d 752, 754

6 (9th Cir. 1957).

7 14. A statement by one conspirator made in the presence of other  
8 conspirators who are defendants is not hearsay at all as to those  
9 others.

10 United States v. Haili, 443 F.2d 1295, 1300

11 (9th Cir. 1971);

12 United States v. Sanchez-Mata, 429 F.2d 1391, 1392

13 (9th Cir. 1970).

14 15. The declarations, in order to be properly used against a  
15 fellow conspirator, must have been made in furtherance of the  
16 conspiracy.

17 Carbo v. United States, 314 F.2d 718, 735-736 n.21

18 (9th Cir. 1963), cert. denied, 377 U.S. 953,

19 reh. denied, 377 U.S. 1010.

20 16. Testimony by a third party as to what defendant tells him  
21 to say to another is admissible as being in furtherance of the  
22 conspiracy.

23 United States v. Cioffi, 493 F.2d 1111, cert.

24 denied 95 S.Ct. 195, 419 U.S. 917, 42 L.Ed.

25 2d 155 (5th Cir. 1974).

26 17. Statements of co-conspirators are not hearsay even if made  
27 prior to entry of conspiracy by party against whom they are used.

28 //

1 United States v. Anderson, 532 F.2d 1218  
2 (9th Cir. 1976).

3 18. The scope of the conspiracy alleged in the indictment does  
4 not limit the application of the co-conspirator exception to the  
5 hearsay rule.

6 United States v. Mitchell, 556 F.2d 371, 377  
7 (6th Cir. 1977).

8 19. Such evidence is admissible against an alleged co-conspirator  
9 only if there is sufficient proof aliunde (independent of the  
10 statements themselves) that he is connected with the conspiracy to  
11 establish a prima facie case.

12 United States v. Spanos, 462 F.2d 1012, 1014  
13 (9th Cir. 1972);

14 United States v. Radio, 565 F.2d 573  
15 (9th Cir. 1977).

16 It is for the judge to determine whether the independent evidence  
17 makes out a prima facie case against the alleged conspirator, and  
18 thus lays the foundation for the hearsay exception.

19 Carbo v. United States, supra at 737.

20 It is then for the jury to weigh all the evidence, including the  
21 declarations.

22 Hansen v. United States, 326 F.2d 152, 156 n.9  
23 (9th Cir. 1963);

24 Carbo v. United States, supra, at 737.

25 20. The threshold requirement for admissibility is that there  
26 be a showing of a likelihood of an illicit association between the  
27 declarant and the defendant.

28 //

1 United States v. Randall, 491 F.2d 1317, 1320-1323  
2 (9th Cir. 1974).

3 The Ninth Circuit law clearly holds that the jury is not to make a  
4 split determination; rather, once the court has found that a prima  
5 facie conspiracy case has been made out against the defendant, the  
6 jury is to consider all the evidence together. Once the conspiracy  
7 is established, declarations of fellow conspirators are admissible  
8 even if they were made or done prior to the particular defendant's  
9 entrance into the conspiracy.

10 United States v. Gypsum, 333 U.S. 364, 393 (1948).

11 21. Evidence of an act, whether the act is by a conspirator or  
12 third person and whether it occurs during the period of the conspiracy  
13 or not, is admissible so long as the act is probative of a crime  
14 charged against the defendant.

15 United States v. Costello, 352 F.2d 848, 854  
16 (2nd Cir. 1965).

17 22. Acts and statements by others, whether they involve the  
18 defendant directly or not, may be relevant in proving the existence  
19 and aim of the conspiracy.

20 United States v. Testa, 548 F.2d 847  
21 (9th Cir. 1977);

22 United States v. Costello, supra;

23 Lutwak v. United States, 344 U.S. 604, 617-619,  
24 73 S.Ct. 481, 97 L.Ed. 593 (1953).

25 a. These acts are admissible evidence whether  
26 they occurred before or after the conspiracy.

27 Lutwak v. United States, supra;

28 //

1 United States v. Ross, 321 F.2d 61, 68-69  
 2 (2nd Cir.), cert. denied, 375 U.S. 894,  
 3 84 S.Ct. 170, 11 L.Ed. 2d 123 (1963).

4 23. Evidence which ties the defendant to the conspiracy is  
 5 admissible for the purpose of proving the existence and aim of the  
 6 conspiracy and to show the defendant's state of mind and his intent  
 7 in respect to the conspiracy.

8 United States v. Cohen, supra;  
 9 United States v. Del Purgatorio, 411 F.2d 84  
 10 (2nd Cir. 1969);  
 11 United States v. Cioffi, supra.

12 24. Existence of the conspiracy on or about a certain date may  
 13 be proved by showing actions of persons who later perfected the  
 14 conspiracy, leading up to the date on which the conspiracy was  
 15 actually formed.

16 United States v. Milisci, 465 F.2d 700,  
 17 cert. denied;

18 Beachchamp v. United States, 93 S.Ct. 684, 409  
 19 U.S. 1076 [34 L.Ed. 2d 664 (Florida 1972)].

20 25. Evidence of events preceding the conspiracy are admissible  
 21 to prove intent, purpose and aim of parties to conspire.  
 22 18 U.S.C. §1503.

23 United States v. Cioffi, supra.

24 26. Post conspiracy acts or declarations may be admissible for  
 25 several purposes.

26 United States v. Green, 594 F.2d 1227, 1229  
 27 (9th Cir. 1979);

28 United States v. Testa, supra;

1 Anderson v. United States, 417 U.S. 211, 218-221  
 2 94 S.Ct. 2253, 41 L.Ed. 2d 20 (1974);

3 United States v. Wentz, 456 F.2d 634, 637  
 4 (9th Cir. 1972);

5 United States v. Estrada, 441 F.2d 873, 877  
 6 (9th Cir. 1977).

7 a. Testimony which relates to a conspirator's  
 8 acts and proof of the existence of the conspiracy is  
 9 admissible against both actor and his co-conspirator  
 10 even if the conspiracy has terminated when those acts  
 11 took place.

12 United States v. Estrada, supra;

13 United States v. Iacovetti, 466 F.2d 1147,  
 14 cert. denied 93 S.Ct. 963, 410 U.S. 908  
 15 35 L.Ed. 2d 270.

16 C. STATE OF MIND

17 1. The Federal Rules of Evidence Rule 803(3) provides an  
 18 exception to the hearsay rule for statements revealing a declarant's  
 19 state of mind.

20 28 U.S.C. §803(3).

21 2. Rule 803(3) admits "a statement of the declarant's then  
 22 existing state of mind, emotion, sensation, or physical condition.  
 23 (such as intent, plan, motive, design, mental feeling, pain, and  
 24 bodily health) . . . ."

25 28 U.S.C. §803(3).

26 3. A statement under Rule 803 is not admissible unless it was  
 27 made under circumstances indicating that it is trustworthy.

28 People v. Alcalde, 24 Cal. 2d 177, 148 P. 2d 627 (1944).

1 United States v. Cline, 570 F.2d 731, 734  
 2 (8th Cir. 1978);  
 3 See Fed.R.Evid. 801(c);  
 4 6 Wigmore, Evidence §1715 at 61 (3 ed. 1940);  
 5 Morgan, "A Suggested Classification of Utterances  
 6 Admissible as Res Gestae", 31 Yale Law Journal,  
 7 229, 232 (1922);  
 8 Weinstein, Weinstein's Evidence, ¶803(3) [02] pp. 803-94-95.  
 9 4. Hearsay evidence is admissible to show state of mind of an  
 10 extrajudicial declarant, where such is relevant.  
 11 Miles Laboratories, Inc. v. Frolich, 296 F.2d 740  
 12 (D.C.Al. 1961), aff'd 296 F.2d 740, cert. denied,  
 13 396 U.S. 865.  
 14 5. An out of court statement is admissible if it bears on the  
 15 state of mind of the declarant and if state of mind is an important  
 16 issue of the case.  
 17 United States v. Adcock, 558 F.2d 397 (9th Cir.),  
 18 cert. denied, 434 U.S. 521 (1977);  
 19 United States v. Pheaster, 544 F.2d 353, 379  
 20 (9th Cir. 1976), cert. denied, 430 U.S. 406  
 21 Weinstein, Weinstein's Evidence, ¶803(3) [03] at 803-98-99.  
 22 6. A statement by a deceased indicating his present existing  
 23 state of mind made in a natural and unsuspecting manner is admissible  
 24 under state of mind exception to show declarant's design or intent  
 25 to perform a specific act.  
 26 Wilbye v. United States, 87 F.Supp. 830, 832  
 27 (D.C.Cal. 1949), aff'd, 191 F.2d 181.  
 28 //

1 7. When performance of a particular act by an individual is an  
 2 issue, statements concerning his intention to perform that act may be  
 3 admitted to reveal his state of mind before the doing of the act.  
 4 Mutual Life Ins. Co. v. Hillmon, 145 U.S. 285 (1892);  
 5 United States v. Brown, 490 F.2d 758,  
 6 160 U.S. App.D.C. 190 (1970).  
 7 8. A statement made by deceased that he intended to turn the  
 8 defendant over to law enforcement authorities is admissible to show  
 9 defendant's motive for killing the declarant.  
 10 United States v. Cline, 570 F.2d 731, 734  
 11 (8th Cir. 1978).  
 12 9. Extrajudicial statements of a deceased are admissible under  
 13 803(3) to prove the scope of the deceased's knowledge which was  
 14 relevant to show defendant's motive and intent to murder the  
 15 declarant.  
 16 United States v. Harvey, 526 F.2d 529, 535  
 17 (2nd Cir. 1975), cert. denied, 424 U.S. 956 (1976).  
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## 1 D. MISCELLANEOUS

## 2 1. Airline Tickets

3 Airline tickets are reliable evidence and as such are verbal  
4 acts, from which the jury may infer that trips were made on a  
5 specified date.

6 United States v. Clabaugh, 589 F.2d 1019

7 (9th Cir. 1979);

8 Relford v. United States, 309 F.2d 706

9 (9th Cir. 1962);

10 28 U.S.C. §402.

## 11 2. Physical Evidence

12 Physical evidence found near the murder victim's body may be  
13 properly admitted in a murder prosecution.

14 28 U.S.C. §103(a);

15 United States v. Cheyenne, 558 F.2d 902, cert.

16 denied 98 S.Ct. 486, 434 U.S. 957, 54 L.Ed.

17 2d 316 (8th Cir. 1977).

## 18 3. Photographs

19 a. Admission of photographs lies within the trial  
20 judge's discretion.

21 United States v. Franks, 511 F.2d 25

22 cert. denied 95 S.Ct. 2654, 2656,

23 422 U.S. 1042, 1048 45 L.Ed. 2d 693;

24 28 U.S.C. §1002.

25 b. Test to be applied in admitting photographs  
26 is whether prejudicial effect of photographs outweighs  
27

1 their probative value.

2 Giblin v. United States, 523 F.2d 42,

3 cert. denied 96 S.Ct. 1470 (8th Cir. 1975).

4 c. Photographs are admissible which show where  
5 victim was shot.

6 United States v. Smith, 490 F.2d 789,

7 160 U.S. App. D.C. 221 (D.C. Cir. 1974).

8 d. Photographs of the decedent taken while  
9 lying on the floor of a vehicle after being shot  
10 pertain to the corpus delicti and can not be deemed  
11 inflammatory.

12 United States v. Littlebear, 531 F.2d 896

13 (8th Cir. 1976).

14 e. Photographs of the deceased are admissible  
15 to demonstrate the identity of the victim in a  
16 homicide case.

17 United States v. Kaiser, 545 F.2d 467

18 (8th Cir. 1977).

## 19 4. Admissibility of Duplicates

20 a. "A duplicate is admissible to the same extent  
21 as an original unless (1) a genuine question is raised  
22 as to the authenticity of the original or (2) in the  
23 circumstances it would be unfair to admit the duplicate  
24 in lieu of the original."

25 28 U.S.C. §1003.

26 b. Unless something is offered for the record  
27 to show that a genuine question is raised as to the  
28

1 authenticity of an original or as to the fairness  
2 of admitting a duplicate, a xerox copy is presumptively  
3 admissible.

4 United States v. Morgan, 555 F.2d 238  
5 (9th Cir. 1977).

6 c. "The original is not required, and other  
7 evidence of the contents of a writing, recording,  
8 or photograph is admissible if . . . (4) collateral  
9 matters - the writing, recording, or photograph  
10 is not closely related to a controlling issue."

11 28 U.S.C. §1004.

12 d. Best evidence rule does not require that  
13 the author of a document be produced if the original  
14 document is offered.

15 United States v. American Radiator, 433 F.2d  
16 174, cert. denied 91 S.Ct. 928, 401  
17 U.S. 948, 28 L.Ed. 2d 231 (3rd Cir. 1970).

18 e. "Extrinsic evidence of authenticity as  
19 a condition precedent to admissibility is not required  
20 with respect to the following:

21 1) Certified copies of public records.

22 Public record can be certified as correct  
23 by the custodian or any other person authorized  
24 to make the certification by a certificate."

25 28 U.S.C. §902.

26 f. Birth certificates are admissible pursuant  
27 to Federal Rules of Evidence, Rule 803[d].

28 28 U.S.C. §803.

1 g. Proof can be offered by introducing a  
2 certified copy of the public record in accordance  
3 with Rule 902 of the Federal Rules of Evidence.

4 28 U.S.C. §1005.

5 28 U.S.C. §1732.

6 h. A witness' lack of personal knowledge in  
7 regard to entries made in motel records does not  
8 preclude their admissibility but only speaks to  
9 the weight of the evidence.

10 United States v. Morton, 483 F.2d 573, 577  
11 (8th Cir. 1973).

12 5. Use of Charts

13 a. The use and admissibility of summary charts  
14 is a matter within the sound discretion of the trial  
15 court.

16 United States v. Johnson, 319 U.S. 503 (1943);  
17 Baines v. United States, 426 F.2d 833  
18 (5th Cir. 1970).

19 b. Summaries are not in themselves evidence but  
20 only aids in evaluating the evidence.

21 United States v. Bartone, 400 F.2d 459  
22 (6th Cir. 1968);

23 United States v. Smyth, 556 F.2d 1179  
24 (5th Cir. 1977), cert. denied, 434 U.S. 862,  
25 98 S.Ct. 190, 54 L.Ed. 2d 135 (1977);

26 Weinstein's Evidence, §1006[02].

27 c. However, summaries shall be treated as evidence  
28 under circumstances where examination of the underlying

1 documents cannot be done conveniently.

2 1. The summary, however, must be  
3 based on admissible documents which have  
4 previously been made available to the  
5 opposing side at a reasonable time and place.

6 28 U.S.C. §1006.

7 United States v. Smith, supra.

8 2. The chart must be accurate, authentic  
9 and properly introduced before it may be admitted.

10 United States v. Denton, 556 F.2d 811, 816

11 (6th Cir. 1977), cert. denied, 434 U.S. 892.

12 d. Summary charts are admissible to aid the jury  
13 in organizing the proof of the charge.

14 1. Where the facts of the case are  
15 complex and likely to confuse the jury,  
16 a summary chart is admissible to aid the  
17 trier of the fact.

18 United States v. Scales, 549 F.2d 558

19 (6th Cir. 1979).

20 2. Charts may be used to explain a  
21 witness' testimony.

22 United States v. Smith, supra;

23 Epstein v. United States, 246 F.2d 563, 570

24 (6th Cir. 1957).

25 e. Charts may be used to aid the trier of the  
26 fact in making the evidence more intelligible.

27 United States v. Park, 56 F.2d 753, 756

28 (2nd Cir. 1932).

1 f. Charts are admissible which offer a "clear-cut  
2 illustration of how the [conspiracy] plan [is] carried  
3 out."

4 United States v. Park Ave. Pharmacy, 56 F.2d 753, 756  
5 (2nd Cir. 1932).

6 g. Charts may be used by the prosecutor in  
7 his opening statement to assist the jury in understanding  
8 the method and purpose employed by the defendant.

9 United States v. Rubino, 431 F.2d 284, 290  
10 (6th Cir. 1970).

11 h. The jury is "free to exercise its untrammelled  
12 judgment upon the worth and weight" of evidence included  
13 in the charts.

14 United States v. Johnson, 319 U.S. 503, 519

15 63 S.Ct. 1233, 1241, 87 L.Ed. 1546;

16 Smith v. United States, 239 F.2d 168

17 (6th Cir. 1956);

18 Epstein v. United States, supra.

19 6. Business Records of Regularly Conducted Activity.

20 a. The Federal Rules of Evidence Rule 803(6) provides  
21 an exception to the hearsay rule for records of a regularly  
22 conducted activity.

23 28 U.S.C. §803(6).

24 b. Rule 803(6) admits "a memorandum, report, record,  
25 or data compilation, in any form, of acts, events,  
26 conditions, opinions . . . if kept in the course of a  
27 regularly conducted business activity" under  
28 circumstances which indicate trustworthiness.

1 23 U.S.C. §803(6).  
 2 c. Foundation requirement may be shown by  
 3 testimony of the custodian of records or other  
 4 qualified witness.

5 28 U.S.C. §803(6).

6 1. "The phrase 'other qualified  
 7 witness' should be given the broadest  
 8 interpretation; he need not be an  
 9 employee of the entity as long as he  
 10 understands the system."

11 J. Weinsetein and M. Berger, Weinstein's Evidence,  
 12 803(6) [02] at 803-152 (1979).

13 d. There is no requirement that the foundation  
 14 come from the individual who kept the records, or had  
 15 supervised over them or had personal knowledge of  
 16 what particular evidence contained in the record.

17 United States v. Rose, 562 F.2d 409, 410  
 18 (7th Cir. 1977);

19 United States v. Reese, 568 F.2d 1246  
 20 (5th Cir. 1977);

21 Reyes v. Wyeth Laboratories, 498 F.2d 1264,  
 22 1286 n.37 (5th Cir. 1974), cert. denied,  
 23 419 U.S. 1038 (1974).

24 1. Absence of the person who prepared  
 25 the exhibits goes to the weight to be  
 26 given to the evidence and not to its admissibility.

27 United States v. Pfeiffer, 539 F.2d 668, 671  
 28 (8th Cir. 1976);

1 United States v. Morton, 483 F.2d 573, 577  
 2 (9th Cir. 1973).

3 e. "A foundation for admissibility may at times  
 4 be predicated on judicial notice of the nature of  
 5 the business and the nature of the records as  
 6 observed by the court." (Emphasis added)

7 J. Weinstein and M. Berger, Weinstein's Evidence,  
 8 803(6) [02] at 803-152 (1979).

9 1. A witness who was neither the custodian  
 10 nor preparer may refer to a document in  
 11 evidence, where documents possess a high  
 12 degree of trustworthiness and the necessity of  
 13 admitting them far outweighs the inconvenience  
 14 that would result in having the person who  
 15 prepared the document testify.

16 United States v. Hines, 564 F.2d 925, 928  
 17 (10th Cir. 1977), cert. denied,  
 18 434 U.S. 1022 (1978).

19 f. Foreign hotel records are admissible despite  
 20 each of testimony by custodian where none of the witnesses  
 21 could be subpoenaed to testify.

22 United States v. Leal, 509 F.2d 122, 127  
 23 (9th Cir. 1975).

24 1. "The official records analogy  
 25 [803(8)] is far from inappropriate (in a  
 26 situation involving foreign hotel records)  
 27 because many of the same guarantees of  
 28 trustworthiness underlie both the official

documents and the business records exception."  
United States v. Leal, 509 F.2d 122, 127  
(9th Cir. 1975).

g. "[C]ancelled checks are clearly admissible  
to prove that money was withdrawn from an account."

United States v. Dawson, 400 F.2d 194, 199  
(2nd Cir. 1968), cert. denied, 393 U.S. 1023 (1969).

h. Federal Rules of Evidence 803(24) provides  
admissibility of statements not specifically covered by any  
of the specific exceptions but one having equivalent  
circumstantial degrees of trustworthiness.

28 U.S.C. §903(24).

v.

CONCLUSION

Counsel for defendant is herewith informed that defendant may  
if so advised, serve and file similar trial memoranda at or prior to  
the commencement of trial.

Respectfully submitted,

ANDREA SHERIDAN ORDIN  
United States Attorney

ROBERT L. BROSIO  
Assistant United States Attorney  
Chief, Criminal Division

  
ROBERT S. BREWER, JR.  
Assistant United States Attorney

Attorneys for Plaintiff  
United States of America

CERTIFICATE OF SERVICE BY MAIL

I, Betty Nash, declare:

That I am a citizen of the United States and resident or employed in  
Los Angeles County, California; that my business address is Office of United  
States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles,  
California 90012; that I am over the age of eighteen years, and am not a party  
to the above-entitled action;

That I am employed by the United States Attorney for the Central District  
of California who is a member of the Bar of the United States District Court for  
the Central District of California, at whose direction the service by mail  
described in this Certificate was made; that on March 21, 1980, I  
deposited in the United States mails in the United States Courthouse at  
312 North Spring St., Los Angeles, California, in the above-entitled action,  
in an envelope bearing the requisite postage, a copy of

Trial Memorandum

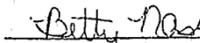
addressed to

John C. Wakefield, Esq.  
4501 Griffin Avenue  
Los Angeles, California 90031

at his last known address, at which place there is a delivery service by  
United States mail.

This Certificate is executed on March 20, 1980 at  
Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.

  
BETTY NASH

1 ANDREA SHERIDAN ORDIN  
United States Attorney  
2 ROBERT L. BROSIO  
Assistant United States Attorney  
3 Chief, Criminal Division  
WILLIAM J. SAYERS  
4 Assistant United States Attorney  
Controlled Substance Unit  
5 1400 U. S. Courthouse  
312 North Spring Street  
6 Los Angeles, California 90012

7 Telephone: (213) 688-2688

8 Attorneys for Plaintiff  
United States of America

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA, ) NO. CR 79-660-  
12 Plaintiff, ) GOVERNMENT'S MOTION IN  
13 v. ) SUPPORT OF BAIL  
14 RALPH GODOY, aka Richard Wood,  
15 et al., )  
16 Defendant. )

18 COMES NOW, the United States of America, by and through its  
19 counsel of record, to file this motion in support of bail for the  
20 defendants in this case. This motion is based upon the attached  
21 Memorandum of Points and Authorities, the Declaration of Special  
22 Agent Darrell W. Shaver, and such facts as may be adduced at any  
23 hearing concerning bail.

24 Respectfully submitted,  
25 ANDREA SHERIDAN ORDIN  
United States Attorney  
26 ROBERT L. BROSIO  
27 Assistant United States Attorney  
Chief, Criminal Division

28 *William J. Sayers*  
WILLIAM J. SAYERS  
Assistant United States Attorney

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 PRELIMINARY STATEMENT

3 Count One of the indictment names each of the four defendants  
4 as cocönspirators in a conspiracy to conduct the affairs of an  
5 enterprise through a pattern of racketeering activity as prohibited  
6 by Section 1962(d) of the RICO statutes (Racketeer Influenced and  
7 Corrupt Organization). In addition, each defendant is named in  
8 substantive violations of federal narcotics laws and the defendant  
9 GODOY is alleged to have conducted an enterprise in violation of  
10 Title 18, United States Code, Sections 1962(c) and 1963. The  
11 punishment for the RICO violations includes imprisonment for a period  
12 up to twenty years. Further, GODOY faces the prospect of forfeiting  
13 items of property obtained through the operation of the illegal  
14 enterprise.

15 The case against the defendants revolves around the operation of  
16 a small pharmacy located in south-central Los Angeles. Ralph  
17 Brothers Market and Pharmacy was purchased by the defendant  
18 RALPH GODOY in 1977 with the help of a Small Business Administration  
19 loan. In his SBA loan application, GODOY listed his net worth  
20 at less than \$160,000. By December of 1978, GODOY was listing  
21 his net worth at \$1.4 million. Investigation has shown that this  
22 increase in capital resulted from the illegal operation of Ralph  
23 Brothers Market and Pharmacy.

24 The investigation has revealed that 1.2 million tablets of  
25 methaqualone (quaaludes) were obtained by the defendants through  
26 the operation of the pharmacy. Legitimate wholesalers filled the  
27 orders of the pharmacy when orders were placed. Information obtained  
28 from the State Board of Pharmacy reveal that the pharmacy dispensed

1 over 300,000 units of methaqualone (quaaludes) during 1978, while  
 2 120 Thrifty Drug Store pharmacies dispensed less than 50,000 units  
 3 during the same period. Further, a shortage of over 600,000  
 4 quaaludes was found at the pharmacy. It is these figures that  
 5 reveal the magnitude of the defendants' illicit drug trafficking.

6 The evidence gathered during the investigation revealed that the  
 7 defendants were selling quaaludes by the jar, that is \$1,000 per  
 8 500 tablet jar. Testimony has been received that the defendants sold  
 9 as many as forty-two 500 tablet jars of quaaludes at one time.  
 10 These activities culminated in the arrest of defendants FUTRELL and  
 11 MATSUMOTO in December of 1978 following their distribution of  
 12 24,000 quaalude tablets to state undercover officers. In that  
 13 same month, defendants GODOY and FROST had traveled to Las Vegas  
 14 for the purpose of negotiating the purchase of a small gambling  
 15 casino.

16 Following the arrest of FUTRELL, defendant GODOY solicited the  
 17 murder of FUTRELL because he feared that FUTRELL would compromise  
 18 an operation that he had characterized as being so good that it  
 19 would last five years. When told that FUTRELL had been killed,  
 20 GODOY stated "he deserved to die".

21 Examples of the monies available to the GODOY organization  
 22 are the properties acquired by the defendant GODOY listed in Count  
 23 Ten of the indictment. Generally, these properties would be purchased  
 24 with cashier's checks which were obtained with cash gained through  
 25 the sale of quaaludes. One indication of the cash available to  
 26 GODOY was his attempt to open an escrow for the purchase of a  
 27 Las Vegas gambling casino with \$102,000 in cash which he carried in  
 28 a brief case.

## II

1  
 2 THE GOVERNMENT'S RECOMMENDATIONS REGARDING  
 3 BAIL ARE APPROPRIATE

4 The attached Declaration of Special Agent Shaver and the above  
 5 preliminary statement above provide an adequate basis for the  
 6 recommendations of the Government regarding bail in this case.  
 7 The seriousness of the offenses charged alone mandate careful  
 8 consideration is the setting of bail. When a defendant faces a  
 9 lengthy prison sentence and/or the forfeiture of personal assets,  
 10 the likelihood of flight is manifest.

11 The Government recognizes that the primary purpose of bail is  
 12 to ensure the presence of the defendant at trial, Stack v. Boyle,  
 13 342 U.S. 1 (1950), and that the fixing of bail is a matter of  
 14 discretion with the court in Kaufman v. United States, 325 F.2d  
 15 305 (9th Cir. 1963). However, a review of the factors to be  
 16 considered in the setting of bail suggest that secured bonds of  
 17 some magnitude are required to achieve the purpose of bail in this  
 18 case.

19 The defendants have been involved in a large scale operation  
 20 involving large quantities of controlled substances and money.  
 21 The evidence against each is strong and there is every indication  
 22 that the defendants have profited greatly from their venture. Those  
 23 profits are available for both the posting of bail and flight from the  
 24 jurisdiction of this Court. Further, the fact that the case involves  
 25 a threat of murder and a threat against those who are responsible  
 26 for exposing the illegal enterprise make it clear that these  
 27 defendants should not be dealt with in a casual manner. Rather,  
 28 measures should be taken to assume their presence at trial and a

1 consideration of all the factors in the case suggests that high  
2 secured bonds are necessary.

3 III

4 CONCLUSION

5 It is respectfully submitted that the recommendations made by  
6 the Government regarding bail in this case are appropriate and  
7 should not be disturbed.  
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1 DECLARATION OF DARRELL SHAVER

2 I, DARRELL SHAVER, do hereby declare as follows:

3 1. I am a Special Agent of the Federal Bureau of Investigation  
4 and have been so employed for ten years. Since January of 1979, I  
5 have been the case agent on the investigation of Ralph Godoy, aka  
6 Richard G. Wood, William Thomas Futrell, aka Fat Tom, Michael John  
7 Frost, and David Miltor Matsumoto. That investigation has revealed  
8 the following information that is relevant to bail:

9 2. RALPH GODOY

10 a. Investigation has revealed that defendant Godoy is  
11 head of a racketeering enterprise which dispensed over one  
12 million quaalude tablets during 1978. Through his ownership of  
13 a small neighborhood pharmacy located in South Central  
14 Los Angeles, Godoy acquired approximately 1.2 million quaaludes  
15 from legitimate drug wholesalers while 120 Thrifty Drug Store  
16 pharmacies dispensed less than 50,000 units during the same  
17 period. Utilizing a system of forged prescriptions, inventory  
18 shortages, and improper counter sales, more than 600,000  
19 quaaludes were sold on the illicit drug market. Evidence in  
20 this case also includes the eyewitness testimony of individuals  
21 who observed quaalude sales by the defendant.

22 b. Investigation has determined that in October of  
23 1976 Godoy was an applicant for a small business administration  
24 loan wherein he listed his net worth at \$159,275. In December of  
25 1978, Godoy made application towards purchasing a Las Vegas  
26 casino and submitted a net worth statement of \$1,400,500.  
27 Godoy initially presented \$102,000 in cash to open the escrow  
28 account on the casino, but was persuaded to purchase a cashier's

1 check instead. This transaction, and Godoy's rapid increase  
2 in net worth is especially remarkable when Godoy's salary  
3 from the market and pharmacy per year was fixed at less than  
4 \$25,000 per year by terms of the Small Business Association  
5 loan.

6 c. Godoy is charged with solicitation of murder  
7 of a potential witness against him and is known to have  
8 uttered statements that if he goes to jail he will hold on to  
9 enough money to make sure that he gets the informant who was  
10 responsible for his arrest.

11 3. WILLIAM THOMAS FUTRELL

12 a. Futrell is one of the quaalude distributors for  
13 Godoy's organization. After arrangements were initially  
14 made by Godoy, Futrell did much of the actual delivery  
15 and collecting of money.

16 b. On December 18, 1978, Futrell was arrested in  
17 possession of 24,000 quaaludes by the California Department  
18 of Justice and Riverside Sheriff's Office.

19 c. Evidence against Futrell consists of undercover  
20 conversations with California State Officers leading to  
21 the above arrest and eyewitness testimony of individuals  
22 who observed Futrell deliver quaaludes.

23 d. During the undercover contact with Futrell, he  
24 identified Ralph Godoy as his "source" of quaaludes.

25 4. MICHAEL FROST

26 a. Frost worked as Manager of Ralph Brothers Market and  
27 Pharmacy and was Godoy's Chief Assistant. Frost was observed to  
28 assist Godoy in the illegal distribution of quaaludes by

1 packaging the quaaludes and helping to count the money  
2 received from the sales of such quaaludes.

3 b. Frost was also the "straw" owner of a nightclub,  
4 Whiskey Creek, which was purchased with money derived from  
5 the sale of quaaludes.

6 c. Frost is married and lives with his wife at  
7 6952 Cantaloupe Avenue, Van Nuys, California. He is  
8 believed to be unemployed at the present time.

9 5. DAVID MATSUMOTO

10 a. David Matsumoto is also one of the quaalude  
11 distributors for the Godoy organization and is closely  
12 associated with William Thomas Futrell. He allegedly  
13 is the Lake Tahoe, Nevada connection for the distribution  
14 of quaaludes.

15 b. Evidence against Matsumoto consists of his pos-  
16 session of 24,000 quaaludes at the time of his arrest with  
17 Futrell in December of 1978. Matsumoto's fingerprints were  
18 found on one of the quaalude jars.

19 c. Matsumoto's exact residence address is unknown,  
20 and his marital status is unknown. He is currently  
21 employed as a Pit Boss at Harvey's Casino, Lake Tahoe,  
22 Nevada.

23 I declare under penalty of perjury that the foregoing is true  
24 and correct.

25 EXECUTED: This 22 day of August, 1979.

26  
27 Darrell Shaver  
28 DARRELL SHAVER  
Special Agent, FBI  
Declarant

**CONTINUED**

**2 OF 3**

1 IN THE UNITED STATES COURT OF APPEALS  
2 FOR THE NINTH CIRCUIT

3 UNITED STATES OF AMERICA, ) C.A. NO. 79-1788  
4 Plaintiff-Appellee, ) D.C. NO. 79-660 (A)-WPG  
5 v. ) GOVERNMENT'S OPPOSITION TO  
6 RALPH GODOY, ) DEFENDANT'S MOTION FOR BOND  
7 Defendant-Appellant. ) PENDING APPEAL; DECLARATION  
8 ) OF DARRELL W. SHAVER;  
9 ) ATTACHMENT  
10 )

11 COMES NOW the United States of America, by and through  
12 its counsel of record, to oppose Defendant-Appellant's Motion  
13 for Bond Pending Appeal. This motion is based on the files  
14 and records of this case, the attached Memorandum of Points  
15 and Authorities, the Declaration of Darrell W. Shaver, and  
16 the attached Transcript of Proceedings concerning bail.

17 Respectfully submitted,

18 ANDREA SHERIDAN ORDIN  
19 United States Attorney

20 ROBERT L. BROSIO  
21 Assistant United States Attorney  
22 Chief, Criminal Division

23 William J. Sayers  
24 WILLIAM J. SAYERS  
25 Assistant United States Attorney

26 Attorneys for Plaintiff-Appellee  
United States of America

WJS:cj

1 I  
2 STATEMENT OF FACTS

3 On November 19, 1979, the defendant was convicted of  
4 thirteen (13) counts involving drug and racketeering charges.  
5 The charges included the distribution of large quantities  
6 of methaqualone (quaaludes) and four (4) violations of the  
7 RICO statutes, Title 18, United States Code, Section 1961  
8 et seq.

9 Following the verdict, the trial court, on its own  
10 motion, revoked the defendant's bond and remanded him to  
11 custody. After affording counsel for the defendant an  
12 opportunity to address the topic of bail, the trial court  
13 indicated that it could not trust the defendant in light of  
14 the evidence at trial, and that it did not intend to afford  
15 the defendant an opportunity to endanger the lives of others  
16 by allowing him to remain free on bond [R.T. 4-5].<sup>1/</sup> At a  
17 subsequent bail hearing, the trial court reaffirmed these  
18 findings regarding the defendant.

19 Evidence at trial had shown that the defendant solicited  
20 the murder of William Thomas Futrell, one of his "runners,"  
21 following Futrell's arrest on charges of distribution of  
22 quaaludes. Both taped conversations and the testimony of  
23 two (2) witnesses who were solicited to kill Futrell were  
24 received in evidence at trial. The evidence at trial also

25 <sup>1/</sup>  
26 ["R.T." refers to the Reporter's Transcript of the proceed-  
below concerning bail heard on November 19, 1979].

1 showed that the defendant had made purchases of more than  
2 \$450,000 during the Year 1978, alone.

3 . On December 17, 1979, the defendant was sentenced to  
4 the custody of the Attorney General for a total term of  
5 twelve (12) years. In addition, the defendant was ordered  
6 to forfeit several properties to the Government as a result  
7 of his racketeering activities.

8 II

9 ARGUMENT

10 A. THE BURDEN OF PROOF CONCERNING RISK OF  
11 FLIGHT AND DANGER TO THE COMMUNITY  
12 RESTS WITH THE DEFENDANT.

13 Admission to bail pending appeal is a matter committed  
14 to the discretion of the trial judge. United States v.  
15 Hearst, 424 F. Supp. 318 (D.C. Cal. 1976); Reiff v. United  
16 States, 288 F.2d 887 (9th Cir. 1961). There is no absolute  
17 right to bail pending appeal. Significantly, the rule which  
18 governs release on bail after conviction reverses the ordi-  
19 nary burden of proof, requiring that a defendant satisfy the  
20 court that he is a good bail risk. Federal Rules of Appel-  
21 late Procedure 9(c) provides:

22 "(c) Criteria for Release. The decision as to  
23 release pending appeal shall be made in accordance  
24 with Title 18, U.S.C. §3148. The burden of estab-  
25 lishing that the defendant will not flee or pose  
26 a danger to any other person or to the community  
rests with the defendant."

-3-

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USA 40-124  
(Rev. 5-77)

1 B. RISK OF FLIGHT

2 Defendant has recently been sentenced to a twelve- (12)  
3 year prison term following his conviction on racketeering  
4 charges. The evidence at trial showed that the defendant  
5 was the leader of an organization which was involved in the  
6 distribution of enormous quantities of methaqualone which  
7 were obtained from legitimate wholesalers.

8 Contrary to defendant's claim that he is not a flight  
9 risk, the decision of the trial court to revoke the defen-  
10 dant's bond is supported in that the possibility of flight  
11 is great when a defendant is facing a lengthy period of  
12 incarceration. United States v. Jackson, 297 F. Supp. 601  
13 (D.C. Conn. 1969). Further, the trial court's remarks con-  
14 cerning the defendant's trustworthiness and potential danger  
15 to the community give additional support for the denial of  
16 bail pending appeal in this case. From those remarks, it is  
17 clear that the defendant failed to meet his burden of proof  
18 regarding bail pending appeal at the hearing before the  
19 District Court. Accordingly, this Court should not disturb  
20 the trial court's decision to revoke bond.

21 C. DANGER TO THE COMMUNITY

22 The considerations governing the release of the  
23 defendant in this case are set forth in Title 18, United  
24 States Code, Section 3148. One of the factors to be con-  
25 sidered is whether the defendant poses a danger to any person  
26 or to the community. When this factor is considered, it

-4-

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(Rev. 5-77)

1 should be noted that other courts have held that a person  
 2 who engages in drug trafficking may be considered a danger  
 3 to the community within the meaning of Section 3148. United  
 4 States v. Erwing, 280 F. Supp. 814, 818 (N.D. Cal. 1968),  
 5 United States v. Quicksey, 371 F. Supp. 561, 564 (S.D. W.V.  
 6 1974). The defendant's role as a drug trafficker is evi-  
 7 denced by his conviction of thirteen (13) drug-related  
 8 charges in this case. However, the danger that the defen-  
 9 dant presents does not rest on his involvement in drugs  
 10 alone.

11 Count Ten of the Indictment, which defendant stands  
 12 convicted of, included an allegation that the defendant  
 13 solicited the murder of one of his co-conspirators. This  
 14 allegation was supported by the testimony of two (2)  
 15 witnesses at trial and is reflected in the Declaration of  
 16 Special Agent Shaver. This Court should look no further  
 17 than the evidence at trial when considering the issue of  
 18 whether the defendant poses a danger to society.

19 III

20 CONCLUSION

21 From the facts before it, it is manifest that the  
 22 trial court could have found that the defendant is both a  
 23 flight risk and a danger to society. It is also clear that  
 24 the defendant has not met his burden of showing that he is  
 25 neither a flight risk nor a danger to society. Accordingly,  
 26 bond pending appeal in this case should be denied.

1 DECLARATION OF DARRELL W. SHAVER

2 I, DARRELL W. SHAVER, do hereby declare as follows:

3 1. I am a Special Agent of the Federal Bureau of Investigation  
 4 and have been so employed for ten years. Since January of 1979, I  
 5 have been the case agent on the investigation of Ralph Godoy, aka  
 6 Richard G. Wood, and his associates.

7 2. On October 25, 1979, I interviewed Richard Jeffrey.  
 8 Jeffrey told me that in the last part of December, 1978, Ralph  
 9 Godoy approached him asking him to kill both "Fat Tom" Futrell and  
 10 David Matsumoto. Futrell and Matsumoto had recently been arrested  
 11 in possession of 24,000 quaaludes and Godoy expressed fear that  
 12 either or both might speak with law enforcement about him. Godoy  
 13 offered Jeffrey \$12,000 in cash or quaaludes to kill Matsumoto and  
 14 Futrell. After some heated discussion, Jeffrey persuaded Godoy not  
 15 to put a contract on Matsumoto. Jeffrey told Godoy he would  
 16 accept a contract on Futrell only because he felt that Godoy would  
 17 "cool down" after a period of time if he thought someone was  
 18 working on it. Godoy later told him that Michael Frost would point  
 19 out Futrell's home to help Jeffrey get Futrell.

20 3. On January 30, 1979, Jeffrey recieved a telephone call from  
 21 Ralph Godoy inquiring about "Fat Tom" Futrell. When he went to  
 22 Godoy's home, Ralph Godoy related that he had met with Victor Perea  
 23 and Godoy asked Jeffrey to try to find out if Futrell was dead.

24 4. In August of 1979, about one week after Ralph Godoy was  
 25 indicted by the Federal Grand Jury, Godoy again approached Jeffrey.  
 26 On that occasion, Godoy asked him to kill Victor Perea and offered  
 27 \$20,000 to do the job. He then told Jeffrey of several bars in the  
 28 San Fernando Valley where he might locate Perea.

1 5. I have also received informaton from Victor Perea and  
2 William Thomas Futrell that Ralph Godoy had personally threatened to  
3 have them killed as a result of their involvement in this case.

4 I declare under penalty of perjury that the foregoing is true  
5 and correct.

6 Executed on: This 15 day of November, 1979.

7 *Darrell W. Shaver*  
8 DARRELL W. SHAVER  
9 Special Agent - FBI

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1 IN THE UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA

3 - - -  
4 HONORABLE WILLIAM P. GRAY, JUDGE PRESIDING  
5 - - -

6 UNITED STATES OF AMERICA, )

7 Plaintiff, )

8 vs. )

No. CR 79-660 (A)

9 RALPH GODOY, )

10 Defendant. )

11  
12  
13 REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

14 Los Angeles, California

15 November 19, 1979

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21 BEN NEWLANDER  
22 Official Reporter  
23 455 U.S. Court House  
24 312 North Spring Street  
25 Los Angeles, Calif. 90012  
Telephone: (213) 622-5545

APPEARANCES:

2

1  
2  
3 on behalf of the government:

4 ANDREA SHERIDAN ORDIN,  
5 UNITED STATES ATTORNEY, BY

6 WILLIAM SAYERS,  
7 ASSISTANT U.S. ATTORNEY

8 on behalf of defendant:

9 DANILO BECERRA, ESQ.  
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1 LOS ANGELES, CALIFORNIA; MONDAY, NOVEMBER 19, 1979, 9:30 AM

2 - - -

3 (The following proceedings were had in  
4 open court, out of the presence and hearing  
5 of the jury:)

6 \* \* \*

7 THE COURT: Mr. Becerra, I am disposed to  
8 commit the defendant to incarceration pending sentencing.  
9 Do you wish to argue?

10 MR. BECERRA: Yes, I do. Mr. Godoy has been,  
11 as the Court is aware, free on bail during the entire  
12 period. As the Court may or may not be aware, his wife  
13 actually this week or next week is going to give birth to  
14 their first child. The Court has heard the value of the  
15 property which is keeping him here.

16 The allegations as to the threats, your Honor,  
17 took place back in December and January of 1979 -- 1978  
18 and January of 1979. I think his behavior while he has  
19 been free has been exemplary. The witnesses the Court  
20 saw did come forward. Even Mr. Futrell came forward.

21 Your Honor, he does not pose, I would submit  
22 to the Court, a threat. I think I know the reason why  
23 the Court is inclined to do that, but I think he's got a  
24 track record now. We have seen a solid seven or eight  
25 months of his behavior, and in light of that, and in

1 light of the substantial property which is here, your  
2 Honor, he is not going anywhere.

3 THE COURT: He is likely to lose the property.

4 Mr. Sayers, what is your attitude?

5 MR. SAYERS: Your Honor, the government would  
6 request that this defendant be remanded to custody. I  
7 have a declaration from Agent Shaver. This trial did not  
8 cover the fact that in August of 1979, one week after the  
9 indictment in this case, the defendant contacted Richard  
10 Jeffrey and offered him \$20,000 to kill Victor Perea.

11 THE DEFENDANT: No, that's not so.

12 MR. SAYERS: That is the declaration I have  
13 and which we will be filing in any motion on bail that  
14 Mr. Becerra may make.

15 THE COURT: I am not disposed to go outside  
16 the record.

17 Mr. Becerra, I am mindful that Mrs. Godoy is  
18 expecting. I couldn't possibly have more sympathy for  
19 her in that situation, but the problem is I don't trust  
20 any statement the defendant might make; I don't trust any  
21 assurances he might give based upon his testimony and  
22 testimony I have had in this Court.

23 MR. BECERRA: Your Honor, I think --

24 THE COURT: And I am impressed that he did seek  
25 in two instances to have a person killed. I know that

1 you will undoubtedly appeal this case based upon at least  
2 the Court's ruling with respect to the grand jury. The  
3 defendant may have a hope of success on appeal, but I am  
4 just not in position to have him --

5 MR. BECERRA: Your Honor --

6 THE COURT: -- at large in order to be able to  
7 seek to try again to --

8 MR. BECERRA: Except for the fact, your Honor,  
9 that when he came before the Court he was in custody at  
10 that time. He has been free for the last two and a half  
11 months. He was aware of the witnesses.

12 THE COURT: I understand that.

13 MR. BECERRA: I think it is clear based on his  
14 track record he is not going to do anything. There are  
15 issues, as the Court has noted, there are substantial  
16 issues for appeal. This will not be an expedited appeal  
17 because of the length of the trial. I am not going to  
18 get any priority in terms of docketing, and I would  
19 submit to your Honor that, one, based on the situation  
20 with his wife at the very least until the 17th, and I  
21 mean, your Honor, he knew what the evidence was when that  
22 jury went out last week and he is back here now.

23 THE COURT: I wish I could, Mr. Becerra. I am  
24 not able to do so. When the time comes for the wife to  
25 deliver, I will try to arrange with the marshal to make

1 it possible for him to visit her, but the defendant will  
2 be committed to the custody of the marshal forthwith.

3 MR. BECERRA: The last request: even a stay on  
4 this until Friday. We do have the businesses which are  
5 going to have to be resolved. Will the Court consider  
6 giving me a stay until Friday?

7 THE COURT: You can help. I am sure you will  
8 have access to him. You can arrange with him. That will  
9 be the order. The marshal will take charge of this  
10 gentlemen as of this moment.

11 We will recess pending call of the Court  
12 subject to receipt of word from the jury.

13 (A recess was thereupon taken, after  
14 which the following further proceedings  
15 were had herein:)

16 \* \* \*

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE WILLIAM P. GRAY, JUDGE PRESIDING

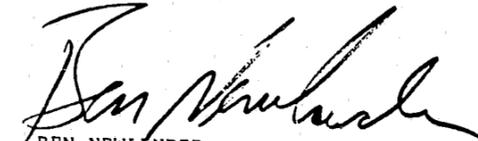
UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 RALPH GODOY, )  
 )  
 Defendant. )

No. CR 79-660(A)

REPORTER'S CERTIFICATE

I, Ben Newlander, do hereby certify that I reported  
the above proceedings on Monday, November 19, 1979; and  
that the foregoing is a true and accurate partial  
transcript of said proceedings.

Los Angeles, California; November 19, 1979



BEN NEWLANDER  
Official Reporter  
U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

1 UNITED STATES OF AMERICA, ) C.A. NO. 79-1788  
 2 ) NO. D.C. NO. 79-660(A)-WPG  
 2 Plaintiff-Appellee, ) DECLARATION OF SERVICE  
 3 v. ) BY MAIL  
 4 RALPH GODOY, )  
 5 Defendant-Appellant. )  
 6 CLEMENTINE JONES, )

, declares and says:

7 That (s)he is a citizen of the United States and a resident of  
 8 Los Angeles County, California; that (his/her) business address is  
 9 312 North Spring Street, Los Angeles, California; that (s)he is over  
 10 the age of 18 years, and not a party to the above-entitled action; that  
 11 on January 3, 1980, (s)he deposited in the United States mails in  
 12 the U. S. Court House, 312 North Spring St., Los Angeles, California, in  
 13 the above-entitled action, in an envelope bearing the requisite postage,  
 14 a copy of GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION FOR BOND PENDING  
 15 APPEAL; DECLARATION OF DARRELL W. SHAVER; ATTACHMENT

16  
 17 addressed to Danilo Becerra, Esq.  
5146 East Olympic Boulevard  
 18 Los Angeles, California 90022

19 his last known address, at which place there is a delivery service by  
 20 United States mail.

21 I declare under the penalty of perjury that the foregoing is true  
 22 and correct.

23 DATED: This 3rd day of January 1980.

24  
 25 Clementine Jones  
 26 CLEMENTINE JONES

1 ANDREA SHERIDAN ORDIN  
 United States Attorney  
 2 ROBERT L. BROSIO  
 Assistant United States Attorney  
 3 Chief, Criminal Division  
 ROBERT J. PERRY  
 4 Assistant United States Attorney  
 Controlled Substance Unit  
 5 1400 United States Courthouse  
 312 North Spring Street  
 6 Los Angeles, California 90012

Telephone: (213) 688-2692

8 Attorneys for Plaintiff  
 United States of America

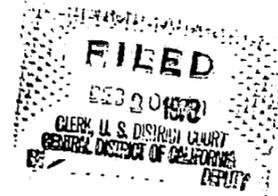
9 UNITED STATES DISTRICT COURT  
 10 CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA, ) NO. CR 78-1095  
 12 )  
 Plaintiff, )  
 13 v. ) GOVERNMENT'S MOTION IN SUPPORT OF  
 14 HARVEY ORVILLE DAIL, ) \$1,000,000 CASH BAIL AND REQUEST  
 15 ) FOR NEBBIA HEARING; MEMORANDUM OF  
 Defendant. ) POINTS AND AUTHORITIES; DECLARATION  
 16 ) OF GEORGE HOELKER; EXHIBITS

17 COMES NOW, the United States of America, by and through its  
 18 counsel for record, Robert J. Perry, to file this motion in support  
 19 of a \$1,000,000 cash bail for defendant HARVEY ORVILLE DAIL in this  
 20 case. By this motion the Government also requests that it be provided  
 21 the opportunity to inquire as to the source of any funds used to  
 22 attempt to post bail for defendant DAIL. This motion is based on  
 23 the attached memorandum of points and authorities, the declaration  
 24 of George Hoelker, and exhibits, and such facts as may be adduced at  
 25 any hearings concerning bail.

26 Respectfully submitted,  
 27 ANDREA SHERIDAN ORDIN  
 United States Attorney

28 RJP:ban



ROBERT L. BROSIO  
Assistant United States Attorney  
Chief, Criminal Division

*Robert J. Perry*

ROBERT J. PERRY  
Assistant United States Attorney  
Controlled Substance Unit

Attorneys for Plaintiff  
United States of America

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## MEMORANDUM OF POINTS AND AUTHORITIES

1 By this motion, the Government presents some of the factors  
2 which substantiate the fact that bail in the amount of \$1,000,000  
3 cash is appropriate and necessary to insure the presence of defendant  
4 HARVEY ORVILLE DAIL at trial. As discussed below, the Government  
5 also seeks an order permitting the opportunity to inquire into the  
6 source of any funds used to attempt to post bail for defendant DAIL.  
7

8 This case concerns the efforts of defendant DAIL and others to  
9 arrange for the contract killing of a witness in a federal criminal  
10 trial which occurred in Reno, Nevada, in 1976. Many of the significant  
11 facts in this investigation are set forth in the attached declaration  
12 of DEA Special Agent George Hoelker. Briefly summarized, the facts  
13 include the following.

14 In July of 1978, defendant DAIL was arrested by local authorities  
15 in Belize, Central America (the former British Honduras) for marijuana  
16 smuggling activities. DAIL was placed in custody at the prison in  
17 Belize City. While in the prison, he met a fellow American, Al  
18 Moore. Moore had been convicted of murder in Belize in 1973, and  
19 was serving a sentence of life imprisonment. DAIL advised Moore  
20 that he was a member of a large narcotics smuggling operation in the  
21 United States. DAIL further advised Moore that a member of the  
22 smuggling operation was a fugitive from a 1976 narcotics prosecution  
23 in Reno, and that the fugitive desired that a witness in that case  
24 be killed in order that the fugitive could return to the United  
25 States and avoid prosecution. DAIL offered Moore \$20,000 and  
26 assistance in an escape from prison in exchange for Moore's promise  
27 to kill the former witness.

28 DAIL was released from prison in Belize in late July. On

1 August 11, 1978, Moore escaped from prison and was driven to Guatemala  
2 by a local native whose assistance had been arranged by defendant  
3 DAIL. Moore obtained immigration papers at the United States Embassy  
4 in Guatemala. On August 25, 1978, Moore contacted DEA agents in  
5 Guatemala City and advised them of the plot to kill the witness.

6 In Guatemala, Moore placed a tape recorded telephone call to  
7 DAIL and DAIL sent an airplane ticket. Moore then flew to Texas and  
8 met with DAIL. While in Texas, Moore tested firearms with DAIL and  
9 observed DAIL to purchase a handgun using a false name.

10 On September 3, 1978, Moore flew to Los Angeles. Two days  
11 later, DAIL flew to Los Angeles by private plane. DEA agents observed  
12 DAIL deliver two handguns and ammunition to Moore. Agents then  
13 obtained clothing and identifying documents from the intended victim  
14 witness. These items were provided to Moore who in turn provided  
15 them to defendant DAIL as evidence of the successful "hit" (murder)  
16 of the witness. Moore and DAIL then returned to Texas, and on  
17 September 8, 1978, DAIL paid Moore \$16,000 in cash.

18 The evidence against DAIL is extremely strong and includes tape  
19 recorded conversations. (See Exhibits B through E attached.) The  
20 following are excerpts from the taped conversations:

21 (1) Taped conversation in Jacmar Hotel, Room 31, the evening  
22 of September 5, 1978 [DAIL delivers the Colt Python .357 handgun and  
23 the .38 caliber handgun and ammunition to Moore.] (Exhibit B):

\* \* \* \*

24  
25 Moore: Well, we're going to find out in the  
26 morning . . . If I ever get my damn  
27 old boots on. Hey, did you . . .  
28 check the ammunition out on that

1 son-of-a-bitch? Did ya fire some  
 2 rounds through it?  
 3 DAIL: I run six through it.  
 4 MOORE: Ok. You brought the .357 and the .38 both?  
 5 DAIL: Ya.  
 6 MOORE: OK.  
 7 DAIL: Now I bought, I brought . . . what  
 8 was left of that old ammunition we  
 9 had there and I bought some hollow points.  
 10 MOORE: What, .357's?  
 11 DAIL: Smith and Wesson hollow points . . .  
 12 I run six, seven through it.

\* \* \* \*

14 (2) Tape recorded telephone conversation, September 5, 1978.  
 15 (Exhibit C):

16 \* \* \* \*  
 17 MOORE: I took the .357 out and popped one cap on it.  
 18 DAIL: No, no problems.  
 19 MOORE: No problems brother it's beautiful.  
 20 DAIL: OK . . . it's got the kick you want.  
 21 MOORE: It's got it just like I want it.  
 22 DAIL: OK. Good.

\* \* \* \*

24 (3) Taped telephone conversation, September 6, 1978 (Exhibit  
 25 D):

26 \* \* \* \*  
 27 MOORE: 'ow, ahhh. . . I don't think we're  
 28 going to carry either one of these

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1 guns back with us, Harvey.  
 2 DAIL: Ok. No sweat.  
 3 MOORE: All right, I'm going . . . I'm going  
 4 to dump both of them.  
 5 DAIL: No sweat.  
 6 \* \* \* \*  
 7 (4) Taped telephone conversation, September 7, 1978 (Exhibit E):  
 8 \* \* \* \*  
 9 MOORE: He's dead.  
 10 DAIL: Well . . .  
 11 MOORE: I'm fixing to drop him and both the  
 12 guns, too . . . Now, I'm going to  
 13 have to clean up the back end of the car.  
 14 DAIL: Well.  
 15 MOORE: Like I said, don't tell me how to do this  
 16 and I won't tell you how to fly your plane.  
 17 DAIL: I won't.

\* \* \* \*

19 The indictment charges defendant DAIL with violations of Title 18,  
 20 United States Code, Section 241 (conspiracy to violate civil rights)  
 21 and Section 924(b) (interstate transportation of a firearm for a  
 22 felonious purpose). The combined punishment for these offenses  
 23 could be twenty years imprisonment. It is clear from Agent Hoelker's  
 24 declaration and the attached exhibits that the evidence of defendant  
 25 DAIL's guilt is overwhelming. DAIL is accused of extremely serious  
 26 crimes, and the imposition of a lengthy sentence of imprisonment  
 27 upon conviction is a near certainty. DAIL's recognition of the fact  
 28 that he will most likely spend the next many years in prison provides

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1 son-of-a-bitch? Did ya fire some  
2 rounds through it?  
3 DAIL: I run six through it.  
4 MOORE: Ok. You brought the .357 and the .38 both?  
5 DAIL: Ya.  
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8 was left of that old ammunition we  
9 had there and I bought some hollow points.  
10 MOORE: What, .357's?  
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13 \* \* \* \*

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15 (Exhibit C):

16 \* \* \* \*

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21 MOORE: It's got it just like I want it.  
22 DAIL: OK. Good.

23 \* \* \*

24 (3) Taped telephone conversation, September 6, 1978 (Exhibit  
25 D):

26 \* \* \* \*

27 MOORE: Now, ahhh. . . I don't think we're  
28 going to carry either one of these

1 guns back with us, Harvey.  
2 DAIL: Ok. No sweat.  
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4 to dump both of them.  
5 DAIL: No sweat.

6 \* \* \* \*

7 (4) Taped telephone conversation, September 7, 1978 (Exhibit E):

8 \* \* \* \*

9 MOORE: He's dead.  
10 DAIL: Well . . .  
11 MOORE: I'm fixing to drop him and both the  
12 guns, too . . . Now, I'm going to  
13 have to clean up the back end of the car.  
14 DAIL: Well.  
15 MOORE: Like I said, don't tell me how to do this  
16 and I won't tell you how to fly your plane.  
17 DAIL: I won't.

18 \* \* \* \*

19 The indictment charges defendant DAIL with violations of Title 18,  
20 United States Code, Section 241 (conspiracy to violate civil rights)  
21 and Section 924(b) (interstate transportation of a firearm for a  
22 felonious purpose). The combined punishment for these offenses  
23 could be twenty years imprisonment. It is clear from Agent Hoelker's  
24 declaration and the attached exhibits that the evidence of defendant  
25 DAIL's guilt is overwhelming. DAIL is accused of extremely serious  
26 crimes, and the imposition of a lengthy sentence of imprisonment  
27 upon conviction is a near certainty. DAIL's recognition of the fact  
28 that he will most likely spend the next many years in prison provides

1 an exceptionally strong incentive to flee.

2 It is clear from the record of this case that DAIL has the  
3 ability to flee and the means by which to post a substantial bond.  
4 DAIL is a pilot, and has flown outside of the United States. DAIL  
5 paid more than \$16,000 cash to Moore and also paid \$10,000 to an  
6 attorney to represent Moore on extradition charges. A reliable  
7 informant has advised DEA agents in Reno that the smuggling organization  
8 of which DAIL is a member is extremely active and is responsible for  
9 the importation of millions of dollars worth of cocaine and marijuana  
10 into the United States each year. In addition, Moore has advised  
11 that he visited DAIL on a large ranch in Texas and that DAIL said he  
12 owned the ranch.

13 The primary purpose of bail is to insure the presence of the  
14 accused at trial. Stack v. Boyle, 342 U.S. 1 (1951). The fixing of  
15 the amount of bail is a matter of discretion with the trial court.  
16 Kaufman v. United States, 325 F.2d 305 (9th Cir. 1963). In setting  
17 bail, the governing criteria is not whether the defendant can post  
18 the bail but whether the bail is set at a figure higher than an  
19 amount reasonably calculated to insure that the accused will stand  
20 trial. United States v. Wright, 483 F.2d 1068 (4th Cir. 1973);  
21 United States v. Radford, 361 F.2d 777 (4th Cir. 1966). In light of  
22 the strong evidence of guilt and the near certainty of imprisonment,  
23 the ability of DAIL to flee, and the substantial means at his disposal,  
24 it is clear that DAIL's presence at trial will be insured only by an  
25 exceedingly high bail. The Government respectfully requests that  
26 bail in the amount of \$1,000,000 cash is warranted and necessary in  
27 this case.

28 In addition, the Government requests that this Court order that

Form CBD-183  
12-8-76 DOJ

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1 the Government have the opportunity to investigate the source and  
2 purpose of any funds used to post bail for defendant DAIL. Hearings  
3 into the sources of bail funds are routinely held in the Southern  
4 District of New York, and are authorized by United States v. Nebbia,  
5 357 F.2d 303 (2nd Cir. 1966). The evidence in this case strongly  
6 suggests that DAIL is a member of a large smuggling organization.  
7 DAIL acted as a "middle man" in arranging with Moore to murder the  
8 witness in order that the fugitive from the Reno prosecution could  
9 return to the United States. The Government fears that the organi-  
10 zation may try to post bail for DAIL to provide him an opportunity  
11 to flee. It is clear that this Court has the power to reject funds  
12 offered for bail if it is shown that the purpose in posting the  
13 funds is to gain the release of the defendant for a reason other  
14 than to insure the defendant's presence at trial. United States v.  
15 Nebbia, supra; United States v. DeMarchena, 330 F.Supp. 1223 (S.D.  
16 Cal. 1971).

17 The indictment and arrest warrant in this case are presently  
18 under seal. It is requested that the court order that the pleadings  
19 in this matter also remain under seal until such time as DAIL is  
20 arrested.

Form CBD-183  
12-8-76 DOJ

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DECLARATION OF GEORGE HOELKER

I, GEORGE HOELKER, do hereby declare as follows:

1. I am a Special Agent with the Drug Enforcement Administration (DEA) and have been so employed for eight and one-half years.

2. On August 29, 1978, I received a teletype from DEA Agent Jim Daniels in Guatemala City, Guatemala, regarding his contacts with Alton Wayne Moore, an escapee from Belize Prison. (A copy of that teletype is attached as Exhibit A.) In the teletype Daniels advised that Moore has been hired to kill a witness in a narcotics case, and that the witness lived near Ventura, California.

3. I have been advised by DEA agents in Houston, Texas, that they observed Moore arrive at Houston Airport on August 27, 1978.

4. Moore has advised me of the following facts. On August 27, 1978, DAIL flew himself and Moore by private plane to Tyler, Texas. On September 2, DAIL showed Moore a number of firearms which the two men test fired. Later that day, DAIL and Moore drove to Canton, Texas, where DAIL using a false name purchased a Colt .357 Python handgun.

On September 3, 1978, Moore flew to Los Angeles from Texas. Prior to boarding the airplane DAIL advised Moore that the man he was to kill was Charles Hudson, who was also known as Charmin' Charlie. DAIL advised that Hudson lived on a golf course in Saticoy, California.

5. On September 3, 1978, I met with Moore in Los Angeles. Moore showed me \$1,850 in cash which had been given to him by DAIL for expenses.

6. On September 5, 1978, I met with Moore, who advised that DAIL was en route to California with two handguns to be used for the murder. I obtained emergency authorization for the use of a recording device for Moore's hotel room. I and other agents conducted surveillance

of the room. At approximately 9:23 p.m., DAIL arrived at the hotel and entered Moore's room. A conversation between the two men was tape recorded and a transcript is attached as Exhibit B. DAIL and Moore then left the room and went to a nearby bar. They then went to a liquor store where Moore purchased some beer, and the two men then returned to the hotel room. Agents observed DAIL remove a briefcase from the trunk of his car, which he took into the room. Approximately ten minutes later, DAIL left the hotel room and drove away. I then entered the hotel room and obtained two handguns which DAIL had given to Moore. (I had earlier searched Moore and the hotel room, and had satisfied myself that handguns were not present in the room or on Moore.) At approximately 12:01 a.m. on September 6, 1978, Moore received a telephone call from DAIL. This telephone call was recorded with Moore's consent, and a transcript of the conversation is attached as Exhibit C.

7. On September 6, 1978, I obtained clothing and personal items from Charles Hudson, and put blood on some of the clothing. These items were provided to Moore. I observed Moore place telephone calls to DAIL, who was registered at the Holiday Inn in Van Nuys under the false name of Ellis. These telephone calls were tape recorded with Moore's consent, and transcripts of the calls are attached as Exhibits D and E.

8. In the morning of September 7, 1978, I observed DAIL meet with Moore. Later, DAIL and Moore were observed at the Van Nuys Airport. With DAIL as the pilot, the two men flew off in a private plane.

9. Moore has advised me of the following facts. On September 8, 1978, he met with DEA Agent John D'Antonio in Henderson, Texas, and

1 gave D'Antonio the items received from Hudson. Later that evening,  
 2 Moore met DAIL at Pounds Airfield in Tyler, Texas. DAIL handed him  
 3 a cardboard box about 12" x 12" x 4" which was filled with currency.  
 4 The two men drove by separate vehicles to the Alamo Plaza Motel in  
 5 Tyler, where DAIL delivered \$16,000 in cash to Moore.

6 10. I have been advised by DEA Agent D'Antonio that he conducted  
 7 surveillance on September 8, 1978, and that he took possession of  
 8 \$16,000 which was given him by Moore.

9 11. On October 30, 1978, Moore was arrested for extradition to  
 10 Belize. He was held in custody without bail for 45 days, and was  
 11 released when the formal documents for extradition failed to arrive  
 12 for presentation to the court. During this time, DAIL arranged for  
 13 the services of an attorney from San Francisco to represent Moore.  
 14 DAIL told Moore in a tape recorded conversation that DAIL had paid  
 15 the attorney \$10,000 as a retainer.

16 12. I have been advised by Moore that DAIL has asked him to  
 17 kill two more individuals. DAIL has indicated that one of the  
 18 persons is a witness in a narcotics case in Colorado. The other  
 19 person is Vic Stoddard. On or about December 15, 1978, DAIL gave  
 20 Moore a handgun and the key to Stoddard's front door. DAIL told  
 21 Moore he would receive \$50,000 for killing Stoddard.

22 13. I have been advised by Agent D'Antonio that on December 18,  
 23 he met with Moore in Dallas, and Moore provided him with a handgun  
 24 and a front door key.

25 14. Moore has advised me that DAIL has admitted that he is a  
 26 member of a large scale smuggling organization. The organization  
 27 utilizes planes to import marijuana and cocaine. From my experience,  
 28 I know that millions of dollars can be made by well organized

1 smuggling operations. Moore has advised that DAIL owns a large ranch  
 2 near Tyler, Texas, and drives many vehicles, including a late-model  
 3 Lincoln Continental.

4 15. I have been advised by DEA Agent Dennis Cameron of Reno that  
 5 he is familiar with the case in 1976 in which Charles Hudson testified  
 6 as a witness. Cameron advised that the case concerned a large scale  
 7 marijuana smuggling organization, and that Leland Rene Quinn is  
 8 a fugitive from that prosecution. Cameron has advised that he has  
 9 received information from a reliable informant that Quinn is still  
 10 active in Mexico and South America and is engaged in narcotics  
 11 smuggling.

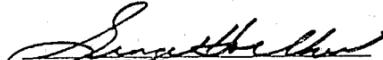
12 16. Based on my knowledge of this case, I believe that defendant  
 13 DAIL will flee the United States if given the opportunity to do so.  
 14 I also believe that the smuggling organization will attempt to  
 15 obtain an attorney to represent DAIL and that the organization will  
 16 also attempt to obtain DAIL's release on bond.

17 17. I am familiar with other high cash bails in narcotics cases.  
 18 I know that the Ninth Circuit set bail for Jose Valenzuela in the case  
 19 of United States v. Jose Valenzuela, CR 77-1047 at \$5,000,000 cash.  
 20 I am also aware that the First Circuit upheld bails of \$10,000,000 cash  
 21 and \$5,000,000 cash in the case of United States v. Ibarra, et al.  
 22 (Memorandum Order; Miscellaneous Number 78-8010). Although the  
 23 defendant in this case is charged with non-narcotics violations, he  
 24 nevertheless was working for a large scale organization when the crimes  
 25 were committed. I therefore believe that bail in the amount of  
 26 \$1,000,000 cash is fully justified and appropriate.

27 //  
 28 //

1 I declare under penalty of perjury that the foregoing is true and  
2 correct.

3 Executed on: December 20, 1978.

4   
5 GEORGE HOEWKER  
6 Special Agent - DEA

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2 United States Attorney  
3 ROBERT L. BROSIO  
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15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA, )  
18 Plaintiff, )  
19 v. )  
20 HARVEY ORVILLE DAIL, )  
21 Defendant. )

22 NO. CR 78-1095

23 ORDER

24 The Court having considered the facts set forth in the Government's  
25 Motion and the attached declaration and exhibits, makes the following  
26 ruling. IT IS HEREBY ORDERED that bail for defendant HARVEY ORVILLE  
27 DAIL is set at \$1,000,000 cash. The Government shall have the  
28 opportunity to examine and approve all sources of funds offered to  
post the bail prior to the release of the defendant.

IT IS FURTHER ORDERED, that all pleadings in this matter shall  
remain under seal until such time as defendant HARVEY ORVILLE DAIL  
is arrested.

DATED: This \_\_\_\_ day of December, 1978.

UNITED STATES DISTRICT JUDGE

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The hearings of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs held in 1980 and entitled "Organized Crime and Use of Violence" are printed in two volumes or parts.

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