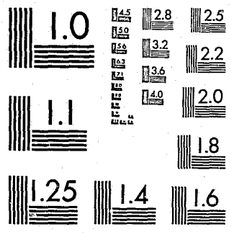

Department of Justice

STATEMENT

OF

D. LOWELL JENSEN
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

CONCERNING

THE ADEQUACY OF LAW ENFORCEMENT POWERS
AVAILABLE TO THE INSPECTOR GENERAL'S OFFICE OF
ORGANIZED CRIME AND RACKETEERING,
UNITED STATES DEPARTMENT OF LABOR

ON

FEBRUARY 3, 1983

I am pleased to be here today to present the views of the Department of Justice on the adequacy of law enforcement powers available to criminal investigative agents assigned to the Inspector General's Office of Organized Crime and Racketeering in the United States Department of Labor. These are agents who since 1978 have been assigned by the Labor Department to carry out that Department's participation in the organized crime program. Seventy five such Labor Department agents are currently assigned along with other criminal investigative agencies to assist the Justice Department's strike forces and United States Attorneys' offices with the investigation and prosecution of organized criminal activity related to labor unions and pension or welfare employee benefit plans. The work of these agents, whom I shall refer to as "Labor OC agents" for brevity's sake, has been clearly productive and has contributed significantly to the organized crime program. The Department holds the opinion that the law enforcement powers currently exercised by these agents are adequate to do the job which the agents are expected to perform.

As I advised the Senate Subcommittee on Labor one year ago when I testified on labor racketeering legislation proposed at that time, we believe that while there may have been problems in the past, the Labor Department is now cooperating with the organized crime program to a high degree. Although the level of their performance has varied over the past five years from strike force to strike force, we are pleased with the overall performance of the Labor OC agents insofar as they have endeavored to primarily focus

their investigative efforts on so-called "white collar crime" in labor unions, employee benefit plan affairs, and labor-management relations. The strengths which the Justice Department has sought and will continue to seek from these Labor OC agents lie primarily in their ability to deal with documentary evidence associated with these types of investigations, to understand the workings of the labor movement and its component organizations, and to develop sources of information within those organizations. A recently published list of labor racketeering prosecutions investigated by Labor OC agents since 1978 discloses that a large majority (approximately 70%) of such investigations involved the cooperation of other investigative agencies. Our figures indicate that approximately half of the open investigations in which Labor OC agents are currently engaged already involve the cooperation of other investigative agencies. We think that this experience reflects the fact that the Labor OC agents are able to obtain the assistance of the FBI and other criminal law enforcement agencies when required in particular cases.

Therefore, we think that the Justice Department's policy with respect to the authorization of Labor OC agents to act as deputy United States Marshals is a sound one. In general, we believe that the carrying of weapons by Labor OC agents should be restricted to those instances where the FBI or other criminal investigative agency, all of whose agents are regularly trained in the use of weapons, is unable to assist in situations where the personal safety of an informant is in jeopardy or where the personal safety

of an agent is endangered as the result of his investigative activities in a particular case. We think that this policy is consistent with the strike force concept that participating agencies will regularly cooperate and complement each others' efforts while maintaining their own respective areas of specialized expertise.

Since the vast majority of arrests are made in strike force labor racketeering cases only after an indictment or criminal information has been returned, arrest powers and the authority to carry weapons for the purpose of making arrests is not required for Labor OC agents. Where arrests are required, there is ample time to secure the cooperation of the United States Marshals Service or other federal law enforcement agencies in executing court-ordered arrests. In those rare instances where searches for documentary evidence were required as part of Labor OC investigations, the Marshal's Service or other federal law enforcement agencies with weapons have also cooperated in the execution of the searches.

On February 3, 1982, before the Subcommittee on Labor I also testified against applicable portions of proposed legislation which would have conferred authority on the Department of Labor, concurrently with the FBI and other investigative agencies, to investigate all criminal violations involving employee pension and welfare benefit plans. The legislative proposal, which was opposed by the Administration, would have authorized the Labor Department

to commence investigations under Title 18 and other provisions of the United States Code outside Title 29 for which existing memoranda of understanding between the Departments of Justice and Labor require a specific assignment of investigative responsibilities to Labor Department investigators on a case-by-case basis. We prefer to make these assignments in Title 18 on a case-by-case basis.

In general, we believe that proposals to expand the Labor Department's existing criminal investigative responsibilities in terms of broader subject matter or additional investigative procedures, such as those requiring weapons, may jeopardize certain important concepts which we think have contributed significantly to the successful investigation and prosecution of organized criminal elements in the labor-management and pension-welfare fields. I am speaking here of the close coordination of covert investigations involving undercover operations or judicially authorized electronic surveillance and the strict accountability of investigators to Justice Department supervisors, particularly in multi-district investigations. At present the Federal Bureau of Investigation exercises the primary responsibility among investigative agencies with respect to covert investigations of organized crime and labor racketeering. It does so within the organizational framework of the Justice Department and subject to the direct supervision of Justice Department administrators.

Although other investigative agencies like the Labor Department Inspector General's Office of Organized Crime and Racketeering can furnish vitally important expertise in connection with the internal operation of labor unions and employee benefit plans, which flows from the other regulatory responsibilities of the Labor Department, we do not believe that the expansion of responsibility in another investigative agency which duplicates the FBI's responsibility in regard to labor racketeering is an appropriate and wise course of action. We do think that the conduct of an organized crime investigative program with the Department of Labor as an efficient and cooperative partner which complements the role played by the FBI is the proper and desirable course of action.

The FBI is already performing covert investigations with considerable success. In order to continue to conduct its organized crime program efficiently, the FBI has advised that it needs to receive information of other agencies' investigative efforts in regard to organized crime members and associates on a regular and recurring basis. We agree that such intelligence is necessary if the FBI is to be able to meaningfully influence other agencies' decisions to commence their inquiries in regard to persons and organizations who may already be the subject of sensitive covert investigation by the FBI. We are hopeful that current discussions between the Labor Department's Office of Organized Crime and Racketeering and the FBI will result in even greater cooperative efforts between the two investigative agencies.

Finally, I would like to comment on our efforts to combat labor racketeering by organized criminal elements. Recent convictions involving labor-management corruption on the waterfront and in other industries have demonstrated the continuing need for federal legislation to address the problem of the infiltration of labor unions and their affiliated organizations by organized crime. In September 1982 the reputed number three man in the Chicago syndicate was sentenced along with seven other defendants who had held office in or who had been affiliated with the Laborers International Union of North America. At sentencing four of the defendants, including the reputed organized crime leader, who then held union office were removed under the forfeiture provisions of the Racketeer Influenced Corrupt Organizations (RICO) statute. The trial court was able to accomplish that removal because the defendants' conduct, in furtherance of a scheme to obtain kickbacks in return for awarding union insurance and health services business, was sufficiently pervasive to permit prosecution as a pattern of racketeering activity under the RICO statute. In addition, the organized crime leader was also sentenced to 20 years' imprisonment.

In December, 1982 another reputed organized crime street boss in the Chicago syndicate together with the General President of the Teamsters union, a service provider to the Teamsters' Central States Welfare Fund with reputed ties to organized crime, and two others, an employee and a trustee of the Teamsters' Central States Pension Fund, were convicted after trial for conspiracy to bribe

a United States Senator and other crimes in regard to a scheme involving deregulation in the trucking industry. The service provider was murdered two weeks ago. In this case, however, the government was not able to use any federal statute which would result in immediate removal from union office on conviction in the trial court. Because Section 504 of the Labor Management Reporting and Disclosure Act and Section 411 of the Employee Retirement Income Security Act do not permit the removal of a convicted individual until all his appeals are exhausted, the primary federal statute governing disqualification from union office or benefit plan position may not be invoked until many months after sentencing.

As the Attorney General testified last week before the Senate Judiciary Committee, disqualification from positions in labor unions, employer associations and employee pension or welfare benefit plans should become effective immediately upon conviction in the trial court. Similar legislation to that which the Attorney General was recommending as an additional tool in the fight against organized crime and labor racketeering was passed by the Senate last year as part of a proposed Labor Racketeering Act. The House failed to act on the bill. I urge this Committee to support such legislation in the 98th Congress. If this legislation had already been enacted into law, Section 504 of the LMRDA and Section 411 of ERISA would have immediately disqualified the individuals in both these cases from holding labor union or benefit plan office upon sentencing in the trial court.

In summary, for the reasons which I have discussed, the Department of Justice recommends against legislation which would require a change in the current allocation of investigative responsibilities among the several criminal law enforcement agencies which now participate in the organized crime program. We believe that the current allocation of investigative responsibilities strikes an appropriate balance among all the agencies charged with enforcement of the federal criminal laws dealing with labor racketeering. The Administration clearly and strongly endorses this position.

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